

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1084 OF 2015

IN

SESSION CASE NO.589 OF 2010

Javed Rehman Shaikh }
Age-25 years, Occu : Service }
Residing at Gulam Rasul Chawl, }
Room N.7, Opp. Firdos Hotel }
Kasaiwada, Kurla (East), Mumbai. }
[Presently lodged at Nashik Road }
Central Prison, Nashik. }....Appellant/Ori.Accused

Versus

The State of Maharashtra }....Respondent

Mr. Amin Solkar a/w. Ms. Sudha Dwivedi, Ms. Misbaah Solkar, Mr. Asif Kitokar & Ms. Archana Sukla for the Appellant.

Ms. G.P. Mulekar, APP for State.

**CORAM : S.S. SHINDE &
SURENDRA P. TAVADE, JJ.**

RESERVED ON : 28th OCTOBER, 2021

PRONOUNCED ON : 23rd DECEMBER, 2021

JUDGMENT (PER SURENDRA P. TAVADE, J.):

1. Being aggrieved and dissatisfied with the Judgment and Order

dated 05.09.2015 passed by the Additional Sessions Judge, Sessions Court, Greater Mumbai in Sessions Case No.589 of 2010, the original accused/appellant has preferred this appeal. The appellant is held guilty and convicted for the offence punishable under Sections 364 and sentenced to undergo RI for ten year and fine of Rs.10,000/-, in default, to suffer further imprisonment for one year. He is held guilty and convicted for the offence punishable u/s.376(2)(f) of IPC and sentenced to undergo RI for life and fine of Rs.10,000/-, in default, to suffer further imprisonment for one year. He is also held guilty and convicted for the offence punishable u/s.302 and sentenced to undergo RI for life till his death and fine of Rs.10,000/-.

2. The case of prosecution, in brief, can be summarized as under:

Noorjahan Khurshid Alalm Shaikh (PW1) lodged missing report of her daughter on 06.06.2010. It is contended by Noorjahan Shaikh (PW-1) in the report that on 06.06.2010 at about 6.00 p.m. her daughter went out from the house and she did not return back to home. She took extensive search to trace her out, but she could not found her. Therefore, she alongwith her husband went to Nehru Nagar Police Station and lodged missing report. She also gave the description of her

daughter in the missing report.

3. On 19.06.2010 at about 9.30 a.m. the Informant, Rajak Shaikh received an information from one boy that one dead-body was lying in the room near Balwadi. Therefore, informant Rajak Shaikh rushed towards the spot. The said room was locked. Hence, he opened the window. He saw dead-body of the child aged about 9-10 years lying in the room. Hence, he gave information to PI Mr. Godse (PW-35) of Nehru Nagar Police Station. The police rushed to the spot. The said room was open by breaking the latch of the room. The informant as well as police entered into room and they found one decomposed dead-body of 8-9 years girl in naked condition. The wire was tied on her knee. The blue colour kurta with white design, one black nighty, nicker and black shoes were found near the dead-body. One wire was also lying near the dead-body. The informant also saw one bush shirt lying in the open bathroom. The Investigating Officer prepared seizure panchnama of the spot and sent the dead-body for PM report. The Investigating Officer also seized the articles found on the spot. He called the photographer and took photographs of the dead-body as well as the spot. Razak Shaikh lodged FIR with police. On the basis of the same, Crime

No.160/2010 was registered u/s.363, 302 of IPC against the unknown person.

4. PI Mr. Bhagwan Darade called Noorjahan Shaikh (PW-1) and her husband Kurshid Shaikh for identification of the dead-body. Both of them have identified the clothes found on the spot, as of their daughter. After the postmortem examination, the medical officer has taken viscera and 13 samples for analysis. The said articles were sent for forensic laboratory. The IO prepared sketch of the spot.

5. Prior to the present incident, there were two incidents of missing girls in the same area. The investigation of the crime was given to PI Mr. Kadam. He prepared a separate team for investigation of the present crime. On 23.06.2010 the Investigating Officer referred 14 suspects including the appellant for DNA examination. Accordingly, their blood samples were taken as per rules and said samples were sent to forensic laboratory.

6. On 30.06.2010 the Investigating Officer received DNA report of the appellant wherein it was mentioned that the DNA of the appellant was matched with the DNA profile of the victim. Accordingly, the

appellant was arrested on 01.07.2010 under seizure panchnama. He was referred to the medical examination. The Investigating Officer recorded the statement of the witnesses wherein three witnesses gave a statement that they had seen the appellant alongwith deceased-victim prior to the incident. The appellant also made a voluntary statement and produced electric wire similar to that of seized from the spot. He also produced his pant and shirt which were wore by him at the time of incident. The Investigating Officer also arranged Test Identification Parade wherein witnesses identified the appellant as the same persons who was found alongwith the victim prior to the incident. The Investigating Officer also received CA and DNA report.

7. The Investigating Officer has also referred parents of victim for taking their blood sample for DNA examination. The DNA of parents of victim matched with the DNA profile of the deceased. After completion of investigation, charge-sheet came to be filed against the appellant u/s.364, 376(2)(f) and 302 of IPC in the Court of Metropolitan Magistrate, Court No.34, Vikhroli, Mumbai. As the offences were triable by the Court of session, hence, the Ld. Magistrate, committed the case of the appellant to the Court of Session, Greater Mumbai. On the

appearance of the appellant, charge came to be framed against him. He pleaded not guilty and claimed to be tried. The defence of the appellant is of total denial.

8. To prove the charge against the appellant, the prosecution has relied on the evidence of 36 witnesses. The appellant has also examined 4 witnesses in support of his defence of alibi.

9. On going through the evidence on record and the defence of the appellant, the trial Court held the appellant guilty for the offence punishable u/s.364, 376(2)(f) and 302 of IPC and sentenced him as mentioned above. Hence, the appellant has preferred this appeal.

10. On behalf of the appellant, it is submitted that the trial Court has not appreciated the evidence on record in proper perspective and come to the erroneous conclusion. The entire case is based on circumstantial evidence and none of the circumstances have been conclusively, cogently and firmly established thus forming a complete chain which unerringly points out the guilt of the appellant. It is contended that the dead-body was completely decomposed. It was not identified by Noorjahan Shaikh (PW-1) and her husband Khurshid Nasaralam Shaikh

(PW-2). It is contended that Khurshid Shaikh (PW-2) had filed Writ Petition No.1197/2010 wherein he has alleged that dead-body found was not of her daughter, but still the trial court has held that the dead-body belongs to the daughter of Noorjahan Shaikh (PW-1) and Khurshid Shaikh (PW-2). It is contended that the premises in which the dead-body was found was belongs to Drupadabai Madhukar Patil. She has identified the seized clothes as belongs to her four year old granddaughter, but the said fact is not properly considered by the trial Court. It is contended that the prosecution has not established that blood samples of Noorjahan Shaikh (PW-1) and Kurshidalam Shaikh (PW-2) was taken for DNA examination. Therefore, it is not established that the dead-body was of daughter of Noorjahan Shaikh (PW-1) and Kurshid Shaikh (PW-2). It is contended that it is not established that whether the locked mezzanine room of Vatsalatai Naik Nagar where the body was found was infact the place of offence or that the dead-body was dumped there and found later. It is also submitted that the prosecution has not led any evidence to substantiate that the girl entered said mezzanine room alive through the small gap between the door and the roof alongwith the appellant and thereafter committing the crime, the appellant escaped from the very same gap and, therefore, the learned

Sessions Judge ought to have discarded this theory. It is contended that the prosecution relied on the theory of last seen together, but it was not proved by the prosecution, but the evidence led by the prosecution is neither fixes the time of death nor proves that in immediate and close proximity, the deceased was seen alive in the company of the appellant.

11. It is contended that the witnesses examined to prove last seen together is sought to be proved through got-up witnesses since their statements have been recorded by the police after the arrest of the appellant whose identity was revealed to the public at large immediately following his arrest, therefore, theory of last seen together loses its evidentiary value. It is contended that the Assistant Director, Forensic Laboratory had not conducted any such test in order to establish the presence of DNA or to identify recovered DNA, if any, from Article X-21 which was used for strangulation. It is contended that the Doctor conducting the postmortem has noted that the samples of teeth, muscle, bone, hair and blood stained filter paper preserved for DNA profiling whereas there is no reference that he had taken sample of nail clippings for chemical analysis. However, as per DNA expert Shrikant Lade (PW-26), he personally received the nail clippings from which he discovered

the hair sample used to retrieve DNA. The said aspect is not properly appreciated by the trial court. It is contended that the trial court has not considered the DNA profile of Deepak Kamble whose DNA matched with that of DNA retrieved supposedly from the nail clippings of the dead-body. The possibility of involvement of Deepak Kamble cannot be ruled out, but the said aspect is not properly considered by the trial court. It is contended that the trial court has relied upon the YSTR DNA Testing instead of Autosomal STR DNA testing in which case the former could not conclusively prove that the appellant and only the appellant's DNA could match with that of the DNA retrieved from the hair found in the nail clippings of the deceased, and therefore, such YSTR DNA Testing is unreliable and not free from doubt which was admitted by the DNA Expert (PW-26).

12. It is contended that the trial court has not appreciated the evidence of alibi advanced by the appellant. It is contended that the findings of trial court are not proper, therefore, it is prayed that the appellant be acquitted.

13. On the other hand, learned APP on behalf of the State submits that there is ample evidence to prove the identity of the dead-body. She

submits that the clothes of dead-body were identified by parents of victim. Similarly, DNA profile of parents matched with the DNA profile of the deceased. It is also contended that the prosecution has established theory of last seen together from the evidence of three witnesses. The said witnesses are natural witnesses from the same locality having no nexus with police or animus against the appellant. She further states that the DNA profile of the appellant matched with the DNA of nail clippings of the deceased. It is contended that 8 alleles of the appellant matched with the DNA profile of deceased whereas the 4 alleles of Deepak Kamble matched but that is not conclusive proof of DNA matching, therefore, Deepak Kamble is noway concerned with the crime. It is also submitted that the defence witnesses supports the theory of prosecution, namely, the presence of appellant nearby the scene of offence. There is overwhelming evidence on record, therefore, the trial court has rightly discarded the defence evidence. The trial court has rightly considered the evidence on record in proper perspective, therefore, there is no need to interfere with the findings of the trial court. Hence, it is prayed that the appeal be dismissed.

14. The entire case rests on the circumstantial evidence. Learned

Counsel for the appellant submits that the prosecution has failed to prove the chain of circumstances against the appellant. He relied on the ratio laid down in the case of ***Sharad Birdhichand Sarda vs. State of Maharashtra, reported in (1984) 4 SCC 116***, wherein it was held that the following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

“(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely “may be” fully established,

(2) the facts so established should be consistent only 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,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any responsible ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

15. In view of the ratio laid down in the case of ***Sharad Sarda (supra)***, we have to scan the evidence led by the prosecution to prove the charge against the appellant. The prosecution has relied on the following

circumstances to prove the charge against the appellant.

- (I) Missing of victim from the house.*
- (II) Seizure of dead-body of victim and its identification by parents.*
- (III) Identification of clothes of the deceased by the witnesses.*
- (IV) Homicidal death of a victim girl.*
- (V) The DNA of accused is matched with DNA of HAIR in nail clipping and semen in vaginal smear.*
- (VI) The appellant last seen together with the deceased.*
- (VII) Recovery of wire at the instance of the appellant, which was tallied with the wire found on the spot.*
- (VIII) Recovery of pant at the instance of the appellant which was used in crime and was having blood stain.*

16. **(I)Missing of victim from the house:-**To prove the missing of victim from the house, the prosecution has relied on the evidence of Noorjahan Shaikh(PW-1) and her husband Khurshid Shaikh(PW-2). Both of them are the parents of victim girl. Noorjahan Shaikh(PW-1) deposed that she has got three children including the victim girl. On 06.06.2010 at about 6.00 p.m.victim girl had gone out from the house, but she did not return within the reasonable time. Therefore, she took extensive search for her. She took search at the different places in nearby area, but could not trace her out. Therefore, she went to Nehru Nagar police station and lodged missing report(Exh.10). She further deposed that the victim girl was studying in 3rd Std. at Municipal School, Nehru Nagar. She brought on record the school leaving certificate of deceased(Exh.11) wherein the date of birth of victim girl is mentioned. It is

further deposed that at the time of missing, the victim girl had worn blue colour kurta with white design, black colour half nighty and black colour school shoes. She has also provided the photograph of victim girl to the police. Similar evidence is given by her husband Khurshid Shaikh (PW-2). According to him, on 06.06.2010 at about 5.30 p.m. he left his house for work. At about 8.00 p.m. his wife came to him and she was crying. She disclosed that their daughter was missing. Therefore, he closed his shop and went to search his daughter. Till morning he was searching the victim girl, but he could not trace her out. He further deposed that his wife Noorjahan Shaikh (PW-1) lodged missing complaint in Nehru Nagar police station. The above evidence is not challenged by the defence. Therefore, it is established that the victim girl was missing since 6.00 p.m. of 06.06.2010. It is also established that the parents of victim girl took extensive search and therefore, the mother of victim girl lodged a missing report (Exh.10) with detailed description of a victim girl.

17. On this point, the prosecution has also examined Aparna Joshi (PW-31) who deposes that on 6.6.2010 she was on duty from 8.00 p.m. to 8.00 a.m. On 6.6.2010 at about 10.30 p.m. one lady by name

Noorjahan Shaikh (PW-1) came to the police station and informed that her daughter aged about 8 years was missing. She recorded her missing report (Exh.10). She also deposed that Noorjahan Shaikh (PW-1) had given photograph of her daughter of which she affixed on the application and accordingly put her endorsement. She further deposed that for finding the victim girl, she followed the routine procedure. This part of evidence of Aparna Joshi (PW-31) is not denied by the defence. So from the evidence of Noorjahan Shaikh (PW-1) coupled with the evidence of Aparna Joshi, the prosecution has proved that since evening of 6.6.2010 daughter of Noorjahan Shaikh (PW-1) was missing from the house.

18. On the point of missing of victim girl, the prosecution has relied on the evidence of Mrs. Sabit Gitaram Tijori (PW-10) who deposes that her daughter Roma used to take tuition of students of Std. 1st to 5th in her house. She knew the victim girl. The deceased used to come for tuition between 9.30 a.m. to 11.30 a.m. She was residing near her house. She used to play in the garden near flour mill (Chakki) from near about 3.30 p.m. to 5.30 p.m.

19. On 06.06.2010 at about 8.00 p.m. the maternal uncle of victim girl came to her house and informed her that victim girl was missing and

they were searching for her since 6.00 p.m. She asked him to lodge report to the police station. She also searched for the deceased girl. Her evidence is not challenged by the defence. So it is established from the evidence of Mrs. Sabit Tijori (PW-10) that the maternal uncle of victim girl informed her that deceased victim girl was missing from the house since 6.00 p.m. of 06.06.2010. It is also established that the teacher Mrs. Sabit Tijori (PW-10) as well as the relatives of deceased were searching victim girl. So the prosecution has proved that the victim girl was missing from the house since evening of 6.6.2010.

20. (II) Seizure of dead-body of victim and its identification by parents & (III) Identification of clothes of the deceased by the witnesses:- According to the prosecution, the dead-body of victim girl was found on 19.06.2010. The dead-body was found in the mezzanine floor of hut situated at Vatsalabai Naik Nagar at Kurla. To prove the said fact, the prosecution has heavily relied on the evidence of Rajak Ramjan Shaikh (PW-7). He deposed that he resides at Vatsalatai Naik Nagar since last 30 years. On 19.06.2010 at about 9.30 a.m. one boy came to his house and disclosed that one dead-body is lying in the room at Balwadi, Kurla. Accordingly, he immediately rushed to the spot. The

said room was locked. He climbed the roof of the room and peeped through the window of the room. He saw one dead-body of a child aged 9-10 years was lying in the room. He immediately called PI Shri. Darade (PW-33) of Nehru Nagar Police Station. PI Shri. Darade and Godse (PW-35) rushed to the spot within 10 minutes alongwith the staff. They broke open the latch of the said room and opened the door. The police entered in the said room. He saw dead-body of one girl. The knee of the body was tied with nylon string. The dead-body was in naked condition. The black nighty, printed green kurta and nicker were lying on the floor of the room near the dead-body. One wire was lying near the head of dead-body. One bush shirt was lying in the bathroom of the room. He saw two black colour shoes lying near the door inside the room. One shoe was lying on the steps outside the room. Accordingly, the police recorded his statement. He identified the seized clothes, shoes which were found on the scene of offence. In the cross examination, he admits that he has two wives. His both wives are residing in the same area, but on different premises. He does metal refining work as well as he deals in scrap. His shop is situated in Sagar market at Sakinaka Ghatkopar. He admits that he has no relations with any political party. He doesn't belong to any political party. He helps people for obtaining ration card,

for taking them to hospital for medical treatment. He also does charity work of paying medical expenses of the needy people. He also does social work in the area of Vatsalatai Naik Nagar. Therefore, the residents of the said area respects him. He admits that the Sai Baba Mandir is situated at a distance of 70 to 80 rooms away from his house. All the rooms are situated in a row. On the East side of Vatsalatai Naik Nagar, there is Eastern Express Highway and on the Western side, there is 90 feet road. On the northern side there is Kurla station road. There are near about 200 to 250 rooms in one row. He admits that the access to the spot where the dead-body of victim girl was found is from open ground through a small lane and one has to cross the rationing shop. He also admits that most of the huts are having mezzanine floor. He also admits that the place where the dead-body was found is situated at the dead end of the said lane.

21. He further admits that he is respectable person in his area. If anything happens in the said area, people immediately inform him. He further admits that during the said period, minor girls were missing every month, therefore, the people in the said area were became vigilant. He admits that after receiving the information from the boy, he

immediately rushed to the spot and he did not disclose the said information to anybody else. He confirmed the said information and informed the police accordingly. He further admits that the dead-body was lying on the mezzanine floor of the room. There were two windows to the said mezzanine floor. One was on southern side and other one was on the northern side. One window of northern side was small of area about 1 feet into one and half feet. The other window of southern side was of area near about 2X3 feet. He further admits that Subhash Jaiswal and 2-3 other persons came with him on the roof and he got down on the roof of the room situated opposite to the spot, as the height of the said room was short, so he peeped through the window of the southern side of the said room from the said roof. He also identified the photographs of the room shown to him. He admits that the police have taken photograph of the room wherein it is seen that room was locked. He also admits that with the help of hammer, the lock of the door was broken. In fact, the latch was broken and the door was open. It is also come in the evidence of investigating officer that after the removal of dead-body, the latch was restored and the room was again locked. He admits that after opening the door of the room, the police called panch-witnesses Naresh and Aakash. Both of them are residents of said area.

The entire spot panchnama was drawn in their presence. The dead-body was shifted to J.J.Hospital for postmortem examination. He also admits that there is only one door to mezzanine floor of the spot. The police seized shirt from the open bathroom. He also admits that the police seized blue jeans pant, one yellow colour shirt with checks, one grey colour underwear, two wrapper and one outer wrapper. He also admits that the room in which the dead-body was found was locked for a period of 2 ½ months. The said room was sold to somebody.

22. On going through the above evidence, it is established that Rajak Shaikh had received an information from one boy regarding the dead-body of victim girl. Accordingly, he set criminal law in motion by calling police on the spot. In his presence, the police broke open the room and sent the dead-body for postmortem examination. The police also seized clothes and other articles found on the spot under seizure panchnama.

23. The evidence of PI Mr. Godse is also important on the point of discovery of dead-body, seizure of articles from the spot and the scene of offence panchnama. Mr. Godse has deposed that on 19.06.2010 at about 8.30 a.m. he received phone call of Rajak Shaikh (PW-7) whereby he informed that one rotten dead-body of one small girl was found lying in

the closed room at Vatsalatai Naik Nagar near Veer Lahuji Ustad Balwadi. Hence, he alongwith PI Darade and other police staff rushed to the spot. He also called two panch-witnesses, one carpenter to remove the bolt of the door. He also deposed that foul smell emitting from the room. Hence, the bolt of the door was removed by the carpenter and they entered inside the room. He saw the rotten dead-body of one small girl and other articles lying in that room. He immediately sent the dead-body to J.J. Hospital for postmortem. PI Darade prepared the scene of offence panchnama (Exh.98) and recorded the complaint of Rajak Shaikh on the spot. He further deposed that the foul smell was unbearable and the place was not convenient to make seizure panchnama of articles. Hence, he collected all articles lying on the spot and came to police station where the seizure panchnama of articles were prepared. He further deposed that before leaving the place, the room was again locked.

24. To prove the scene of offence panchnama, the prosecution has heavily relied on the evidence of Akash Subhash Tupsundar (PW-27). He deposed that on 19.06.2010 one incident had taken place in his locality. He saw police and crowd had gathered there. Hence, he

alongwith his employer Naresh had been there. The spot was near Balwadi in a lane besides ration shop. The police asked them whether they will act as a panch. He asked police about the panchnama. They explained the incident, therefore, he and his employer consented to act as a panch. One photographer was also alongwith police. They entered the lane. There was again a one small by-lane on right side. Photographer took the photo of location of the lane. The room was situated towards dead end of the by-lane. The room was having one mezzanine floor. There were stairs of black stone to approach the mezzanine floor. The door was locked. Photographer took photograph of locked door. The walls of the room were not touching to the roof. There was gap of 2 to 2 and half feet. The police broke the bolt and opened the door. There was foul smell coming from room. One naked dead-body of 8-9 years girl was lying towards one wall. He alongwith his employer Naresh, police, photographer and one person Razak Shaikh (PW-7) had gone inside the room. Photographer took photograph of dead-body. The dead-body was decomposed and there were insects around it. One red wire was tied on its left knee, which was in little bit bent condition. The officer of Forensic Lab, Mr. Lade (PW-26) had also come there. Mr. Lade informed the police that he had come from

Forensic Lab. He had discussion with the police. There were 3 angles on the wall having nylon flat rope. The clothes of the victim girl were lying there. The clothes were blue top with white design and black nighty, one cream nicker in rolled condition, one key and coin of 2 rupees were also there. The room was in dirty condition. Mr. Lade extracted dried blood from nylon flat rope, from wall, from floor and door lock in small plastic packets. The statement of Razak was recorded on the spot. The room was small and there was foul smell, hence, the dead-body was brought downstairs. The smell was unbearable and they felt uneasy, therefore, the police prepared scene of offence panchnama in the police station and room was locked. He further deposed that in the crowd, one person introduced himself as Khurshid Shaikh (PW-2) and inquired as to whose dead-body was found. The clothes of the victim girl were shown to him, he identified said clothes as belong to her daughter. The police asked him to go to J.J. Hospital for identification of dead-body. Thereafter, he went away. The police completed the panchnama and seized the articles and took their signatures. He identified the clothes of victim girl namely kurta (Articles 1), black nighty (Article 2), nicker (Article 3), black shoes (Article 4). he also identified bolt (Article 5), blue colour electric wire (Article 8), one shoe

(Article 6) which was lying outside the room, another shoe (Article 12) which was lying inside the room. He also identified coin of 2 rupees. He also identified his signature and signature of other pancha. The wrapper alongwith label was marked Article 20A. He also identified wire which was tied to the knee of the body (Article 21), one red wire X-21, which was found in the room (Article 22). He further deposed that police seized and sealed the articles. Thereafter, he left the police station.

25. He further deposed that on 22.06.2010 he was called by the police at police station alongwith Naresh. At about 6.00 p.m. to 6.30 p.m. police wanted to take out key from the box for investigation. Police opened one box. 3 packets were inside the box. These sealed packets were inside the box. In the first packet, there was coin of Rs.2/- (Article 20), in second packet, there was lock (Article 13) and in the third packet, there was a key (Article 18). These articles were seized from the spot. The key was taken into custody for investigation. The other articles were kept again in the box. He identified the signatures on the labels of the packets. He further deposed that on 29.06.2010 at about 2.30 to 2.45 p.m. the key was again put in the box by sealing it and obtaining their signatures. He further deposed that on 11.08.2010 at about 6 or 7

in the evening he went to Nehru Nagar police station. The place where they were seated were having two persons and one lady. One lady was Alka Gaikwad. The name of one person was Bhau Tarde and the name of the other person who was wearing Khakhi clothes was Mohd. something. Police opened one sealed box. The box containing blue colour jeans pant and chocolaty colour checks shirt. The clothes were shown to that lady Alka Gaikwad. She identified the clothes were worn by one person on 06.06.2010 near Balwadi, when she was standing alongwith members of Mahila Bachat Gat. The person by name Mohd. also identified the clothes and said that he had seen those clothes on the person who was alongwith one girl. The said person had sat in his rickshaw alongwith the girl at Kohinoor oil centre and he dropped them near S.T.Depot near Jai Bhawani temple. The third person Bhau Tarde identified those clothes as he had seen one person wearing those clothes near Gupta grain stores.

26. He further deposed that the second box was opened in which the clothes of the girl were kept. Witness Alka Gaikwad identified the girl's clothes that those clothes were worn by the girl who was alongwith that person who was wearing the clothes shown to her earlier. The clothes

were blue colour kurta with white design and black nighty. The witness Mohammad also identified the clothes of a girl as same were worn by the girl, who was alongwith the appellant in the auto. Third person Bhau Tarde also identified clothes of a girl was worn it when he saw her alongwith the appellant. The witness was cross examined by the defence. Except the suggestions of denial nothing was brought on record to brush aside his evidence. So it can be said from the evidence of Akash Subhash Tupsundar (PW-27), the prosecution has established that the investigating officer had called him for scene of offence panchnama. The photographer took photograph of the scene of offence as well as the dead-body. It is also established that the investigating officer had seized and sealed the articles found on the spot. So it is also established from the record that the seized clothes of victim were identified by three witnesses namely Alka Gaikwad, Bhau Tarde and Mohammad Khudbuddin. It is also established from the evidence of panch-witnesses that Shrikant Lade from Forensic Lab, Kalina was present on the spot and he took samples of dried blood from the spot. It is also established that the father of victim girl had identified the seized clothes as of his daughter namely victim girl.

27. The prosecution has also relied on the evidence of Tarachand Sharma (PW-12) who is a photographer by profession who deposes that he is having photo studio in the name and style as Satiah Digital Studio situated at Vatsalatai Naik Nagar, S.G. Barve Road, Chembur. On 19.06.2010 one police hawaldar came to his studio. He asked him that some photos were to be snapped. Accordingly he took him near the Balwadi of Vatsalatai Naik Nagar. One rationing shop was also there. Number of persons were gathered there and there was foul smell coming from the mezzanine floor. The lock of the room was broken open. He entered into the room. He saw the dead-body lying in the room. He took photographs. He also gave bill of the said photographs. He charged Rs.880/- for all photographs. He had also taken photograph of room. He identified the photographs, which were at Articles 27 to 31. In the cross-examination, it is admitted that he was on the spot till 12 to 12.15 noon. He admits that he took photographs of the room before its lock was open. When he was present there police were making some writing. He took 11 photographs as per the directions of police. He identified photograph of garbage (Article 31). He also admitted that in photograph nos.9 and 10 (Articles 38 colly.) clothes are seen.

28. From the evidence of photographer, it is established that he was called by the police for taking photographs of the room as well as the dead-body. Accordingly, he took photographs wherein the condition of dead-body as well as the articles lying in the room are seen. The seized clothes namely kurta, nighty, nicker, shoes etc. are seen in the photographs near the dead-body.

29. The Investigating Officer has also called the Architect Mr. Vishwajit Salgaonkar (PW-15) for preparing the topography of the spot. According to Salgaonkar (PW-15) he is practicing as an Architect since 1993. On 03.08.2010 he was called at Nehru Nagar police station. He was asked to prepared sketch of the room situated at Vatsalabai Nagar. On 04.08.2010 he visited the said site and took the measurements of the said room. PI Darade had accompanied him. On the same day he prepared the plan. He gave the plan to Shri. Darade as per his instructions alongwith his letter. The letter and map is collectively marked as Exh.42.

30. His evidence is not denied by the defence. He has simply admitted that in the location plan, he has not shown the rooms adjacent to the room in question. The witness was asked to prepare a location

plan of the spot, therefore, he had prepared it as per the directions of police. The location plan shows the measurements of the room in which the dead-body was found. It shows the place of open bathroom. So it can be said that the police had completed the formality of preparation of location plan of the scene of offence.

31. The prosecution has also relied on the evidence of Parvati Pillai (PW-11) and Devamma Masipago (PW-17). According to Parvati Pillai (PW-11), she is residing opposite to Balwadi, Kurla since last 10 years. There was one house belongs to one Marathi speaking family where the dead-body was found. She further deposed that the said Marathi family had left the said house and it was locked. The police broke open the lock of said house and removed the dead-body from the said place.

32. Witness Devamma Masipago (PW-17) deposed that she is residing in Vatsalabai Naik Nagar since last 20 years alongwith her two sons and their family members. According to her, there was foul smell coming near her house. She thought that dog or mouse must have been dead. Her family cleaned up the drainage which was flowing adjacent to her house, but still the foul smell was persisted. But this witness has not deposed anything about the dead-body found in the room.

33. On this point, the prosecution has also relied on the evidence of Chamkumma Chandrakanti (PW-18). She deposed that she residing at Vatsalatai Naik Nagar, Besides Veer Lahuji Ustad Balwadi, Near Ration Shop, Kurla Signal, Chembur, Mumbai – 71 since last 27 years alongwith her husband and two sons. During rainy season, there was foul smell coming from adjacent room. She thought that smell was coming due to drainage and rat must have been dead. She has also not deposed about the finding of dead-body in the adjacent room. So it can only be said that this witness simply noticed foul smell was coming from the adjacent room, but she did not make any complaint to any authority.

34. The prosecution has also examined the original owner of the house Drupadabai Patil (PW-13). According to her, she was residing at Vatsalatai Naik Nagar. She sold her room to one Khatri and shifted to Pipeline Road alongwith her family including son, daughter-in-law, daughter and granddaughter. She deposed that her room at Vatsalatai Naik Nagar was of pakka structure having one mezzanine floor above her room. Her daughter-in-law was residing in the mezzanine floor alongwith her daughter. She had taken away all articles from the said room. She identified articles namely shirts, pants etc. seized from the

said room. She admits that Kurta and nighty (Articles 1 & 2) belongs to her granddaughter Rani who was 4 years old at the relevant time.

35. Though Drupadabai Patil (PW-13) has identified kurta, nighty (Article 1 & 2) as belong to her granddaughter, the prosecution has examined her grandson Sudhir Patil (PW-20). He deposed that he was staying at Vatsalatai Naik Nagar alongwith his mother, younger brother, sister and daughter of sister. He also deposed that his house was consisting ground floor and mezzanine floor. On the mezzanine floor, his grandmother Drupadabai Patil (PW-13), uncle, his wife and daughter of Drupadabai were staying. He further deposed that he sold their room in mezzanine floor and he shifted to Nashik. He further deposed that he was called by police for identification. He identified his shirt (Article 5) but he did not identify any other articles. He further deposed that out of deceased clothes, none of the clothes belong to daughter of his sister, mother or his mother and sister. The said fact is not denied by the prosecution. On perusal of the articles namely kurta and nighty (Articles 1 & 2) which is bigger in size and it cannot be said that the clothes were of 4 years girl. Thus, it appears that the witness Drupadabai Patil (PW-13) has wrongly identified the clothes of deceased of her grandmother.

36. The prosecution has also examined the owner of room in question namely Arshad Hasan Khatri (PW-14). He deposed that he knows Mohammad Suleman Lakdawala, who was working with Mohemood Merchant. Mohemmod Merchant is his brother-in-law. He purchased room in question from Drupadabai Patil (PW-13). He obtained the possession of the said room on 07.03.2010. He put the lock to the room and kept the key with him. He deposed that lock was of bronze. He identified the said lock (Article 13). He admitted that he did not produce the sale-deed of the room to police. He admitted that on 19.06.2010 he received phone call of police on his mobile phone, when he was at Lonawala. Police informed him that there was some problem with his room and they asked him to bring the key of the room. When he reached the spot, police had opened the room and seizure panchnama was prepared. He asked the police as to why they opened the door. The police informed him that one dead-body was lying there, therefore, they broke the latch and opened the door. Thus from his evidence, it is established that he was the owner of room in question situated near the ration shop wherein the dead-body of the victim girl was found. Witness Drupadabai Patil (PW-13) has also stated that she sold her room to one Arshad Khatri, so the investigating officer has established the link of

ownership of the room in question through the evidence of Arshad Khatri (Exh.PW-14).

37. On perusal of the seized articles namely kurta and nighty which is bigger in size and it cannot be said that the said clothes were of four years girl. Therefore, it appears that the witness Drupadabai Patil (PW-13) has wrongly identified the clothes of deceased as of her granddaughter; but she has identified the other articles belong to her family members.

38. From the above evidence, it is established that the room where the dead-body was found, originally belonged to Drupadabai Patil (PW-13) who sold it to Khatri. Witness Parvati Pillai has simply deposed that dead-body was recovered by the police from the room nearby her house. Witness Devamma Masipago (PW-17) and Chamkumma Chandrakanti (PW-18) have deposed that there was foul smell from the room nearby their house, but they did not made any complaint to the police about the same. Ultimately, Rajak Shaikh (PW-7) informed the police about the dead-body of girl. Accordingly, the police rushed to the spot and sent the dead-body to the postmortem examination. Therefore, it is established that the dead-body of a girl was found on the mezzanine floor

in Vatsalatai Naik Nagar. The said room was at the end of small lane and it has no other access.

39. The Investigating Officer Shri. Godse has deposed that he had referred 14 persons for DNA examination including the appellant. The appellant was referred to DNA examination on 23.6.2010. Thereafter again on 30.6.2010 he was referred for drawing blood samples for DNA profile. According to constable Prakash Patil (PW-3) on 30.6.2010 his Senior Officer deputed him to take suspects for taking their blood samples at Nagpada hospital for DNA test. Accordingly, he took the appellant to Nagpada police hospital. He produced the appellant before the medical officer. The medical officer collected photographs of all suspects including the appellant and affixed their photographs on identification forms. Thereafter, he obtained the signatures of suspects as well as the panch-witnesses on the identification form. The medical officer obtained blood samples of all suspects including the appellant. The blood samples were sealed in plastic container separately. He collected 14 bottles of suspects and handed over to Forensic Laboratory and obtained the acknowledgment of Senior Clerk of Forensic science. The evidence of Prakash Shinde (PW-3) is substantiated by the Assistant

Chemical Analyzer Shrikant Lade who deposed that on 30.6.2010 he received sealed plastic container alongwith the letter of Senior PI of Nehru Nagar police station. The identification forms were enclosed alongwith the letter. He extracted DNA from blood samples of the appellant and compared the said DNA profile of hair detected on nail clipping of right hand and vaginal semen detected on vaginal smear of the deceased. He analyzed the said four profiles and gave his report (Ex.73). So it can be said that the Investigating Officer had taken blood sample of appellant on 23.6.2010 and 30.6.2010 for DNA analysis.

40. On the point of identification of dead-body, the prosecution has also relied on the evidence of Aparna Joshi (PW-31) and Ravindra Kadam (PW-6). It is come in the evidence of Aparna Joshi that on 19.06.2010 the duty officer Sr. PI Prakash Kale informed her on mobile that in a room behind Veer Lahuji Balwadi, Vatsala Tai Naik Nagar, a dead-body of one small girl was found and directed her to show the clothes to Kurshid Shaikh. Accordingly, at about 10.30 a.m. she reached near the spot. Thereafter, she came to the police station alongwith Kurshid Shaikh. She showed one blue coloured kurta with white print (top), one black nighty, two black canvas school shoes at police station.

He identified the said clothes and shoes to be of her missing daughter. She further deposed that she went to J.J. Hospital alongwith Kurshid Shaikh and two panchs to identify the dead-body of the girl and for inquest and PM procedure. She further deposed that at J.J. Hospital Kurshid Shaikh identified the dead-body of the girl to be of his missing daughter. She prepared inquest panchnama. Thereafter, the dead-body was given to hospital authority for postmortem examination. Dr. Bansode asked her, constable Kadam (PW-6) and Kurshid Alam Shaikh (PW-2) to identify the dead-body. Kurshid Shaikh identified the body to be of his daughter. Thereafter, they came out from PM centre. After completion of postmortem examination, the dead-body was given to Kurshid Shaikh by doctor for performing last rites. So it can be said that the dead-body found in the mezzanine floor situated near Veer Lahuji Ustad Balwadi was rightly identified by the parents of victim girl with the help of clothes. Similarly, Kurshid Shaikh identified the dead-body at J.J. Hospital.

41. To prove the identification of dead-body, the prosecution has also relied on the DNA profiling of the parents of victim. According to Shrikant Lade (PW-26), on 14.9.2010 he received two sealed plastic

containers alongwith forwarding letter of Senior PI of Nehru Nagar Police Station and two identification forms given by medical officer, police hospital Nagpada, Mumbai. Out of those two plastic containers, one plastic container was containing blood sample of Khurshid Shaikh (PW-2) and second container blood sample of Noorjahan Shaikh (PW-1). He identified the letter dated 14.9.2010 (Exh.76 Colly.) issued by the Nehru Nagar police station. He further deposed that he extracted DNA from blood sample of Khurshid Shaikh (PW-2), Noorjahan Shaikh (PW-1) and nail clippings of deceased of FSLML Case No.DNA 261/10 was typed at 15 STR LOCI and gender specific Amelogenin locus using PCR Amplification Shaikh, Noorjahan Shaikh (PW-1) and nail clippings of deceased of FSLML case no.DNA 261/10. His interpretation was for all the 15 different genetic system analysed with the PCR, putative father Khurshid Shaikh matched the obligate paternal alleles present in the nail clippings of deceased of FSLML case no. DNA 261/10. Similarly, DNA of Noorjahan Shaikh (PW-1) also matched the obligate maternal alleles. Thus, he opined that the putative father Khurshid Shaikh and Noorjahan Shaikh (PW-1) are concluded to be the biological parents of the nail clippings of the deceased of FSLML case no. DNA 261/10. Accordingly, he prepared report (Ex.77). So it can be said that with the

help of DNA profiles of parents of the deceased, the prosecution has established identify of the dead-body.

42. Learned counsel for the appellant has vehemently submitted that there is no material on record to establish as to when Khurshid Shaikh and Noorjahan Shaikh (PW-1) were referred for Nagpada police hospital for drawing blood samples. He also submits that neither Khurshid Shaikh, Noorjahan Shaikh (PW-1), nor medical officer or police officers have deposed that Khurshid Shaikh and Noorjahan Shaikh (PW-1) were referred to hospital for drawing blood samples for DNA. It is true that neither Khurshid Shaikh, nor Noorjahan Shaikh (PW-1) had deposed that they were referred to hospital for drawing blood samples for DNA examination. The Forensic Expert Shrikant Lade has produced on record a letter dated 14.9.2010 wherein he was asked to carry out DNA examination of the blood samples of Khurshid Shaikh (PW-2) and Noorjahan Shaikh (PW-1). He has also produced on record the identification forms of both of them. Therefore, it can be said that the Investigating Officer has failed to record the statement of parents of the deceased when they were referred to DNA examination. Similarly, it is not brought on record through the evidence of parents of the deceased

that they were referred to Nagpada police hospital for drawing samples, but it is established on record that the Forensic Laboratory had received a letter of PI Nehru Nagar police station alongwith the identification forms and blood samples of Khurshid Shaikh (PW-2) and Noorjahan Shaikh (PW-1). The Forensic Expert is an independent witness. He has categorically deposed that he had received the blood samples of Khurshid Shaikh and Noorjahan Shaikh (PW-1) and accordingly, he had extracted the DNA from the said blood samples and analyzed with the nail clippings of deceased. His evidence cannot be brushed aside simply because the Investigating Officer has failed to record further statement of parents of the deceased. Hence, we hold that with the help of DNA profile of the parents of deceased, the prosecution has rightly proved the identification of dead-body as it belongs to the daughter of Khurshid Shaikh and Noorjahan Shaikh (PW-1).

43. **(IV) Homicidal death of a victim girl** :- The dead-body of girl was sent to J.J.Hospital for postmortem examination. Dr. Bhalchandra Gopinath Chikhalkar (PW-24) performed the postmortem examination on the dead-body. According to him, on 19.06.2010 he was working as Assistant Professor, Forensic Medicine Department, Grant Medical

College, Mumbai. Doctors M.E. Bansude and M.M. Wankhede were his colleagues. On 19.06.2010 he was on postmortem duty. Doctor Bansude and Doctor Wankhede were also on same duty alongwith him. On that day, dead-body of victim girl was brought by ASI Aparna Joshi and Police Constable Shri. Kadam of Nehru Nagar Police Station. The dead-body was identified by police constable who was on mortuary duty and relatives of the deceased. The dead-body was a female of eight years. He started postmortem examination on 5.00 p.m. and concluded at about 7.00 p.m. on the same day. As per police inquest report, dead-body was found on the decomposed condition and it was declared dead before admission and then it was sent for postmortem examination. On external examination, he noticed that the dead-body was averagely nourished. The religion was Muslim. There were no clothes on the body. Rigor mortis was absent due to decomposition. He noticed following injuries :-

“External negital findings as mentioned in column no.15 namely, female external genitalia identified. Dialated labia major shows congestion. Posterior vaginal wall shows laceration and congestion, tear reddish extending upto perineum till rectal mucocutaneous junction, involving perineal muscles and rectal wall. Oozing of yallowish semi-liquid type of fluid, read tinged in between from area of wound. Gew white colour maggots seen in the cavity. Nails cyanozed. Right thumb separated at its metacarpal joint with decomposition of soft tissue. The Limbs were in anatomical

position in decomposed state with adipocere formation. Left lower limb, below knee was tied with an electric wire with two turns with running noose just below knee. On removing wire pale, yellow colour deep groove was noted, under this ligature peeling of skin of limbs at places.

The injuries around neck were observed as a deep groove ligature mark seen on neck transverse at the level of thyroid cartilage extending from right lateral side to left lateral side of neck 17 cm X 1 cm. Right and left posterior lateral part of neck shows destruction of soft tissues. The region was divided of soft tissue hence mark can be appreciated at these regions. Posterior part of neck soft tissues preserved due to adipocere which shows a transverse ligature mark of size 4cm X 1cm. Corresponding to the ligature mark described above. On dissection muscular soft tissues shown infiltration of blood, damage of thyroid cartilage. Non united hyoid bone body and cornu in separated state noted. Laryngeal and tracheal congestion appreciated.

Injuries on lower limb were observed as

- 1) Contusion on medial aspect of thigh 2cm X 2cm confirmed on dissection with infiltration of blood near groin region on left thigh. Two in numbers, one below other.*
- 2) Contusion of medial aspect left thigh at lower 1/3 circular 1cm diameter confirmed on dissection with infiltration of blood.*
- 3) Contusion of right thigh posterior medial aspect size 2 cm X 2 cm confirmed on dissection, upper 1/3 part.*
- 4) Contusion on right thigh posteriorly just below gluteal cleft of size 4cm X 5 cm confirmed on dissection with infiltration of blood.*
- 5) Contusion of left leg just above ankle of size 2cm X 1.5 cm confirmed on dissection with infiltration of blood.*

Following injuries on trunk were observed:-

(Posteriorly)

- 1) Contusion on back posterior part of trunk, right scapular region 8cm X 3cm confirmed on dissection with infiltration of blood.*
- 2) Abraded contusion on back of trunk of lumbar region, centrally 3cm X 2cm confirmed on dissection with infiltration of blood.*

On examination on internal body, it was observed:-

Skull bone was intact. There was no fracture. Brain liquefied.

Gryish colour liquid in decomposed state present within cranial cavity.

The lever was decomposed laryngeal congestion, tracheal congestion observed. Both right and left lung identifiable in decomposed state converted into blackish coloured soft, flabby mass.

Pericardium decomposed. Heart was of normal size. Soft flabby. All four chambers were empty.

The large vessels were intact soft.

Anterior abdominal wall was intact. Adipocare formation noted.

In organ of generation uterus was small size i.e. normal size. Non menstruating non parous uterus, soft and intact and it was consistent with the age of deceased.”

44. He deposed that during the postmortem examination, they preserved viscera for chemical analysis, samples were preserved for DNA examination, nail clippings were preserved for chemical analysis, vaginal smear and swab and also rectal swab preserved for CA, blood stained filter paper preserved for grouping, electric wire was handed over to police constable. The provisional opinion was given as evidence of ligature mark around neck with multiple contusions and perennial tear, however, final opinion was kept pending for accessory examination report.

45. He proved the PM (Ezx.60) report and identified his signature and signatures of Shri. Wankhede. He further deposed that all the samples which were preserved were sealed and labeled and sent to

respective departments. He had given final opinion about cause of death. He further deposed that the cause of death was due to compression of neck due to strangulation associated with vaginal and perineal tear indicative of sexual assault. It was unnatural death. Accordingly he produced cause of death certificate (Exh.62). He further deposed that he has mentioned the external injuries in Column No.17 of the postmortem report.

46. In cross-examination, he admits that the dead-body was in an advanced stage of decomposition. He admits that in such a case identification of dead-body becomes difficult. This also applies if a dead-body is in a state of skeltonisation. He admits that in the present case decomposition dead-body is not unnecessarily be bloated. The Doctor has admitted that it may be possible if the hands of victim are not tied, the nail injury around the neck is possible in case of strangulation. Such injury around the neck would be caused if the victim tried to loosen the grip around the neck by catching the object used for strangulation. It is also admitted that no such signs were noticed around the neck of dead-body. He further admits that in case of eight years old girl in such type of strangulation there could be possibility of fracture of the hyoid bone,

in such case there could be such possibility if the pressure is sustained or continued for a long time. He admits that fracture of hyoid bone is also depend on the object used for strangulation. He admits that there is no mention of fracture of hyoid bone in the PM report. It is suggested to Doctor that death would have been caused between one to three months from the postmortem, but the said suggestion is denied by the witness. The witness has admitted that he has not given the exact length of hair of the dead-body. On going through the evidence of medical officer, it can be said that the prosecution has proved the homicidal death of the deceased girl.

47. **(V) The DNA of accused is matched with DNA of HAIR in nail clipping and semen in vaginal smear** :- Admittedly, the dead-body was found on 19.06.2010. It was in decomposed condition. It was shown to the parents of the victim girl. Both of them have identified the dead-body as belongs to them. Learned counsel for the appellant submits that the father of the victim girl Khurshid Shaikh had filed Writ Petition No.1197/2010 wherein he had denied the paternity of the dead-body found by the police, but on perusal of said writ petition, it appears that the father of victim girl had identified the dead-body. He had alleged the discrepancies in the investigation, ultimately he withdrew the said writ

petition. Therefore, it can be said that the father of the victim girl had identified the dead-body as his daughter.

48. The Medical Officer Dr. Bhalchandra Gopinath Chikhalkar (PW-24) had performed the postmortem examination on the dead-body. He had preserved viscera as well as taken samples (teeth, muscle for DNA profile). He deposed that he had taken nail clippings, vaginal smear and swab and also rectal swab preserved for CA, blood stained filter paper preserved for grouping, electric wire was handed over to police constable. The above facts are also mentioned in PM report (Exh.60). On this point, the evidence of PI Ravindra Kadam is also crucial. PI Ravindra Kadam deposed that on 19.6.2010 he had accompanied with API Aparna Joshi to Vatsalatai Naik Nagar. One dead-body of a small girl was found there. He took the said dead-body in ambulance to J.J. Hospital. After postmortem examination, 13 sealed bottled were handed over to him for taking the same to Forensic Laboratory. He came police station at 8.30 p.m. as it was late he did not take those bottles to Kalina. He took key of the fridge from PI Godse and kept those bottles in the fridge and gave back the key of fridge to Shri. Godse. The said evidence is not denied by the defence. So it can be concluded that after postmortem examination, Ravindra Kadam (PW-6) received samples

from the hospital for delivering it to Forensic Laboratory.

49. It is the case of prosecution that on 20.06.2010 the sealed bottles were handed over to Forensic Laboratory, Kalina. To prove the said fact, the prosecution has examined Dashrath Navale (PW-5). He deposed that on 20.06.2010 he was attached to Nehru Nagar police station as a Head Constable. On that day, he was assigned a duty as a Storekeeper. PI Godse called him in his office. He took key of the fridge from him. In the fridge 13 bottles were kept. He took those bottles in his custody. He locked the fridge and gave its key to PI Godse. PI Darade gave him one letter which was addressed to the Forensic Laboratory. He reached Forensic Laboratory, Kalina alongwith the letter and sample bottles. He handed over the letter to the concerned clerk. He verified and checked the seal of those bottles and acknowledged the same by signing the letter (Exh.19). He returned back to the police station and handed over the copy of letter having acknowledgment of Forensic Laboratory to PI Darade.

50. In the cross examination, he has admitted that before leaving the police station, he made an entry in the station dairy that he took sample of 13 bottles from the fridge. He also made an entry that he left the police station, by giving key of fridge to PI Godse. He also made an

entry that he obtained 13 sealed bottles for handing it over to Forensic Laboratory. He also admitted that in his statement it is not mentioned that he had carried one packet containing 19 articles to Forensic Laboratory, Kalina. On the basis of the evidence of Dashrath Navale (Pw-5), it is established that in the evening of 19.6.2021, 13 sample bottles were kept in the Forensic Laboratory, which were handed over to Forensic Laboratory on 20.06.2010 by Dashrath Navale (PW-5) and obtained the due acknowledgment of Laboratory Authority.

51. It is deposed by PI Godse that prior to the incident, two girls were found missing from Kurla (East) and ultimately their deadbodies were found. Therefore, the officers of Kurla police station had referred many young persons for DNA test. He further deposed that in the presence case, he had referred 14 persons for DNA examination including the present appellant. To prove the said fact, the prosecution has heavily relied on the evidence of Anant Patil (PW-4). He deposed that on 23.6.2021 he was attached to Nehru Nagar police station as a constable. On that day, his senior officer asked him to take 5 suspects (including the appellant) to Nagpada Hospital for DNA test. Accordingly, he alongwith constable Shetye took those 5 suspects to Nagpada hospital. He took one DNA kit and forms alongwith him. In

the hospital, doctor collected blood samples of those 5 suspects in 5 separate bottles. The medical officer sealed those bottles and handed over to him. The medical officer also handed over one letter addressed to the police officer of Nehru Nagar Police Station. He took sample bottles and 5 suspects and came to police station at 4.30 p.m. He further deposed that as it was not possible for him to reach Forensic Laboratory before 5.00 p.m., he kept those bottles in the fridge which was in the room of PI Godse. He took the key of fridge from PI Godse, opened the fridge, kept the bottles and locked the fridge and gave the key to PI Godse.

52. On 24.06.2010 at about 10.45 a.m. he took the key of fridge from PI Godse and took those 5 bottles from the fridge. He returned the key of fridge to PI Godse. He took those bottles to Forensic Laboratory for depositing the same in the said Laboratory. He handed over one letter and five sealed bottles to the custody of Senior Clerk of the Forensic Laboratory. He checked it and took those bottles in his custody. Thereafter, he came to Police Station and gave the copy of the letter which he had carried with him, to PI Darade. In the cross examination, he admitted that at about 1.00 p.m. to 1.30 p.m. he left the police station for Nagpada hospital. He had made entry in station diary while leaving

the police station. At about 2.00 p.m. he reached to hospital. The name of the doctor who took sample was Dr. Patil. It was suggested to witness that the appellant was not among the 5 suspects, but the said suggestion was flatly refuted by the witness. On the contrary, the witness has given names of the 5 suspects namely Javed Rehman Shaikh, Rafiq Shaikh, Izaz Shaikh, Tushar Ganesh Patil and Mahendra Choudhari.

53. On the basis of the above evidence, learned counsel for the appellant submits that the medical officer had not taken proper care while drawing the blood samples of suspects. He submits that the form of appellant was not properly filled in by the medical officer. To appreciate the submissions of learned counsel for the appellant, one has to go through the evidence of medical officer who took the blood sample of the appellant.

54. The prosecution has examined Dr. Baban Shinde (PW-25). He deposed that on 23.06.2010 he was on duty at Nagpada police hospital from 8.00 a.m. to the next day morning 8.00 a.m.. On that day, five accused of Nehru Nagar police station were brought to hospital for collection of blood for DNA test alongwith the forwarding letter. He identified the said letter. He also deposed that the accused were brought to hospital alongwith DNA kit and identification forms supplied by

Forensic Laboratory, Kalina. Those identification forms were filled in the office of hospital and photographs of each accused were affixed on their identification form. Thereafter in front of two witnesses blood of all five accused were collected and were kept in special vial supplied by the Forensic Laboratory. 1.5cc blood of each accused was collected in two vials. He put adhesive tape on mouth of each vials. The vials were kept in the container. He put lid on the containers and sealed it. He put label on the container and mentioned name of the each accused on the label. He handed over all these containers to the concerned police. All the forms were duly filled in. He put seal of his office on the forms. He signed all those five forms. He put his endorsement on the letter which he had received from the police station that “blood collected for DNA test”. He identified the letter dated 23.6.2010 received by him from Nehru nagar police station (Exh.68). He identified the appellant among 5 suspects who were referred for blood and DNA test.

55. On perusal of letter addressed to the witness Ravindra Kadam (PW-6), it appears that the names of all 5 persons are mentioned in the letter including the present appellant. There is an endorsement of police constable that he collected samples for chemical analysis. The prosecution has also produced on record letter issued by the PI to

Forensic Laboratory, Kalina for examination of blood sample for DNA of appellant. The prosecution has also produced on record the identification form of appellant which bears details of the appellant. It also bears signature of the appellant as well as the signatures of witnesses namely, Mahendra Choudhari and Yusuf. It also bears the signature of medical officer namely Dr. Baban Shinde. Therefore, on going through the above documents and the evidence of constable Anant Patil (PW-4), Dr. Baban Shinde (PW-25), it is established that on 23.06.2010 the appellant was referred to Nagpada police hospital for drawing sample for his DNA examination. The identification form of the appellant was properly filled in. It was attested by two witnesses and it also bears signature of the appellant as well as medical officer. Therefore, I am not inclined to accept the submission of learned counsel for the appellant that the medical officer did not follow the procedure for taking sample of appellant for DNA examination.

56. According to the Investigating Officer, after arrest of the appellant, he was referred to the medical examination. To prove the said fact, the prosecution has relied on the evidence of Dr. Pratap Daya Anand (PW-23). He deposed that on 2.7.2010 the appellant was brought for medical examination by API Shaikh of Nehru Nagar police

station. On examination nothing was found showing that he was impotent. He further deposed that he collected sample of blood for grouping and HIV test. He further deposed that he collected samples of pubic and scalp hairs. Accordingly, he issued certificate (Ex.57). He also deposed that he had noted identification mark of the appellant and on the basis of the same he identified the appellant in the Court. He further deposed that the samples of blood, scalp and nail clippings were sent to chemical analysis alongwith the form filled up by him. He identified his signature on the form at Ex.58. So it can be said that the blood samples of the appellant was drawn on 23.5.2010 and 2.7.2010. The said samples were sent to chemical analysis as well as Forensic Laboratory and accordingly the said samples were analyzed for DNA profiling and grouping etc.

57. The prosecution has also examined Habibulla Sidqqi (PW-16) to prove the school leaving certificate of the appellant. He deposed that he was Head Master of Green Bombay Urdu High School situated at Qureshi Nagar, Kurla (East), Mumbai. The police had come to his school to collect school leaving certificate of the appellant. He had given duplicate original copy of school leaving certificate of the appellant to the police. He identified the duplicate copy of school leaving certificate

(Ex.44). The evidence of Habibulla Sidqqui (PW-16) is not denied by the defence. So it can be said that the appellant was born on 17.8.1990. Thus, on the day of incident, he was above 18 years of age which is not disputed by the defence.

58. The medical officer Bhalchandra Chikhalkar (PW-24) had preserved the viscera of the deceased. According to him, he had drawn 11 samples from the body of the deceased and he sent the said samples for CA/DNA. On this point, the evidence of Dr. Dharmashila Sinha (PW-22) is very crucial. She deposed that she was working as Assistant Chemical Analyzer in Forensic Chemical Laboratory at Kalina. She received sample of viscera in Crime No.160/2010 from Nehru Nagar police station for examination. The Forensic Laboratory was asked to detect whether the viscera was containing poison. She has produced on record letter of Nehru Nagar police station dated 21.6.2010 (Ex.52). She further deposed that she received two bottles of samples alongwith letter (Ex.52). She found samples correct as mentioned in the letter. She analyzed the sample of the bottles as per the required procedure and prepared the report in three sets. She has produced on record report (Ex.53) wherein it is mentioned that no poison was found in the sample.

59. The samples were analyzed by the Assistant Director Forensic

Laboratory, Kalina namely Shrikant Lade (PW-26). He deposed that on 19.06.2010 he was called by Nehru Nagar Police Station for collection of samples. Accordingly, he went to the scene of offence. He collected blood scrapping on the wall of the room and on the floor of the room. He also collected sample of blood found the nylon rope. He had seen Kurta, black colour nighty, one nicker, one school shoes of right leg, one left leg school shoes, one blue colour electric wire, white colour nylon rope, one sleeveless black strips shirt, one nylon rope, one key, one coin of 2 rupees, one stainless steel latch (used for closing door), one pair of rubber sleeper, one sport shoes, one bronze lock, one half pant, one gandhi cap, two pieces of electric wire, one butt of cigarette butt. The said articles were sealed and seized under seizure panchnama and were sent to Forensic Laboratory for analysis. The said articles were received by Biology section of Laboratory on 21.6.2010 and 28.06.2010 alongwith letters (Exh.20 & 20A). He further deposed that he extracted DNA from blood, sweat from above said articles. He analyzed DNA profile. His report is non-interpretable DNA profile results are obtained from above said articles. He prepared the report (Exh.71) and dispatched it to the Investigating Officer.

60. He received the following articles from investigating officer of

the crime:-

1. One filter paper in a plastic container labeled in the name of deceased.
2. Nail clippings of right hand in a plastic container labeled in the name of deceased.
3. Nail clippings of left hand in a plastic container labeled in the name of deceased.
4. Vaginal smear slide in a plastic container labeled in the name of deceased.
5. Vaginal swab slide in a plastic container labeled in the name of deceased.
6. Rectal swab in a plastic container labeled in the name of deceased.
7. Teeth in a plastic container labeled in the name of deceased.
8. Hairs in a plastic container labeled in the name of deceased.
9. Sternum and femur in a plastic container labeled in the name of deceased.
10. Blood stained filter paper in a plastic container labeled in the name of deceased.
11. Muscle in a plastic container labeled in the name of deceased.

61. He extracted DNA from hair detected in nail clippings of left hand of victim girl and semens detected on vaginal smear side of victim girl and blood sample of appellant. This DNA was typed at 17YSTR LOCI (17 Y – chromosome specific i.e. male Short Tandem Repeats LOCI) by using PCR amplification technique. He obtained DNA profile of hair, semens of the deceased and from blood sample of appellant. His interpretation of result is male haplotypes of hair detected on nail clippings of left hand of the victim girl and semen detected on ex 4 vaginal smear slides of victim girl match with the male haplotypes of

appellant. On analysis, he opined that DNA profile of hair detected on nail clippings of left hand of victim girl semen detected on vaginal smear slides of victim girl and blood sample of appellant are from the same paternal progeny. Accordingly, he prepared report (Exh.72) and dispatched it on 29.06.2010. He has given his report in tabular form, which is as under:-

YSTR LOCUS	Genotype		
	Hair detected on Ex.No.3 Nail clippings of left hand of the deceased.	Semen detected on Ex.No.4 vaginal smear sides of the deceased.	Blood sample of the appellant DNA 270/10
B_DYS456	-	-	15
B_DYS3891	12	12	12
B_DYS390	-	-	22
B_DYS38911	-	-	28
G_DYS458	14	14	14
G_DYS19	-	-	14
G_DYS385	13, 16	-	13, 16
Y_DYS393	12	12	12
Y_DYS391	11	-	11
Y_DYS439	-	-	13
Y_DYS635	25	-	25
Y_DYS392	-	-	14
R_Y_GATA_H4	-	-	12
R_DYS437	15	15	15
Y_DYS438	—	-	10
Y_DYS448	19	-	19

62. It is come in the evidence of Lade that he received one jean full pant from Biology department on 14.07.2010. He extracted DNA from blood stained detected on jean pant and from blood sample of appellant received on 24.06.2010. He prepared DNA profile of blood stained detected on jeans full pant and blood sample of appellant. He opined that male haplotypes of blood detected on jean full pant matched with male haplotypes of appellant. Accordingly, he prepared report Exh.75. From the above evidence, it is established that the hair found in the nail clipping of left hand of the deceased and the semen in vaginal smear tallied with the DNA of the appellant.

63. In the cross-examination, Lade has admitted that DNA samples are required to be packaged in a paper bag and those should be kept in a cool place out of direct sunlight till delivered to the laboratory. In view of the said admission, one must fall back to the evidence of constable Kadam. He has categorically deposed that after receiving the samples from the medical officer, he kept it in the refrigerator and thereafter handed over to the Forensic Laboratory. So there is positive evidence on record that after receiving the samples those were kept in the refrigerator.

64. The witness has also explained the meaning of non interpretable

DNA profile. It means degraded DNA, due to degraded sample. He further explained that degraded DNA means the poor quality of DNA and not because of contamination of DNA sample. He further admitted that semen stains start degrading within a week, if not preserved properly. He also admitted that if the blood is collected by proper procedure then it is sufficient for DNA profile of that exhibit. Mr. Lade has explained the procedure of obtaining sample of DNA profiling. He has stated that there is an identification form which contains attested photographs of the donor, his consent. The blood is collected in presence of 3 witnesses. Those forms also contains names and signatures of witnesses. Similarly, it also bears signature of medical officer. The samples are sent in sealed container. In the present case, the prosecution has produced on record the identification form of the appellant, which is having his signature below the consent. The form is attested by witnesses and the medical officer. The blood sample was sent in sealed container. Therefore, it appears from the evidence of Mr. Lade, the prosecution has complied with the procedure of obtaining sample for DNA profiling of the appellant.

65. Witness Lade has admitted that in female, there are XX pair of chromosome and in male, there are XY pair of chromosome. 22 pairs of

DNA are called autosomal DNA. Autosomal STR means Small Length of DNA that sequence is highly polymorphism. These number of sequences varies from person to person. That's why they call it Short Tandem Repeat Polymorphism. By analyzing autosomal STR, we get discrimination power of analysis is one person in tens of trillionth. He admitted that autosomal STR DNA profile would give the full identification of the suspect. It was suggested to him that autosomal STR DNA profiling would give more reliable result than YSTR DNA profile, the said suggestion is accepted by the witness. The witness has also explained YSTR loci. He stated that YSTR loci means males specific Short Tandem Repeats present on Y chromosomes only. They are used to detect to analyze rape cases, because in rape cases they get female DNA mixed with male DNA to detect that male DNA YSTR analysis is done. There is mixture of one as to two thousand female DNA, then they detect that male DNA from that of female DNA. It is very sensitive. It detect DNA below 125 picogram of male DNA.

66. He further admitted that 8 markers are needed to give result of 100% match. He admitted that he was provided database of 600 suspect from the locality of accused and they have searched for profile match of database. No single profile matched with the profile of the appellant. He

admitted that he has done all 17 YSTR Loci for the appellant. He got all 17 markers of the appellant. He admitted that he could only obtained 4 markers for YSTR LOCI. He also admitted that due to degradation of DNA, he could not find out the remaining 12 YSTR LOCI. He also admitted that he got the male specific markers in the vaginal smear detected in victim girl and that was the important marker as far as DNA profiling was concerned. He admitted that he detected 8 markers on the hair detected on nail clippings of the victim girl.

67. Learned counsel for the appellant submits that 4 allilies of Deepak Kamble matched with 4 allilies found in the DNA of semen vaginal smear of the victim. Therefore, the involvement of Deepak Kamble cannot be ignored. On this point, the evidence of Mr. Lade is also crucial. He has categorically stated that at least 8 markers LOCI are needed to conclude the match. In DNA report of Deepak Kamble only 4 markers were detected in semen sample obtained from the vaginal semen of the victim. Further all 4 of these LOCI are similar in both the appellant as well as in Deepak Kamble, but as opined by the expert at least 8 markers are needed to conclude the match. The DNA sample of Deepak Kamble, 4 allilies matching exactly to the 4 allilies of semen of vaginal smear of the deceased. Therefore, the suspect Deepak Kamble

was excluded by the expert. We must mentioned here that prior to the alleged incident, two more girls were missing and they were murdered. The said girls were of the same age group as of the deceased. The investigating agency had collected DNA of 600 persons out of which the DNA of appellant was matched with the DNA of hair found in nail clipping and semen found in vaginal smear. The defence has criticized the DNA analysis carried out by the witness Lade, but he is expert witness. He had collected the samples from the scene of offence. He has also received samples from the medical officer. He has analyzed the samples and gave his report. The doubts expressed by the appellant were specifically answered by the witness. DNA test does not create any doubt. It proves the involvement of the appellant in the said offence beyond the reasonable doubt.

68. Learned APP relies on the recent judgment in the case of *Mukesh and anr. V/s. State (NCT of Delhi) and others, 2017 6 SCC 1*; the Apex Court took into consideration series of its earlier judgments on the said question as also judgments of foreign jurisdiction. The Hon'ble Supreme Court also took note of amendment of the Code of Criminal Procedure by insertion of Section 53A therein, which provides for DNA Profiling, where a person is accused of committed rape. It has been

noted that DNA test has an unparalleled ability, both for exonerating the wrongly convicted and to identify the guilty. Upon noticing various judgments, the Hon'ble Supreme Court has found as follows:

228. From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non- acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted.

It has been further held in the said judgment as follows:

455. Before considering the above findings of DNA analysis contained in tabular form, let me first refer to what is DNA, the infallibility of identification by DNA profiling and its accuracy with certainty. DNA – Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. DNA is the genetic blue print for life and is virtually contained in every cell. No two persons, except identical twins have ever had identical DNA. DNA profiling is an extremely accurate way to compare a suspect's DNA with crime scene specimens, victim's DNA on the blood-stained clothes of the accused or other articles recovered, DNA testing can make a virtually positive identification when the two samples match. A DNA finger print is identical for every part of the body, whether it is the blood, saliva, brain, kidney or foot on any part of the body. It cannot be changed; it will be identical no matter what is done to a body. Even relatively minute quantities of blood, saliva or semen at a crime scene or on clothes can yield sufficient material for analysis. The Experts opine that the identification is almost hundred per cent precise. Using this i.e. chemical structure of genetic information by generating DNA profile of the individual, identification of an individual is done like in the traditional method of identifying finger prints of offenders. Finger prints are only on the fingers and at times may be altered. Burning or cutting a finger can change the make of the finger print. But DNA cannot be changed for an individual no matter whatever happens to a body.

10. The aforesaid position of law pertaining to reliability of DNA tests, shows that it can be the basis of conviction of accused. The only requirement being that sampling of the blood samples has to be proper and there should be no material indicating any tampering of samples. Therefore, it becomes extremely important that there is evidence on record to show that collection of blood samples of the accused, the prosecutrix and the girl child in the present case, has been proper and that there is no evidence of tampering of the same.

69. In the present case, not only the oral evidence of investigating officer Jaywant Godse (PW-35), Baliram Kadam (PW-36), Shrikant Lade (PW-26), Bhalchandra Chikhalkar (PW-24), police constable Ravindra Kadam (PW-6) assume significance, the documentary evidence pertaining to blood samples also become crucial. The material on record shows that on 19.06.2010 witness Shrikant Lade (PW-26) collected blood sample and other articles from the scene of offence and handed over to the investigating officer. The said articles were dispatched to chemical analysis by letter Ex.20 & 20A. The chemical analyst Shrikant Lade (PW-26) received four letters collectively (Ex.19A) alongwith 11 articles from the medical officer. He carried out analysis and submitted his report at Ex.72. The blood samples of appellant was drawn by Dr.Baban Shinde (PW-25). It was carried by Anant Patil (PW-4) to chemical analysis and obtained acknowledgment of chemical analysis having been received the said samples. The DNA

reports are proved by Shrikant Lade (PW-26). There is no discrepancy or flow in drawing samples of DNA examination. Therefore, the prosecution has proved the involvement of the appellant in the crime with the help of DNA reports.

70. **(VI) The appellant last seen together with the deceased :-** It is the case of prosecution that two witnesses had seen the appellant near Balwadi alongwith the victim girl. To prove the said fact, the prosecution has heavily relied on the evidence of Alka Gaikwad (PW-8) and Bhau Tarde (PW-19). The prosecution has also relied on the evidence of Mohd. H. Khudbuddin (PW-9). According to prosecution, the appellant had taken the victim girl to the spot through auto-rikshaw of Mohd. Khudbuddin (PW-9). According to the investigating officer, after detection of dead-body, the constables were showing photographs of deceased to the residents in the area to give some input of the accused persons. Accordingly, the photographs of deceased was shown to Alka Gaikwad. According to Alka Gaikwad she does the work of making chapati from 6.00 a.m. to 10 a.m. and thereafter she works in Balwadi 11.00 a.m. to 2.00 p.m. She knew Vir Lahu Ustad Balwadi situated near Shankar Mandir. All women run bachat gat “Bhishi” in that area. Every month they all collected contribution of Rs.100/- from each

women. All women gathered there at about 6.00 p.m. to 7.30 p.m. near the said Balwadi. She further deposed that on 2.7.2010 police were making inquiry in her area. They showed the photograph of one girl. They were asking whether anybody had seen the said girl while going with any person. On seen the photograph, she recollected that she had seen the said girl alongwith one boy. She gave the description of the said boy. She was taken to police station. Her statement was recorded. On 23.7.2010 she was called at Thane jail for TI parade wherein she identified the appellant as the said boy to whom she had seen with the deceased girl.

71. She further deposed that on 11.8.2010 police called her for identification of clothes of the victim girl as well as the appellant. She identified the said clothes. In the cross-examination, she admitted that she works as a Helper in Balwadi situated in Shivshrushti Colony from 11.00 a.m. to 2.00 p.m. He admitted that prior to the present incident, two minor girls were kidnapped and subsequently found dead in same area. She admitted that first incident had occurred in the month of February 2010 and the second incident had occurred in the month of March 2010. She also admits that due to the said incident, the residents of her area were alert and become conscious. She admits that after

recovery of dead-body of victim, the residents of Vatsalabai Nagar were panic. It was suggested to her that she had seen the photograph of the victim. It is also suggested that she had seen the photograph of the appellant. The above suggestions are denied by the witness. She admitted that the police were showing photograph in every house and were asking whether they had seen the girl. She admitted that on 23.07.2010 police shown her accused in Thane jail. In fact on that day, TI parade was held in the Thane jail. So the witness has admitted that she had seen the appellant on 23.07.2010 at Thane jail.

72. The prosecution has also relied on the evidence of Bhau Tarde (PW-19). According to him, he is residing at hutment are of Vatsalatai Naik Nagar, Mumbai since his birth. He residing alongwith his mother, wife, children and brother. He is an employee of ONGC at Panvel. One day he had an occasion to meet police of Nehru Nagar police station. At that time police had shown him photograph of one small girl and asked him whether he had been seen the said girl. He disclosed the police that he had seen the girl probably on 6.6.2010 alongwith one boy. He gave description of the said boy and the clothes worn by him. He also disclosed that the girl had worn blue colour kurta with white design and black nighty. He also deposed that the boy had worn sky blue colour jean

pant and chocolaty black colour checks shirt. He identified the clothes of victim girl as well as the appellant. He further deposed that about 20 days after his disclosure, the police called him at Nehru Nagar police station and shown him the clothes which he has identified. He further deposes that the police had called him at jail where Tahsildar was present. There were 7 persons standing in the room. Accordingly, he identified the appellant. In the cross-examination, he has admitted that the police shown him photograph on 4.7.2010 of the girl. He has also admitted that on the same day police had shown photographs of 2-3 persons. He also admits that he had heard about the incident of kidnapping of two small girls prior to 4.7.2010. It was suggested to him that the photographs of the kidnapped girl was displayed on the television, but he showed ignorance about the same. He also admitted that due to kidnapping of girls, the atmosphere in his locality was tensed and people were having fear in their mind. He also admits that the police had shown him postcard size photograph of the deceased. He was cross examined at length to shatter this evidence, but he stick up to his version that he had seen the girl alongwith the appellant.

73. On the basis of the evidence of Alka Gaikwad, learned counsel for the appellant submits that the victim was reported to be missing

since 6.6.2010. Her dead-body was found on 19.6.2010 but till 4.7.2010 police did not show the photograph of deceased girl to anybody. He also submits that after missing report till the dead-body was traced, the photograph of the deceased girl was flashed in electronic as well as print media. The appellant came to be arrested on 1.7.2010. The Investigating Officer did not take pain to circulate the photograph of the deceased immediately after 19.6.2021 to collect the information from the residents. He submits that after disclosing the alleged involvement of the appellant, the photograph of deceased was circulated. The residents had received an information about the clothes of the deceased from the media. Therefore, it was easy to the witnesses Alka Gaikwad and Bhau Tarde to identify the victim and her clothes. It is true that since 6.6.2021 till the arrest of the accused no steps were taken by the Investigating Officer to collect the information of the deceased girl. The witnesses Alka Gaikwad and Bhau Tarde did not disclose on what date and time they saw the appellant alongwith the deceased.

74. Learned counsel for the appellant submits that the so-called identification of victim girl and the appellant by Alka Gaikwad and Bhau Tarde is not reliable. He submits that the mother of victim girl had given passport size photograph which was affixed on the missing report.

There is no evidence on record to establish that the parents had given postcard size photograph of deceased to the police in order to circulate it in the locality. It is true that the mother of victim girl had given passport size photograph which was affixed on the missing report, but the Investigating Officer has categorically stated that he had enlarge the photograph affixed on the missing report and gave it to the constables for showing it to the people at large in order to trace out the culprit. The witnesses have categorically stated that the police had shown them passport size photograph of the victim and they are identified.

75. He relied on the ratio laid down in the case of ***Bodhraj Vs. State of J & K, reported in (2002) 8 SCC 45***, wherein it was held that the last seen theory comes into play where the gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

76. In the present case, either Alka Gaikwad or Bhau Tarde did not disclose exact day and time on which they had seen the appellant and the deceased in the locality. Their evidence is general in nature as far as the date and time when they alleged to have been seen the deceased and the victim. No doubt; both the witnesses have identified the clothes of

the deceased as well as the appellant. Similarly, they have identified the appellant as the same persons to whom they had seen with the deceased in the Court as well as in the TI parade, but still it is doubtful as to when they had seen the deceased with the appellant. Therefore, we are not inclined to rely on the evidence of Alka Gaikwad and Bhau Tarde to prove the theory of last seen put forth by the prosecution.

77. The third witness examined by the prosecution to prove the appellant last seen together with the deceased is Mohd. Khudbuddin (PW-9). According to him, he is a rickshaw driver. He ply his rickshaw in Kurla, Nehru Nagar, Swastik Park, Kamgar Nagar, Thakkar Bappa Colony and Pipeline from 9.00 a.m. to 9.00 p.m. He deposed that on 8.7.2010 when he was standing near Kurla rikshaw stand, 4-5 persons in civil dress came to him. They were carrying one photograph in their hand. They showed him the said photograph. It was a photograph of the small girl. They asked him whether he had seen the said girl at any time. He saw the said photograph and told them that he had seen the girl earlier. They asked him where he had seen the said girl. He told him that when he was standing opposite to Kohinoor Oil Centre, S.G. Barve Nagar, Kurla, at that time he saw the said girl was coming alongwith a boy, namely the appellant. He further deposed that the said

person asked him to visit to police station. Accordingly, he went to police station alongwith them in his rickshaw. In the police station, he informed the police officer that in the evening when he was standing opposite to Kohinoor Oil Centre, the said girl and accused came to him and asked him whether he can take him to “Thakkar Bappa”. Accordingly, he asked them to sit in his rickshaw. They both sat in his rickshaw. He started his rickshaw and proceeded towards Thakkar Bappa colony. When they reached near fish market the appellant asked him to turn the rickshaw towards right direction. At that time he told the appellant that Thakkar Bappa colony is situated ahead on the left side. At that time the appellant asked him to do whatever he was directed. Therefore, he turned the rickshaw towards right direction and took the rickshaw towards Vatsalatai Naik Nagar. There was one pole of bus stop of bus nos.5 and 60. The appellant asked him to stop the rickshaw. He stopped the rickshaw. The appellant and the victim girl got down from his rickshaw. He asked him about the fare and he told him to give Rs.9/-. The appellant gave him currency note of Rs.10/-. He had no change. He told the appellant that he has not having one rupee. The appellant said him that all the rickawallas are of same type. Thereafter, the appellant proceeded towards the lane near Jai Bhavani

Mandir alongwith the victim girl. The police recorded his statement. He disclosed that the appellant was wearing chocolaty colour with black checks shirt and blue colour full jeans pant. The victim girl was wearing blue colour with while design kurta and black colour nighty. He identified the clothes shown to him in the court.

78. He further deposed that he was called in Thane jail for TI Parade. When he had been to TI parade, about 5-6 boys were standing in one row. He was asked to identify the appellant from those boys. Accordingly, he identified the appellant who was standing in between dummy accused person nos.4 and 5. The witness has also identified the appellant in the Court.

79. In cross-examination, he has admitted that on Kurla rickshaw stand all the rickshaws stands in a queue. For the period from 5 p.m. to 11 p.m. Kurla rickshaw stand area is overcrowded. He further admitted that he doesn't remember how many trips he has taken on 8.7.2010, but he remember that at what places he had taken passengers. On that day near about 18-19 passengers had traveled in his rickshaw before police had approached him. He also admitted that he cannot give the description of all those 18-19 passengers. He admitted that police approached him between 6.30 to 6.45 p.m. He was in the police station

till 8.30 p.m. He did not inform his family members or any other persons that police had taken him to the police station. He was made to sit in the cabin. There were two police officers. The police personnel came in the said cabin and left the cabin during the period when he was sitting in the said cabin. He admitted that police officer who was sitting in the cabin did not leave the cabin when he was there. The police officer had spoken with him. Those two officers who were sitting in the cabin were talking with him. He further admitted that he gave detailed information to the police. The police officers informed him that they have arrested the accused. They told him that they had arrested the accused, but he did not ask the police when the accused was arrested. His statement was recorded by the police. It required about one hour and twenty minutes for recording his statement. He was not shown any photograph. He admitted that he did not ask the senior officer to show him the photograph or the sketch of the accused person for identification. He further admitted that photograph Ex.10 i.e. of victim was seen by him by the first time in the court. He admitted that police had shown him photograph of girl which was of postcard size and the said photograph was lying before the officer in his cabin.

80. In the cross-examination, the witness has further admitted that

at the time of TI parade, the appellant was standing in between Dummy accused nos.4 and 5. It was suggested to him that the police asked him to identify the accused, therefore, he had identified him. The said suggestion is refuted by the witness. The witness has also admitted that the appellant stood between 4th and 5th person in the row in his presence. On the basis of the said admission, learned counsel for the appellant submits that the Executive Magistrate did not carry out TI parade by following due procedure, but we are not inclined to accept the said submission because the witness has given a strong admission that he saw appellant standing between Dummy accused nos.4 and 5. Infact, his entire evidence is read on the point of TI parade, it appears that he was called at Thane jail where one lady officer was present. There were 6-7 persons standing in a one row and he identified the person standing between Dummy accused nos.4 and 5 as the culprit i.e. the appellant. In TI parade the witness has identified the appellant. Similarly, the witness has identified the appellant in the court while giving deposition.

81. Witness Mohammad Hanif Khudbuddin is a rickshaw driver. He ply his rickshaw in Kurla (East) area where the incident had occurred. He had categorically stated that the appellant had boarded his rickshaw alongwith the deceased girl. No doubt, the witness has not given exact

day on which he had seen the appellant and the deceased girl. It is come in the evidence of witness that he had taken the appellant to Vatsalatai Naik Nagar. There was altercation between the appellant and the witness over the payment of rickshaw fare. Similarly, he had also altercation with the appellant as to the destination. According to the witness, the appellant had asked him to take him to Thakkar Bappa Colony and thereafter he change his mind and asked him to Vatsalatai Naik nagar. Accordingly, he left him with alongwith the deceased. Therefore, the evidence of Mohammad Khudbuddin has ring of truth. It cannot be called as got up witness. He has identified the appellant. Similarly, he has identified the clothes of the deceased as well as the appellant when he had seen them last. Therefore, from the evidence of Mohammad Khudbuddin, the prosecution has established that the appellant was last seen together with the deceased at Vatsalatai Naik Nagar.

82. To prove the test identification, the prosecution has relied on the evidence of Ulhas Nalawade (PW-29). It is come in his evidence that in 2010 he was working as a Naib Tahsildar, Kurla (Mulund). On 15.7.2010 Sr. PI Nehru Nagar police station gave him letter (Ex.110 Colly.) with request to conduct test identification parade. Accordingly,

he fixed the date of identification as 23.7.2010 and communicated the same to PI Nehru Nagar police station, by letter dated 19.7.2010 (Ex.111). On 23.7.2010 he came to his office and then proceeded towards Thane jail alongwith the PI Kadam in police vehicle. He reached Thane jail. PI Kadam had brought 4-5 persons. He selected 2 persons out of them as panch-witnesses. Their names were Sawant and Bagde. He got brief information about the incident from PI Kadam. Then he alongwith 3 witnesses, 2 panchas and PI Kadam went to the gate of the jail. PI Kadam introduced him to the jailor and informed about the TI parade to the jailor. He asked PI Kadam to go out from the jail premises. He asked jailor to arrange for two rooms, one room for sitting the witnesses and other room for conducting the TI parade. He made arrangement for sitting of witnesses in a room which was near prison gate. The room for TI parade was within the compound of jail and he satisfied himself that there was sufficient distance between the TI parade and the witness room. He took precaution that the witness should not see the accused while bringing the accused and the accused should not see the witness. The witnesses were asked to sit in their room. He has given brief idea of the TI parade to Jailor. He asked the jailor to bring 7-8 dummies similar in the physique and age of the

accused. He selected 6 out of 8. He asked the jailor and his staff to go out of TI room. He made to stand all these 6 dummies in a room. He cautioned the panchas while bringing the witness to take precaution that one witness should not talk with other and after TI parade, that witness should go out of gate of the jail. Then, he asked the panch Sawant to bring the first witness. In the meantime, he asked the suspect to stand at a place of his choice in the row. The appellant stood between dummy number 4 and 5. Thereafter he asked him whether he wants to change his clothes, but he refused. Panch Sawant brought the witness in the TI room. Witness told his name Mohammad Hanif Kutubuddin Mulani. He asked the witness to identify the culprit. The witness examined the persons standing in the row and identify the appellant who was standing in between dummy number 4 and 5 correctly. He asked the witness as to why he identified the appellant. He informed that he was standing at Kurla station near oil mill, the appellant alongwith one girl came there and engaged his auto-rickshaw near Bhavani Mandir, S.T. Stand and he went alongwith the girl in a by-lane.

83. He asked the panch-witness to bring the other witness. Meantime, he asked the appellant to take a place as per his wish in the room. The appellant stood in between dummy numbers 3 and 4. The

appellant refused to change the clothes. Panch-witness Badge brought witness Bhau Tarade. He asked witness whether he can identify the accused. The witness examined the persons standing in the row and identified the appellant, who was standing in between dummy witness number 3 and 4 correctly. He asked the witness as to how he identified the appellant. He said that on 6.6.2010 in the evening at about 6.30 p.m, he was standing near Balwadi and at that time, appellant alongwith the girl, whom he had seen in the photo, went inside the by-lane. He asked him to go out of the gate of the jail.

84. The witness further deposed that he was asked panch-witness to bring the third witness. Thereafter he asked the appellant to take a place as per his wish and if he wants he can change the clothes. The appellant changed the clothes and stood between the dummy numbers 5 and 6. Panch Sawant brought the third witness. He asked the witness whether she can identify the accused. The witness examined the persons in the row and identified the person who was standing in between the dummy numbers 5 and 6. She correctly identified the accused. He asked the witness as to why she identified the accused. She said that on 6.6.2010 in the evening at about 7 p.m., she had seen this accused taking a small girl in the lane near rationing shop. He asked her to go out of the jail

gate.

85. The witness sent panchnama (Ex.113) to Sr.PI Nehru Nagar police station alongwith the letter (Ex.114). The evidence of this witness Naib Tahsildar is objected by the defence but nothing worth has brought on record to brush aside his evidence. Naib Tahsildar has followed the instructions given in the memorandum manual for holding the TI parade. Therefore, the prosecution has proved the test identification through the evidence of Naib Tahsildar (PW-29).

86. **(VII) Recovery of wire at the instance of the appellant, which was tallied with the wire found on the spot :-** The Investigating Officer Baliram Kadam (PW-36) has deposed that he received DNA report of the appellant. It was matching with DNA profile of the victim. The appellant came to be arrested under panchnama (Ex.117) on 1.7.2010. His clothes were seized under seizure panchnama namely jeans pant, chocolaty shirt having black checks and blue nicker having symbol of ploy boy. On 2.7.2010 the appellant was referred to medical examination at Nagpada police hospital. Dr. Pratap Daya Anand (PW-23) had examined him. On examination nothing was found showing that the appellant was impotent. The blood sample was collected for grouping. His public and scalp hairs were also collected. Accordingly, he issued

certificate (Ex.57). He also collected sample of nail clipping for chemical analysis and accordingly, he sent sample to chemical analysis.

87. The Investigating Officer has further deposed that on 7.7.2010 while in custody the appellant made voluntary statement and showed his willingness to produce wire. Accordingly, the statement was recorded in presence of panch-witness and accordingly memorandum panchnama was prepared (Ex.105). The appellant has also shown his willingness to point out the place of offence and how he entered into it. Accordingly, the appellant led police party and panch-witness to Vatsalatai Naik Nagar. He asked to stop the jeep near Jai Bhavani Temple near the bus stop. He asked driver to stop the vehicle. After alighting from the jeep, he started walking ahead and they were followed him. He went into hutment area. From Hanuman galli he went ahead upto 200-250 feet. There was one rationing shop and beyond the rationing shop there were 4 rooms with mezzanine floor. The appellant took them to the last room which was at the dead end of the lane. There was staircase leading to mezzanine floor. PI Darade was having the key of that room on mezzanine floor. He opened the room and they went inside. The said place of incident was known to the police as dead-body was recovered from the said spot on 19.6.2010.

88. Thereafter, he led police party to Rajiv Gandhi Housing Society. There was construction site having tin sheets. The appellant put his hand inside those tin sheets and produce the plastic bag. It was containing red colour electric wire. That wire was admeasuring 5 feet 1½ inch. The said wire was seized under seizure panchnama. Thereafter, the appellant was brought to police station. To prove the memorandum and seizure panchnama, the prosecution has relied on the evidence of Manoj Pawar (PW-28) who deposes that on 7.7.2010 at about 3.30 p.m. he was called at Kurla Nehru Nagar police station. There were three constables and two officer, himself and his friend and one person in black veil. They were given brief information about the crime. They were asked whether they are ready to act as a panch. They shown their inclination. They were shown the face of that person who was in burkha. He identified the appellant as the said persons. The appellant introduced himself. He gave his name and address. The appellant wanted to show the place of incident. Police noted down his statement and took their signatures. Accordingly the panchnama was prepared. Thereafter, the appellant and panch-witness and police staff boarded the police jeep. The appellant took them to Vatsalatai Naik Nagar. There was one room at the end of the lane. The appellant went to mezzanine

floor. Thereafter, he produced one bag which was containing red electric wire which was admeasuring around 5 feet. The bag was stained with mud. The said wire was seized under seizure panchnama. The evidence on this point is denied, but the panch-witness Manoj Pawar (PW-28) has substantiated the contents of panchnama.

89. The said wire was sent to chemical analysis. The said wire was analyzed by the Assistant Director, FSL, Rajendra Mavle (PW-21). According to Rajendra Mavle (PW-21) on 4.8.2010 he received pieces of electric wire for physical analysis in CR bearing no.160/10 of Nehru Nagar police station. He received four samples of wire in same crime. He performed physical and thermal analysis and elemental analysis of the metal of wire and on analysis he found there were two wires among four tallying with each other. He further deposed that on 20.7.2010 he had examined the wires (Articles 8, X-12, X-21) and he identified the same. He further deposed that the electric wires Article Nos.8, X-12, X-21 are shown to him. Out of these wires, wire bearing article Nos.X-12 and X-21 are the electric wires which were matched with each other.

90. Wire (Article X-21) was found on the spot. It was analyzed by the chemical analyzer and it was found the blood of the deceased. The appellant has produced on record red wire (Artcile X-12) was matched

with the wire found on the spot. In the cross-examination, the witness has admitted that generally specification about physical, thermal and elemental composition of any wire could match with any such specification manufactured by different company. He also admits that there is no any identification mark to show that wire article No.X-12 and X-21 are having the same source. But the wire (X-12) was produced by the appellant which was concealed in tin sheets. So it can be said that the seized wire found on the spot and the wire seized at the instance of the appellant were similar in nature. Therefore, this circumstance is also proved by the prosecution against the appellant.

91. The appellant has pointed out the place of offence to the police. On this point, learned counsel for the appellant submitted that there was no discovery of any object, therefore, the alleged voluntary statement has no meaning. On the other hand, learned APP submits that though there is no recovery of any article in pursuance of the voluntary statement made by the appellant, but after the arrest, he pointed out the place of offence and how he reached to the spot. The said circumstance relates to the conduct of the appellant. On this point, learned APP has relied on the ratio laid down by the Apex Court in ***AIR-1979-SCC-400*** wherein it was observed that *“Showing the place etc. is the conduct of accused and*

same is relevant under Section 8 of Indian Evidence Act”.

92. It appears that the spot was within the knowledge of the appellant. He pointed out the place and how he reached there. So panchnama proves the conduct which is relevant u/s.8 of the Evidence Act. Therefore, the prosecution has proved the nexus between the appellant and the crime.

93. It is the case of prosecution that the appellant has produced his clothes which he had worn at the time of incident. To prove the said fact, the prosecution has heavily relied on the evidence of Ganesh Gurav (PW-32) who deposes that on 9.7.2010 he was called at Nehru Nagar police station by one hawaldar in the afternoon. He took him to the cabin of the officer. He was informed by the officer that one accused was arrested and he wants to make one voluntary statement in his presence. The appellant was sitting there and he was in veil. His veil was removed. He asked name to the appellant. Thereafter, the appellant made a statement that he wanted to show the clothes which he was wearing at the time of incident. Accordingly, his statement was recorded under panchnama (Exh.129). He and the other panch-witnesses signed the same. Thereafter, the appellant led police party and the panch-witness in front of Firdaus Hotel. After he asked to stop the vehicle, he got down

from the vehicle and took police party to his house through the lane. He pointed out the room. He knocked the door. One lady opened the door. She was his mother. The accused brought out the clothes kept in the cupboard and handed over to police. The police seized and sealed the clothes and put label on the same. The panch-witnesses signed the label. The clothes were blue colour jeans pant and chocolaty black colour full shirt. The said clothes were seized under seizure panchnama (Exh.29A). The evidence of panch-witness was simply denied by the prosecution; but it is established that in presence of panch-witness Ganesh Gurav, the accused has produced his clothes in pursuance of voluntary statement.

94. Learned counsel for the appellant submits that the clothes of the accused were seized on 7.7.2010 under seizure panchnama. Therefore, the evidence of Ganesh Gurav has no legal significance, but we must mention here that on 7.7.2010 the police arrested the accused and seized his clothes worn by him at that time. The panch-witness to the arrest panchnama namely, Girdhari Ashtul (PW-30)) deposed that in his presence, police seized blue full jeans pant, red yellow black colour checks shirt, one underwear, cash of Rs.2660/- (2 notes of Rs.1,000 denomination, 6 notes of Rs.100 denomination, one note of Rs.50

denomination and one note of Rs.10 denomination), his I-card and presentee card of his cable work, one Nokia mobile, I-card of school, one receipt of Rs.350/-, one wallet under seizure panchnama. The clothes seized at the time of arrest were described by the witness namely blue full jeans pant and chocolaty black colour shirt was seized. The description of shirt is different. In presence of Girdhari Ashtul (PW-30) the clothes worn by the appellant at the time of incident were seized whereas on 09.07.2010, the instance of the appellant, his clothes were seized from his house which he had worn on the day of incident. Therefore, it can be said that the clothes of the appellant were already seized in presence of Ganesh Gurav (PW-32). There are two different panchnamas. The clothes in question were seized in pursuance of voluntary statement made by the appellant and the said clothes were seized from his house and not at the police station.

95. The clothes of the appellant were sent for chemical analysis. Witness Shrikant Lade (PW-26) analyzed the pant. According to him, he received full jeans pant from the biology department on 14.06.2010. He extracted DNA detected and from the blood sample of the appellant received on 24.6.2010. He prepared DNA profile of a blood detected on jeans pant and blood sample of the appellant. On analysis, his

interpretation was male haplotypes of hair detected on nail clippings of left hand of the victim girl and semen detected on ex 4 vaginal smear slides of victim girl matched with the male haplotypes of appellant. Accordingly, he prepared report (Ex.75). He produced on record results of analysis in a tabular format. He opined that DNA profile of blood detected in full pant and the blood sample of appellant are the same paternal progeny. The appellant has not explained as to how his jeans pant was stained with blood.

96. Learned counsel for the appellant submits that the prosecution has not sought explanation of the appellant regarding the DNA report. No specific question were put to the appellant in his examination u/s.313 of the Cr.P.C. Therefore, he could not explain the said circumstance. On the other hand, learned APP submits that the evidence of Shrikant Lade (PW-26) was put by the appellant, but he has not given any explanation on the point of DNA profile.

97. He submits that if the incriminating material is not put to accused in Section 313 of Cr.PC., then the accused is entitled for acquittal. To substantiate this point, he has relied on the ratio laid down in the case of *Samsul Haque vs. The State of Assam, reported in (2019) SCC 1093*, wherein the Apex Court has held that.....

21. Section 313 of the Code casts a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom 7 (2008) 16 SCC 328 that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in [S. Harnam Singh v. The State](#) (AIR 1976 SC 2140), while dealing with [Section 342](#) of the Criminal Procedure Code, 1898 (corresponding to [Section 313](#) of the Code). Non- indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under [Section 313](#) is not a purposeless exercise.”

23. While making the aforesaid observations, this Court also referred to its earlier judgment of the three Judge Bench in [Shivaji Sahabrao Bobade v. State of Maharashtra](#) 8, which considered the fall out of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence, and the requirement 8 (1973) 2 SCC 793 that the accused’s attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused must be eschewed. No doubt, it is recognised, that where there is a perfunctory examination under [Section 313](#) of the Cr.P.C., the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed.”

98. In view of the above observations, one has to see whether the question relating to DNA profiling was put to the appellant u/s.313 of Cr.P.C.

99. Learned APP has invited our attention to Question No.119 put to the appellant under his cross-examination u/s.313 of Cr.PC. It was put to the appellant that Shrikant Lade (PW-26) was asked to collect blood scrapping from the wall and floor of the room. Accordingly, he had collected the sample, but the appellant shown his ignorance about the same. The question was asked to the appellant that in the scene of offence, there was one angle and one nylon rope was hanging on the said iron angle. There were spot of blood on the said nylon rope. It was also put to the appellant that one kurta and black colour nighty were lying near the dead-body were lying, which were seized. The appellant has shown his ignorance about the same. It was put to the appellant that Shrikant Lade extracted DNA from blood, smear from the above articles found on the spot. He has analyzed DNA profile. He prepared report Ex.71. But the appellant shown his ignorance about the same.

100. The question was put to the appellant that Shrikant Lade extracted the DNA from saliva, smear and from the articles found on the

spot and he prepared report (Ex.50), but the appellant shown his ignorance about the same.

101. The explanation of the appellant was sought by putting Question Nos.222 and 224 that on 30.06.2010 FSL Kalina sent DNA report. In the said DNA report, his DNA was matching with the DNA of the deceased. The appellant has shown ignorance about the same. So it can be said that the attention of the appellant was called by putting specific question that his DNA profile was matched with the DNA profile of the deceased. Therefore, it cannot be said that the prosecution has not invited explanation of the appellant on the point of his DNA profile which was matched with the DNA profile of the deceased. So there is no breach of Section 313 of Cr.PC.

102. On going through the evidence of prosecution, it is established that the DNA profile of the appellant was matched with the DNA profile of the deceased. The prosecution witness Mohammad Khudbuddin has proved that the appellant was last seen together with the deceased girl. The appellant has pointed out the scene of offence as to how he entered into the house. Similarly, the prosecution has proved that the deceased girl was missing from the house since 6.6.2010. Her dead-body was found at mezzanine floor of the hutment area situated at Vatsalatai Naik

Nagar. The room in which the dead-body was found was locked. The dead-body was identified by the parents with the help of description of clothes worn by the deceased at the time of missing. The prosecution has proved the homicidal death of the deceased. The prosecution has proved that the red wire produced by the appellant tallied with the wire tied to the leg of the dead body. The pant worn by the appellant at the time of incident with blood stains. The said circumstance is not explained by the defence.

103. On the other hand, learned counsel for the appellant submits that the appellant has examined four defence witnesses to prove his defence of alibi.

104. Santosh Patil (DW-1) is an Internet provider. He is distributor of Sify Broadband and Finet India Solutions Limited. He was providing connection to his customers in Kurla (East) area. He used to provide internet connection in the colony and not in slum area. At the relevant time, he was having 1000 customers. He and his brother, two employees and himself were looking after the office. 7 boys were doing field work. The appellant was one of them. He further deposed that on 6.6.2010 was Sunday. The appellant was on duty. He came on duty at 10.30 a.m. He had collected money from 27 customers. He used to give incentives

to the employees who were working on field and used to collect the charges. He further deposed that on 6.6.2010 he received complaint of Saurabh Sawant at about 5.00 p.m. He asked the appellant to attend the complaint. At about 5.45 p.m. appellant called him and told him that he attended the complaint and collected the charges of Rs.700/- from Saurabh Sawant and he renewed his package at 6.58 p.m. He further deposed that after attending Saurabh, the appellant collected money and he came to office at about 8.30 to 8.45 p.m. with collection of Rs.10,000/-. He further deposed that the appellant was working with him for 1½ year prior to the incident.

105. He further deposed that on 28.6.2010 he received call from the DCP Sawant and he asked him to call three boys working in his office as he wanted to discuss with him. Thereafter, DCP Sawant and PI Godse came to his office and they asked his brother Vinod patil to take those three boys in his vehicle to police station. After one hour he tried to inquire about his brother, but his phone was switched off, therefore, he inquired in his friend circle and he found that his vehicle was parked in the compound of RCF police station. He further deposed that on 30.6.2010 police took all his employees in their vehicle to RCF police station. On 1.7.2010 media persons came to his office at about 11.00 a.m.

and they informed him that one of the employees Javed is arrested in this crime. He further deposed that there was anger in the mind of people residing in the said area. He was asked to close his shop and he was given protection for a week. He further deposed that police came to his office and took away all documents. Therefore, he could not produce the documents showing the presence of appellant in his office till 8.30 p.m. on 6.6.2010. No doubt, the witness has produced on record collection list given by the appellant. The said list shows that the appellant has renewed the package of Saurabh at 6.58 p.m. According to DW-1 the appellant had come to his shop at about 8.30 to 8.45 p.m., but except bear words of the witness, no evidence is produced on record to prove the said fact.

106. Vinod Patil (DW-2) is the brother of Santosh Patil (DW-1). According to Vinod Patil (DW-2) on 6.6.2010 the appellant came on duty at about 10.00 a.m. and he was with him upto 9.30 p.m. He has not disclosed where the appellant was working. On the other hand, Santosh Patil (DW-1) deposed that the appellant was in the shop till 8.30 to 8.45 p.m. Santosh Patil has not whisper in his evidence that the appellant was at his shop upto 9.30 p.m. According to him, the police took his employees in the custody on 30.6.2010. He further deposed that the

police released his staff members on 7.6.2010, but the appellant was arrested in the crime. He also deposed that the police asked him to close his office from 28.6.2010 upto 6.7.2010, but he opened the office on 1.7.2010 as soon as he opened his office, the media persons entered the office and asking him to start TV Channel 9. He saw TV Channel 9 where the photograph of culprit was shown, but it was not of the appellant.

107. He further deposed that PI Sawant had come to his office. He showed him documents and all proofs that the appellant was working with him at the relevant time on computer, but two days thereafter the police came to his office and took his computer forcibly and damaged the hard-disk and returned the computer after five days. He further deposed that the police were recording his statement from 28.6.2010 to 6.7.2010. There is no sufficient evidence on record to establish that the appellant was present in the office after 7.00 p.m. of 6.6.2010.

108. The appellant has also examined Prakash Kale (DW-3). He deposed that on 31.7.2010 he retired as a Senior PI from Naigaon police station. He further deposed that he was attached to Nehru Nagar police station from 7.5.2009 to 23.6.2010 as a Senior PI. He deposed that Crime Nos.41/10, 69/10 and 160/10 were registered with Nehru Nagar

police station. In all crime, the Modus Operandi of crime was of kidnapping and killing of girls. All three cases were investigated under his supervision. He deposed that the deceased was residing 100 meters away from his residential building. He further deposed that in Crime No.41/10 one minor girl was murdered and his dead-body was found on the terrace of Building No.109. In the said case, DNA test of his son was conducted. Similarly, 2-3 boys were also referred for DNA examination. 16 police officers were staying in Building No.109. Therefore, the sons of police officers were referred for DNA examination. In the second incident, girl was kidnapped and killed and hence, many boys were referred for DNA examination. He further deposed that after the dead-body of deceased was found, one suspect was arrested, but he was released with permission of the Court as there was no proof. He has categorically stated that he could not say whether the accused was innocent in this case because he was not there during the investigation. So the evidence of DW-3 is of no use to prove his innocence and plea of alibi.

109. The defence has also referred the evidence of Ratnakar Sawant (DW-4). He deposed that he was staying in Bldg.No.121, Room No.4000, Nehru Nagar, Kurla (E), Mumbai. In the year 2009 and 2010

he was having cable connection of Swastik Network. He was attached to RCF Police Station. On 6.6.2010 he was at home. On that day, one boy from Swastik Cable Connection Company came to collect the money for internet connection at about 5.00 p.m. to 5.30 p.m. He gave him money and he went away. His cable was in running condition. He cannot identify the said person. So Ratnakar Sawant (DW-4) has not identified the appellant as the person who had come to his house to collect the internet charges. The evidence of Ratnakar Sawant is contrary to the evidence of DW-1/Santosh Patil. According to Santosh Patil, he had sent the appellant to the house of Ratnakar Sawant (DW-4) as there was complaint of non working of network, but the witness has categorically stated that his cable connection was in good condition. The person who had come to his house was only for the purpose of collection of cable charges and he had come in between 5 to 5.30 p.m, whereas Santosh Patil (DW-1) deposed that the appellant was in the house of Ramakant Sawant (DW-4) upto 7.00 p.m. Thereafter, the evidence of Ramakant Sawant is also not helpful to the appellant to prove the plea of alibi.

110. To appreciate the plea of alibi, the evidence of P.W.No.1 is also crucial. Noorjahan Shaikh (PW-1) has deposed that deceased left the house at 6.00 p.m. and till 8.00 p.m. she did not come. Therefore, she

alongwith her relatives took search for the deceased. Ultimately, she lodged missing complaint at about 10.30 p.m. So it can be said that the deceased was missing after 6.00 p.m. There is no positive evidence on record to show that the appellant was in the office of Santosh Patil (DW-1) till 8.30 p.m. It is come in the evidence of DW-1 and DW-2 that their clients are residing in Kurla adjacent to Vatsalatai Naik Nagar. So it can be said that the appellant was moving in Kurla (East) area where the incident had occurred. So the appellant has failed to prove his defence alibi.

111. On going through the evidence on record, we hold that the prosecution has proved that the deceased found missing since 6 p.m. of 6.6.2010. Her dead-body was found on 19.6.2010 at secluded place. She was found dead. The prosecution has established the homicidal death of the victim. The prosecution has led evidence to establish that the DNA profile of the deceased matched with the DNA profile of the appellant. Similarly, the appellant was last seen together with the deceased girl. The pant of the appellant was stained with the blood for which he has not offered any explanation. Similarly, the appellant has produced red wire which was matched with the wire tied on the left leg of the deceased. The said circumstance was also not explained by the

appellant.

112. In view of the ratio laid down in the case of Sharad Sarda (cited supra), the prosecution has proved the circumstances relied upon by the prosecution. The facts so established by the prosecution are consistent only with the hypothesis of the guilt of the appellant. The circumstances are conclusive in nature and tendency and they excluded every possible hypothesis except the one has to be proved. The chain of evidence is so complete as not to leave any responsible ground for the conclusion consistent with the innocence of the appellant and showed that in all human probability the act must have been done by the appellant.

113. Therefore, we hold that the trial Court has considered the evidence in proper perspective. There is no need to interfere in the judgment passed by the learned trial court. Therefore, in our considered opinion, the appeal has devoid of merit and the same is dismissed. Hence, we proceed to pass the following order:-

ORDER

- (i) The Appeal is dismissed.*
- (ii) The sentence imposed by the trial court on the appellant is hereby confirmed.*

[SURENDRA P. TAVADE, J.]

[S.S. SHINDE, J.]