

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

CRIMINAL APPEAL NO.184 OF 2012

1. Ranjeet Shahaji Gade, &	
2. Ganesh Uttam Kamble.	 Appellants
Versus	
The State of Maharashtra	 Respondent

.....
WITH
CRIMINAL APPEAL NO.310 OF 2012

Subhash Hiralal Bhosale	Appellant
Versus	
The State of Maharashtra	 Respondents

.....
WITH
INTERIM APPLICATION NO.1387 OF 2020
IN
CRIMINAL APPEAL NO.184 OF 2012

Ranjeet Shahaji Gade	Applicant
Versus	
The State of Maharashtra	Respondent

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Ms. Anjali Patil, Advocate a/w. Mr. Nauman Shaikh, for the Appellant in Criminal Appeal No.310/2012.

Mr. P.G. Sarda, Advocate for the Appellants in Criminal Appeal No.184/2012.

Ms.S.V. Sonawane, APP for the Respondent–State.

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**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

RESERVED ON : 08th SEPTEMBER, 2021

PRONOUNCED ON : 28th SEPTEMBER, 2021

JUDGMENT : [*PER SARANG V. KOTWAL, J.*]

1 Both these appeals are decided by this common judgment because in both these appeals the same judgment and order of conviction is challenged. For the sake of convenience, the appellants are mentioned as accused and are referred by their names.

2 The appellant in Criminal Appeal No.310/2012 Subhash Bhosale was the accused No.1. Appellant No.1 Ranjeet Gade in Criminal Appeal No.184/2012 was the accused No.3 and appellant No.2 Ganesh Kamble in Criminal Appeal No.184/2012 was the accused No.2 in Sessions Case No.489/2010 on the file of the Additional Sessions Judge, Pune. Vide judgment and order dated 21.10.2011 passed in Sessions Case No.489/2010, the learned Additional Sessions Judge, Pune convicted and sentenced the appellants as follows :

i. All of them were convicted for commission of offence

punishable under Section 120-B of the Indian Penal Code and they were sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each; and in default, to suffer further R.I. for six months.

- ii. All of them were convicted for commission of offence punishable under Section 342 read with Section 120-B of the Indian Penal Code and they were sentenced to suffer imprisonment for one year each and to pay fine of Rs.1,000/- each; and in default, to suffer further R.I. for one month.
- iii. All of them were convicted for commission of offence punishable under Section 366 of IPC read with Section 120-B of the Indian Penal Code and they were sentenced to suffer R.I. for ten years and to pay fine of Rs.2,000/- each; and in default, to suffer further R.I. for three months.
- iv. All of them were convicted for commission of offence punishable under Section 506(2) read with Section 120-B of the Indian Penal Code and they were sentenced to suffer R.I. for seven years and to pay fine of Rs.2,000/- each; and

in default, to suffer further RI for three months.

- v. All of them were convicted for commission of offence punishable under Section 376(2)(g) read with Section 120-B of the Indian Penal Code and they were sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each; and in default, to suffer further R.I. for six months.
- vi. All the substantive sentences of imprisonment were directed to run concurrently.

3 The prosecution case, in brief, is as follows:

3.1 From 4:30 p.m. of 1.4.2010 till 12:45 a.m. in the midnight of 2.4.2010, the prosecutrix, who was examined as PW-1, was taken to various places from Mankar Square to Karat Pate Vasti, Wakad, Tech Mahindra Company, Hinjewadi and finally to a secluded place where all the three accused-appellants committed rape on her one after the other. After that she was left near her residence. In the meantime, the police were informed by the prosecutrix's relatives who were searching for her. The police came to her house. She was taken for medical examination. Her

statement was recorded and FIR was lodged vide C.R. No.87/2010 at Hinjewadi police station under various sections including section 376(2)(g) of the Indian Penal Code. The investigation was carried out. The accused Ganesh Kamble and Ranjeet Gade were arrested on 2.4.2010, accused Subhash Bhosale was arrested on 3.4.2010. The Indica Car in which the prosecutrix was taken to various places was seized from a place near the house of accused No.1 Subhash. Some blood stains and semen stains were found in the car. Panchnama was drawn. Chance finger print was found on the rear view mirror of the car which matched with the finger-print of Ganesh. The prosecutrix's mobile phone was recovered from the house of accused No.1 at his instance. The weapon and articles used in the crime i.e. knife, beer bottles and food packets were recovered at the instance of accused No.1. The blood samples and semen samples were sent for chemical analysis. The report was received. In the meantime, the statements of various witnesses including mother, aunt and others were recorded. The statements of the friends of the prosecutrix's brother were recorded. The prosecutrix had contacted these two friends when she was being

taken to various places by the accused.

3.2 The medical papers were collected and finally the charge-sheet was filed after completion of the investigation.

3.3 During trial, the prosecution examined 24 witnesses. The defence of the accused in their statements recorded under Section 313 of Cr.PC. is of total denial. However, the suggestions given to PW-1 on behalf of accused No.1 Subhash suggested that according to this accused, sexual intercourse between accused No.1 Subhash and the prosecutrix did take place but it was with her consent. All the accused took a defence that they were implicated falsely at the behest of the police. Accused No.1 had other offences registered against him and even an externment order was passed against him. That order was revoked. He was the President of a Rikshaw Union. The police held grudge against him and, therefore, he was falsely implicated. According to the suggestions given, it is the case of the defence and in particular that of accused No.1 Subhash, that, the prosecutrix was not willing to lodge FIR, but police forced her to do so by pressurizing her.

4 We have heard Smt. Anjali Patil, learned counsel for the appellant in Criminal Appeal No.310/2012, Shri P.G. Sarda, learned counsel for the appellants in Criminal Appeal No.184/2012 and Smt. S.V. Sonawane, learned APP for the State.

5 The prosecution case can be categorized according to different points on which the evidence is led. The evidence is discussed in the following paragraphs.

Evidence of the prosecutrix

6 The most crucial piece of evidence in this case, of course, is the evidence of the prosecutrix, who was examined as PW-1. She was an educated lady. At the time of deposition, she was attached to a private hospital and was holding a responsible post. She had obtained a degree in Masters in Hospitalization. She was originally from Nagpur. She had got married on 5.10.2007. Her husband was working in a Software Company. She had accompanied her husband to America from 1.3.2008 to 1.3.2010. After their return, they came back to Pune on 16.3.2010. They were residing in a flat at Wakad. On 28.3.2010, her husband again left for America in connection with his job. Her brother's two friends SB and SBP

were residing in a neighbouring building of the prosecutrix. Their names are mentioned thus to protect identity of the prosecutrix. Both these friends were Software Engineers. The prosecutrix was having a Blackberry mobile phone.

7 The incident took place on 1.4.2010. At about 12:00 p.m., PW-1 received an email regarding a seminar, which was to take place at Bhandarkar Road, Pune. PW-1 wanted to attend that seminar. At about 3:30 p.m., she went to Mankar Square to get a bus to go to Bhandarkar Road. However, she did not get the bus for more than half an hour. She wanted to reach the venue of the seminar by 5:00 p.m.. She was told that it took one hour to reach Bhandarkar Road from her place. When she was waiting for the bus, a maroon coloured Indica car bearing registration No.MH-14-AV-3015 came there. The driver offered to take her to her desired destination. PW-1 was aware that some vehicles operating for the Call Centers were used to take other passengers. She was under the impression that this car was one of those vehicles. She was getting late and, therefore, she decided to go to Bhandarkar road in that car as the driver told her that he was going in the same

direction. In her deposition, she gave description of the driver. There was one more person sitting next to the driver. His description was also mentioned in her deposition. It is her case that the driver was accused No.1 Subhash and other person was accused No.2 Ganesh. They started from the bus-stop. On the way, accused No.1 Subhash got his mobile recharged at one Ganesh Mobile Centre. The car was taken to Aundh side and then towards Pune University. The driver took the car to a garage where rickshaws were standing. Accused No.1 had a talk with one of the garage owners. After that, the car was driven for about an hour but she was not taken to Bhandarkar road. PW-1 kept asking as to where they were going. She gave a call to aforementioned SBP and sent him an SMS. However, he was busy and did not respond. In her SMS to SBP she had mentioned that the driver of the vehicle was not looking good. Thus, she had expressed her suspicion against him. Then she called the other friend SB when the car had reached Nigadi. SB had a talk with accused No.1 on PW-1's mobile phone. He gave directions to accused No.1. However, by that time it was already 6:30 p.m. and PW-1 told accused No.1 that she did

not want to go to Bhandarkar road any more and she should be dropped at the nearest bus stop. Accused No.1 agreed. However, instead of taking her to a bus-stop he took the car on the highway. During that time, both the accused were talking with each other and, therefore, PW-1 came to know their names as Subhash and Ganesh. After some time, these accused called accused No.3 Ranjeet, who joined them at some spot. Accused No.3 Ranjeet started driving the car. Accused No.1 sat besides the prosecutrix. In the meantime, at about 7:00 p.m., PW-1 had received a call from her mother, who was in Nagpur but accused No.1 did not allow PW-1 to make conversation. She was slapped and gagged. She was shown a knife and she was threatened. Accused No.2 Ganesh came and sat on the back seat. Thus, PW-1 was made to sit between accused No.1 and accused No.2. She was completely helpless. She was threatened with the knife. She was told that they would call 8-10 persons more and all of them would commit rape on her. The car was taken to a distant place. The accused bought beer from one hotel. They also bought some food. The accused consumed beer and ate that food.

8 Accused No. 1 asked PW-1 to make a call to her mother for informing her that she would be late. This was apparently done so that nobody started searching for her. When PW-1 called her mother, she had a conversation with her mother and father. During conversation, she referred them as “*Mavashi*” (aunt) and “*Kaka*” (uncle) instead of calling them “Mummi” and “Papa” as she normally did. Her mother got suspicious and contacted PW-1’s aunt in Pune, who in turn started searching for her. In the meantime, PW-1 was taken to a secluded place and all the accused committed rape on her one after the other. After that, the prosecutrix was dropped near her residence. On reaching home, PW-1 immediately called her mother from her landline. It was 12:45 a.m. at that time. Within 5 to 10 minutes, her aunt and two friends came to her flat. The police also came there. There was one lady constable. That time, PW-1 narrated the entire incident to them. She was taken to YCM Hospital for medical examination. Her statement was recorded. It was treated as FIR. It is produced on record at Exhibit P-70. The prosecutrix, while deposing, identified all the accused in the Court. She deposed that on

15.4.2010, Test Identification Parade was held where she had identified all the accused. Her clothes were seized for the purpose of investigation. PW-1 identified her Blackberry mobile cell phone Article P-1, her own clothes which she was wearing at the time of incident and clothes of all the three accused which they were wearing at the time of incident.

9 As far cross-examination of PW-1 is concerned, we have to make serious comments about it at the appropriate place in this judgment. The cross-examination of PW-1 was quite lengthy but was devoid of much substance. Most of the cross-examination was directed towards her educational qualification, background, her marital life and her stay in America. This hardly had any effect on the prosecution case.

10 There was some cross-examination about her knowledge of Pune city, but, here again nothing was elicited from her to show that she was aware of the place where she intended to go i.e. Bhandarkar road. Some questions were asked about the seminar which she wanted to attend. In her cross-examination, PW-1 had accepted the suggestion that till the vehicle reached highway she

did not suspect anything in respect of the driver of the vehicle and his companion. This suggestion, in fact supports her case that initially for quite some time she did not raise alarm when they were in Pune city because she did not suspect anything against the accused.

11 As far as the main incident is concerned, some suggestions were given on behalf of accused No.1 which show that the defence was trying to develop a theory of consensual sex. PW-1 denied the suggestion that when their vehicle reached the hotel they decided to consume beer and that she also consumed beer along with the accused. Thereafter, again similar suggestions were given that PW-1 developed close intimacy with accused No.1 Subhash. She denied these suggestions.

12 On similar lines, it was suggested to her that she herself told the accused that the vehicle be taken to Hinjewadi I.T. Park area and that she herself told accused No.1 to take her to his residence. Strangely it was further suggested that by that time she had developed so much love for accused No.1 Subhash that she did not inform her mother that she was getting late. She of course

denied these suggestions.

13 Further suggestions were given that she and accused No.1 decided to have sexual intercourse and it was performed with her consent. PW-1 had vehemently denied these suggestions. The suggestions did not stop there. Some more suggestions regarding the details of the act were put to her. These suggestions given in this case can hardly be called as proper cross-examination. There were no questions put in respect of improbability of the entire incident. Merely putting these suggestions did not affect the prosecution case at all and did not help the defence in any manner. Once she had denied suggestion of consensual sex, further suggestions were put to her regarding graphic details of the act. These further suggestions were wholly unnecessary.

14 We strongly disapprove all these suggestions put to the witness. We are more pained because of the passive approach adopted by the learned Judge in allowing these questions. These suggestions crossed all lines of basic dignity. Under the garb of giving suggestions, graphic details of the act were put to the witness. This was wholly unwarranted. The learned Judge has

recorded that at that stage the witness was sobbing. The learned Judge should have intervened and stopped this line of cross-examination. While it is true that the accused has a right to conduct cross-examination to prove his innocence but these suggestions can by no stretch of imagination be called as proper cross-examination. Even under Section 152 of the Indian Evidence Act, the Court was duty bound to forbid any question which appeared to be intended to insult or annoy or which though proper in itself appeared to the Court needlessly offensive in form. Section 151 of the Indian Evidence Act also empowers the Court to forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. The learned trial Judge failed in his duty in not protecting the dignity of PW-1 and not exercising his powers under Sections 151 and 152 of the Indian Evidence Act.

15 These questions were not necessary for establishing or

destroying the facts in issue. At this stage, it is necessary to remind the trial Courts that under Section 148 of the Indian Evidence Act, it is their duty to decide when the witness shall be compelled to answer. In particular, the Court was duty bound to decide whether or nor the witness would be compelled to answer such questions and the Court is expected to warn the witness that he is not obliged to answer if such questions are improper and if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence. In the present case, such suggestions were totally uncalled for which PW-1 was made to answer. In any case, PW-1 had denied the theory of consensual sex and, therefore, all further suggestions in respect of the actual act of intercourse were totally unnecessary. Such suggestions were, as mentioned earlier, violative of basic dignity and the learned Judge failed in his duties under Section 148, 151 and 152 of the Indian Evidence Act. Having observed thus, we also take note of the fact that the learned Judge has conducted and concluded the trial with a lot of sincere efforts otherwise.

16 We are also not happy with the silence kept by the learned Special Public Prosecutor by not objecting to these suggestions.

. It is necessary to remind the Prosecutors that under the scheme of Cr.P.C., they are in-charge of the conduct of the prosecution. They are supposed to perform their duties responsibly and they are supposed to render sincere assistance to the Court. It is their responsibility to protect the interest of the victims and the witnesses before the Court. Of course, at the same time, they have to maintain a balance by not being unfair to the defence. But, they have to protect their witnesses. In this particular case, there was absolutely no objection from the prosecution to this line of suggestions. The Prosecutors cannot only concentrate on securing conviction, but the conduct of proper trial is also their duty. In this particular case, the learned Special Public Prosecutor failed to protect PW-1 from this torture of cross-examination.

17 This line of cross-examination has taken further turn for the worse when it was suggested to her that she reached her house under influence of liquor and admitted her act with accused No.1

when narrating the incident. Further strange suggestion is given that her aunt informed her mother regarding her misdeeds. It is further suggested that PW-1 knew that accused No.1 was a good person and she did not want to lodge FIR against him and that she was pressurized into lodging report against him. Otherwise the police would publish that she was roaming with criminals during night hours. All these suggestions were vehemently denied by PW-1. No questions eliciting the response about the incident or lodging of the FIR or any relevant matters were asked. Most of this cross-examination is in the form of suggestions. There are certain questions asked about some omissions from her supplementary statement recorded on 3.4.2010, but, these minor omissions are hardly of any consequence and we are not even taking note of such minor omissions.

18 Some questions were asked to her in the cross-examination regarding identification parade. However, here again there was no cross-examination about the actual procedure and conduct of Test Identification Parade except giving a suggestion that since accused No.1 had not raped her she did not state

anything against him regarding the parade. This suggestion was also denied by her.

19 The cross-examination conducted on behalf of accused No.2 was slightly different. On behalf of accused No.2, suggestion was given to her that on 3.4.2010, the police had shown the accused persons. She denied this suggestion. PW-1 as the answer to the question put on behalf of accused No.3 clarified that as she was seated between the two accused, she did not make any attempt to open the door during the entire journey, though, she had tried to escape from their clutches. This answer elicited from PW-1 in fact harms the defence case. Otherwise, most of the cross-examination was again in the form of suggestions which she had denied.

20 Learned counsel for accused No.3 had also suggested that he was shown to PW-1 on 2.4.2010. She had denied that suggestion.

Relatives and friends of PW-1

21 The prosecution examined PW-1's mother as their witness No.2. PW-2 was an educated lady and was working as a Sub-

Divisional Engineer in a Company. Her husband i.e. PW-1's father had retired as a Lecturer. Thus, PW-1 is coming from an educated family and she herself was highly educated. PW-2 has stated in her deposition about the events that took place at her end on 1.4.2010. She had called PW-1 at about 6:30 p.m. regarding the seminar. PW-1 had abruptly cut the phone call. For quite some time PW-1's phone was not reachable and it was switched off. PW-2 kept trying to contact her. At about 8:45 p.m., she received a call from PW-1 and strangely PW-1 addressed her as *Mavashi* (aunt). She told her that she would return late as she was planning to stay at her friend's residence. Strangely, PW-1 further told her that this should not be informed to her mother as she would get worried. Significantly at that time PW-1 was talking to her own mother PW-2. PW-1 continued to address PW-2 as her aunt. PW-2 gave her phone to her husband. There again, PW-1 spoke with him by referring to him as uncle. She further told him that they should not send her elder brother. This conversation was quite strange. There was no question of sending PW-2's son to fetch PW-1. She strangely referred to PW-2 as her 'aunt' and her own father as

‘uncle’. PW-2 immediately realized that there was something wrong. She got frightened and called her cousin staying in Pune. She also called her son’s friends SB and SBP to visit PW-1’s flat. After some time, they informed PW-2 that the flat was locked. By 11:00 p.m., PW-2 instructed them to approach the police. At about 12:45 a.m. in the midnight, PW-2 received a call from PW-1. She was weeping. PW-1 told her that she had reached home. PW-2 immediately called her cousin (who is examined as PW-3). She was at the police station. PW-2 informed her that PW-1 had returned home. Therefore, PW-3, her son Mandar and aforementioned two friends SB and SBP came back to PW-1’s flat. PW-1 told everybody about the incident. PW-2 and her husband rushed to Pune by flight. Here again, the cross-examination on behalf of all the accused has not yielded any answers in their favour. Most of the cross-examination was again in the form of suggestions which were on similar lines which were put to PW-1.

22 PW-3 is cousin of PW-2 and hence maternal aunt of PW-1. She had deposed that she had received a call on 1.4.2010 from Nagpur made by PW-2 at about 9:00 p.m.. She was told by

PW-2 that PW-1 had informed her that she was staying at her friend's place for the night and that her elder brother should not be sent to fetch her. PW-2 further informed PW-3 that said friend of PW-1 was residing at Nagpur and PW-1's elder brother was in America. Therefore, this message had some hidden meaning. PW-3 along with her son went to PW-1's flat. It was locked. They were joined by aforementioned SB and SBP. They got worried and all of them went to Hinjewadi police station. When they were at the police station, she received a call from PW-2 who told her that PW-1 had returned home and that PW-3 should immediately rush there. Therefore, without lodging any report they came back to PW-1's flat. They found that PW-1 was frightened and she was weeping. In the meantime, the police officers including one lady constable also reached there. All of them made enquiries with PW-1. She narrated the entire incident. Thereafter the police took her to YCM Hospital. This witness had also accompanied her. Again there was nothing much in the cross-examination. Again some suggestions in bad taste were given to her. It was suggested to her that the security guard informed this witness that a boy in a

car had dropped PW-1 at her flat. When PW-3 reached there, she found PW-1 to be under the influence of liquor and that PW-1 herself told her about her consensual sexual acts. PW-3, of course, denied this suggestion.

23 She was also suggested that PW-1 told the name of accused No.1 Subhash as her friend. This suggestion was also denied. She also denied the suggestion that she and the police officers forced PW-1 to lodge FIR. She denied the suggestion that she herself told PW-1 that if it was known to people that she was roaming around with criminals in the night that would affect her marriage.

24 The prosecution examined PW-6 SBP. He was friend of PW-1's brother. He and SB were residing in a nearby building. He deposed about the messages sent by PW-1 on his mobile phone at around 6:30 P.M., which PW-1 had referred to in her deposition. This witness has deposed about the phone call made by PW-2 to him regarding PW-1's phone call in frightened condition and about her incoherent conversation. Importantly, this witness had deposed about the exact message sent by PW-1 to him, wherein she had

mentioned that she was already late and hence she was returning back and that 'the driver of the car was not looking good'. Thus, PW-1 had expressed her apprehension about accused No.1 through this message.

25 In the cross-examination, PW-6 answered that he had not suggested to PW-1 that she should not continue the journey in that vehicle. The rest of the cross-examination was regarding taking print out of that SMS. However, his deposition about the contents of the SMS was not shaken.

26 PW-1's husband was examined as PW-5 but on the date of the incident he was in America and, therefore, his evidence is not material in this case.

Medical evidence

27 The prosecution examined PW-12 Dr. Rapol. She was attached to YCM Hospital, Pimpri as a Medical Officer from 1.4.2010 to 8.4.2010. She had examined PW-1 at about 5:45 a.m. She has deposed that PW-1 was referred for her medical examination by Hinjewadi police station and she was brought by a lady constable. PW-1 had given the history of the incident to her

and there she had categorically informed this witness about the gang rape committed by three persons at around 11:00 p.m. on the same night by giving threats to her life. The history was mentioned by this witness in the medico legal certificate. PW-1's undergarments were found stained with discharge. There were bite marks on her left breast. There was tenderness on her genitals. The labia majora and labia minora were inflamed. PV examination was painful. This witness, PW-12, then took vaginal smear, vaginal swab etc.. This witness has categorically stated that PW-1's examination revealed findings which were suggestive of forceful intercourse. She issued a medico legal certificate which is produced on record at Exhibit P-105. The samples taken by her were sealed and given to police with forwarding letter addressed to Directorate of Forensic Laboratory. The cross-examination was mainly in respect of maintaining the record and absence of outward number on the medico legal certificate. She was also cross-examined about the time of examination. The perusal of the medico legal certificate shows that the MLC number was mentioned there. Registration number of indoor patient is also

mentioned. Therefore, there is not much force regarding absence of outward number on the medico legal certificate Exhibit P-105. The other findings mentioned by this witness in her deposition are recorded in that certificate. This evidence supports the prosecution case that the sexual intercourse was forceful and not consensual. Significantly, the information was given by PW-1 herself immediately when she was taken to hospital and when she was examined at 5:45 a.m. on 2.4.2010. There is no scope to argue that the allegations were made by PW-1 as an afterthought. The incident of rape had taken place.

28 The prosecution also examined Dr. Pathre as PW-24. He had examined accused No.2 Ganesh and accused No.3 Ranjeet on 2.4.2010. He has deposed that on examination he had noticed smegma over glans of both these accused. This witness also noticed redness of glans. He has deposed that redness of glans suggested the intercourse. He had also deposed that he did not notice any uniform layer of smegma. He did not agree to the suggestion put by learned counsel for accused No.3 that smegma over glans suggested recent sexual intercourse. He agreed that

redness of glans may be due to various reasons.

. We do not find that evidence of this witness is very material as he has not given clear opinion about the medical examination. In any case, it neither helps the prosecution nor the defence.

Evidence regarding extra judicial confession

29 The prosecution has examined Arun Rithe as PW-7. He was knowing accused No.1 Subhash since 5 to 7 years prior to his deposition. He has deposed that accused No.1 was the President of Autorickshaw union in respect of an auto-rickshaw stand. This witness has deposed that accused No.1 was using Indica car bearing No.MH-14-AV-3015. He was also knowing other two accused. On 2.4.2010 at about 1:00 p.m., he received a phone call from accused No.1 Subhash. This witness was asked to bring his rickshaw as there was break-down of accused No.1's car. This witness and accused No.1 went to a hotel. Accused No.1 consumed liquor. This witness has deposed about the extra judicial confession made by accused No.1 to him. According to this witness, accused No.1 told him that he along with other two accused Ganesh and

Ranjeet were going to Pune city by Indica car. On their way one lady asked for lift. She wanted to go to Deccan. Accused No.1 told this witness that initially only accused No.1 and Ganesh were in the car. Ranjeet joined them later at Wakad. Accused No.1 told him that he had taken the vehicle to a secluded place and all of them committed rape on her. After this disclosure this witness and accused No.1 went to Pavana dam and then to hotel “Sher-E-Punjab” and then to “Shital Hotel”. The police apprehended the accused Subhash at “Shital Hotel”. This witness was also taken to police station. This witness told the police about the confession made by accused No.1 to him. His statement was recorded. The cross-examination was on the line to suggest that the police had threatened him of implication in the case if he did not give the statement against accused No.1. This suggestion was denied by him.

Evidence of pancha witnesses

30 The prosecution examined PW-9 Nana Paul, who was a pancha for the panchnama under which the clothes of PW-1 were seized.

31 PW-10 Pandurang Gughe was a pancha in whose presence accused No.1 made a statement regarding accused's willingness to produce mobile phone from his house. That mobile phone was belonging to PW-1 and it was produced at the instance of accused No.1 from his house from a cupboard.

32 PW-13 Somnath Shelar was a pancha for recovery of knife, beer bottles and an empty packet at the instance of accused No.1. He has made statement in presence of this witness leading to recovery of these articles from the bushes near the spot where the offence was committed. A knife, two beer bottles and a packet containing some food were recovered from that secluded spot, which was not used by public as such.

33 The prosecution examined PW-14 Hemraj Jambulkar as a pancha in respect of examination of and taking samples from the vehicle bearing registration No. MH-14-AV-3015. This panchnama was carried out on 2.4.2010. The vehicle was locked. It was opened by inserting one strip in the window-glass. Stains on the seat cover were seized by cutting the pieces of the seat cover. Some stains were found on the gunny-bag in the car. Stains of gutka

were collected. This panchanama was produced on record vide Exhibit P-113. The panchnama was carried out between 12:15 p.m. and 1:15 p.m. on 2.4.2010 in respect of C.R. no.87/2010 of Hinjewadi police station.

Witnesses who were knowing the accused and who deposed about some events on that day

34 The prosecution examined PW-8 Shardul Sonavane. He was working in the shop, where cushions were made for rickshaws. This witness was knowing accused No.1 Subhash as he was their regular customer. Accused No.1 Subhash was also having a rickshaw. PW-8 has deposed that on 31.3.2010, accused No.1 had placed some orders for hood and cushions for his rickshaw. On 1.4.2010 at about 5:00 p.m., accused No.1 had come to this witness's shop in his Indica car bearing No.MH-14-AV-3015. At that time, accused No.2 was with accused No.1 in the car. Importantly this witness has deposed that a lady was sitting in the car on the rear seat. This witness has identified PW-1 as the same person who was sitting in the car. This evidence has gone unchallenged and it supports the prosecution case that PW-1 was

taken to his shop around that time.

35 PW-16 Malhari Ware was having mobile shop and he was approached by accused No.1 for getting his mobile phone recharged at about 4:15 p.m. on 1.4.2010. This witness has seen that person who had recharged the mobile phone had come in Indica car. One lady was sitting on the rear seat. He has not identified either accused No.1 or PW-1. His evidence, therefore, is not much of use either to the prosecution or to the defence.

36 PW-22 Ajit Gogavale was knowing all the accused. This witness was a rickshaw driver and he was a member of the union of which accused No.1 was the President. On 1.4.2010 at around 9:00 p.m., accused No.2 Ganesh had come to the rickshaw stand and had taken auto-rickshaw of accused No.3 Ranjeet. This witness was examined to show that accused No.3 Ranjeet had joined other accused at about 9:00 p.m.. No questions were asked in the cross-examination by and on behalf of any of the accused as to how accused No.3 accompanied accused Nos.1 and 2 from that place. Not even a suggestion is given in that behalf.

37 The prosecution had examined PW-21 Shrimant Londhe,

who was also a rickshaw driver. But, he did not support the prosecution case and he was declared hostile. He was cross-examined by the prosecution. He has given evasive answers when he was confronted with his statement before the police to the effect that accused No.2 Ganesh had come to the rickshaw stand and had told accused No.3 Ranjeet that accused No.1 Subhash had called him and that accused No.1 Subhash was waiting near a road.

Witnesses on other corroborative pieces of evidence :

38 The prosecution examined PW-18 Sachin Shinde, who was a Nodal Officer of a Telephone Service Provider at Pune. He had produced the Call Data Record of accused No.1 Subhash and aforementioned SB.

39 PW-19 was Sanjay Bhorade, was a fingerprint expert attached to Fingerprint Bureau, Pune. He had inspected the car parked in the police station on 2.4.2010 and had found a chance print on the rear view mirror of that Indica car. It was compared with the fingerprints of the accused and it was found that the chance fingerprint was that of the thumb print of accused No.2 Ganesh. His opinion was produced on record vide Exhibit P-138.

He was not cross examined on the reasons for his conclusion. He denied the suggestion that he had not taken the chance print as deposited by him.

Police witnesses regarding investigation

40 PW-4 ASI Janardhan Yele was in-charge of Hinjewadi police station from 9:00 p.m. on 1.4.2010 till 3:00 a.m. on 2.4.2010. At about 12:15 a.m. in the midnight of 2.4.2010, PW-3 along with 2-3 persons approached his police station and told him that PW-1 had left her residence in the afternoon and she had not returned till midnight and that they had come to the police station to lodge the report about her missing. While they were still in the police station, at about 12:45 a.m. they informed this witness that they had received a telephonic information that PW-1 had returned home and, therefore, without lodging any report, PW-3 and others had left the police station. This witness had noted this information in the station diary at 12:45 a.m. on 2.4.2010. A copy of the extract of the station diary entry was produced by this witness on record at Exhibit P-78.

41 PSI Narayan Gavade was examined as PW-11. At about

12:45 a.m. on 2.4.2010, he was informed by PW-4 that PW-3 had come to Hinjewadi police station to lodge a report about PW-1 not returning home for quite some time. PW-4 was told that PW-1 had returned home. However, to verify the situation PW-4 asked this witness to go to PW-1's flat. Accordingly this witness went to the flat. He was accompanied by his driver and a lady police constable. He found that PW-1 was in the flat. She was frightened and was weeping. This witness made enquiries and at that time PW-1 narrated the horrible ordeal which she had to face. She even disclosed the names of all the three accused. This witness issued medical requisition to YCM Hospital for medical examination of PW-1. He recorded the statement of PW-1 with the help of his assistant. It was treated as FIR and it is produced on record, as mentioned earlier, at Exhibit P-70. This witness has deposed that he took said report at about 2:35 p.m. on 2.4.2010 and came to Hinjewadi police station at 3:00 a.m.. This witness took charge of the police station from PW-4. This witness has stated that he registered the offence at 3:10 a.m. on 2.4.2010. He took station diary entry to that effect. He made endorsement on the report to

that effect. That endorsement is specifically marked as Exhibit 70-A. This witness had taken charge of clothes of PW-1 and carried out panchnama to that effect. At 9:00 a.m. on 2.4.2010 he handed over investigation to PI Bhosale Patil. The proforma of the FIR registered vide C.R. No.87/2010 showed that the information was received at the police station at 15:10 hours on 2.4.2010. This was a mistake because the endorsement vide Exhibit 70-A showed that the station diary entry was taken at 6:10 a.m. and the report was taken down at 3:10 a.m. on 2.4.2010. There is no cross-examination on this aspect on behalf of the defence.

. The cross-examination was specifically directed towards the fact that the full names of the accused were mentioned on the proforma which was produced on record and marked at Exhibit D-103. While answering the questions in the cross-examination this witness has stated that at the time of recording of FIR, PW-1 had given description of the accused and, therefore, she was shown album of photographs of habitual criminals that was in the police station and from that album she had identified the photograph of accused No.1 Subhash Bhosale and on the basis of available record

of accused No.1 his name and address was incorporated in the printed FIR. In respect of other two accused, their names were already with the police on record in connection with miscellaneous offences and, therefore, their names and addresses were incorporated in column No.7.

42 The defence wanted to contend that since the photograph of accused No.1 was shown to PW-1, his identification is not free from doubt. This aspect shall be discussed a little later in the judgment. This witness was given a suggestion that the FIR was lodged against the wishes of PW-1 and she was pressurized and she was forced to lodge this FIR. This witness has denied this suggestion.

43 PW-15 API Dhananjay Jagdale has deposed about the seizure of the car. He has deposed that on 2.4.2010 at about 11:00 a.m. the investigating officer Shri Bhosale Patil instructed him to bring that Indica car bearing registration No.MH-14-AV-3015 parked in front of the house of accused No.1. By that time, accused Nos.2 & 3 were already arrested and accused No.1 Subhash was absconding. This witness had gone to the spot and

had brought the car to Hinjewadi police station at 12:00 p.m. by towing it with the help of a crane. The panchas were called. The doors were opened and the articles as well as the stains from the cushion covers bearing different stains were seized. After arrest of accused No.1 Subhash Bhosale during investigation, mobile phone of PW-1 was recovered at his instance. At that time this witness had gone to the house of accused No.1 at his instance. He had denied the suggestion that the panchnama of seizure of mobile was done only at the police station. He stated that since the offences were previously registered against accused No.1 Subhash Bhosale he was knowing his house, though he was not an investigating officer in the previous cases against accused No.1.

44 PW-17 API Ramesh Pawar has supervised recovery of knife, two empty beer bottles and some food packets at the instance of accused No.1. This recovery was effected on 4.4.2010.

45 PW-20 Police Naik Dilip Ghate was the carrier who had carried the samples and articles to the Forensic Science Laboratory at Mumbai.

46 PW-23 Senior P.I. Nandkishore Bhosale Patil was the

investigating officer. He had taken over the investigation of C.R. No.87/2010 at 3:10 p.m. on 2.4.2010. He was in-charge of the investigation. He had gone to the house of accused No.1. He had arrested accused Nos.2 & 3 but accused No.1 had absconded. Accused Nos.2 & 3 were sent for medical examination. This witness had instructed PW-15 to bring the car in question to the police station. He obtained the fingerprints of accused Nos.2 & 3. He received a tip on 3.4.2010 regarding the whereabouts of accused No.1 Subhash Bhosale. According to the information, he was to arrive at "Shital Hotel", Kanhe Phta, Pune. A trap was arranged and accused No.1 was arrested. He recorded the supplementary statement of PW-1 and the statements of other witnesses. He collected the C.A. report from the laboratories. He received the DNA report on 28.4.2010. They are produced at Exhibit P-165 and P-166. The fingerprint expert's report was also collected by him. On conclusion of investigation, charge-sheet was filed by this witness on 23.6.2010. This witness had proved the portion from statement of PW-21 Shrimant Londhe, who had turned hostile. He was cross-examined about various places where

PW-1 was taken. He was suggested that in the absence of accused No.1, who was absconding this witness had misbehaved with accused No.'1 wife who had lodged a complaint with this witness's superiors. This witness PW-23 has denied this suggestion. The contradictions from the statements of witnesses were put to him in the cross-examination and they were marked as Exhibits-172, 173, 174, 177 and 179. He denied the suggestion that PW-1 was pressurized into lodging that report and that she was subjected to medical examination against her wishes. A specific suggestion is given to this witness mentioning that sexual intercourse was with consent but it was given a colour of rape because the externment order passed against accused No.1 was revoked and that the police held grudge against him.

47 Forensic Science Laboratory report, the DNA profiling report was produced on record vide Exhibit P-165. The DNA profile of PW-1 matched with the hair found on the back-seat of India car bearing No.MH-14-AV-3015. The DNA report also shows that the semen detected on vaginal smear and vaginal swab of PW-1 as well as on the back-seat of the cover of said car matched with

the DNA in respect of blood sample of accused No.1 Subhash Bhosale. Similarly, the semen detected on the back-seat cover of the said car also matched with the blood sample of accused No.2 Ganesh Kamble though in the report his name is mentioned as “Uttam Kamble”. As per the further prosecution case, the sample of blood of all the accused were sent for DNA profiling.

Submissions on behalf of all the accused and the prosecution :

48 Smt. Anjali Patil, appearing for accused No.1 and Shri P. G. Sarda appearing for accused Nos.2 & 3 made their submissions. They are as follows:

48.1 The proforma of the FIR shows that the information was received at the police station at 3:15 p.m. on 2.4.2010. Hence, there was delay in registration of FIR. When PW-3 went to lodge a report about missing of PW-1, no further steps were taken and the report about PW-1's missing was not lodged, which is a suspicious circumstance against the prosecution.

48.2 The semen stains found in the car were result of planting

of evidence by the police and, therefore, the forensic science laboratory report should not be taken into consideration. There are omissions and contradictions in the evidence of the witnesses.

48.3 The case of PW-1 does not seem probable.

48.4 Most importantly the test identification parade memo was not exhibited. The SEM who had conducted that test identification parade was not examined. Identification of the accused is not clearly established. The police officer had admitted that the photograph of accused No.1 was shown to PW-1 in the police station before lodging of the FIR. The names and addresses of the accused appeared on the proforma at the FIR and, therefore, it indicates that the police had already disclosed the identity of the accused without investigation which shows false implication on their part. Finally, both learned counsel for the appellants submitted that in the alternative leniency be shown to the accused considering that they are in custody since April, 2010.

48.5 As against these submissions, learned A.P.P. Smt. Sonavane supported the prosecution case. She submitted that the identification parade is not necessary in every case. There are some

exceptions when, without identification parade the identity can still be established and accepted during the trial. She relied on the judgment of the Hon'ble Supreme Court passed in the case of **Raja Vs. State by the Inspector of Police**¹.

48.6 Smt. Sonavane submitted that PW-1 was constantly put under threats. Knife was shown to her and, therefore, she could not resist or raise alarm. There was nothing improbable or unacceptable in the version of PW-1. There was no reason for PW-1 to falsely implicate the accused. Her evidence is amply corroborated by PW-2, PW-3 and PW-6 in respect of events which took place on that particular day.

Reasons :

49 We have carefully considered the evidence on record and we have taken into consideration the submissions made before us. The prosecution case rests basically on the version of PW-1. We have bestowed our careful attention on her evidence and we are

1 Dated 10.12.2019 passed in Criminal Appeal No.740/2018 (Raja Vs. State by the Inspector of Police) with Criminal Appeal Nos.1608-1609/2018 (Govindaraj and others Vs. State by the Inspector of Police, Singarapattai police station, Krishnagiri District)

satisfied that she is a truthful witness. There are no infirmities in her evidence at all. PW-1 was new to Pune City and was not well versed with the topography. She wanted to reach Bhandarkar Road to attend a seminar. She was looking for a bus. The bus was not in sight and did not arrive for quite some time. She, therefore, took lift from accused No.1's car as accused No.1 offered to take her to that place. He had claimed that he was going in the same direction. The dishonest intention on the part of accused No.1 was clear right from the inception as he claimed that he was going towards the same direction where PW-1 wanted to go and yet he did not take her to that place and made a show that he did not find that place.

50 After roaming around for quite some time, on the pretext of taking her to that particular place, finally she was taken to highway and she was threatened at the point of knife. Accused No.3 joined other two accused. Accused Nos.1 & 2 sat on either side of PW-1 and, therefore, it was impossible for her to raise any alarm. She was frightened. Accused No.1 had shown her knife. He had also threatened that he would call 8-10 of his associates which

would have been even more dangerous. Therefore, it was not unnatural that PW-1 could not raise alarm at any place including the place from where beer and food were purchased.

51 PW-1's subsequent call to her mother and her unusual conversation by referring her parents as "uncle" and "aunt" also shows her state of mind and her desperate attempt to seek help without making the accused aware of what she was doing.

52 After she returned home, PW-1 had immediately narrated the incident to her aunt and to police officers. There was no scope to fabricate the story as an afterthought.

53 PW-1 was immediately sent for medical examination. The samples were collected and even before the medical officer, she had narrated the incident of gang rape. She had given her statement immediately. It is impossible to believe that she developed love affair with accused No.1 during a very short time while they were in the car and immediately had sexual intercourse with mutual consent. The theory developed during the cross-examination is neither believable nor acceptable and we discard it outrightly. An attempt was made to give suggestion that PW-1 had consumed

alcohol, had sexual intercourse with accused No.1 and had roamed around with criminals, and this was not liked by PW-3 and others and, therefore, to save her marriage she was made to lodge the FIR. The theory itself is absurd. PW-3 was PW-1's aunt. None of the witnesses were from her husband's side. It is not possible to believe that PW-3 and the police forced PW-1 to falsely depose against the accused.

54 As mentioned earlier, the DNA sample reports conclusively establish that her vaginal swab and smear showed presence of accused No.1's semen. His semen was also found on the back-seat of the car. Accused No.2 Ganesh's semen was also found on the back-seat as is revealed from the DNA profiling.

55 These circumstances on their own sufficiently prove the guilt of these accused. The chance finger print of the accused No.2 Ganesh's thumb print found on the rear view mirror is another strong circumstance.

56 It is not possible to accept Shri Sarda's submission that the evidence of semen stains was planted in the car by the police. The car was seized and the samples from the car were collected on

2.4.2010 whereas accused No.1 Subhash was arrested on the next day i.e. on 3.4.2010.

57 The evidence of Pws-2, 3 & 6 sufficiently corroborates the prosecution case. PW-2 has spoken about the cryptic phone call conversation whereby PW-1 was trying to give hidden message to her parents. PW-2 got worried and contacted PW-3, who along with aforementioned two friends immediately rushed to police station. When PW-1 came to home, she contacted her mother through her landline. PW-2 has deposed about the state in which PW-1 was when she had returned home.

58 PW-6 has spoken about the message sent by PW-1 expressing her apprehension against the driver of the vehicle. All these factors go on to establish all the connecting pieces of evidence against the accused as these circumstances have strengthened the prosecution case.

59 One of the important aspects in this case is about the identity of the culprits. Learned counsel Shri Sarda and Smt Patil submitted that identification parade memo is not produced on record and the SEM who conducted the identification parade was

not examined. In ordinary course, this submission would have assumed importance. However, in the light of the evidence in this particular case, non production of the test identification parade memorandum and non examination of the SEM who conducted the test identification parade is not important.

60 Learned A.P.P. has rightly relied on the judgment of the Hon'ble Supreme Court in the case of **Raja** (supra). In that judgment in paragraph-15, the Hon'ble Apex Court has observed that what weightage must be given to T.I.P. is a matter to be considered in the facts and circumstances of each case.

. Paragraph-16 of the same judgment makes reference to various other judgments of the Hon'ble Supreme Court. One of such judgments is in the case of **Malkhansingh Vs. State of M.P.**². Paragraph-7 of that judgment reads thus :

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the

2 (2003) 5 SCC 746

identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the

courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.”

61 In paragraph-18 of **Raja**’s case (supra), it is observed that if material on record sufficiently indicates that reasons for “gaining an enduring impression of the identity on the mind and memory of the witnesses” are available on record, the matter stands in a completely different perspective; and in such cases, even non-holding of identification parade would not be fatal to the case of the prosecution.

. Applying this test to the facts of the present case, certain aspects are required to be considered. All the accused were in the same car with PW-1 for sufficiently long time. They committed a heinous crime. PW-1 had no escape and had no option but to be in close contact with all the accused during the entire journey through her entire ordeal. Therefore, it is not only natural for her to remember their faces but it is impossible for her to forget their faces. After such a traumatic experience she was unlikely to forget their features. She was examined in the Court in May, 2011 i.e.

hardly after one year from the incident. Therefore, in this case identification of the accused in the Court can safely be relied on.

62 Importantly accused No.1 through his counsel had taken up a defence through suggestions that it was a consensual act. Thus, occurrence of the incident and their journey together in the car is admitted by accused No.1. Therefore, though the police officer has deposed that his photograph was shown to PW-1 in the police station before his arrest, it will not affect the prosecution case. There is no evidence to suggest that photographs of other two accused were shown or any of the accused was shown to PW-1 by the police. Apart from this circumstance, as mentioned earlier, there are other important clinching pieces of evidence against the accused and, therefore, non-production of identification parade memo and non-examination of the SEM, who had conducted the identification parade, will not affect the prosecution case.

63 As far as the timing in the format of the FIR is concerned, there is no cross-examination in that behalf and in any case the endorsement on Exhibit 70-A shows that PW-1 had given statement at 3:00 a.m. in the night itself and there is no delay.

64 The medical evidence shows that PW-1 was subjected to forceful sexual intercourse. This again establishes commission of offence.

65 The last circumstance is about extra judicial confession made by accused No.1 to PW-7 Arun Rithe. This witness was with accused No.1 when accused No.1 was arrested. Thus, he was a natural witness and, therefore, the confession made by accused No.1 to him has to be given its due importance. It is a substantive piece of evidence against accused No.1. It can also be used against accused Nos.2 & 3 under Section 30 of the Indian Evidence Act to lend assurance to the conclusion of guilt reached by the Court against accused Nos.2 & 3. Through our earlier discussion, we have already reached a conclusion that all the accused have committed this offence. Therefore, this extra judicial confession can be used against accused No.1 as a substantive piece of evidence and can be used against accused Nos.2 & 3 to lend assurance to the conclusion of guilt which we have reached against accused Nos.2 & 3.

66 On the basis of this discussion, we are convinced that the

prosecution has established its case against all the accused beyond all reasonable doubt.

67 The next question which needs consideration is about quantum of sentence. Both learned counsel submitted that considering the fact that the accused were in custody since April, 2010 and since they were young at the time of commission of offence, leniency be shown to them.

68 Smt Anjali Patil relied on the judgment delivered by a Division Bench of the High Court Punjab and Haryana at Chandigarh in the case of **Kulwinder Singh @ Billu Vs. State of Punjab**³. In that case, considering the age of the accused the sentence of imprisonment for life was reduced to 12 years without remission for offence under Section 376(2)(g) of IPC.

69 Learned A.P.P., on the other hand, relied on the judgment of the Hon'ble Supreme Court in the case of **Purushottam Dashrath Borate and another Vs. State of Maharashtra**⁴. That was a case in which the victim was murdered after commission of rape. That

3 Passed in CRA-D-242-DB-2013 dated 13.3.2019 (Punjab & Haryana High Court).

4 2015 Cri.L.J. 2862

was also a case from Pune where the victim was working in the night shift. It was observed that in recent years, the rising crime rate, particularly violent crimes against women had made the criminal sentencing by the Courts a subject of concern. The sentencing policy adopted by the Courts, in such cases, ought to have a stricter yardstick so as to act as a deterrent. There are a shockingly large number of cases where the sentence of punishment awarded to the accused is not in proportion to the gravity and magnitude of the offence thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. The object of sentencing policy should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it.

70 In this particular case, PW-1 innocently took lift from accused No.1. Accused Nos.1 & 2 and accused No.3 who joined them subsequently, took advantage of her helplessness condition. They committed rape on her. She was threatened. PW-1 has suffered extreme trauma. The manner of commission of offence

was cruel. Therefore, applying the principles laid down and the observations made by Hon'ble Supreme Court in the case of **Purushottam Borate** (supra), we are not inclined to reduce the sentence.

71 We find no reason to interfere with the judgment and order of conviction and sentence passed by the trial Court. Hence, both the appeals are dismissed. In view of dismissal of the appeal, nothing survives in Interim Application No.1387/2020 and same also stands disposed of.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)

Deshmane (PS)