



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

CRIMINAL APPEAL NO.542 OF 2019

Ananda s/o. Tatyarao Salunkhe,
alias Andesh Baba,
Age : 66 years, Occ. Nil,
r/o. Jalgaon, Dist. Jalgaon

..Appellant

Vs.

1. The State of Maharashtra,
Through Police Inspector,
Ramanand Nagar Police Station,
Jalgaon
2. XYZ,
r/o. Samtanagar, Near Shiv temple,
Jalgaon.

..Respondents

Mr.Mayur V. Salunke, Advocate for appellant (appointed)
Mrs.U.S.Bhosale, APP for respondent no.1
Mr.Satej S. Jadhav, Advocate for respondent no.2

AND

CRIMINAL APPEAL NO.571 OF 2020

The State of Maharashtra,
Through Police Inspector,
Ramanand Nagar Police Station,
Jalgaon

..Appellant

Vs.

Ananda Tatyarao Salunkhe
alias Aadesh Baba,
Age : 65 years,
r/o. Samtanagar, Near Shiv Temple,
Jalgaon

..Respondent

Mrs. U.S.Bhosale, APP for appellant
Mr.Mayur V. Salunke, Advocate for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : MARCH 19, 2024
PRONOUNCED ON : JUNE 13, 2024**

JUDGMENT (PER R.G.AVACHAT, J.) :-

Both these appeals are decided by this common judgment since they are interconnected.

2. The challenge in Criminal Appeal No.542 of 2019 is to the judgment and order dated 30.03.2019, passed by learned Sessions Judge, Jalgaon, in Special Case No.31 of 2018. Vide the impugned judgment and order, the appellant has been convicted for the offences punishable under Sections 363, 376(3), 376-A, 302 and 201 of Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act and therefore, sentenced to various terms of imprisonment, as detailed below :-

Sections	Punishment
Section 363 of IPC	R.I. for four years and to pay fine of Rs.25,000/-, in default, to suffer S.I. for two months
Section 376(3) of IPC	R.I. for life. The life imprisonment shall be for the remainder of the natural life of the accused and to pay fine of Rs.25,000/-, in default, to suffer S.I. for two months
Section 376-A of IPC	R.I. for life. The life imprisonment shall be for the remainder of the natural life and to pay fine of Rs.25,000/-, in

	default, to suffer S.I. for two months.
Section 302 of IPC	R.I. for life. and to pay fine of Rs.25,000/-, in default, S.I. for two months.
Section 201 of IPC	R.I. for five years and to pay fine of Rs.10,000/-, in default, S.I. for one month.
Section 6 of POCSO Act	R.I. for ten years and pay fine of Rs.25,000/-, in default, to suffer S.I. for two months.

The sentences awarded under Sections 363 and 201 of Indian Penal Code and Section 6 of POCSO Act have been directed to run concurrently.

3. Criminal Appeal No.571 of 2019 has been preferred by the State for enhancement of sentence from life imprisonment to death.

4. For the sake of convenience, we refer the parties as per their status appearing in Criminal Appeal No.542 of 2019 (appeal against conviction).

5. The facts, giving rise to the present appeal, are as follows:-

The First Information Report (Exh.31) was lodged by the mother (PW 6 – Manisha) of the deceased/victim “A” (name withheld)

on 13.06.2018 by little past 02.00 a.m. Based on the FIR, Crime vide C.R. No.95 of 2018 was registered for the offence punishable under Section 363 of Indian Penal Code, at Ramanand Nagar Police Station, Jalgaon. According to the informant (PW 6 – Manisha), the victim was her eight years old daughter. She left the house by 06.00 p.m. for visiting the house of her parental grand-mother. Since the victim did not return home until 08.00 p.m., she (PW 6) went to the house of her parents-in-law to find whether the victim had been there. She, however, learnt the victim to have not visited her grand-parents. PW 6 – Manisha, thereafter, went to the house of her sister-in-law to find whether the victim was there. Since the victim had also not visited the house of her parental aunt and after having taken search for the victim for 2-3 hours, PW 6 – Manisha approached Ramanand Nagar Police Station, Jalgaon and lodged the FIR. She named the appellant in the FIR as a suspect, since during search for the victim, the house of the appellant was found closed.

6. The dead body of the victim was found in a jute-bag at Samatanagar hill. A report to that effect was immediately made to Ramanand Nagar Police Station. The police officials reached the place. Since large number of persons had gathered there and with a view to avoid law and order problem, the dead body of the victim was removed from the jute-bag and sent to the Civil Hospital for

inquest and post mortem examination. The jute-bag was allowed to be remained at the place whereat it was found. During inquest, some injuries were noticed on the person of the victim, while in the post-mortem report (Exh.19) little over 18 injuries were noticed. It was also found that the victim was subjected to sexual intercourse (rape). On receipt of the post-mortem report (Exh.19), Sections 302 and 201 of I.P.C. came to be invoked.

7. The appellant was allegedly arrested on 14.06.2018, i.e. on the next day of registration of FIR. According to the prosecution, while some persons from the vicinity attempted to nab him, he took to his heels and in the process, fell in a ditch and as a result, suffered fracture. The appellant was, therefore, admitted to the Civil Hospital. He was operated upon. On his discharge from the hospital, he came to be arrested on 25.06.2018.

8. In the jute-bag, a few pieces of bread-toast were found besides rope used for tying jute-bag. In addition to these articles, cover of match box bearing name written with pen "Kiran Ahir" was found. All these articles were taken charge of under panchnama (Exh.16). Then, a clutcher and a smoking pipe were found nearby latrine of the house of the appellant. Same were came to be seized

under very panchnama. On the same day, the house of the appellant was searched. Number of articles came to be seized from house search panchnama. During arrest of the appellant, his specimen handwriting was obtained. A diary containing his handwriting was also taken charge of from his son besides seizure of four diaries from his house during house-search panchnama. Clothes on the person of the victim and that of the appellant were seized. The Medical Officer, who conducted post mortem examination, had obtained vaginal and anal swabs besides blood samples of the victim. The blood samples of the appellant too was obtained for DNA profiling. All the seized articles were submitted to F.S.L., Nashik, for analysis and report. Involvement of four other persons was also suspected. Their blood samples were also obtained and sent to F.S.L., Nashik. During police custody, the appellant made disclosure statement and pointed out the place whereat he had thrown the jute-bag containing the dead body of the victim. Statements of the persons acquainted with the facts and circumstances of the case were recorded. C.A. and D.N.A. reports were received. Upon completion of the investigation, the appellant was proceeded against by filing charge sheet before the Sessions Court, Jalgaon. Learned Sessions Judge, Jalgaon (trial court) framed Charge (Exh.8). The appellant pleaded not guilty. His defence was of false implication.

9. The prosecution in order to bring home the Charge, examined twenty-seven witnesses and produced in evidence various documents. On appreciation of the evidence produced in the case, the trial court convicted the appellant and consequentially, sentenced, as stated above.

10. Heard learned counsel for the parties

11. Mr.M.V.Salunke, learned counsel appointed to represent the appellant (accused), would submit that the case was based on circumstantial evidence. None of the circumstances relied on has been conclusively proved. He adverted our attention to the inquest panchnama (Exh.15) and post-mortem report (Exh.19) to indicate great variance therein. He submitted that the clothes of the victim were not packed and sealed. The clothes were remained with the police officials. The appellant was, in fact, arrested on 13.06.2018 itself. He was thrashed by police. On his admission to the hospital, his blood samples could have been obtained immediately. Reports appearing in the press, based on the briefing made by the police officials, were also relied on in this regard. It was submitted that since it was a sensational case various political leaders had visited the mother of the victim. There was public pressure as well. Learned counsel for the appellant referred and relied on the protocol

relating to obtaining of blood and semen samples for DNA profiling. According to him, protocol has been breached in this case. He pointed out various loopholes in the prosecution case. According to him, the C.A. reports are, after all, in the nature of the opinion. Based on the DNA report alone, without there being any evidence of the victim to have been seen in the company of the appellant, no conviction could be sustained. According to learned counsel, material witnesses have not been examined. He has placed on record his notes of arguments and heavily relied on the judgment of the Apex Court in the case of **Prakash Nishad alias Kewat Zinak Nishad Vs. State of Maharashtra, 2023 SCC OnLine SC 666** besides four more authorities. He, ultimately, urged for allowing of the appeal.

12. At the outset itself, we appreciate the efforts taken by Mr.M.V.Salunke, learned counsel for the appellant (accused), in ably assisting us in this matter. The record indicates that before the trial court as well, the appellant/accused was represented by an Advocate appointed through the Legal Aid authority. After having perused the entire evidence in the case, we find it appropriate to appreciate the able assistance rendered by the learned Advocate, to the trial court in deciding the matter. We had, in fact, heard Mr.Salunke, learned

counsel, at length. We, however, do not propose to refer to his each and every submissions, since those may be our reasons in deciding the matter.

13. Learned APP for the State and Mr.Satej Jadhav, learned counsel appointed to represent the informant, would on the other hand, submit the trial court to have rendered a well-reasoned judgment based on the evidence in the case. Both learned counsel took us through the evidence of each and every witness and heavily relied on the CA reports and DNA reports, indicating involvement of the appellant in the crime. According to them, it is a serious offence. A girl of eight years was first deflowered and then, murdered. It is a rarest of rare case. Both of them, therefore, urged for dismissal of the appeal against conviction and for allowing the appeal preferred by the State for imposing death sentence.

We appreciate the able assistance given by Mr.Satej Jadhav, learned counsel for the respondent-informant.

14. We have considered the submissions advanced. Perused the evidence on record.

15. Let us advert to the evidence and appreciate the same. Before taking up the said exercise, it is reiterated that the case is

based on circumstantial evidence. In the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, the Apex Court has observed thus :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should 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 reasonable 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.”

16. The prosecution relied on the following circumstances:-

- (i) The appellant was residing in the vicinity in which the victim would reside;
- (ii) On the morning of the fateful day, the victim was seen talking to the appellant;

- (iii) On the very day, by 05.30 p.m., the victim was seen proceeding towards the house of the appellant;
- (iv) The handwriting expert's report indicates that the specimen handwriting in the diary seized from the appellant and one delivered by his son, match with the handwriting appeared on the cover of match-box;
- (v) CA report suggests bakery items found in the gunny-bag in the house of the appellant, match with very many particulars;
- (vi) DNA report

17. Samtanagar is a hilly area in the city of Jalgaon. Low or middle-income group people have been residing at Samta Nagar. PW 6 – Manisha (informant) was also residing at Samtanagar along with her three children including eight years old victim. The appellant too was residing in the nearby of house of PW 6 – Manisha. The appellant would reside in a tin-shed house along with his wife. He too is blessed with grown up children. The children, however, would reside away from him. There is, however, evidence to indicate that his children would visit him on and often. It is not in dispute before us that the dead body of the victim was found in a jute-bag,

abandoned at a secluded place at Samtanagar in the early morning of 13.06.2018. It is also undisputed that the FIR (Exh.31) had already been lodged by 02.20 a.m., suspecting the appellant to have kidnapped the victim.

18. PW 1 - Harshal Tejkar is witness to the inquest panchnama (Exh.15). He was employee serving with Civil Hospital, Jalgaon. His services, therefore, were immediately availed. The Inquest panchnama (Exh.15) was drawn at the Civil Hospital itself. It is in his evidence that one Chetan Chhajlani (not examined) had identified the dead body of the victim. His evidence further indicates that some injuries were noticed on the person of the victim. Chest and stomach of the victim turned reddish. The victim was clad in white T-shirt and green half-pant. Services of a lady panch (Rekha Patil) were availed for examination of private part of the victim. The lady panch too was not examined as witness. The post mortem report indicates that the private part of the victim was intact. Learned counsel for the appellant brought to our notice that the carbon-copy of the inquest panchnama provided to the Medical Officer while the dead body was submitted for post mortem examination, did not bear signature of the third panch. Our attention was also adverted to the cross-examination of PW 1 - Harshal to

indicate that at the material time, his duty hours were from 06.00 a.m. to 12.00 p.m. On the given day, he had duty in I.C.U. There is nothing to indicate that the Investigating Officer had obtained order of the Civil Surgeon to avail services of PW 1 - Harshal to act as panch witness. Be that as it may. The evidence that has been referred to, so far, undoubtedly, indicates that the inquest panchnama (Exh.15) was drawn by the Investigating Officer - Bhagwat Patil (PW 24) negligently.

19. PW 2 - Dr. Nilesh conducted post-mortem examination. The post-mortem examination report finds place at Exh.19. His oral evidence and post-mortem report indicates following injuries on the the person of the victim:-

3) We found injuries to external genitals as follows:-

Vagina - Labia majora and Minora was red, inflamed and contused, vaginal orifice was patulous, edges were inverted towards vaginal orifice, multiple hymenal tears were present at multiple sites with evidence of minimal bleeding present. All these findings were suggestive of sexual intercourse. All these injuries were antemortem.

4) We examined the anus., We found that the anal opening was patulous, mucosa was red, inflamed with minimal bleeding present. It was suggestive of sexual intercourse. All these injuries were antemortem in nature. The lateral buttock traction test was positive. All limbs were straight.

5) We found the external injuries on the dead body as follows:-

1. Contused abrasion present below lateral canthus of right eye. Size 1 cm. x 1 cm., red
2. Contused abrasion present over root of nose on right side. Size 0.5 cm medial to medial canthus of right eye of size 1.5 cm x 0.5 cm, red
3. Contused abrasion present over root of nose on left side. Size 0.5 cm medial to medial canthus of left eye of size 0.5 cm x 0.5 cm, red.
4. Contused abrasion present over upper lip in front of left ala of nose, two in number of size 0.5 cm x 0.5 cm and 0.5 cm X 0.3 cm, red.
5. Abrasion present over left eye upper eye lid of size 0.5 cm x 0.5 cm., red.
6. Abrasion present over middle 1/3 of left eyebrow of size 1 cm x 0.5 cm, red.
7. Abrasion present over forehead on right side of size 1 x 1 cm., red.
8. Abrasion present over left cheek over zygomatic bone of size 1 cm x 1 cm, red.
9. Multiple linear abrasions present over all over neck anterior aspect above and below thyroid cartilage, from below right angle of mandible up to left mastoid process crescentic of size varying from 1 cm to 0.2 cm to 0.5 cm x 0.2 cm, red.
On neck dissection muscle hematoma present at neck muscle bilaterally involving platysma, sternohyoid muscle, sternothyroid muscle and around thyroid cartilage. Thyroid cartilage and hyoid bone intact.
10. Multiple abrasions present over right shoulder anterior aspect of anterior aspect of size varying from 1 cm x 0.5 cm to 0.5 cm x 0.5 cm, red.
11. Multiple linear abrasions present over right

upper limb from lower 1/3 of arm up to dorsal aspect of right hand, antero-medial and postero-medial aspect of size varying from 5 cm x 0.2 cm to 4.5 cm to 0.2 cm, red.

12. Graze abrasion present over plantar aspect of right hand over 5th finger of size 1.5 cm x 0.5 cm, red.

13. Multiple linear abrasions present over antero-lateral aspect of left lower limb involving thigh and lower leg of size varying from 5 cm x 0.2 cm to 4 cm x 0.2 cm, red.

14. Abrasion present over back, just below neck and medial to medial border of right scapula of size 1 cm x 1 cm, red.

15. Linear abrasion present over outer quadrant of left buttock, four in number of size varying from 1 cm x 0.2 cm to 0.5 cm x 0.2 cm, red.

16. Multiple abrasions present over postero-medial aspect of right thigh upper 1/3 of size varying from 1 cm x 0.5 cm to 0.5 cm x 20.5 cm, red.

17. Multiple graze abrasion present over lateral aspect of left lower limb involving thigh and lower leg of size varying from 10 cm x 3 cm to 3 cm x 1 cm, associated with skin tag at various places pale, yellow in colour suggestive of postmortem injury.

18. Multiple graze abrasion present over medial aspect right forearm of size varying from 12 cm x 4 cm to 2 cm x 1 cm, associated with skin tag at various places pale, yellow in colour suggestive of postmortem injury.

6) The injury Nos.1 to 16 mentioned in column No.17 of postmortem notes were antemortem in nature and fresh. Injuries to external genitals mentioned in column No.15 of

postmortem notes were also antemortem in nature and fresh. Injury Nos.17 and 18 mentioned in column No.17 were postmortem in nature.

7) The injury Nos.9, 11, 13 and 15 could be possible by sharp, pointed weapon/object like finger nails. Injury Nos.1 to 8, 10, 12 and 14 to 16 could be possible by rough, hard and blunt object/weapon.

8) On the basis of the symptoms we opined that the death had occurred within 18 to 24 hours from start of postmortem examination.

9) On internal examination of head we found following injury.

Under scalp hematoma present over frontal bone of size 5x3.5 cm, red . This injury was antemortem in nature.

10) We preserved the viscera samples with other articles for chemical analysis. On completion of the postmortem examination, I gave opinion about the cause of death. We opined the injury No.9 mentioned in column No.17 of postmortem notes was sufficient to cause death of the victim. We also opined that injury No.9 mentioned in column No.17 along with injury mentioned in column No.15 and column No.19 were cumulatively sufficient to cause death of the victim. According to us, the cause of death was, "death due to throttling associated with evidence of sexual intercourse." We prepared the postmortem report. The postmortem report now shown to me is the same. Its contents are true and correct. It bears my signature and the signatures of Dr.Nita Bendale and Dr.Pravin Patil. The postmortem report is marked as Exh. 19.

In his opinion, the cause of death was "*due to throttling associated with the evidence of sexual intercourse*". In paragraph 11 of his examination-in-chief, PW 2 - Dr. Nilesh testified that the blood of the deceased was collected for blood-grouping. Swabs were collected

from external genitals, i.e. from vagina and anal opening for detection of spermatozoa. It is further in his evidence that the clothes on the person of the victim were removed and handed over to the police constable - Yogesh Pawar. During his cross-examination, he was confronted with the inquest panchnama. He agreed that there was great variance between the notings in the inquest panchnama and the injuries noticed by him on the person of the victim. His evidence would further indicate that the blood samples of the victim were obtained. It needs to be mentioned here that the evidence in the examination-in-chief of PW 2 is silent to state the manner of packing and sealing of the blood samples of the victim and the manner of collecting vaginal and anal swabs of the victim. We meant to say that the evidence of PW 2 is silent to state about the packing and sealing of the articles collected for chemical analysis. PW 2 being an independent witness, we propose to rely on his evidence as regards the post mortem report (Exh.19).

20. The fact that the victim was first deflowered and then murdered is a fact not disputed before us. The question is whether the appellant has committed said offence/s. Admittedly, the FIR (Exh.31) was lodged against the appellant on suspicion. There is evidence to indicate that the appellant was self-proclaimed "godman

(baba)". Four-five persons used to visit his residence everyday. He was sporting long hair and beard as well. The evidence of PW 6 - Manisha, informant, would only be relevant to the extent of setting the criminal law into motion. Still, it is not known, as to why she was economical with truth in respect of some of the facts. Close reading of the entire evidence would indicate that one Chetan Chhajlani was very much present during investigation. It was he who pointed out the place whereat the jute-bag wherein the dead body of the victim was stuffed, was found. It was he who led the police to the place nearby latrine of the house of the appellant. From that place, a clutcher and a smoking pipe were said to have been seized. It was he who identified the clutcher to have belonged to the victim. There is other evidence also to indicate him to have assisted the police in the investigation. It is still not known, as to why PW 6 - Manisha, during her cross-examination, claimed that he (Chetan) was not her relative. She even went on to state to have not known the place of his (Chetan) residence, whereas, it is in the evidence of the Police Inspector that Chetan had accompanied her (PW 6 - Manisha) to lodge the FIR. It is in the examination-in-chief of PW 6 - Manisha that two persons had accompanied her to the police station to lodge the FIR. She, however, did not give their names. There is evidence indicating that she was Hindi-speaking. She knew

little about Marathi. According to her, she was unable to read the FIR in Marathi. It is in her evidence that she suspected involvement of the appellant in kidnapping of her daughter since she found the appellant's house to have been closed.

21. There is further material in the nature of her (PW 6 Manisha) statement under Section 164 of the Code of Criminal Procedure and others as well. Those others have not been examined as prosecution witnesses. The trial court, still, allowed the defence to refer their statements under Section 164 of Cr.P.C. and put certain questions to the Investigating Officer. Since the same has been allowed to be brought on record, we cannot ignore the same.

22. The Investigating Officer (PW 23), in his cross-examination, admitted that it was revealed during investigation that PW 6 - Manisha (informant) had accompanied Leena Karosia (Exh.206) to the house of the appellant on the night on which the victim went missing. The appellant was present in his house with his wife. He claimed ignorance. In view of this fact, we simply propose to rely the evidence of PW 6 - Manisha to the extent of setting the criminal law into motion by filing the FIR (Exh.31). Otherwise also, her evidence is of not much assistance for the prosecution to further its case.

23. PW 7 – Reena was resident of Samtanagar locality. It is in her evidence that by 9:00 in the morning of 12.06.2018, she had seen the victim sat on the compound wall by the side of her house. It is further in her evidence that she had seen the victim to have been talking to the appellant. Close reading of her evidence would indicate that the appellant was present outside the his house when the victim was sitting on the compound wall. Even if we accept the evidence of PW 7 - Reena as it is, what it brings on record is that she had seen the victim to have some talk with the appellant. It is not her case that she had seen them together. Her cross-examination indicates that her statement was recorded on 15.06.2018. Before that, she did not disclose said fact to anyone inspite of having been aware the victim to have gone missing and search for her was on in the vicinity. She was confronted with her statement under Section 164 of Cr.P.C., wherein she has stated that the victim was sitting at the compound wall behind her (PW 7) house. Said statement was recorded on 12.07.2018, i.e. a month after the victim went missing. In our view, the evidence of PW 7 would, in no way, was helpful for the prosecution, even to suspect involvement of the appellant.

24. PW 5 – Aarti is daughter of PW 7- Reena. Aarti was 14 years of age at the relevant time. She was 10th standard student. It

is in her evidence that on the given day, i.e. 12.06.2018, she was playing bat-ball along with his sister Anjali and brother Ayush in the front-yard of her residence. Admittedly, their residence has compound-wall. It is in her evidence that her brother hit the ball, which went outside the compound. She, therefore, went to fetch the ball. While she was outside the compound wall for fetching the ball, she saw the victim proceeding towards the house of the appellant. According to her, the appellant's house was open that time. It was 05.30 p.m. She and her siblings would attend one and the same school. The school timing was 12 noon to 05.00 p.m. It was her mother PW 7, who used to take them to the school and get back after the school time was over. She would take them on Scooty (moped). It is further in her evidence that it would take 30-45 minutes to reach the school from their house. Necessarily, equal time was required to come back home after the school was over. As such, this witness appears to be a chance witness. Her cross-examination indicates that it was no holiday. She did not state as to why, she along with his sister and brother did not attend the school on the given day. Her evidence further indicates that the appellant would reside along with his wife. His children used to come and stay there on and often. She was confronted with her police-statement, which is silent to state that her brother had hit the ball outside the

compound wall and she had, therefore, been outside the compound wall to fetch the same. This is the material omission amounting to contradiction. The nature and quality of the evidence of this witness does not inspire confidence to rely on her version and to conclude her to have had seen the victim proceeding towards the house of the appellant little past 05.30 p.m. on the given day.

25. PW 8 - Rekha was resident of the same locality. Her evidence is relevant to the extent of her to have seen the jute-bag at the hill while she had been there to throw/dump waste/garbage. It is in her evidence that she had seen legs of a child protruding out of the jute-bag. She related the same to the persons in the vicinity. Said fact was immediately reported to the police, pursuant to which PW 24 - Bhagwat Patil (Investigating Officer) reached the place and removed the dead body and sent it for inquest and post mortem examination.

26. PW 9 - Ramesh is a witness to the arrest panchnama (Exh.37). The appellant's arrest was effected on 25.06.2018. According to the prosecution (PW 23 - Rohom), the appellant was chased by the persons from Nagzari area. The appellant took to heels. In the process, he fell in a ditch. A police official, Sandip Patil (Police-Naik/89), attached to M.I.D.C. Police station, Jalgaon, took the

appellant into custody. Due to the fall, the appellant suffered fracture and was, therefore, admitted to the hospital on 14.06.2018. The appellant was discharged from the hospital on 25.06.2018 and was immediately arrested. This is the case put up by the prosecution. Said Sandip Patil (Police-Naik/89), who detained the appellant, has not been examined. PW 23 - Bapu Rohom, Investigating Officer, admitted in his cross-examination that there used to be police briefing to the press-reporters in relation to the incident. A newspaper clipping was confronted to him. Same is on record. We have perused the same, wherein, it has been reported that the police arrested the appellant on 13.06.2018 itself. The trial court did not exhibit the said newspaper clipping. Be that as it may. We found the Investigating Officer to be economical with truth on this point. When the appellant was at his house on the night on which the victim went missing, he must have been taken into custody either by the police or the persons residing in Samtanagar area and thrashed him, as a result of which he (appellant) suffered fracture and required hospitalisation for about 11 days. We have reason to observe so, since there is evidence to indicate that when the Investigating Officer - Bhagwat Patil had reached the place on having learnt the dead body being found in the jute-bag, large number of people had gathered. The situation had become tense.

Therefore, no spot-panchnama was said to have been drawn then and there immediately. The dead body was first immediately removed from the jute-bag and sent for inquest and post-mortem examination.

27. PW 9 - Ramesh Patil a is panch witness of other panchnama as well. One is relating to seizure of clothes on the person of the appellant. The clothes were appellant's Lungi and under-pant. Those clothes were seized on 25.06.2018 under panchnama (Exh.38). Another panchnama Exh.39 pertains to obtaining six specimen handwriting of the appellant in his presence.

28. Another circumstance relied on is finding of clutcher, said to be of victim, nearby the appellant's latrine situated adjoining the appellant's residence. PW 1 - Harshal, witness to the inquest panchnama, had accompanied the police to the spot, whereat jute-bag was found. His evidence indicates that the spot was identified by Chetan Chhajlani. A jute-bag, match-box cover bearing name "Kiran Ahir" thereon, human-hair, rope and bread-toasts came to be seized under panchnama (Exh.16). It is further in his evidence that from that place, they went to a place nearby the house of the appellant. There was latrine. A ladies-clutcher and a smoking pipe were seized from the open place. The seized clutcher is said to be a

piece of evidence to indicate the victim to have been to the residence of the appellant. It was black-colour clutcher. It was identified by Chetan Chhajlani as that of belonging to the victim. He being cousin of the informant, must have had shared said fact with the informant.

29. The Investigating Officer conducted test identification of the clutcher at the police station. Services of Executive Magistrate - Amol Nikam (PW 15) were availed therefor. It is in his evidence that on 06.07.2018, he went to Ramanand Nagar Police Station on request letter from Police Inspector, Ramanand Nagar Police Station. He availed services of two panchas. It is in his evidence that PW 6 - Manisha identified the black clutcher from among seven clutchers placed for identification. He drew panchnama to that effect vide Exh.69. In our view, this piece of evidence too would be of little assistance to the prosecution for more than one reason. The legal position that a police official shall not take part in the test identification parade of culprit, equally applies to the test identification of an article. In the case in hand, the test identification took place at the police station itself. The clutcher to be identified was of black colour. The Executive Magistrate was expected to mingle the said clutcher with some other clutchers which were

identical with the clutcher to be identified. In the case in hand, all the seven clutchers were of different colour. There is nothing in the evidence of PW 6 – Manisha that on the given day, the victim had tied her hair with the clutcher. Since the police machinery was involved in the identification of the clutcher and same was not in accordance with the guidelines relating to test identification parade of culprit, we propose to ignore this piece of evidence.

30. PW 16 – Indubai was also resident of Samtanagar. She would run a grocery shop. It is in her evidence that before 25.06.2018, on one day, the wife of the appellant had been to her shop for purchasing of grocery articles. She purchased one milk bag and 10 bread/toasts. Since she did not have carry bag, she gave those articles in an empty bag bearing logo “Krushna Namkeen”. The evidence of this witness is not specific to state on which day, the wife of the appellant had been to her shop. Her statement was recorded on 25.06.2018, i.e. 12 days after the incident. According to her, the wife of the appellant had purchased those articles from her shop on one day, before 25.06.2018. That day might be a day post incident or even before thereto. There was nothing special for this witness to identify the bag bearing logo “Krushna Namkeen”, which was allegedly given by her to the wife of the appellant to carry

therein milk bag and toasts. Said bag was shown to her for the first time before the court and not during investigation, like identification of clutcher. In our view, therefore, the evidence of PW 16 – Indubai, either independently or cumulatively with the evidence of other witness, is of little assistance for the prosecution even though similar bag was said to have been found at the house of the appellant during the house-search panchnama.

31. The evidence of PW 14 – Sanjay is altogether irrelevant. He is witness to the so called disclosure statement (Exh.61) regarding keeping of dead body in the jute-bag and then appellant's further statement regarding pointing the place whereat he threw the jute-bag containing the dead body and panchnama drawn in that regard (Exh.62). The alleged disclosure statement was made by the appellant on 28.06.2018, i.e. 15 days after the dead body in the jute bag was found at the place, which was said to have been disclosed by him and pointed out pursuant to his statement (Exh.61). Since the place whereat the jute-bag containing the dead body and certain articles thrown, was allegedly pointed out by the appellant on 28.06.2018, same would not be relevant under the doctrine of confirmation by subsequent event, under Section 27 of the Evidence Act. It is reiterated that the jute containing dead body had already

been found at that place long before the disclosure statement under Exh.61.

32. The house of the appellant was searched in the afternoon on 13.06.2018 in the presence of two panchas. PW 3 – Manoj Patil is one of those two panchas. The panchnama is at Exh.21. It was drawn by PW 23 – Rohom. A leopard-skin, two horns of deer, a knife, a sword-stick, four diaries, a book, a cover of match box bearing the name “Kiran Ahir” written thereon, a quilt, a plastic bag containing *Nankhatai* and a bag with name “Krushna Namkeen” with pieces of toasts/breads came to be seized. All the articles seized during the investigation were sent to the office of Chemical Analyzer, Nashik, and the office of State Examiner of Documents, Aurangabad.

33. The handwriting expert's report relating to the written matter appearing on the seized cover of match box, the specimen handwriting of the appellant, the handwriting contained in four diaries seized during panchnama (Exh.21) and a seized diary, which was allegedly delivered by the son (Jayram Salunkhe) of the appellant. The son was not examined. It is not known as to why the prosecution or the trial court considered the handwriting appearing in the said diaries and the diary delivered by the son of the appellant to be the handwriting that of the appellant. Upon close reading of

the entire evidence on record, we did not come across the appellant to have admitted the handwriting therein. There is also no evidence that the said handwriting was that of the appellant as no witness in proof thereof was examined.

34. The question, now, remains that the handwriting appeared in the seized cover of match-box and the handwriting of the appellant obtained during presence of PW 9 – Ramesh Patil, matches or not. The handwriting expert (PW 17) gave his opinion with reasons therefor (Exhs.88 and 89). According to him, the questioned handwriting, i.e. handwriting appeared on the match-box and box-cover and the specimen hand writing of the appellant found to have common authorship. In our view, same is, after all, the evidence in the nature of opinion. The science as regards handwriting has not attained such standard as to rely on it conclusively to attribute authorship to the appellant. As per the prosecution case itself, when the appellant had denied his involvement in the case and there were five more suspects, some investigation about involvement of those suspects was made. PW 23 – Rohom admitted in the cross-examination to have not placed on record any evidence as regards investigation he did in that regard. It is true that the blood samples of all those five suspects were

obtained for DNA analysis. The DNA report (Exh.93) favours them. Learned counsel for the appellant was, however, right in contending as to why did the Investigating Officer did not obtain specimen handwriting of the suspect "Kiran Ahire". From the fact that the handwriting appeared on the cover of the match-box seized from the jute-bag and the handwriting appeared on the inner part of the match box although found to have common authorship attributable to the appellant, one cannot jump to the conclusion based on the said evidence that it was the appellant and none else has committed the crime in question. True, the handwriting expert's reports (Exhs.88 and 89). would be very much relevant while appreciating the entire evidence to reach to a conclusion.

C.A. REPORTS AS REGARDS BREAD-TOASTS :-

35. Said reports have been placed at Exh.195. PW 27 - Pravin was Assistant Chemical Analyser in the office of F.S.L. Nashik. He examined the toasts seized from the house of the appellant during the house search and those seized from the jute-bag. The report (Exh.195) indicates that those articles tally with each other in respect of hue, microscopic and spectro-chemical characteristics. It needs no mention that such eatables must have been manufactured/produced in large quantity and might have been sold

to one and many persons through number of bakeries and grocery shops at various places including Samtanagar. This report, in our view, therefore, would not lead us to conclude that the bakery products seized from the jute-bag were part and parcel of the bakery products those were allegedly purchased by the wife of the appellant from the shop of PW 16 - Indubai, more so, when PW 16 - Indubai was not confident to state when these bakery product were purchased by the appellant's wife. It is reiterated that her evidence indicates that before 25.06.2018, on one day, those bakery articles were bought by the wife of the appellant.

D.N.A. REPORTS :-

36. PW 18 - Vaishali was serving as Assistant Chemical Analyser with the office of F.S.L., Nashik, during the relevant period. She gave detail evidence as regards receipt of various articles submitted by Ramanand Nagar Police Station, Jalgaon, in connection with C.R. 95 of 2018. We have closely perused her evidence to find her to have undertaken detail procedure as regards analysis done by her to reach the ultimate conclusion and given has opinion vide reports (Exh.93 to 99). The relevant portion of the DNA reports are reproduced below:-

Examination Report (Exh. 93)

Description of articles contained in the parcel:

- 1) Blood in vials labelled Raju Hamid Tadvi, put in plastic container labelled Raju Hamid Tadvi.
- 2) Blood in vials labelled Bhimrao Narayan Salunkhe, put in plastic container labelled Bhimrao Narayan Salunkhe.
- 3) Blood in vials labelled Pradip Santosh Sapkale put in plastic container labelled Pradip Santosh Sapkale
- 4) Blood in vials labelled Rahul Ramesh Kurhade, put in plastic container labelled Rahul Ramesh Kurhade.
- 5) Blood in vials labelled Kiran Ashok Ahire put in plastic container labelled Kiran Ashok Ahire

Opinion:-

- 1) Mixed DNA profiles obtained from ex.4 Anal swab, ex.5 anal swab, ex.6 anal swab (DNAnk-239/18), stain I, stain II and stain III of semen detected on ex.1 Half pant (DNAnk-252/18) matched with DNA profiles obtained from ex.1 prepared blood stain of Akshara Naresh Karosiya (DNAnk-252/18) and ex.1 Blood of Anand Tatyarao Salunkhe (DNAnk-249/18).
- 2) DNA profiles obtained from ex.1 Vaginal swab, ex.2 Vaginal swab, ex.3 Vaginal swab (DNAnk239/18), blood detected on ex.1 Half Pant and ex.2 T-shirt (DnAnk252/18) are identical and from one and the same source of female origin and matched with ex.1 prepared blood stain of Akshara Naresh Karosiya (DNAnk-252/18)

Opinion:-

Male haplotypes of ex.4 Anal swab, ex.5 Anal swab, ex.6 Anal swab (DNAnk-239/18), stain I, stain II, stain III of semen detected on ex.1 Half pant (DNAnk-252/18) are identical and **matched** with male daplotypes of Blood of Anand Tatyarao Salunkhe.

Examination Report (Exh. 95)

Description of articles contained in the parcel:

- 1) Vaginal swab.
- 2) Vaginal swab
- 3) Vaginal swab
Exhibits 1, 2 and 3 put in plastic container labelled Akshara Naresh Karosiya. PM No.516/18, Dt.13/06/18
- 4) Anal swab
- 5) Anal swab
- 6) Anal swab
Exhibits 4, 5, and 6 put in plastic container labelled Akshara Naresh Karosiya. PM No.516/18 Dt.13/06/18.

Report

- Controlled DNA Profiles are obtained from Exh.1, Exh.2, Exh.3
- Controlled Mixed DNA profiles are obtained from Exh.4, Exh.5 and Exh.6
- For DNA Profiles and opinion please refer R.F.S.L.ML Case No.DNAnk-257/18

Examination Report (Exh. 96)

Description of articles contained in the parcel:

- 1) Blood in vials labelled Anand Tatyrao Salunke, put in plastic container labelled Ramanand Nagar Police Station, CR No.95/18, u/s.363, 302, 201 IPC

Report

- Controlled DNA profile is obtained form Exh.1
- For DNA profiles and opinion, please refer R.F.S.L.ML Case No.DNAnk-257/18

Examination Report (Exh. 97)

Description of articles contained in the parcel:-

Bnk-2237/18

- 1) Blood stain cuttings from Half pant labelled Bnk-2237/18/Ex.1.

- 2) Semen stain cuttings from Half pant labelled Bnk-2237/18/Ex.1.
- 3) Blood stain cuttings from T-shirt labelled Bnk-2237/18/Ex.2

Bnk-2193/18

- 1) Prepared blood stain labelled Bnk-2193/18 Ex.1, Akshara Naresh Karosiya.

Report

- Controlled DNA profiles are obtained from Exh.1 blood stain cuttings from half pant and Exh.2 blood stain cuttings from T-shirt
- Controlled mixed DNA profiles are obtained from Exh.1 Semen stain cuttings from half pant
- Controlled DNA profile is obtained from Exh.1 prepared blood stain of Akshara Naresh Karosiya
- For DNA profiles and opinion please refer R.F.S.L.ML Case No.DNAnk-257/18

Examination Report (Exh. 98)

Description of articles contained in the parcel:-

Bnk-2361/18

- 1) Blood stain cuttings from Burlap sack labelled Bnk-2361/18/Ex.1
- 8) Blood stain cuttings from Quilt labelled Bnk-2361/18/Ex.8

Opinion:-

- 1) DNA profile obtained from blood detected on ex.1 Burlap sack is of female origin and matched with DNA profile obtained from ex.1 prepared blood stain of Akshara Karosiya (DNAnk252/18).
- 2) DNA profile obtained from blood detected on ex.8 Quilt is of male origin and matched with DNA profile obtained from ex.1 Blood of Anand Tatyarao Salunkhe (DNAnk249/18)

Examination Report (Exh. 99)

Description of articles contained in the parcel:-

Bnk-2423/18

- 1) Blood stain cuttings from Lungi labelled Bnk-2423/18/Ex.1
- 2) Blood stain cuttings from Underwear labelled Bnk-2423/18/Ex.2

Opinion : DNA profiles obtained from blood detected on ex.1 Lungi and ex.2 Underwear (Bnk-2423/18) are identical and from one and the same source of male origin and matched with DNA profile obtained from ex.1 Blood of Anand Tatyrao Salunkhe (DNAnk249/18)

37. PW 18 - Vaishali was subjected to a searching cross-examination. According to her, mixed DNA was found on anal swab. Same indicates involvement of more than one culprit in committing the unnatural offence (Section 377 of IPC). The appellant has not been charged with offence under Section 377 of IPC. The Investigating Officer appears to have not made any investigation as regards involvement of more than one culprits.

38. PW 26 - Suraj Bais was another Assistant Chemical Analyser in the office of F.S.L., Nashik. According to him, the samples in C.R. No.95 of 2018 were received in the general section. Those were received by a Clerk serving the said office. PW 26 - Suraj Bais was assigned the work of analysis of samples. According to him, the samples were in sealed condition. He analysed the blood samples of the victim. It was forwarded for blood-grouping. The result thereof (Exh.190) indicates that the blood was found

unsuitable for grouping. It is further in his evidence that in M.L.Case No.Bnk-2237/2018, he has received two packets in sealed condition. He opened the seal to find the articles to be T-shirt and half-pant. He tallied the seals and analysed the stains thereon. The articles analysed by him were cut-pieces of T-Shirt. The report is at Exh.191. This witness gave details of the articles received by him under various M.L.C. case numbers and the procedure for analysis. The reports in that regard finds place at Exhs.190, 191 (already referred) and Exhs.192 and 193).

Ex.190

Description of articles contained in parcel/s

- (1) Blood in a phial labelled – Akshara Naresh Karosiya

Result of Analysis

Exhibits (1) is haemolysed hence unsuitable for blood grouping

Ex.191

Description of articles contained in parcel/s

- 1) Burlap sack (torn) wrapped in paper labelled – Ex.No.B-1
- 2) Rope (cut) in a polythene put in a packet labelled – Exh.B-2
- 3) Hair in a polythene put in packet labelled – Exhibit No.B-3
- 4) Bakery product (Nankhatai) in a polythene put in packet labelled – Exhibit No.B-4
- 5) Bakery product (Toast) in a polythene put in packet labelled – Exhibit No.B-5
- 6) Bakery product (Nankhatai) in a polythene put in packet labelled – Exhibit No.C-1
- 7) Bakery product (Toast) in a polythene put in packet labelled – Exhibit No.C-2.

8) Quilt (torn) wrapped in paper Labelled – Exhibit No.C-3

9) Bedsheet (torn) wrapped in paper labelled – Exhibit No.C-4

Result of Analysis

- Exhibit (1) is stained with blood at places-
- Exhibit (8) has few blood stains ranging from about 0.1 cm. to 2 cm. in -diameter at places.-
- No blood is detected on exhibits (2), (3) and (9)
- No semen is detected on exhibits (1), (2), (3), (8) and (9)
- Species origin and blood grouping results are as follows-

Ex.No.	Blood/semen	Species origin	ABO grouping
1	Blood	Human	Referred to DNA
2	Blood	Human	Referred to DNA

Exh.192

Description of articles contained in parcel/s

(1) Lungi put in a packet labelled – Exhibit No.D-1

(2) Underwear put in a packet labelled – Exhibit No.D-2

Result of Analysis

- Exhibit (1) has considerable number of blood stains ranging from about 0.1 cm to 8 cm in diameter spread at places
- Exhibit (2) has considerable number of blood stains ranging from about 0.1 cm to 6 cm in diameter located on middle portion
- No semen is detected on Exhibits (1) and (2)
- Species origin and blood grouping results are as follows-

Ex.No.	Blood/semen	Species origin	ABO grouping
1	Blood	Human	Referred to DNA
2	Blood	Human	Referred to DNA

Exh.193

Description of articles contained in parcel/s

(1) scalp hair in a phial labelled – Anand Tatyarao Salunkhe or Adesh Baba

(2) Pubic hair in a phial labelled – Anand Tatyarao Salunkhe or Adesh Baba

(3) Nail clippings in a phial labelled – Anand Tatyarao Salunkhe or Adesh Baba.

(4) Blood in a phial labelled – Anand Tatyarao Salunkhe or Adesh Baba

Result of Analysis

- Exhibit (3) is stain with blood
- No blood is detected on Exhibit (1)
- No semen is detected on Exhibit (2)
- Species origin and blood grouping results are as follows-

Ex.No.	Species origin	ABO grouping
3	Human	Inconclusive
4	Not attempted	`AB'

This witness too was subjected to searching cross-examination. All the C.A. reports indicate that the articles received were in sealed parcels/packets and seals thereon were intact. We have, so far, not come across any C.A. report, even in any other case, contrary to such description. Be that as it may.

39. The question is, based on the DNA reports, whether the conviction and/or sentence passed by the trial court would be

sustainable. We have gone through the impugned judgment. The trial court has relied on the evidence of each and every witness. It also relied on the evidence of the medical officer who collected blood of the appellant for DNA analysis, even in breach of protocol in that regard. The reason assigned for relying on the said evidence is that the said witness is uninterested and independent one. Before appreciating the evidence relating to DNA, we must have a look at the guidelines for collection, storage and transportation of the crime-scene DNA samples. Those have been placed on record by learned counsel for the appellant. Item No.10 therein speaks of maintaining the chain of custody. It describes what chain of custody means. Same reads as under:-

10. Maintaining the chain of custody:

- Chain of custody is a process used to maintain and document the chronological history of the evidence.
- A 'chain of custody' document should be maintained which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item.

Those were the guidelines issued by The Central Forensic Science Laboratory, Chandigarh. PW 18 - Vaishali admitted in cross-examination that the C.F.S.L., Chandigarh and Hyderabad are best in India.

40. Learned counsel for the appellant has also supplied/placed on record Blood Sample Authentication Form. The guidelines therein indicate that it should bear photograph of the person whose blood sample has been submitted for DNA profiling. The form indicates that the blood has to be obtained in presence of three panch witnesses. The form shall contain their names with their signatures along with date and time.

41. In the case of **Prakash Nishad (supra)** it has been observed thus:-

61. We may observe that the Maharashtra Police Manual, when speaking of the integrity of scientific evidence in Appendix XXIV states-

“The integrity of exhibits and control samples must be safeguarded from the moment of seizure upto the completion of examination in the laboratory. This is best done by immediately packing, sealing and labeling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also.”

62. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to “Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers- Central Forensic Science Laboratory

Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India” which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken “Must be submitted in the laboratory without any delay.”

63. The document also lays emphasis on the ‘chain of custody’ being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloging the custody. A chain of custody document in other words is a document, “which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim’s or suspect’s name and the brief description of the item.”

64. Indisputably, these “without any delay” and “chain of custody” aspects which are indispensable to the vitality of such evidence, were not complied with. In such a situation, this court cannot hold the DNA Report Ext.85 to be so dependable as to send someone to the gallows on this basis. We have carefully perused FSL as well as DNA report forming part of the record. A snapshot of the said reports, in a tabulated format is presented as under :

.....

65.
 66.

67. Referring to [the above case](#), a three-Judge bench in [Manoj v. State of M.P.](#), 2023 SCC Online SC 201 through S. Ravindra Bhat J., observed:

158. This Court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to corroborate. This Court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case.”

In the very judgment it has been observed in paragraph 82 as under:-

82. This court, recently, in Maghavendra Pratap Singh @ Pankaj Singh v. State of Chattisgarh, 2023 SCC OnLine SC 486 had emphasised the role and responsibilities of the investigating authorities by referring to various judgments of this Court. Such principles, which are essential to successful investigations, were not adhered to. Needless to state, such responsibilities would be all the more heightened in cases of crimes involving severe punishments such as imprisonment for life or the sentence of death. Considering the nature of the case, the police ought to have, even more than usual, taken steps, precautions, and decisions to safeguard the fact-finding and investigation exercise.

42. Let us, now, turn to the evidence as regards collection of blood samples, seizure of related articles namely, clothes of the appellant and victim and maintaining them in proper custody until those were sent to F.S.L. Nashik. We have already referred to the evidence of PW 2 – Dr. Nilesh, who collected blood samples of the victim and took charge of the victim's clothes. At the cost of repetition, the evidence in that regard in his examination-in-chief is reproduced below for better appreciation:-

11) The viscera was preserved in six bottles. The viscera bottles were packed and sealed. We handed over the sealed viscera bottles to Police Constable Yogesh Pawar, B.No.2943. The viscera was collected to find out the possibility of poisoning or administration of any sedative substance to the victim. The blood of the deceased was collected for blood-grouping. The swabs were collected from external genitals i.e. from vagina and anal opening for detection of spermatozoa.

His evidence is silent as to the manner and procedure adopted for obtaining blood samples of the victim besides vaginal and anal swabs for detection of spermatozoa. His evidence is conspicuously silent to state that he wrapped all these articles, sealed them and handed over to a particular police officer for being sent to F.S.L., Nashik, for analysis. His evidence is also silent to state that those articles were directly sent by the Civil Hospital to the F.S.L., Nashik. He only testified that the viscera bottles were packed, seized and handed over to the police constable – Yogesh Pawar.

43. We, now, need to refer to the evidence of the police officials who received the articles and carried the same to the F.S.L., Nashik. It is in the evidence of PW 11 – Mahesh Pawar that on 13.06.2018, he carried four forwarding letters in respect of different articles addressed to Chemical Analyser, Nashik. He also carried the requisition letter for obtaining DNA kits. His evidence indicates that he handed over the articles and received the DNA kits, which were, in turn, kept with Civil Hospital. The communication Exh.51 made by the Investigating Officer on 13.06.2018 is on record. Same pertains to forwarding of vaginal and anal swabs. As already observed above, there is no evidence to indicate that the swabs were received by PW 11 – Mahesh Pawar from PW 2 – Dr. Nilesh in packed and sealed

condition. Another communication (Exh.52) is requisition letter for obtaining DNA kits. The another document is (Exh.53) dated 17.06.2018, i.e. four days after the incident. It was addressed to the Asst. Director, F.S.L., Nashik, forwarding clothes of the victim. Said letter itself records that the appellant has not confessed to the crime. An opinion was solicited as regards clothes of the deceased submitted for analysis. For better appreciation, the relevant matter in Exh.53 is produced below:-

१२) प्रश्नावली :

- 1) Exhibit No.A1, A2 वर रक्ताचा अंश आहे काय ? असल्यास ते मानवी आहे काय?
- 2) Exhibit No.A1, A2 मधील रक्ताचा गट कोणता आहे ?
- 3) Exhibit No.A1, A2 मधील रक्ताचा गट, हा यापूर्वी इकडील जा.क्र.१९३७/१८ दिनांक १३/६/१८ अन्वये आपले कार्यालयात दिनांक १४/६/२०१८ रोजी दाखल केलेल्या मयताचे रक्ताचे नमुना गटासोबत जुळते आहे काय ?
- 4) Exhibit No.A1, A2 वर वीर्याचे डाग आहे काय ? असल्यास सादर वीर्याचे डागांचे DNA प्रोफायलिंग करण्यात यावी
- 5) Exhibit No.A1, A2 वरील वीर्याचे डाग हे यापूर्वी इकडील जा.क्र.१९३७/१८ दिनांक १३/६/२०१८ अन्वये आपले कार्यालयात दिनांक १४/६/१८ रोजी दाखल केलेल्या वजायनल स्वाबमधील वीर्याचे सोबत मिळते जुळते आहे काय?

44. Then, there is evidence of PW 10 – Ganesh Desle, who was deputed many a time to submit various articles to the F.S.L., Nashik. We do not propose to reproduce his evidence in extenso. His evidence indicates that he carried the articles to the F.S.L., Nashik, for 4-5 times. The documents in that regard have been

placed on record vide Exhs.44 to 49. Exhibit 45 pertains to forwarding of blood samples of the appellant for DNA profiling. Exhibit 46 is requisition for five more DNA kits. It was dated 20.06.2018. Said requisition was made since the Investigating Officer suspected involvement of five more persons in the crime. Letter (Exh.47) pertains to forwarding of blood samples of those suspects (their names already figured in report (Exh.93). Letter (Exh.48) is the communication relating to analysis of the articles seized from the jute-bag and from the house of the appellant. Exhibit 49 pertains to the analysis of the clothes of the appellant seized on his arrest. The clothes were none other than Lungi and under-pant.

45. PW 21 - Dr.Akshay Deshmukh collected the blood samples of the appellant on 20.06.2018 for DNA profiling. It is in his evidence that on the given day, he was on duty as Casualty Medical Officer. Police Constable Ganesh Desle (PW 10) had come with the forwarding letter dated 19.06.2018. Dr. Akshay placed on record the office-copy of the said letter (Exh.44). He brought original office-letter. He was shown the office-copy thereof (Exh.44). He was requested to collect the blood samples of the appellant for DNA profiling. We have perused the said requisition letter. It has been

stated therein that the blood sample of the appellant be obtained in the presence of the Government panchas. Requisite forms received from the F.S.L., Nashik, were also forwarded to PW 21 along with the letter Exh.44. It was hand-delivery through PW 10 – Ganesh Desle. His evidence would further indicate that the DNA kit was preserved in their hospital. Same was used for collection of blood sample of the appellant. It is in his evidence that on 20.06.2018, one Jayant Kumawat, Police Constable, had brought the requisition letter (Exh.44) for collection of blood samples. PW 21 – Dr.Akshay's evidence indicates that it was Jayant Kumawat, who handed over him the requisition letter (Exh.44), while according to the evidence of PW 10 – Ganesh Desle, it was he who delivered the same to PW 21 – Dr.Akshay. This is the glaring inconsistency in the evidence of PW 10 – Ganesh Desle and PW 21 – Dr.Akshay. For the reasons best known to the prosecution, the police constable – Jayant Kumawat has not been examined. He placed on record the office-copy of the said requisition letter (Exh.111), which was delivered to him by Jayant Kumawat. Same bears signature of Jayant Kumawat, acknowledging receipt of the DNA kit from PW 21 – Dr. Akshay by 9:45 a.m on 20.06.2018. It is further in his evidence that he collected the blood samples of the appellant, made entry to that effect in M.L.C. register (entry no.1854). He obtained thumb impression and signature of the

appellant in the MLC register. The MLC entries have been placed on record vide Exhs.114 to 116. It is further in his evidence that he collected 1.5 ml. (each) blood sample. He affixed label to the two DNA kits and put the DNA kits in a container and closed the lids thereof. He then packed the DNA container. He affixed a label with description of the container. He put said container in a vaccinated carrier and handed over the same to Jayant Kumawat on 20.06.2018. He filled in the form CM 24 No.II. Exhibit 117 bears signature of Jayant Kumawat, who received the DNA kits containing blood sample of the appellant. Same is contrary to the case of the prosecution as is disclosed from the evidence of PW 10 - Ganesh Desle and the Investigating Officer - PW 23 - Rohom. It is reiterated that Jayant Kumawat has not been examined. According to PS 21 - Dr.Akshay, the appellant was produced by Jayant Kumawat to whom, he handed over the appellant's blood samples.

46. It is in the cross-examination of PW 10 - Ganesh Desle that he arrived at Ramanand Nagar Police Station on 20.06.2018 for collecting the articles from the Civil Hospital. The medical officer handed over the samples to him by 10.45 am. to 11.00 a.m. He left the Civil Hospital for the office of Chemical Analyser, Nashik, immediately after collecting the DNA kits from the Medical Officer. It

is further in his evidence that the blood samples were not collected by the Medical Officer in his presence. According to him, he did not collect the empty DNA kits from the Civil Hospital and handed over the same to Investigating Officer – Rohom. Here is a bleach. According to PW 21 – Dr. Akshay, he obtained the blood samples while Jayant Kumawat was present before him; while, according to the Investigating Officer, he had directed PW 10 – Ganesh Desle to produce the appellant before the Medical Officer and collect his blood samples. It is reiterated that Jayant Kumawat to whom the DNA kits, containing blood sample of the appellant were handed over, has not been examined. There are documents on record to indicate Jayant Kumawat to have received DNA kits delivered to PW 21 – Dr. Akshay and received the same kits containing blood samples of the appellant. There is no evidence to indicate as to when the blood samples changed hands from Jayant Kumawat to PW 10 – Ganesh Desle for being carried to F.S.L., Nashik.

47. There is one more aspect of the matter. The Investigating Officer has written letter (Exh.160) to provide three employees to act as panch witnesses for collection of blood samples. The record indicates that three named persons were deputed to act as panch witnesses for collection of the blood samples of the

appellant. Admittedly, PW 21 – Dr. Akshay collected the blood samples in the presence of none of those panch witnesses. Neither the Investigating Officer recorded statements of those persons deputed to act as panch witness nor the prosecution has examined anyone of them as witness. It is true that the Medical Officer who collected the blood samples may be independent and non-interested witness but here, the standard protocol in relation to collection of the blood samples for DNA profiling has been breached.

48. The appellant has been sentenced to suffer life imprisonment until his death in prison. When the offence is serious one, there has to be strict compliance of the mandatory provisions and proof thereof.

49. There is one more aspect of the matter, that is, the clothes of the victim, which were allegedly packed and sealed by PW 2 – Dr. Nilesh and delivered to Yogesh Pawar were shown to have been seized under panchnama (Exh.22) by Police Constable Manoj Indrekar. Neither Yogesh Pawar nor Manoj Indrekar has been examined. The panch witnesses in whose presence those clothes were seized, testified that the clothes were neither packed in wrapper nor were in sealed condition. The defence counsel had given suggestion to the police officials to the effect that they have

tampered with the articles seized during the investigation. It is panchnama Exh.22 said to have been proved by the evidence of PW 3 – Manoj Patil. We have perused the said panchnama to find that the clothes were taken charge of by Manoj Patil and Indrekar from police constable Yogesh Pawar as it is, meaning hereby, the clothes were collected from PW 2 – Dr. Nilesh and brought to the police station for being shown to have been seized under panchnama (Exh.22) There is contrary endorsement in the post-mortem report (Exh.19), which was prepared by PW 2- Dr. Nilesh. It records that *“the blood stains present over posterior of T-shirt at places and blood stains present over posterior aspect of half pant at places. All clothes sealed packed, labelled and handed over to duty PC Yogesh Pawar (B.No.2943 of Ramanand Nagar Police Station)”*. When the clothes were packed and sealed soon after the post-mortem examination and handed over to Yogesh Pawar how could he deliver those clothes in open condition to police constable Manoj Patil. This lacuna in the investigation has also not been explained. Same indicates that the clothes of the victim were with the police in unpacked and unsealed condition.

50. When the appellant was arrested on 13.06.2018 or as per the case of prosecution on 14.06.2018, it is not known as to why the

clothes on his person were not seized immediately. His Lungi and under-pant came to be seized on 26.06.2018, i.e. post his discharge from the hospital. Those were seized while he was arrested under panchnama. There is evidence on record to indicate the appellant to have underwent operation as he had suffered fracture. It has also been admitted by the Investigating Officer and it is a matter of common knowledge that while a patient is taken in operation theater, clothes on his person are removed and the clothes provided by the hospital are put on. The CA reports or DNA reports as regards Lungi and under-pant are bound to show blood stains and semen stains of his blood group. The CA/DNA reports in this regard therefore, do not further the case of prosecution.

51. There is one more aspect of the matter that soon after finding of the dead body of the victim, services of sniffer dog-squad were availed. Neither the dog-tracker has been examined nor there is shred of evidence to indicate what was revealed during the instigation made with the assistance of sniffer dog squad. We have, therefore, reason to observe that the said report might have been adverse to the prosecution case. So far as regards history of quilt and burlop sack is concerned, the same were bound to contain blood stains or semen stains of the appellant and blood stains of the victim

respectively, since the quilt was seized from the house of the appellant while the dead body was removed from burlop sack.

52. So far as regards the age of victim is concerned, there is no dispute that she was 8 years of age at the relevant time although same was disputed before the trial court. PW 6 – Manisha, mother of the victim, testified that the victim was 8 years of age at the relevant time. Said evidence has not been taken exception to. Moreover, PW 19 – Dr. Vikas Patil was examined. He placed on record the birth certificate of the victim. Same indicates the date of birth of the victim was 05.02.2009.

53. There is one more aspect of the matter. On arrest of the appellant, he was examined by PW 20 – Dr. Ruturaj Chavan to ascertain whether the appellant was capable to do sexual intercourse. His evidence indicates that he found nothing to opine the appellant to have been impotent. The report of the medical examination of the appellant is at Exh.109. It records history given by the appellant that there was no act of sexual intercourse/assault done by him. The opinion given by PW 20 – Dr. Ruturaj is as under:-

“In my opinion, there are no any abnormal finding detected to label him as incapable of doing intercourse.”

54. There is, however, one more aspect of the matter that is, the Civil Surgeon had suggested the Investigating Officer to get the appellant examined at civil hospital, Aurangabad and obtain his semen sample. This suggestion or advise has not been complied with. The reasons are best known to the Investigating Officer. As such, in a case of sexual violence/assault, the culprit's semen sample has not been obtained for analysis and report to find whether the stains thereof were found on person or clothes of the victim.

55. PW 22 - Dr. Swapnil's evidence is in relation to the medical examination of five other suspects and obtaining their blood samples. Since DNA reports favour those suspects, evidence of PW 22 - Dr.Swapnil is not referred to.

CONCLUSION :-

56. Admittedly, the case is based on circumstantial evidence. The prosecution did not come with any kind of motive. True, admittedly, both appellant and victim were residing in one and the same locality namely, Samtanagar, Jalgaon. There is however, no evidence at all to indicate the families of both of them had close acquaintance or on visiting terms with each other. There is no shred of evidence to indicate the appellant and the victim had been seen together on the fateful night. The evidence of PW 5 - Aarti, a chance

witness, that she had seen the victim proceeding towards the house of the appellant, was found to be unreliable. The reason therefor has already been given above. The evidence of PW 7-Reena that she had seen the victim was talking with the appellant by 09.00 in the morning on the fateful day, has also been discarded for the reasons stated above. Her statement was recorded two days after the incident. The name of the appellant figured in the FIR as suspect. The informant did not understand Marathi. She even could not read her FIR. The Investigating Officer admitted that in fact, in her later statement recorded under Section 164 of Cr.P.C., she did not suspect involvement of anyone. The informant's evidence indicate that two persons had accompanied her to lodge the FIR. The evidence of the Investigating Officer is that one of them was Chetan Chhajlani. The record indicates that Chetan Chhajlani was involved in the investigation from the day one of the registration of the crime. It is he who had identified the dead body and who took the police officer to the crime-scene. He identified the clutcher. It is he who received the dead body of the victim. Still, it is not known, why the informant in her cross-examination, claimed to have no acquaintance with Chetan Chhajlani, who, in fact, happened to be her cousin. The informant even testified to have not known where Chetan Chhajlani resides.

57. Admittedly, the appellant was residing with his wife. His grown up children would visit his residence on and often. On the given day, there were five visitors to his residence. The trial court allowed to bring on record certain material against the principles of law. The persons who were not examined as witnesses, their statements under Section 164 of Cr.P.C. were allowed to be referred to and exhibited. Those were shown to the Investigating Officer. It was brought through the evidence of the Investigating Officer that the informant had accompanied (Leena Karosiya - Exh.206) to the house of the appellant to find whether he knew about the victim, post victim went missing. Said visit was in the fateful night. The appellant along with his wife was present in his house. His conduct namely, to be present at his house, may be termed to be consistent with his innocence. It is not known as to why the Investigating Officer - Bhagwat Patil immediately did not visit the house of the appellant in spite of the fact that the appellant was named as suspect. No crime-scene panchnama was drawn immediately when the dead body was removed and sent for post-mortem.

58. The evidence of PW 16 - Indubai has already been dealt with. Her evidence simply indicates that the wife of the appellant had, on one day, before 25.06.2018, purchased milk bag and bread-

toasts. The bag bearing logo “Krushna Namkeen” provided by her for carrying the milk bag and bread-toast home, cannot be said to be one, which was seized from the house of the appellant since similar bags may be available in the market. No test identification in that regard was held. Said bag was shown to the witness for the first time before the court. Said bag did not bear any earmark to be identified as one provided by her to the wife of the appellant. Similar is the case of about finding of clutcher. The investigation agency was involved in the test-identification of the clutcher. The identification took place at the police station. Other clutchers, with which the one to be identified was mingled, were of different colours. There is no evidence to indicate that the victim was sporting clutcher at the material time nor was there any evidence the clutcher to have any earmark to identify it to have belonged to the victim. Finding of the clutcher was there long before the test identification parade was conducted. We have reason to say so since the clutcher was identified by Chetan Chhajlani who is cousin of the informant. He himself might have shared the said fact to her(informant). Chetan Chhajlani has not been examined.

59. The evidence as regards the disclosure statement made by the appellant and pointing out the place whereat he had thrown

the dead body in the jute-bag, is not relevant under Section 27 of the Evidence Act in view of the fact that the dead body in the jute-bag was already found at that place long before he made the alleged disclosure statement. As such, it was not a case of doctrine of confirmation by subsequent event.

60. So far as regards the CA reports relating to the bakery items are concerned, those are insufficient to conclude to have proved that the bakery items found in the jute-bag were bakery items purchased by the wife of the appellant from PW 16 - Indubai. Similar is our view in relation to the handwriting expert's opinion. We have already observed above that Kiran Ahir was one of the suspects. His specimen handwriting was not obtained. From the said piece of evidence, we cannot conclude that the cover of match-box seized from the jute-bag was that of the match-box seized from the house of the appellant during house search panchnama. There is no evidence to indicate that demo was made during investigation to find that it was cover of the very match box. Be that as it may.

61. Services of sniffer-dog squad were availed. What transpired to the dog-tracker has not brought on record. Same could be said to have been withheld.

62. Admittedly, it being a serious offence, there was public and political pressure as well. The evidence of the Investigating Officer indicates that many of the high-rank political figures had visited the house of the victim. True, it is a heinous offence. We are short of words to condemn the same. The question is, whether the offence was committed by the appellant. Although the DNA reports implicate him, it is, after all, an opinion evidence. Admittedly, nobody had seen the victim entering the appellant's house or exited the same. Since there is no evidence at all to indicate the appellant to have enticed or lured the victim to come to his residence or any other place whereat the crime might have been committed, it is just difficult to agree with the findings recorded by the trial court holding the appellant guilty of the offence of kidnapping, punishable under Section 363 of Indian Penal Code. So far as the offence of rape is concerned, although the DNA report names the appellant, we have already observed that there is breach of protocol. The blood samples of the appellant were not obtained in the presence of the witnesses. The Investigating Officer had made communication to provide services of three persons to act as panch witnesses for obtaining blood samples. It even appears that their services were provided. The record, however, indicates that none of them were present while the blood samples were obtained. PW 10 - Ganesh Desle, who was

asked to collect the DNA kits and blood samples of the appellant, testified that the blood samples were not obtained in his presence. According to PW 21 – Dr. Akshay who collected the blood samples of the appellant, it was police constable – Jayant Kumawat, who had brought the DNA kits. He handed over the blood samples to Jayant Kumawat. Jayant Kumawat has not been examined. As such, there is no evidence to indicate as to how, when and why, the blood samples changed hands from Kumawat to Desle for being carried to the office of F.S.L., Nashik.

63. Although PW 2- Dr. Nilesh testified that the clothes of the victim were packed and sealed and handed over to Yogesh Pawar, the evidence indicates that the clothes were seized by Indrekar under panchnama (Exh.22). There is nothing to indicate that the clothes were, in fact, wrapped and sealed. The panch witnesses, in whose presence those clothes were seized, testified that the clothes were neither packed in wrapper nor they were in sealed condition. Moreover, during the DNA process, mixed DNA was found in the anal swab. Same suggests involvement of more than one culprit. Section 377 of Indian Penal Code was not invoked. No investigation in this regard was made. Literature indicates finding of mixed DNA means residues found belonging to more than one person. Moreover, the

clothes of the victim were sent to the F.S.L., Nashik, four days after seizure thereof. It is already observed that those were neither packed nor sealed while received at the police station. When Medical Officer deposed to and observed in the post mortem report that the clothes of the victim were packed and sealed, who opened the seal and wrapper and for what reason, is not known. It is reiterated that PW 2 did not testify on oath that the vaginal and anal swabs seized by him were packed and sealed so as to ensure they would reach safe to the F.S.L. and would be fit for analysis. The person to whom those were handed over, i.e. Yogesh Pawar has not been examined.

BLOOD SAMPLES:-

64. Admittedly, the appellant was indoor patient in the hospital from 13/14.06.2018 to 25.06.2018. It is not known as to why his blood samples were not immediately obtained. Those were obtained on seventh day of his admission in the hospital. He was admitted in the Civil Hospital, whereat, admittedly, the facility of obtaining sample was there. The Investigating Officer lied that he was present while the blood samples were obtained. According to him, the blood samples of the appellant were obtained in Orthopedic Department where he was admitted. The fact is, however, otherwise.

The blood samples were obtained in the casualty ward by PW 21 – Dr. Akshay. It is also not known as to why the Investigating Officer has not complied with the suggestion of the Civil Surgeon as regards obtaining of semen sample of the appellant. He was directed to be produced in Civil Hospital, Aurangabad, for obtaining his semen sample. Same has not been complied with.

65. The Doctor (PW 20), who examined the appellant about his potency, gave history that he (appellant) did not commit sexual assault. Same too is relevant.

66. How can one jump to the conclusion that it was the appellant and none other, who has killed the victim, when mixed DNA was found suggesting involvement of more than one culprit.

67. It is reiterated that after having analysed and appreciated the entire evidence on record and although the DNA report goes against the appellant, we do not propose to rely on the DNA report for the reason of having not complied with the protocol in that regard. At the cost of repetition, the reasons for discarding the DNA report are :-

- (i) If the clothes of the victim were really packed and sealed by the Medical Officer, there is no explanation

as to why the seal was opened and the clothes were seized as it is under panchnama (Exh.22). The clothes remained in the custody of the Investigating Officer for four days.

(ii) PW 2 did not testify on oath that the vaginal and anal swabs obtained and seized by him were packed and sealed so as to ensure they would reach safe to the F.S.L. and would be fit for analysis.

(iii) The blood samples of the appellant were supposed to be obtained in the presence of witnesses and a police officer of the rank of at least, Asst. Sub Inspector. The Investigating Officer lied that he was present while the blood samples were obtained. He admitted to have not signed a particular form, i.e. filled in, while obtaining the blood samples. Although services of three witnesses were solicited and even the concerned Head of Department had provided three persons to act as witnesses while obtaining the blood samples, none of them was present while the blood samples were obtained. The Investigating Officer has neither recorded their statement nor any one of them has been examined.

(iv) The DNA kits were handed over to police constable - Jayant Kumawat. Kumawat has not been examined. There is no evidence to indicate, how come the blood samples changed hands from Jayant Kumawat to PW 10 - Ganesh Desle, for being carried to F.S.L., Nashik.

(v) Mixed DNA was noticed on anal swab.

68. For all the aforesaid reasons, we reach to the conclusion that none of the circumstances relied on by the prosecution, have been conclusively proved in terms of the parameters enshrined in the judgment of the Apex Court in the case of **Sharad Birdhichand Sarda** (supra). Benefit of doubt necessarily goes to the appellant. Based on such kind of evidence, the trial court ought not to have convicted the appellant. Interference with the impugned order of conviction and consequential sentence is, therefore, warranted.

69. In the result, the appeal against conviction succeeds. Hence, the following order:-

(i) The Criminal Appeal No.542 of 2019 is allowed.

(ii) The order of conviction and consequential sentence dated 30.03.2019, passed by learned Sessions

Judge, Jalgaon, in Special Case No.31 of 2018, for the offences punishable under Sections 363, 376(3), 376-A, 302 and 201 of Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, is set aside. The appellant is acquitted of the said offences.

(iii) The appellant be released forthwith, if not required in any other case.

(iv) Fine amount deposited by the appellant, if any, be refunded to him.

(v) As a corollary, Criminal Appeal No.571 of 2020 preferred by the State for enhancement, fails. The same is dismissed.

(vi) Both the appeals, therefore, stand disposed of accordingly.

70. Fee of Mr.Mayur V. Salunke, learned counsel appointed to represent the appellant in Criminal Appeal No.542 of 2019, is quantified at Rs.25,000/- (Rupees Twenty Five Thousand), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP