

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.414 OF 2022
WITH
INTERIM APPLICATION NO.137 OF 2024
IN
CRIMINAL APPEAL NO.414 OF 2022**

Banda @ Navnath Bhanudas Chavan]
Age: 30 years, R/o: Surli, Taluka-Karad,]
Satara Native: Vihapur, Taluka- Kadegaon]
District- Sangali.] Appellant

Vs.

1. The State of Maharashtra
Through, Station Officer, Karad]
Taluka Police Station Tal- Karad,]
District- Satara, Maharashtra]
2. A. B. C.]
Age: Adult, Occ: Not known]
3. X. Y. Z.]
Age: Adult, Occ: Not known]
The Respondent Nos.2 & 3]
to be served through Karad]
Police Station, Karad] Respondents

Mr. Amit Mane for the Appellant.

Mrs. P. P. Shinde, APP for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 12th JULY, 2024
PRONOUNCED ON : 24th OCTOBER, 2024**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.]

. We are in present Appeal concerned with a kidnapping of a minor girl “P”, heinous rape on her and merciless murder at the end. Appellant was charged and tried for committing said offences punishable under Sections 302, 376 (2) (f), 363, 364 and 201 of the Indian Penal Code (for short “I.P.C.”) and finally stood convicted for the same by the impugned Judgment and Order dated 8th June, 2020 passed by Learned Special Judge, at *Karad* in Sessions Case No.48 of 2012, and sentenced as follows :-

I.P.C. Sections	Sentence
302	RI for life which shall be imprisonment for the remainder of his natural life and pay fine of Rs.50,000/-, in default to suffer RI for 6 months.
376 (2) (f)	RI for 10 years and pay fine of Rs.50,000/-, in default to suffer RI for 6 months.
363	RI for 5 years and pay fine of Rs.1000/-, in default to suffer RI for 2 months.
364	RI for 5 years and pay fine of Rs.1000/-, in default to suffer RI for 2 months.
201	RI for 5 years and pay fine of Rs.1000/-, in default to suffer RI for 2 months.

Appellant, however, has been acquitted of the offence under Section 3 and sub-Sections (1) (xi) and (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (*'the Act'*, for short).

2) The prosecution version giving rise to this Appeal is that, said victim "P", aged 11 years, was residing with her grandfather (PW1-C) and parents at village "K", Taluka- Karad, District Satara. On 11th May 2012, at about 9.00 p.m., as usual, the victim went to watch T.V. at the house of PW14-Mahesh Ghorpade, who has been residing near the house of PW1-C. However, the victim did not return home till 10.00 p.m. Therefore, victim's mother PW10-A went to see her at PW14, but the victim was not found there. Search was made in the nearby area and at the known places, but in vain. Therefore, on 12th May, at 8.45 a.m., PW1-C lodged a missing report of the victim (Exh.13).

2.1) Thereafter, at about 9.45 a.m. to 10.00 a.m., crowd had gathered near the house of PW1-C. At that time, PW8-Ananda

Pawar was passing from there and seeing the crowd, he enquired. In turn, PW8 was told that the victim was missing. On this, PW8 informed that on 11th May, at about 9.45 p.m to 10.00 p.m., while he was passing from the *Vasti* of PW1-C to go to water his agricultural field, he saw that the Appellant was taking the victim with him from behind the house of PW1-C; that hence, he flashed a torchlight on the face of Appellant and asked him as to where he was taking the victim at such night time; that the Appellant replied that he had come to drop labour Vikas @ Shankar Dabhade (PW12) and Mahesh Ghorpade (PW14) and at that time, victim asked to give her a round on a Motorcycle (M/Cycle). PW8 further told that, then the Appellant went towards *Surli* road and he went towards his field.

2.2) On 13th May 2012, at about 00.30 hours, PW1 lodged a report (Exh.37) wherein he narrated that, PW5-Ajay Bhoge, resident of a nearby village *Surli*, was doing the work of laying electric lines on contract; that several boys of village "*K*" used to go to PW5 for said labour work. The Appellant was working as tractor driver with PW5 and residing at village-*Surli*, native-Vihapur, Taluka-Kadegaon,

Dist.-Sangli. Appellant was regularly transporting the said labour boys to and from "K", therefore, people in the vicinity knew the Appellant. Whenever Appellant was visiting the vicinity (*Vasti*) of PW1-C, the grandchildren of PW1-C and other children used to go to the Appellant to have a ride on his M/cycle or the tractor. Therefore, the children there also knew the Appellant.

2.3) It is alleged that, on 11th May 2012, at about 9.30 p.m., the Appellant had been to village "K" to drop PW14-Mahesh Ghorpade and his associate, riding on the M/cycle. At that time, the victim went near the M/cycle of Appellant. In the meanwhile, quarrel occurred between Ananda Ghorpade and his wife. Therefore, PW10-A and victim went there. Appellant was also present there. Thereafter, at about 10.00 p.m., when PW10-A and the victim were returning home, the Appellant also accompanied them up to their house. At that time, the victim was holding hand of the Appellant. Then PW10-A returned home and the victim went to PW14 to watch T.V. However, the victim did not return home till 10.30 p.m. Therefore, PW10-A went to PW14 and called the victim. PW14 and

his family informed that the victim has left just some time before. Thereafter, PW1-C, his family members and people of the vicinity searched for the victim, but she was not found. Therefore, missing report (Exh.13) was lodged on 12th May 2012, in the morning. It is alleged that, after lodging said report, when PW1, his co-villagers and police were searching the victim, they were informed by PW8-Ananda Pawar that, on 11th May 2012, at about 10.30 p.m., the victim was going along with the Appellant holding his hand. Therefore, PW1-C suspected that the Appellant has kidnapped the victim, on the pretext of giving her a ride on the M/cycle. Pursuant to the said report, police registered this crime under Section 363 of I.P.C. against the Appellant.

2.4) On 13th May, between 2.50 a.m. to 3.00 a.m., PW15-API Choudhari (rtd.) arrested the Appellant under an arrest panchnama (Exh.57); that between 5.00 a.m. to 5.15 a.m., while in the police custody, Appellant confessed to have kidnapped the victim on the pretext of giving her a ride on the M/cycle; that he took the victim to the spot; committed rape on her and then murdered her. Further,

Appellant gave a disclosure statement (Exh.68) that the body of the victim and her clothes were concealed in a sugarcane field and, that he would show the said clothes. Thereafter, Appellant took the police and panchas by a police van to the shelter-less slum, at village "K" and there, he showed the spot from where he had allegedly kidnapped the victim. Thereafter, Appellant took the police and panchas towards village *Surli* in the same van and on the way, he took them to one sugarcane field of Baba Madane. There, Appellant showed them a place under a *Babul* tree and disclosed that the victim was raped there. Then, Appellant took them at few meters distance and showed the body of the victim and her hidden clothes i.e., pants and slacks (MOs 7 & 8), in the field of Padmu Khandagale. Police seized the said clothes under recovery panchnama (Exh.69). This action was completed between 5.15 a.m. to 6.20 a.m. It was followed by an inquest panchnama (Exh.51), medical examination of the Appellant, collection of the samples of Appellant's nails clippings, pubic hairs, blood and semen, postmortem examination of victim's dead body, obtaining its report and seizure of the victim's *kurta* and *odhani* (MOs 1 & 2) under panchnama (Exh.49), which were

removed from her body during autopsy. On 13th May, in the evening, PW5-Ajay Bhoge produced the M/cycle having regn. No.MH10-U-8278 allegedly used in the offence and the clothes (MOs 4 to 6) of the Appellant. Police seized the same under panchnama (Exh.44).

2.5) During investigation, PW15-API Choudhari recorded the statement of the witnesses and forwarded the seized *muddemal* articles and the samples for Chemical Analysis. Investigation revealed that, the Appellant knew that the victim belongs to scheduled caste, however, he kidnapped the victim on the pretext of giving her a ride on the M/cycle. Thereafter, the Appellant raped and murdered the victim and concealed her body in the field of Padmu Khandagale. Hence, PW15 filed charge-sheet before 3rd Court of learned Judicial Magistrate First Class, at *Karad*, who committed the case to the Court of Sessions.

3) Learned Judge of the trial Court framed the charge. The charge was read over and explained to the Appellant in Marathi. The Appellant pleaded not guilty to the charge and claimed to be tried.

4) The prosecution, in order to bring home the charge, examined the following.

Sr. No.	Name of witnesses	Nature of Evidence
1	"C"-Informant	Victim's grand father. He lodged the missing report and the F.I.R.
2	Sambhaji Mahadev Mane	Panch- seizure of the M/cycle and clothes of the Appellant produced by PW5-Ajay Bhoge.
3	Tatyaso Padmu Khandage	Panch- seizure of the clothes of the victim and arrest panchnama.
4	Vijay Bhivaji Atakare	Panch- inquest panchnama of the body.
5	Ajay Vasant Bhoge	Employer of the Appellant. He produced the M/cycle and the clothes of Appellant.
6	Janardhan Namdeo Tambavekar	Panch- seizure of the clothes of the victim and arrest panchnama.
7	Bhimrao Shankar Mohite	Circle Inspector- he drew map of the spot.
8	Ananda Dadu Pawar	Last seen Appellant together with the victim.
9	Sadashiv Balwant Khatavkar	Panch to disclosure statement and recovery.
10	"A", Mother of Victim	Went to the house of PW14 to call victim.
11	Mrs.VNG (victim's relative, hence, name hidden)	She saw the Appellant following PW10 and the victim. She had talked with the Appellant.
12	Vikas Ananda Dabhade	Appellant had dropped him at "K".
13	Dr. Jayant Govind Dabhole	Medical Officer- Postmortem Examination.
14	Mahesh Gajanan Ghorpade	Appellant had dropped him at "K" and meanwhile victim went to him to watch TV.
15	Ashok Shankarrao Choudhari	Investigation Officer.

5) After closure of the prosecution evidence, statement of the Appellant under Section 313 of Cr.P.C. was recorded. The defence of the Appellant was of denial and false implication. It was specific defence of the Appellant that, the material witnesses did not know him even prior to the incident of kidnapping, however, he has been falsely implicated in this case only on suspicion, by tampering with his semen sample.

6) On evaluating the evidence in the light of arguments, the trial Court convicted and sentenced the Appellant as stated above.

7) Learned counsel Mr. Mane for Appellant vehemently submitted that the evidence of the informatn/PW1-C and PW11-VG show that, after the victim went missing, when PW1-C and the village *Sarpanch* Mr. Atakare went to *Surli* and inquired with the Appellant, the latter clearly told them that he does not know about the victim. PW8-Ananda Pawar has allegedly seen the victim last in the company of Appellant. As alleged, PW11-VG had seen the victim near her house and PW11-VG had a talk with the Appellant just

before kidnapping. The testimonies of the witnesses indicate that, on the next day morning, PW8 had disclosed to PW1-C and others that in the last night, he had seen the Appellant while taking the victim with him. However, the aforesaid facts are not immediately informed in the missing report (Exh.13).

7.1) He submitted that, certain witnesses have admitted that, there was heavy rainfall at village "K" for two days prior to 11th May. Therefore, there was no need for PW8 to go to water his field in the night. Thus, the conduct of PW1-C, PW8, and PW10-A was unnatural and that itself indicates that PW8 has falsely stated that he saw the Appellant and victim together in the last night. For the same reason the evidence of PW11-VG cannot be relied. He submitted that, neither PW1-C nor PW10-A have deposed that, when PW10-A and victim were returning from the quarrel place, the Appellant was following them and that, the victim had caught hold of the hand of Appellant. All the above cumulatively lead to a safe inference that, PW1 lodged the report (Exh.37) on suspicion and PW8 and PW11-VG have deposed against the Appellant at the instance of police.

7.2) He submitted that the missing report (Exh.13) and report (Exh.37) coupled with the evidence in the cross-examination of PW1-C and PW10-A indicate that the victim went missing on 11th May 2012, at about 10.30 p.m. The prosecution case is that, the Appellant had reached village "K" at about 9.30 p.m. As admitted by PW10-A, village *Surli* is at a distance of 20 to 25 minutes from "K". PW5-Ajay Bhoge has admitted that, it might be 9.30 p.m. or 10.00 p.m. when the Appellant had come to his house on 11th May and thereafter, they had dinner together and it might have taken 20 to 25 minutes for dinner. PW5 has admitted that, after dinner he had discussed with the Appellant about the next day's work in the field. In this background (of timings) he submitted that, when the victim gone missing, the Appellant was with PW5 at *Surli*.

7.3) He submitted that the panch for the arrest of Appellant were called from longer distance i.e., village "K", which is unusual and abnormal because such panch could have been called from the areas nearer to the Police Station. Therefore, the date, time and place of the arrest is doubtful and cannot be believed. He submitted that,

the disclosure statement of the Appellant (Exh.68) leading to the recovery of the victim's dead body and her clothes under recovery panchanam (Exh.69) is not reliable. Because the panch to the said event i.e., PW9-Sadashiv Khatavkar is a regular panch as he has acted as panch in more than 100 cases of the same Police Station. The another panch was called from the village *Sajur*, which is at a distance of 10 to 15 kms. from the Police Station. This is unnatural looking at the timings of the disclosure statement and recovery panchnama. These facts indicate that, both the aforesaid panchas were made to sign the ready-made documents (Exh.68 & 69). He submitted that, there is no evidence that the seized clothes were immediately sealed with *lac* seal. Therefore, it is probable that, the samples of the victim's blood and the sample of Appellant's semen were misused and then Appellant has been falsely implicated in this offence. He submitted that, in the backdrop, there is reasonable doubt about truthfulness of the prosecution story and therefore, Appellant is entitled for acquittal giving benefit of that doubt. Learned counsel submitted that, however, the learned trial Court has failed to consider the aforesaid aspects of the case and erroneously convicted

and sentenced the Appellant. Therefore, he submits that the impugned Judgment and Order is liable to be quashed and set aside and the Appeal deserves to be allowed.

8) Learned A.P.P. Mrs. Shinde for the Respondent-State submitted that, there is sufficient, cogent and reliable evidence that, on the relevant date, at time and place, the Appellant and the victim were last seen together; that the dead body of the victim was found at the instance of the Appellant; and that the medical evidence shows that the death of the victim occurred in close proximity to the time when the Appellant and the victim were last seen together. She submitted that from the external and internal injuries of the victim it is evident that the victim was first raped and then murdered. The C.A. Reports have proved that, stains of Appellant's semen were found on the slack of victim. Withal, the Appellant did not explain these circumstances. Thus, prosecution had fully met the standard of proof required to convict a person in a case of circumstantial evidence. The circumstances relied upon by the trial Court have fully established the involvement of the Appellant, and the chain of

evidence furnished by the circumstances is also complete. The appeal thus lacks merit, and is liable to be rejected.

The victim raped and murdered :

9) Looking at the rival submissions, first; it must be seen as to whether the prosecution has proved that the victim was raped and murdered. In this regard the testimonies of PW4-Vijay Atakare and PW15-API Choudhari indicate that, on 13th May, PW15 called PW4, the co-panch and parents of the victim etc. to the spot and recorded the inquest panchnama (Exh.51). There were injuries on the body of victim i.e., to the left eye, private part and mark on the neck. There is nothing in the cross-examination to ignore this evidence

9.1) The evidence of PW13-Dr. Dabhole shows that, on 13th May, between 9.00 a.m. to 10.a.m., at Sub-District Hospital Karad, he along with Dr. Mrs. Trimbake held the postmortem examination of the body of victim. On examination of external genitals, they found (1) posterior forchette lacerated 6 o'clock position vertically, brownish red. (2) hymenal tear at 5 o'clock and 12 o'clock position, brownish red in colour. (3) lacerated injury over left labia mejora,

measuring about 0.5 x 0.5 cm., reddish in colour. There was whitish discharge from the nostrils. There were following antemortem external injuries on the dead body.

- (1) Reddish lacerated wound over left eyelid of size 0.5 cm x 1 cm.
- (2) 4 blackish discoloration, 2 oval patches over left side of neck out aspect measuring 2 cm x 2 cm.
- (3) 4 brownish black markings seen over right side, anterior part of neck just lateral to thyroid cartilage.
- (4) Multiple minor abrasions over posterior aspect of ankle.
- (5) abrasion over buttocks multiple in nature.

9.2) PW13-Dr Dabhole has deposed that, on internal examination they found torn tracheal rings associated with haematoma. On examination of stomach, semi-digested food was present which suggested that the last meal was taken within 6 hours before the death. In their opinion, the cause of death of the victim was due to throttling (due to asphyxia). He has deposed that the aforesaid genital injuries were caused due to forceful sexual assault. Accordingly, they recorded the memorandum of postmortem

examination (Exh.77). He has deposed that the C.A. opined that the victim was forcefully sexually assaulted (*vide* letter Exh.99).

9.3) The aforesaid oral and documentary evidence remained unshaken. In other words, nothing material has come in the cross-examination of PW13-Dr. Dabhole to reject his testimony, the injuries and the postmortem report, thus, said evidence has proved that the victim was raped and then intentionally done to death by throttling. Hence, we find that the offences under Sections 376 (2) (f) and 302 of I.P.C. are clearly established.

10) Now we advert to the question *i.e.*, whether the prosecution has proved that the Appellant kidnapped, raped and murdered the deceased. And the answer to this question is purely based on circumstantial evidence.

10.1) As held in the case of *Shri. Sujit Biswas vs. State Of Assam*¹, “..... In a criminal trial, suspicion no matter how strong,

1. AIR 2013 SC 3817

cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that

is based upon reason and common sense. (*Vide: Hanumant Govind Nargundkar & Anr. vs. State of M.P., AIR 1952 SC 343; State through CBI vs. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan vs. State of U.P., AIR 2012 SC 1979*).

10.2) In the case of *Shri. Sujit Biswas (supra)*, it is enunciated that, in a case of circumstantial evidence, the Judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

10.3) In the case of *Sharad Birdhichand Sarda vs. State of Maharashtra*², the Hon'ble Supreme Court held that, "Graver the crime, greater should be the standard of proof". In *Kali Ram vs. State*

2. AIR 1984 SC 1622

*of Himachal Pradesh*³, the Hon'ble Supreme Court enunciated that, "A golden thread which runs through the web of the administration of justice in criminal cases is that, if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence".

11) Keeping in mind the aforesaid settled legal propositions, we have considered the prosecution evidence in the case in hand. There are various circumstances on the strength of which the prosecution has claimed to have proved the charge.

Appellant and the witnesses were working with PW5-Ajay Bhoge :

12) PW5-Ajay Bhoge has deposed that in the year 2012, he was taking contract of laying electric lines on poles; that, the Appellant was working with him as driver on his tractor and his agricultural land; that, the Appellant used to sleep in his agricultural

3. AIR 1973 SC 2773

land; that, the Appellant was washing his clothes on the well in his land; that, on inquiry Appellant had told him that his wife was not living with him but she was living with her parents. PW5 has deposed that in May 2012, he had taken a contract work of G.T.L. Company; that, there was a slum of shelter-less at "K"; that, people residing in the slum of shelter-less used to work with him; that, the Appellant had some friends in the slum of the shelter-less; that the Appellant used to visit said slum; that, some persons residing in the said slum knew the Appellant; and that, some children residing in the said slum used to call the Appellant as '*Banda Mama*'. This evidence is not shaken in the cross-examination.

12.1) The testimonies of PW12-Vikas Dabhade and PW14-Mahesh Ghorpade indicate that, PW1-C, Dilip Ghorpade, and Kailash Ghorpade have been residing near their houses, at village "K". PW12, PW14, Kailash Ghorpade and Jalindar Ghorpade were employed with PW5 and doing labour work of installing electric wires of M.S.E.B; that they used to travel in the tractor of PW5 to attend the said work; and that the Appellant used to drive the tractor. PW3-Tatyaso Khandagale and PW11-VG both have been residing at

"K". PW11-VG has stated that PW1-C is her brother-in-law and his family was residing opposite to her house. PW3 and PW11 both have deposed that, boys/people residing in their shelter-less slum were working with PW5; that, the Appellant was driver on the tractor of PW5; and that, the Appellant was transporting the said workers from shelter-less slum and used to drive them back; that, Appellant also used to come to their vicinity on M/cycle.

12.2) The aforesaid evidence of the witnesses is consistent and it is corroborated with each other. In the cross-examination of PW5 it has come that the Appellant was working with him in the field and using his tractor for carrying agricultural instruments. Hence, we hold that, at the relevant time the Appellant was working with PW5 and that, the Appellant was transporting the workers residing in the slum of the shelter-less, by tractor or on M/cycle, therefore, he was acquainted with certain members of said slum and also known to children there.

Appellant rode on a bike and dropped PW12 and PW14 to "K":

13) PW5 deposed that, at the time of incident his contract

work was going on at village Bhendvale; that, he had a Splendor M/cycle bearing No.8278; and that, occasionally the Appellant used to take that M/cycle. The testimony of PW12 and PW14 show that, on 11th May 2012, in the morning, as usual they went to work at Bhendvale; that, the Appellant was with them at the work site; that, after finishing the work, at about 6.00 p.m. in the evening, they returned to village "K" by riding the M/cycles; that, at that time, the Appellant was riding the said M/cycle; that, Kailas Baban Ghorpade, Jalindar Ghorpade and Kaisas Gajanan Ghorpade were travelling with them riding on another M/cycle; that they reached at "K" at about 9.30 p.m. This evidence did not meet any challenge in the cross-examination. In the cross-examination of PW12 it has come that, after dropping him the Appellant did not tell him as to where he was going. Similarly, in the cross-examination of PW14, it has come that, on 11th May, at about 9.00 p.m. to 9.30 p.m. when the Appellant went away, he did not tell him that he was going towards the house of PW1-C. From these suggestions, it is evident that the Appellant has not disputed that, at the relevant time, he had ridden PW12 and PW14 on the M/cycle and dropped them to village "K".

Seizure of the Appellant's clothes and the M/cycle used in offence :

14) The testimonies of PW5-Ajay Bhoge and PW15-API Choudhari indicate that, on 12th May police visited PW5 at *Surli* and instructed him to produce the M/cycle; that police asked him the whereabouts of the Appellant; that he replied that the Appellant was in his field; that police took the Appellant in custody on 13th May; that on the same day, police instructed him to produce the clothes of the Appellant. Cumulatively, the testimonies of PW2-Sambhaji Mane, PW5 and PW15 show that, as called by PW15, on 13th May, PW5 produced the clothes of the Appellant (MOs 4 to 6) and the M/cycle bearing No.MH-10-U-8287 in the Police Station. Said clothes were on person of Appellant and said M/cycle was used by the Appellant at the time of offence. PW15 seized the said clothes and the M/cycle in the presence of PW2 and the co-panch and recorded seizure panchnama (Exh.44).

14.1) The aforesaid evidence did not see sufficient challenge in the cross-examination. PW5 had no reason to produce the said clothes, which had nothing incriminating and the M/cycle. Similarly,

PW2, PW5 and PW15 had no reason to depose falsely against Appellant and to claim the seizure of said clothes and the M/cycle. Therefore, we hold that the clothes and the M/cycle were seized as above when PW5 produced it. Thus, it supported the claim of PW12 and PW14 that the Appellant had ridden them on bike to "K".

Kidnapping of the victim :

15) On the point of kidnapping the victim, the evidence of PW1-C and PW10-A indicate that, 11th May, at about 9.30 p.m., there was quarrel between Ananda Ghorpade and his wife, at their house; PW10-A went there along with the victim; that many other villagers had gathered there; and that the Appellant was also present there. PW10-A has deposed that some time thereafter, she along with the victim returned back; that when they reached near their house, the victim said that she was going to PW14's house to watch T.V. programme and saying so, the victim went to the house of PW14. PW10-A has deposed that then she went home but the victim did not return home till 9.45 p.m. PW1-C deposed that, the victim did not return home till 10.00 p.m. Their evidence show that, therefore, PW10-A went to the house of PW14 to call the victim and inquired

with him; that PW14 said that the victim had been to his house but instantly she left; that, thereafter PW1-C and others searched for the victim in the nearby vicinity, but could not find the victim, therefore, on the next day morning PW1-C lodged the missing report (Exh.13).

15.1) PW11-VG is the wife of PW1's brother "N". She has deposed that, PW1-C is her brother-in-law; and that, PW1 and his family reside just opposite to her house. She has deposed that on 11th May, at about 9.30 p.m. to 10.00 p.m. she was sitting on the door step of her house; that at that time, she saw that PW10-A along with the victim were going to their house; that sometimes thereafter, the Appellant also followed them; that then the Appellant went to the house of Ajit Ghorpade, but immediately returned back from there; that at that time the Appellant asked her as whether she had the meal; that she asked the Appellant as why he came at such night time; the Appellant replied that he had come to drop the labour boys; and that at that time she saw that the victim was standing near the wall of her house. She has deposed that, then she went inside her house; that at about 10.30 p.m. to 11.00 p.m. she heard a shout that

the victim was missing; and that the victim was searched in that night but she was not found.

15.2) The aforesaid testimonies are in harmony. It is backed by the missing report (Exh.13). Nothing material is elicited in the cross-examination to disbelieve the prosecution case that, between 9.30 p.m. to 10.00 p.m. PW10-C and the victim had gone to the house of Ananda Ghorpade as there was quarrel between him and his wife. Ananda Ghorpade is distinct father-in-law of PW10-C and residing near her house. Therefore, it was natural that PW10-C and the victim would go to his house due to the quarrel. There is no reason to doubt the testimony of PW11-VG that between 9.30 p.m. to 10.00 p.m., she was sitting in the door-step of her house and therefore she was in a position to see the movements around. As held above, around the same time, the Appellant had been to village "K" to drop PW12 and PW14. According to PW13-Dr.Dabhole, the victim had her last meal within 6 hours before the death. This fact indicates that, immediately after the victim went missing, she was done to death but not before raping her. Considering this fact and

the aforementioned evidence of PW1, PW10 and PW11 together with the contents of the missing report (Exh.13) and F.I.R. (Exh.37), the conclusion is inevitable that the victim was kidnapped between 9.30 p.m. to 9.45 p.m. and immediately thereafter, she was raped and murdered.

Appellant last seen together with the victim :

16) Evidence of PW12 and PW14 is that, after dropping them home to "K", the Appellant went towards the house of PW1. PW8-Ananda Pawar has deposed that, he was residing at "K"; that on 11th May, at about 9.45 p.m to 10.00 p.m., he had gone to his agricultural land to water crops; that when he reached at the brooklet ahead to Goddess Laxmi temple, he saw that Appellant was proceeding from the road by holding the hand of victim; that he focused the torchlight on the face of the Appellant and asked him as to where he was taking the victim at night; and that the Appellant replied that he had come to drop Vikas Dabhade (PW12) and Mahesh Ghorpade (PW14) and at that time, the victim met him and asked to give her a ride on the M/cycle. PW8 has deposed that, thereafter the Appellant went towards the M/cycle taking the victim

with him; and that, he (PW8) went to his field and stayed at his field during that night.

16.1) Considering the evidence of the witnesses, it is apparent that, PW8 did not know that the Appellant had come to "K" to drop PW12 and PW14. The Appellant was not from village *Surli*, nor was he related to the victim. Therefore, it was natural on the part of PW8 to question the Appellant as above and the Appellant, to respond to the PW8 accordingly. PW8 has been residing in village "K". In the cross-examination of PW8 it has come that, the aforesaid brooklet is located behind the house of PW1 and that the said brooklet is at a call's distance from the house of PW1. The evidence indicates that, when the victim told PW10-C that she is going to PW14 to watch T.V., around that time only, PW14 had reached home and it was the dinner time for him. These circumstances indicate that, when the victim told PW10 that she is going to PW14 to watch TV, she in fact went there but did not stay and immediately she returned to her house and stood besides the wall of her house. And it was at this juncture, when PW11-VG spotted her there; that around this time

only the Appellant met PW11; that, around this time only the Appellant took the victim with him to give her a ride on his M/cycle; and immediately thereafter, PW8 spotted the Appellant and the victim together near the house of PW1. All this happened in quick succession, which cannot be a coincidence. Thus, the evidence of PW11, PW12 and PW14 corroborate the testimony of PW8. Hence, it is safe to hold that the Appellant was last seen together with the victim and he only had kidnapped the victim at the relevant time.

16.2) It has come in the cross-examination of PW8 that his agricultural field is at a short distance from his house and "K" to *Surli* road. Generally he used to go to the field from said "K"-*Surli* road. It has come in the cross-examination of PW10-C that the spot of the rape and murder *i.e.*, field of Padmu Khandagale is at 10 to 15 minutes walking distance from her house (around 1 Km.), on "K"-*Surli* road. It was not possible for the victim aged 11 years to walk alone that long in the night, without light. Admittedly, the Appellant was residing at village *Surli*., hence, it was natural that after dropping PW12 and PW14 home, he would return to *Surli* by "K"-*Surli* road.

In this background, it is safe to conclude that, soon after the kidnapping, the Appellant took the victim to the said field by "K"-*Surli* road.

16.3) PW12 has testified that, at about 9.30 p.m. to 10.00 p.m. PW10-C had come at the house of Ananda Ghorpade. At that time quarrel was going on between Ananda Ghorpade and his wife. This is supported by PW14 stating that, the said quarrel had occurred at about 10.00 p.m. to 10.30 p.m.; that he, PW1-Informant, PW10, the victim, PW12, the Appellant and many others had gathered there; that he left the said place and proceeded to his house; that PW10 proceeded towards her house and that Appellant along with the victim were coming towards his (PW10) house; and that thereafter when he was eating, the victim came at his house but seeing them eating, she went away. However, both PW12 and PW14 have omitted the aforesaid fact in their respective statements before the police. Therefore, no weightage can be given to their said evidence. However, it is insignificant looking at the trustworthiness of testimonies of PW1, PW10, PW8, PW10 and PW11.

16.4) Learned counsel Mr. Mane for Appellant submitted that, PW1 has admitted that, after the victim went missing, in the same night, he along with his son, PW8, PW10, PW14 and some other persons from his area searched for the victim; and that, the above witnesses were with him when he had gone to the Police Station (to lodge missing report), but the fact that the Appellant was last seen together with the victim by PW8, is not stated in the missing report.

However, for the above admissions, the evidence as to the last seen cannot be disbelieved. Because the aforesaid admissions are the result of clubbing the name of PW8 with others. This conclusion is fortified by the fact that, when the same question was asked in respect of going to the Police Station for lodging the missing report, the said names again were not put to PW1-C. The Appellant was an acquainted face in the slum for the shelter-less and children there also knew him. Therefore, it is probable that, when PW8 saw the Appellant and the victim together, PW8 would not think that the Appellant would cause some harm to the victim. As such it was natural that PW8 would move ahead after having said natural talk

with the Appellant. That apart, PW8 specifically denied that, on 11th May itself he knew that the victim was missing.

17) In the cross-examination, PW8, PW9 and PW10 have admitted that, there was heavy rain in village "K" for two day's prior to 11th May 2012. Therefore, learned counsel submitted that, there was no reason for PW8 to go to his field to water crop and on this count also the story of last seen is unbelievable. However, for this reason we cannot disbelieve the testimony of PW8 because it was for PW8 to decide as to why and when he should visit his field. That apart, the evidence of PW8 is so natural that, the solitary fact of rain is not sufficient to reject his evidence.

18) PW1 has voluntarily stated that, the Appellant had told the *Sarpanch* that he did not know the whereabouts of the victim. In the cross-examination PW11VG has stated that, PW1 had gone to village *Surli* and enquired with the Appellant about the victim, but he said that he does not know about the victim. These fact are not stated in the missing report (Exh.13) and the report at Exh.37. However, the Appellant can not derive any benefit from the above

circumstances, because the Appellant being an acquainted person and PW1-C being unaware about the fact of 'last seen' by PW8, initially, PW1-C might have believed in what the Appellant said. Therefore, he did not inculcate the Appellant in the missing report.

19) In the cross-examination PW10-A has admitted that, the house of PW14 is at a call's distance from her house; that at about 10.00 p.m. to 10.15 p.m. the victim went to the house of PW14 to watch T.V.; that at about 10.30 p.m. she went to call the victim and at that time, PW14 told her that the victim had left his house just five minutes earlier. PW5 has deposed that on 11th May, 2012, the Appellant had come to his house at Surli at about 10.00 p.m. to have meal. In the cross-examination PW5 has admitted that it might be 9.30 p.m. or 10.00 p.m. when the Appellant had come to his house on 11th May, 2012; that, it might have taken them 20 to 25 minutes to eat; that after the meal, he had discussed with the Appellant about the next day's work in the field; and that, thereafter the Appellant had left his house.

19.1) In view of the aforesaid evidence, learned counsel Mr. Mane for Appellant has submitted that said evidence suggests that the victim gone missing between 10.15 p.m. to 10.30 p.m., however, during that time period the Appellant was at *Surli*, which is at a distance of 20 to 25 minutes from "*K*". Therefore, it is evident that the F.I.R. (Exh.37) was lodged merely on doubt.

But in our considered opinion, the aforesaid minor variation in timings cannot extend any benefit to the Appellant as only Appellant was able to cross the 15 minutes walking distance from the house of PW1 up-to the spot, riding on the M/cycle. Secondly, village *Surli* is at a short distance form "*K*" and the spot, so, after committing the crime the Appellant could easily reach to *Surli* around 10.00 p.m. by riding the M/cycle.

Disclosure about last seen theory on the next day morning :

20) Testimonies of PW1-C and PW10-A indicate that, on 12th May, in the morning, PW1 along with the village *Sarpanch* went to lodge the missing report (Exh.13). The evidence of PW8, PW10, PW11, PW12 and PW14 is that by that time, many villagers had gathered at the house of PW10 including 11, 12 and 14 and enquired

about the incident; that PW10's family members told them that the victim was missing; that at that time, PW8 had arrived there and enquired; the villagers informed to PW8 that the victim was missing; and that, on this, PW8 immediately informed them that on the previous night, when he was going to his field to water crops, he saw the Appellant behind the house of PW1 and the Appellant was taking the victim along with him by the said road leading towards Laxmi Temple. PW5 has also deposed that PW8 further informed that when he asked the Appellant as to where he was going at such night time, the Appellant replied that he had been to "K" to drop Mahesh (PW14) and Shankar (PW12), but the victim asked him to give her a ride on the M/cycle, so he was taking the victim for a ride on the M/cycle; that then they went away. PW1 has testified that after lodging the missing report when they were searching the victim, PW8-Ananda Pawar informed him that on the last night, at about 10.30 p.m., the victim was going along with the Appellant; that thereafter he went to the Police Station and lodged the report (Exh.37); that police called him at the spot, to identify the dead body. This summary of the evidence of the said witnesses is in

conformity with the timings i.e., 8.45 a.m. when the missing report (Exh.13) was lodged and 00.30 hours of 13th May, when the F.I.R./report (Exh.37) was lodged by PW1. There was no reason for the aforesaid witnesses to concoct a story as to when PW8 saw the Appellant last with the victim together, what dialogues occurred between PW8 and the Appellant, When PW8 returned from his field and when PW8 informed about the 'last seen' fact to the said witnesses and others.

Disclosure by Appellant and recovery of dead body at his instance :

21) The testimony of PW9-Sadashiv Khatavkar and PW15 indicate that, on 13th May, at about 5.00 a.m., PW15 called PW9 and co-panch Abhijit Chavan; that in their presence, the Appellant disclosed that he had concealed the dead body of the victim and her clothes; and that, he was ready to show the spot of the incidents, to recover the dead body of the victim and her clothes; that PW15 recorded the memorandum of the said disclosure (Exh.68); that thereafter, they all boarded in a police van; that as led by the Appellant, said van was taken to *Surli*, then to village "*K*" and then to the slum of shelter-less people; that there the Appellant stopped

the vehicle and showed the spot from where he had kidnapped the victim; that after coming to *Surli*, the Appellant took them to the *Babul* tree and showed the spot of the incident (of rape and murder); that then the Appellant took them at a distance of 25 feet towards northern side and shown the dead body of the victim hidden in the sugarcane field, by identifying the body; that then the Appellant showed the white colour Pants (MO1) and pink colour Slacks (MO2) of the victim in another row of the sugarcane; that said clothes were stained with blood and covered with mud; that PW15 seized the said clothes and sealed the same, affixed a label of the signatures of panchas on the said packet and recorded the recovery panchnama (Exh.69).

21.1) The relevant evidence of PW9 and PW15 is very consistent with the contents of the disclosure memorandum and recovery panchnama. The disclosure by the Appellant was soon after his arrest and so was the recovery of the dead body and the clothes at his instance. Said spot was 150 meters inside from *Surli*- "K" road. Therefore, the relatives of the victim, others or police had no reason

to know the said place and that, the victim's body and her clothes were lying there. PW15 had no reason to falsely prepare the above documents and falsely implicate the Appellant in this case. As such, we have no hesitation to accept the said evidence.

21.2) In the cross-examination PW9 has admitted that he has acted as a panch in near about 150 to 200 panchnamas; and that he has snapped photographs in near about 150 to 200 police cases. In the cross-examination, PW15 has admitted that, Abhijit Chavan, panch to disclosure statement and recovery (Exhs.68 and 69) is resident of village *Sajur*, Taluka Karad, Dist. Satara, which is at a distance of 10 to 15 kms. from Karad Taluka Police Station. However, these admissions are insignificant.

In this regard, it be noted that it has come in the cross-examination of PW15, that after the arrest on 13th May, the Appellant was in his custody till 5.00 a.m. In the cross-examination of PW1-C, it has been suggested that, at 3.00 a.m. police informed him over the phone that the dead body of the victim was found in the field of Madane. It has come in the cross-examination of PW1 that on 13th May, at about 6.00 a.m. police came at her house along

with the village *Sarpanch* Shri Atakare; that police informed that the victim was traced and instructed her to accompany them to identify the victim; that, then she and PW1 went along with the police; that police took them to the spot of the incident and shown the victim's dead body lying there. This evidence is in conformity with the timings of the disclosure and the recovery. Therefore, the discovery and the recovery cannot be doubted just branding the panch witnesses as professional or habitual panch.

Seizure of clothes on the person of the victim :

22) PW15 deposed that, after the inquest panchnama, he referred the body for postmortem examination. Evidence of PW3 and PW6 show that on 13th May, they went to Taluka Police Station on te call of a police; that police arrested the Appellant under arrest panchnama (Exh.57); that on the same day, police seized the victim's clothes i.e., white *Kurta* and *Odhani* (MOs 6 and 7) in their presence; that police affixed paper labels on the said clothes and seized the same under panchnama (Exh.49). The aforesaid testimonies of PW3, 6 and 15 are consistent with both the seizure panchana (Exhs.49 & 57). Nothing material has come in the cross-

examination for disbelieving the aforesaid evidence. The description of said clothes is well stated in the inquest panchnama (Exh.51). PW1 has deposed that the Pants, Slacks, *Kurta*, and *Odhani* (MO1, MO2, MO7 and MO8) were on the person of the victim and identified the same. There is nothing unnatural about this evidence.

23) The testimonies of PW13-Dr. Dabhole and PW15 show that, PW15 referred the Appellant for medical examination and collection of the samples of his blood, pubic hair, semen and nail clipping etc. *vide* letter (Exh.78); that on 13th May, PW13 examined the Appellant, collected the samples as above and handed over the samples to Police Head Constable Awale along with M.L.C. papers (Exh.79); that on 13th May, PW15 forwarded the *muddemal* articles and the sealed samples to the R.F.S.L. for Chemical Analysis; that thereafter, PW15 received the C.A. reports (Exhs.86 to 88).

24) The C.A. Reports *vide* Exh.86 indicates that, semen stains of Group 'A' were found on the Slack (MO2) of the victim. Said Group 'A' matches with the Group 'A' of the blood and semen of the Appellant *vide* Exh.88. The Appellant has failed to explain

this circumstance. The M.L.C. paper (Exh.79) about the medical examination of the Appellant mentions that the Appellant was able to do sexual intercourse. Thus, this evidence coupled with the injuries to the private part of the victim confirms that after kidnapping the victim, the Appellant took her to the spot and raped her. But the victim must have cried due to pain. Therefore, Appellant mercilessly throttled her, disposed of her body and the clothes in the sugarcane field.

25) The upshot of the aforesaid discussion is that, on re-appreciation of the evidence on record in the light of the settled principle of law, we are of the considered view that, the prosecution has proved the complete chain of all the circumstances leading to only hypothesis that, except the Appellant no other person has kidnapped the deceased, raped on her and thereafter committed her murder. No reasonable doubt lingers with respect to the probability or conclusiveness of the circumstance relied on by the prosecution, forming a link in the chain of circumstances pointing to the guilt of the Appellant. As such, the impugned conviction handed over to the

Appellant does not call for any interference by this Court.

26) Now turning to the sustainability of the impugned sentence. Looking at the sentence provision under Section 302 of I.P.C. and having regard to the decision of the Apex Court in the case of *Narendra Singh @ Mukesh @ Bhura v/s. The State of Rajasthan*⁴, the trial Court could not have awarded a sentenced of rigorous imprisonment for life “which shall be imprisonment for the remainder of the Appellant’s natural life”, for the said Section 302. In the said decision of *Narendra Singh (Supra)*, the Constitutional Bench Judgment delivered in the case of *V. Sriharan @ Murugan v/s. Union of India and Ors.*⁵ has been relied upon, wherein it is held that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. The constitution bench clarified that the trial Court cannot curtail the right of the convict to seek remission. Thus, the impugned sentence imposed by the trial

4. 2022 SCC OnLine SC 1993

5. (2016) 7 SCC 1

Court i.e. imprisonment for life, 'which shall extend to remainder of his life', is necessary to be modified. However, considering the facts and circumstances of the case, the Appellant is liable to be sentenced to suffer rigorous imprisonment for life under Section 302 of I.P.C. The Appeal partly succeeds, thus. Hence, following Order.

ORDER

- (a) Appeal is partly allowed.
- (b) The conviction and sentence of the Appellant-Banda @ Navnath Bhanudas Chavan for the offences punishable under Sections 376 (2) (f), 363, 364 and 201 and the conviction under Section 302 of the Indian Penal Code is upheld.
- (c) However, the impugned sentence i.e. 'the Appellant to suffer rigorous imprisonment for life which shall be imprisonment for the remainder of his natural life' is modified as under.

The Appellant-Banda@ Navnath Bhanudas Chavan is sentenced for the offence punishable under Section 302 of I.P.C. to suffer imprisonment for life. However,

the sentence of fine imposed for the offence of Section 302 of I.P.C. is maintained.

- (d) As a result, the Interim Application No.137 of 2024 does not survive and stands disposed of, accordingly.

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.