

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

[1] CRIMINAL APPEAL NO.1165 OF 2023
Rahul Ravindra BaraiAppellant
[Orig.Accused No.1]
Versus
The State of Maharashtra & anotherRespondents

.....
WITH
INTERIM APPLICATION NO.3504 OF 2023
IN
CRIMINAL APPEAL NO.1165 OF 2023

[2] CRIMINAL APPEAL NO.976 OF 2023
Jishan @ Ishan Hamaja Ali KureshiAppellant
[Orig.Accused No.2]
Versus
The State of Maharashtra & anotherRespondents

.....
WITH
INTERIM APPLICATION NO.3191 OF 2023
IN
CRIMINAL APPEAL NO.976 OF 2023

.....
WITH
[3] CRIMINAL APPEAL NO.976 OF 2024
Santosh Vishnu JugdarAppellant
[Orig.Accused No.3]
Versus
The State of Maharashtra & anotherRespondents

.....
WITH
INTERIM APPLICATION NO.4960 OF 2024
IN
CRIMINAL APPEAL NO.976 OF 2024

Mr. Sachin Deokar, Advocate for the Appellant in Apeal/1165/2023.

Ms. Vrushali Maindad, Advocate for the Appellant in Apeal/976/2023.

Mr. Aniket Vagal, Advocate for the Appellant in Apeal/976/2024.

Ms. Kranti Hiwrale, APP for the Respondent-State.

Mr. Jugal Kanani, Advocate for the Respondent No.2 in Apeal/1165/2023 & for the Applicant in IA/3504/2023.

Mr. Advait Tamhankar, Advocate for the Respondent No.2 in Apeal Nos.976/2023 & 976/2024 and for the Applicant in I.A. Nos.3191/2023 & 4960/2024.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 12th & 13th FEBRUARY, 2026

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

1. All these three Appeals are decided by this common judgment because they arise out of the same impugned judgment and order dated 26.5.2023 passed by the learned Special Judge under POCSO Act & Additional Sessions Judge, Pune in Special Case Child Prot. No.246/2014. For convenience, the Appellants are referred to by their original status as the accused in the trial.

2. Criminal Appeal No.1165/2023 is preferred by the original accused No.1 Rahul Barai, Criminal Appeal No.976/2023 is preferred by the original accused No.2 Jishan Kureshi and Criminal Appeal No.976/2024 is preferred by the original accused No.3 Santosh Jugdar.

3. The learned trial Judge convicted and sentenced all of them for commission of the offences punishable under Sections 363 read with 120-B, 366-A read with 120-B, 376-D read with 120-B, 302 read with 120-B, 201 read with 120-B of Indian Penal Code and under Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act'). They were sentenced as follows :

- i. For commission of the offence punishable under Section 363 read with 120-B of IPC, they were sentenced to suffer RI for three years each and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer RI for six months each;
- ii. For commission of the offence punishable under Section 366-A read with 120-B of IPC, they were sentenced to suffer RI for five years each and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer RI for six months each;
- iii. For commission of the offence punishable under Section 376-D read with 120-B of IPC, they were sentenced to suffer life imprisonment for the remainder of their natural life and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer RI for six months each;

- iv. For commission of the offence punishable under Section 302 read with 120-B of IPC, they were sentenced to suffer life imprisonment for the remainder of their natural life and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer RI for six months each;
- v. For commission of the offence punishable under Section 201 read with 120-B of IPC, they were sentenced to suffer RI for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer RI for six months each;

. All the sentences were directed to run concurrently. They were given set off under Section 428 of Cr.P.C. for the punishment under Sections 363, 366-A and 201 of IPC.

4. There was one more accused i.e. accused No.4 Shivkumar Thathera, who was acquitted of all the charges.

5. Heard Mr. Sachin Deokar, learned counsel for the Appellant in Criminal Appeal No.1165/2023, Ms. Vrushali Maindad, learned counsel for the Appellant in Criminal Appeal No.976/2023, Mr. Aniket Vagal, learned counsel for the Appellant in Criminal Appeal No.976/2024, Ms. Kranti Hiwrale, learned APP for the Respondent-State in all Appeals, Mr. Jugal Kanani, learned

counsel for the Respondent No.2 in Criminal Appeal No.1165/2023 & for the Applicant in Interim Application No.3504/2023, Mr. Advait Tamhankar, learned counsel for the Respondent No.2 in Criminal Appeal Nos.976/2023 & 976/2024 and for the Applicant in Interim Application Nos.3191/2023 & 4960/2024.

6. The prosecution case, in brief, is as follows:

. The victim was sixteen years of age. She was residing at Wadala with her family. The accused No.3 Santosh induced her to stay with him and kept her in a flat in Nalasopara. It was taken on leave and license basis in the name of the accused No.1 Rahul's friend. From around 22.4.2014, the victim "R" was kept in that flat. All the accused committed rape on her repeatedly. She was insisting that the accused No.3 Santosh takes some steps in taking their relationship forward. He was already married. He wanted to send her to Uttar Pradesh. She was not willing to go there. She tried to find an escape route. She developed close friendship with a person from the locality in Nalasopara. She was not allowed to contact others. Her mobile phone was broken by the accused. Her friend at Nalasopara gave one SIM card to her. She used to secretly contact him by using that SIM card. In the night of 6th and 7th

May, 2014 the accused No.1 Rahul and the accused No.2 Jishan committed her murder by strangulating her with her odhani. They kept her dead body in a trolley bag. They carried that dead body in the bag from Nalasopara to Dadar in the early hours of 7.5.2014. They reached Dadar at around 4.30 a.m. where the accused No.3 was waiting for them. He arranged a taxi to take them to Pune. They went to Pune. They left the taxi. Then they hired an autorickshaw and went to Talegaon railway station. They left the bag at the railway station. They went towards Urse toll plaza. They took a lift from a private vehicle by paying some money to the driver and came back to Mumbai. Both the accused Nos.1 & 2 then met the original accused No.3 Santosh. They went to a restaurant and bar for some time in the afternoon. Then they returned to their respective houses. Till that time it was almost a foolproof plan where it would have been difficult to trace the identity of the dead body. The abandoned bag was seen by someone. The police were informed. The dead body was removed from the bag and was sent for postmortem examination. The crime was difficult to detect but the accused committed one mistake. They had not checked the clothes worn by the deceased. She had concealed the SIM card

given by her friend, in her underwear. The police recovered that SIM card. Her friend was constantly trying to get in touch with her through that SIM card. The police found that there was repeated communication with a particular phone number. They dialed that phone number. It was found to be the phone number of the friend of the deceased. The police went to Nalasopara and met him. From that point onwards the police collected evidence and solved the crime. That friend of "R" told them how she was kept in that flat by these three accused and how she was sexually exploited. The police kept watch on that particular flat. The accused Nos.1 & 2 unaware of this breakthrough by the investigating agency went to that flat. The police trapped them. They were arrested. They gave information about the accused No.3 Santosh. The police went to his house and arrested him as well. At the time of arresting all the accused, their mobile phones were seized. Based on their mobile phone numbers, travel of the accused Nos.1 & 2 from Pune to Mumbai and back was confirmed. During their further investigation, the taxi driver who had taken them from Mumbai to Pune and another driver who had taken them from Urse to Mumbai were traced. In the meantime, the accused No.1 Rahul gave a

memorandum statement, pursuant to which two pieces of nylon rope and a knife were recovered from his flat. A thorough search was conducted of the flat. More than 40 passbooks and many ATM cards in the name of the accused No.1 were found in that flat. They were seized. The statements of various witnesses were recorded. The postmortem notes revealed that the deceased was sexually assaulted. The cause of death was strangulation due to odhani. The nylon rope tied to the body and the two pieces of rope found from the accused No.1 Rahul's flat were sent for chemical analysis. All the three pieces matched with each other. Test identification parade was conducted and some of the witnesses identified the accused. After the investigation was completed, the charge-sheet was filed and the case was committed to the Court of Session and since it was an offence under POCSO Act it was tried by the learned Special Judge under POCSO Act.

7. During the trial, the prosecution examined 28 witnesses in the form of taxi driver, the other driver, father of the deceased, a friend of the deceased from Wadala, a friend of the deceased from Nalasopara who used to help the deceased, the medical officer, the Tahsildar who had conducted the test identification parade, the

panchas for various panchnamas and the investigating officers.

8. The defence of the accused was of total denial. In addition, they tendered a written statement under Section 313 of Cr.P.C.. According to the accused No.1 Rahul he was residing at Koliwada, Antop Hill, Wadala. He did not know the deceased or her father. He did not meet the accused No.2 or the accused No.3 and he had not resided anytime in the flat at Nalasopara. He had not called the other accused telephonically or had not sent any message to them. He had not paid them any money. He had not given any statement and nothing was recovered at his instance. The police did not have any document supporting the recovery panchnama. He was falsely implicated. The witnesses were giving false evidence against him and that he was never subjected to the test identification parade.

9. The accused No.2 Jishan also gave a written statement under Section 313 of Cr.P.C.. He also stated that he did not know the deceased, her father or her friend. He had never met the other accused. He had no connection with the flat at Nalasopara. He had not met anybody in Nalasopara in particular, connected with this case. He had never contacted or sent messages to the accused. He

had never given any money to the other accused. The police have falsely implicated him.

10. The accused No.3 Santosh also gave his written statement under Section 313 of Cr.P.C.. According to him, he was residing at Himmat Nagar, Wadala (East), Mumbai. He was never residing at Santana Chawl, Wadala, Mumbai. He was not knowing either the deceased or her father or her friends. He had not met any of the accused earlier. He had no connection with the concerned flat at Nalasopara. He had not met the friend of the deceased at Nalasopara. He had never contacted or sent messages telephonically to the other accused. The police had falsely involved him in this case.

11. The prosecution case has unfolded through the evidence of some of the police officers. It would be convenient to refer to their evidence before referring to other witnesses.

12. PW-1 PSI Sarjerao Shinde was the first informant. He deposed that in May 2014 he was attached to Pune Railway Police Station as a PSI. On 7.5.2014, he was on duty as PSO. His duty hours were from 9.00 a.m. to 9.00 p.m.. He received a phone call at 11.10 a.m. from Talegaon Railway Station Police Chowky that

one red coloured trolley bag was lying abandoned at Talegaon Railway Station and that there was a dead body in that bag. The dead body was of a girl of around 15-17 years of age. The dead body was tied with a nylon rope. PW-1 reported this phone call to his senior and on his instructions went to Talegaon Railway Station. He reached there at around 12.00 noon, went to platform No.2 and saw that bag near the public toilet. PI Parmar was with him. He removed the chain slightly to look inside. The information received by PW-1 was confirmed. There was a dead body tied with yellow nylon rope. There was a white handkerchief tied to her mouth. There was salwar, top and odhani on the dead body. Two pancha witnesses, including one lady pancha, were called. The panchnama was conducted at the spot. The bag was shifted to railway hospital near Pune Railway Station. The dead body was taken out from the bag in the presence of panchas at the hospital. Inquest panchnama was prepared. Significantly, the police recovered one SIM card of Docomo company and a black button from inside her underwear. There was bleeding from her nose and ear. The dead body was sent to Sassoon Hospital for postmortem examination. On receipt of the postmortem notes, the FIR was

lodged as C.R. No.95/2014 at the police station by this witness. It is produced on record at Exhibit-90. The bag was produced in the Court at Article No.1. The white handkerchief was produced at Article No.6 and the yellow nylon rope was produced at Article No.7 before the Court. He identified the photographs taken at the spot. They were produced on record.

In the cross-examination, he deposed that his police station was at a distance of 25 to 30 kms from Talegaon Railway Station. When he reached there, a crowd had already gathered near that bag. They were present at Talegaon Railway Station for about 4 to 5 hours. He denied the suggestion that the SIM card and the button were not found. The FIR produced at Exhibit-90 corroborates his evidence. There is hardly any effective cross-examination and serious challenge to the fact that the trolley bag with the dead body was found at Talegaon Railway Station.

13. PW-26 PI Ramdas Shelke was working as API in Railway Police, Pune (LCB) in May 2014. They had conducted parallel investigation of the crime. He was instructed by Senior Police Inspector More to go to Talegaon Railway Station where the bag was found on platform No.2. He went there. He met PW-1 and

his team. PW-26 deposed about finding of the dead body and the SIM card. PW-26 noted down the twenty digit number on the SIM card and returned it back to PW-1's team and in particular to PI Parmar. From that twenty digit number with the help of technician Police Constable Dhole (PW-14) he traced the CDR & SDR from Docomo company as the SIM card was of that company. From the SDR they came to know that said number was of one Tiwari who was a resident of Nalasopara and there were maximum calls from Tiwari's phone number. Therefore, PW-26 and his team went to Nalasopara in search of Tiwari on 8.5.2014. With the help of local police they called Tiwari at Nalasopara police station. PW-26 showed him a photograph of the deceased. Tiwari (PW-25) identified that photo and told them that it was the photograph of "R". She was residing at Nalasopara in New Home Classic Building. He gave information that the accused Nos.1 & 2 were residing with her and the accused No.3 Santosh used to visit that flat. Said Tiwari had given a SIM card to her. On the basis of this information, PW-26 and his team including PI More laid a trap at that particular flat. As per the description given to them they saw the accused Nos.1 & 2 coming towards the building. They were

apprehended. They were taken in custody. On enquiry, they gave information about the accused No.3 Santosh who was at Wadala on that day. PW-26 and his team took custody of the accused No.3 with the help of officers of Antop Hill Police Station. All three of them were arrested. On 10.5.2014, the accused No.1 Rahul gave a memorandum statement expressing his willingness to show one black bag kept in his flat in which he had concealed the cash amount received by him, the mobile phone of "R", yellow nylon rope and the knife. His memorandum statement was recorded in presence of the panchas. His memorandum statement was produced on record at Exhibit-134. As per his information, he led the police and the panchas to his flat at Nalasopara. He took them to Flat No.704 on the 7th floor at New Home Classic Building. The keys were with one Mishra who was residing on the fourth floor. He was called. The flat was opened. The accused No.1 climbed on the kitchen otta and took out a bag concealed near the water tank of the bathroom. When it was opened, there was cash of Rs.62,200/-, one mobile handset of Max Company having two SIM cards, two pieces of yellow nylon rope having length of 780 cm and 64 cm and one silver coloured knife. These articles were seized.

The accused No.1 then showed the spot in the bedroom where they had killed the deceased. Some female hair were scattered in the room in a corner. They were seized. There was one bag in another corner. The panchnama was prepared. It is produced on record at Exhibit-135. He identified all of those articles produced in the Court. Since it was late, PW-26 and his team kept the accused No.1 Rahul in Nalasopara police station. On the next day i.e. on 11.5.2014 they again went to the said flat for conducting search. This time they seized around thirty newspapers. There was one bag in the South East corner. The police found Aadhaar card and PAN card of the accused No.1 Rahul and Aadhaar card of the accused No.2 Jishan. Importantly, there was a bill and receipt of Super Luggage Shop dated 6.5.2014 in the name of the accused No.1 Rahul. There were packets of condoms, bunch of keys etc.. There were four mobile phone handsets with multiple SIM cards. There were 55 bank passbooks, 56 ATM cards and 33 cheque books. In the balcony, there was a dustbin and there was one pair of ladies footwear (It was subsequently identified by the father of the deceased as belonging to the deceased). One particular phone had messages between Santosh and one person under pseudonym.

Those messages were sent on 22.4.2014, 23.4.2014 and 5.5.2014 mentioning that “R” was giving trouble and that she would be beaten. The last message on 5.5.2014 was about making arrangement to procure a chopper. That particular mobile phone was seized. The panchnama was prepared, which was produced on record at Exhibit-136. PW-26 then recorded the statements of various witnesses. He gave requisition letters to produce the CCTV footage from Fun Fiesta Multiplex at Nalasopara. He seized the hard-disk of that CCTV footage. The footage was copied by the technician Rajendra Jadhav on a DVD. It was sealed. He seized the CCTV footage of Karishma Restaurant & Bar. According to the prosecution case, after returning from Pune the accused Nos.1 & 2 met the accused No.3 Santosh at that Bar in the afternoon on 7.5.2014. He identified all those articles which were seized in his presence. As far as finding of the dead body in a bag is concerned, there was hardly any effective cross-examination of this witness. He was asked about recovery at the instance of the accused No.1 and as to how they went from Pune to Nalasopara. He explained that there was no receipt of the toll as the police are exempted from paying toll. On 10.5.2014 they had not conducted video shooting

of the panchnama at the Nalasopara flat. On 10.5.2014, they left the New Home Classic Building at 10.50 p.m., but, he had no documentary evidence to show that he had sealed the flat on 10.5.2014 and had opened it on the next day. As per his investigation, the flat No.704 was given on rent through agent Yogesh Mishra. He admitted that he had not collected a certificate of the technician at Fun Fiesta Mall as per Section 65-B of the Indian Evidence Act. Similarly no such certificate was collected from the technician at Karishma Bar.

14. PW-14 PHC Satish Dhole was attached to Local Crime Branch, Pune Railway Police Station. He deposed about finding of the dead body in the bag and finding of the SIM card with it. He made a phone call from that SIM card to his own number and found out a number of that SIM card of TATA Docomo company. He obtained further details of the number. It was registered in the name of one Tulshiram Savatkar. The call details were analyzed and after that, as mentioned earlier, the accused were apprehended.

15. PW-28 ACP Arun More was the investigating officer. He was working as Senior P.I.. He deposed about the investigation. He

deposed how they traced PW-25 Vivek Tiwari from the call details of the SIM card found with the dead body and Tiwari's phone. Tiwari identified the photograph of the deceased. Three accused were traced and arrested. PW-28 was present when the accused were trapped and arrested. He deposed about the investigation as was deposed by PW-26 PI Ramdas Shelke about recovery from the accused No.1 Rahul. In addition, he deposed that he caused collection of CCTV footage of Somatane Toll Naka and Urse Toll Naka. He recorded statements of important witnesses. He deposed that "R's" father identified the footwear. He sent a letter to the bank regarding 57 bank passbooks. He recorded statements of three drivers with whom the accused Nos.1 & 2 had travelled from Mumbai to Pune and back to Mumbai. He had arranged to conduct the test identification parade on 18.6.2014. He received information that the accused No.1 had committed offences of forgery registered at Himachal Pradesh. He deposed about some investigation in respect of accused No.4 but nothing much was revealed. However, the accused no.4 is already acquitted from the case. The birth-certificate of the deceased was produced on record at Exhibit-389, but, he had not made any enquiry about that birth

certificate. According to that birth-certificate, R's date of birth was 13.7.1998. That means she was below sixteen years of age on 7.5.2014.

In the cross-examination, he stated that the passbooks were of different banks, but, he had not recorded statements of the bank managers. He had made correspondence with the bank managers but the correspondence was not filed with the charge-sheet. He denied the suggestion that he had shown the accused to the witnesses prior to the test identification parade. He denied the suggestion that the offence was made out against PW-25 Tiwari but he had deliberately filed false charge-sheet against accused Nos.1 to 4.

16. The report of the Forensic Science Laboratory is produced on record at Exhibit-382. Very significantly, the two pieces of nylon rope recovered at the instance of the accused No.1 Rahul matched with the nylon rope used to tie the hands of the dead body. A longer piece was found from that bag.

17. PW-22 PHC Dhananjay Dugane was a Police Naik who had carried the muddemal to the Forensic Science Laboratory.

18. PW-15 PSI Luis Makasare had taken part in the

investigation. He had collected the CCTV footage of Somatane Phata Toll Naka. It showed that on 7.5.2014 a rickshaw had passed through one lane between 8.38 a.m. to 8.40 a.m.. He also collected the CCTV footage at Urse Toll Naka which revealed that the accused Nos.1 & 2 were proceeding towards Mumbai. They were walking. They sat in a white car after talking with the driver of that car. He conducted the panchnamas of collection of CCTV footage. They were produced on record at Exhibits-212 & 213. The accused No.2 had shown willingness to point out the place where they had thrown "R's" clothes and other articles near a garbage bin at Wadala, Mumbai. This statement was made on 17.5.2014 but when the police reached Wadala, nothing was recovered from and around that garbage bin.

In the cross-examination, he admitted that he did not make enquiries about preservation of the CCTV footage at the Toll Plaza. He did not obtain certificate under Section 65-B of the Indian Evidence Act. He did not record the statement of the CCTV operator. He admitted that as far as the rickshaw seen at Somatane Toll Plaza is concerned, the registration number of the rickshaw or the passengers were not visible.

19. PW-20 Senior Police Inspector Abhay Parmar had also taken part in the investigation. He had gone to Talegaon Railway Station with PW-26 on receipt of information of finding of a trolley bag containing a dead body. The dead body was taken to Sassoon Hospital. He deposed that from 8.5.2014 onwards the Local Crime Branch took over the investigation.

20. PW-18 PSI Kamlesh Munnaswami had supervised conduct of the inquest panchnama.

21. PW-19 Dr. Vijay Jadhav had conducted the postmortem examination on the dead body. He found following injuries on the external genitals :

“Injuries to external genitals, as mentioned in column No.15 of postmortem report – blood oozing from vagina, hymen – 1] multiple old healed tears present – multiple perihymenal contusions present, bluish, fresh. Labia Majora – Intact, no injury, Labia Minora – contusion present over right side at 9 o’clock position of size 1 cm x 1 cm, bluish, fresh. Vaginal wall – a tear present over posterior vaginal wall, of size 0.5 cm x 0.5 cm x mucosa deep, irregular, red, fresh. All genital injuries are antemortem.”

. PW-19 also found the following external injuries :

“1] Contusion present over inner aspect, middle 1/3rd of upper lip of size 3 cm x 1 cm irregular bluish.

2] Ligature mark present over antero-lateral aspect left side of neck, of size 13 cm x 3 cm at and above the level of thyroid cartilage, situated 5 cm below chin and 4 cm below left mastoid, running obliquely and upwards, reddish brown, on dissection hematoma present within strap muscles on left side of size 4 cm x 3 cm, reddish, hematoma present over posterior pharyngeal wall on right side of size 3 cm x 1 cm and on left side of size 4 cm x 3 cm, reddish, thyroid cartilage and hyoid bone are intact.”

The injuries were antemortem in nature. The cause of death was mentioned as death due to head injury with injury to spine and spinal cord with ligature strangulation. He deposed that the injuries to her private parts were possible only due to forceful vaginal penetration. Injury No.1 in column No.17 i.e. column mentioning external injuries, was possible due to act of resistance in sexual assault. The strangulation was possible by dupatta. The injuries in column No.19 i.e. hematoma under scalp was possible if the dead person was banged on a hard and blunt object, a wall or floor. The injuries to spine and spinal cord were in the nature of fracture dislocation over C3- C2 vertebrae with extravasation of blood in surrounding tissue. Underlying spinal cord was contused and lacerated. Those injuries were possible due to forceful twisting

of head and banging the head on hard and blunt object or surface.

Those injuries were possible due to assault by one or more persons.

The postmortem notes are produced on record at Exhibit-263.

22. Analysis of this evidence, including the cross-examination, shows that though the accused have tried to dispute these basic facts, there cannot be any doubt that the red trolley bag with the dead body inside it, was found at Talegaon Railway Station. The hands of the body were tied with yellow nylon rope. There was a handkerchief in her mouth. A SIM card was recovered from inside her underwear. The postmortem examination revealed that she had died violent death and had suffered violent sexual assault. The prosecution has proved these facts beyond any doubt. The question is about the involvement of the accused in this case. For that purpose the prosecution has relied on the other witnesses to prove the other circumstances.

23. PW-2 was "R's" father. In his deposition, he stated that the date of birth of his daughter was 13.7.1998. He was knowing the accused No.3 Santosh since about 15 to 16 years prior to the incident. He was married to one Pooja and had one son from that wedlock. Before that he was married to some other lady. The

accused No.3 Santosh used to come to his house in his absence. According to PW-2, "R" was treating the accused No.3 Santosh as her brother. Fifteen days prior to 15.5.2014 when he came back to his house, his wife had told that "R" was missing. He searched for her and had gone to his native place in her search but did not lodge any police complaint to save the honor of the family. On 8.5.2014, the police officers approached him with his daughter's photograph. He identified it. He went to Sassoon Hospital and identified the dead body. According to him, the accused No.3 Santosh was creating nuisance in the locality and had performed forcible marriage with Pooja. PW-2 identified the chappals and clothes of the deceased. He identified the accused No.3.

In the cross-examination, he admitted that "R" had not informed anybody where she was going and he admitted that he had not stated to the police what he stated before the Court. His attention was brought to certain portions from his police statement. He accepted that he has stated those portions before the police. He accepted that he had told the police that in the past also "R" had left the house for about four to five days and that she was friendly with one Shabnam who had informed that "R" had gone out.

24. PW-3 Jayada Shaikh was knowing R's family from 20 years prior to the incident. She also knew the accused No.3 Santosh from his childhood. She deposed that she had seen the accused No.3 Santosh, his wife and "R" near accused No.3 Santosh's motorcycle. "R" sat on his motorcycle and before PW-3 could ask the accused No.3 anything, he went away on his motorcycle with "R". She deposed that the accused No.3 did not have good character. He used to flirt with many girls. The people in the locality were terrorized. He had criminal antecedents including murder. Subsequently she came to know that "R" was murdered. She identified the accused No.3 on Video Conferencing in the Court. Her statement was recorded under Section 164 of Cr.P.C. on 30.8.2014. She accepted the contents of that statement. It is produced on record at Exhibit-104.

In the cross-examination, she emphasized that "R" was taken away in her presence. After three days of discovery of the dead body, the police approached PW-3 but at that time she had not told them that the accused No.3 had taken "R" away in her presence. She had not informed R's father (PW-2) about the same. She accepted that she had good relations with PW-2 and she had

attended the Court with him. She did not know the full name of the accused No.3. Her statement recorded under Section 164 of Cr.P.C.. mentions that on 27th or 28th April, 2014 in the evening she had seen the accused No.3 Santosh taking away “R” on his motorcycle. The accused No.3 Santosh had created terror in the locality.

25. PW-13 Shabnam Shaikh was a neighbour of the deceased. She deposed that she was knowing one Pooja. The accused No.3 used to visit Pooja’s house. PW-13 also knew “R”, who was also staying near her house. She deposed that the accused No.3 Santosh and “R” were knowing each other and they were visiting each other’s house.

In the cross-examination, she admitted that she was not talking with the accused No.3. She added that she was close friend with “R” and used to share personal information but she did not know about R’s male friend.

26. PW-25 Vivek Tiwari is a very important witness in this case. He deposed that in 2014 he was residing at Nalasopara, Mumbai. He was working as a real estate agent in Jaymahakal Real Estate situated at Nalasopara, Nile Moregaon, Guest House and the second branch was at New Home Classic Building Shop No.14. PW-

25 was working in New Home Classic Building. It is the same building where the accused No.1 Rahul was staying as per the prosecution case. PW-25 deposed that on 24.4.2014, the deceased came to his shop asking for a pen. She went to the opposite shop to recharge her mobile phone. She wanted to use a pen. PW-25 asked her name and as to where she was residing. She informed that she was residing in Flat No.704 on the 7th floor of the same building. She told PW-25 that she was residing with the accused No.1 Rahul who was a friend of the accused No.3 Santosh. After this initial interaction they spoke many times. She told him that the accused No.1 Rahul had concealed her SIM card and requested PW-25 to arrange another SIM card for her. PW-25 gave her a SIM card of TATA Docomo company. According to the prosecution case, this is the same SIM card found with the deceased. He further deposed that the last two digits of that SIM card number were "35". "R" used to have regular conversations with him. She told him that the accused No.3 Santosh came and raped her. She told him that the accused No.1 Rahul and the accused No.2 Jishan also raped her. The accused No.3 Santosh had torn her clothes. Accused No.3 Santosh asked "R" to go to the village but she was not willing. The

accused No.3 Santosh then called and told her that the accused Nos.1 & 2 would come to the Railway Station and that he would be there. Once, the accused No.1 Rahul had also torn her clothes. She needed new clothes. PW-25 bought two pairs of clothes for her from a market in front of Fun Fiesta Mall. On the next day, when he made a phone call it was unanswered. He tried calling her number throughout the day but there was no answer. On the next day, he received a phone call from the same number. One police officer was talking from the other end. He made enquiries with PW-25. Then the police officers came to him and showed him a photograph of the deceased. He identified the photograph and saw that she was wearing the same dress which he had gifted her. His statement was recorded and subsequently he was called for test identification parade. In the test identification parade he identified all the three accused. His statement was recorded under Section 164 of Cr.P.C.. He accepted that the contents of the statement were correct. That statement is produced on record at Exhibit-335. He identified the clothes seized from the dead body. He identified the accused who was present through Video Conferencing.

In the cross-examination, he deposed that he did not

give any document to the police to show that there were two branches of his office. He used to talk with “R” on daily basis. He used to talk with her once or twice in a day. This went on for about ten days. There were some contradictions tried to be brought on record from his police statement but that line of cross examination was not pursued with the investigating officer to prove those contradictions. He deposed that “R” used to call him frequently and used to tell him that she wanted to marry him but he had told her that he could not marry her without the permission of his parents. PW-25 had asked permission from his parents but they had refused. He denied the suggestion that he wanted to get rid of “R”. He was then cross-examined about the test identification parade. He denied the suggestion that the police had told him about the identity of the accused. Before entering the jail, the police had given him some paper. He could not tell at what time the police came to the building with the accused. He answered that the accused did not come to the building in his presence at any time. His cross-examination was conducted to show that during the test identification parade this witness had an opportunity to see the accused. He denied the suggestion that since there were only three

accused on Video Conferencing, he identified the accused. In his statement recorded under Section 164 of Cr.P.C. there is one importation narration. The deceased had told PW-25 that the accused No.2 had visited accused No.1. She could not complete the conversation. Before switching off the phone, she told him that the accused Nos.1 & 3 were coming. When PW-25 tried to contact her, she did not answer. At 10.30 p.m. she gave a missed called. PW-25 made a return call. At that time she told him that all the three accused had just left the flat. At that time PW-25 had told her that they had passed from there in front of him. After some time, he met "R". At that time she was crying and saying that she did not want to go to the village in Uttar Pradesh.

27. PW-23 Rohit Jaiswal had deposed about the accused No.1 Rahul residing in the said flat No.704 in that building. He deposed that in March, 2014 he was residing at Wadala, Mumbai. He knew the accused No.1 Rahul. Both of them were working as Salesmen in a mobile service provider company for about six months. Then both of them had left the job. They had left their houses. They were travelling in a taxi and were discussing about renting a room. The taxi driver told them that there was a room

available at Nalasopara and his son would give that room on rent to them. They went to one Mishra who took them to one Gupta. PW-23 gave Rs.20,000/- to Gupta and executed an agreement for leave and license for eleven months. That money was given to PW-23 by the accused No.1 Rahul. PW-23 made that agreement. He had rented that room. He deposed that he himself and the accused No.1 Rahul went to reside there but within a couple of days he left the room and he again came back to reside with his classmate Kamble. He identified the accused No.1 through video conferencing in the Court.

In the cross-examination, he deposed that he had left his house because of his personal reasons. Before that he had a discussion with the accused No.1 Rahul. He denied the suggestion that he was deposing falsely that he stayed in that rented room for two days and thereafter the accused No.1 Rahul was residing in that room.

28. PW-12 Narayan Gujar was a grocery shop owner in New Home Classic Building, Nalasopara. His shop was situated in “A” Wing of the said apartment. He knew accused No.1 Rahul. PW-12 deposed that the accused No.1 Rahul was staying in Flat

No.704. He used to come to his shop to buy grocery and other articles. PW-12 further deposed that the accused No.1 was staying with "R". He knew "R" because she also used to visit his shop for buying grocery. Her age was between 15 to 16 years. On 6.5.2014 at about 6.00 p.m. to 6.30 p.m. the accused No.1 Rahul had come to his shop and bought some eatables. At that time, the accused No.2 Jishan was accompanying with him. The accused No.1 was having a red trolley bag. On the next day, Rahul told one Shailesh Mishra that "R" had gone to her native place. On 8.5.2014 he came to know that Rahul and his friend had murdered "R". PW-12's statement was recorded on 11.5.2014. His statement was also recorded under Section 164 of Cr.P.C.. He identified the accused Nos.1 & 2 in the Court. He identified the red trolley bag Article No.1.

In the cross-examination, there is one stray statement made by him that he had seen the accused No.1 Rahul at 8.30 a.m. on the next day. This was in the context of the accused No.1 coming to his shop in the evening of 6.5.2014. He also accepted that he was running his shop till evening. There was no reference that he had seen the accused No.1 on 7.5.2014 at 8.30 a.m. in his statement recorded under Section 164 of Cr.P.C..

29. PW-17 Shravansingh Rajpurohit was the owner of the shop from where the accused had purchased the bag. In May, 2014 the police came to his shop and showed him a receipt. He identified that receipt. It was issued by his shop. He deposed that, on 6.5.2014 three persons had come to his shop to purchase a bag. They wanted a big bag. He sold a big red bag for Rs.1200/-. His statements were recorded by the police and by the Magistrate. He had attended the test identification parade. He identified two persons in that parade. However, he did not identify the accused produced in the Court. He identified the bag in the Court which was shown to him as Article No.1. Since he did not identify the accused, the APP put a suggestion in the nature of cross-examination that he was not identifying the accused at their instance. He denied that suggestion.

In the cross-examination, he stated that the police had shown him photographs of the accused. He had not given the receipt book to the police. He denied the suggestion that he had issued the receipt in the name of accused No.1 Rahul at the instance of the police.

30. The prosecution has examined three drivers in whose vehicles the accused Nos.1 & 2 had travelled. As per the prosecution case the timeline shows that they first travelled with the dead body in a bag from Nalasopara to Sion in one taxi. Then they travelled to Pune in another taxi. From Pune, they went to Talegaon Railway Station in an auto-rickshaw. While coming back to Mumbai they sat in a private car near Urse Toll Plaza. The prosecution has examined the drivers of the taxis and the car.

31. PW-11 D.R. Shivhare had taken the accused Nos.1 & 2 from Nalasopara to Sion Circle at about 12.30 a.m. in the midnight between 6.5.2014 and 7.5.2014. He deposed that he was having Honda Accent Taxi. He started plying his taxi on 6.5.2014 at 7.00 p.m.. His friend Mishra called him and gave him one mobile phone number and requested to take that customer to Sion. PW-11 then made a phone call to that number. The receiver of the call told him to come near Fun Fiesta Mall at 12.30 a.m.. PW-11 accordingly went there. Within 15 minutes, two persons approached him. They were dragging a maroon trolley bag. They kept the bag in the dickey. They were having another small bag with them. They told him to take them to Sion. They reached Sion.

They paid the taxi-fare and toll fare. Then he left. After some days, the police called him to Pune for enquiry. They informed him about the murder. He then was called to Nalasopara police station. The police showed him a photograph of the deceased girl and the trolley bag. He was called to Yerwada Jail for identification of the accused. According to him, he identified both the persons who had travelled in his taxi with that trolley bag. His statement was recorded under Section 164 of Cr.P.C.. It is produced on record at Exhibit-188. He identified the trolley bag shown to him in the Court as Article No.1. He was shown the CCTV footage in front of Fun Fiesta Mall. He identified himself going away with his taxi.

In the cross-examination, he admitted that the taxi number was not visible in the CCTV footage. He also admitted that the CCTV footage did not show anybody approaching him with a luggage or a bag. He could not give details of the said Mishra who had called him. Mishra had called him at about 9.30 p.m. to 10.00 p.m.. He admitted that at Nalasopara police station, the police told him that two thieves had escaped and they wanted to make enquiries about them. He also admitted that thereafter the police showed him photograph of two boys. After that he deposed that

after the police had shown him photographs at Nalasopara, in about a week he was called by the police at Pune. He admitted that the police had shown him photographs of two persons and had told him that they had committed theft when his statement was recorded before the Judicial Magistrate and then subsequently they told him that the accused had committed murder and rape. In further cross-examination, he admitted that when the police had called him to Nalasopara police station at that time the accused were sitting in the police vehicle and that he had seen the accused.

Thus, it can be seen that his identification of the accused in the test identification parade is vitiated because he was not only shown the photographs but prior to that he had also seen the accused. Learned APP re-examined him. At that time he identified the accused Nos.1 & 2 in the Court. He also accepted that the accused seen by him in the Court were already seen by him at the instance of the police and, therefore, he had identified them at Yerwada Central Prison. Therefore, identification of the accused Nos.1 & 2 by this witness loses its significance but his evidence can be considered for the fact that two persons with a trolley bag had travelled in his taxi from Nalasopara to Sion, and that he had

identified the bag in the Court.

32. PW-6 Laxman Hajare is an important witness in this case. He was the taxi driver who had taken the accused Nos.1 & 2 from Dadar to Pune. His taxi was hired by the accused No.3 Santosh. He deposed that he was working as a driver with one Vinod Singh who was having the business of Tourist Cars by the name "Sai Tourist". He was having three vehicles. There were other three drivers working with PW-6. On 6.5.2014, Vinod Singh called him for work. He told him to go to Mumbai in a red car No.MH-14-BC-4965. PW-6 was a resident of Chikhali. He took some passengers at Chinchwad Railway Station at about 5.00 p.m. and reached Dadar at about 8.00 p.m.. He parked his car near Shivneri bus stop at Dadar. He did not get any passenger for returning to Pune. Therefore, he slept in his car. At 4.30 a.m. one person woke him up and asked him what fare he would charge for going to Pune. He quoted the fare as Rs.200/- per passenger, but, that person wanted to hire his taxi exclusively for Rs.1500/-. PW-6 quoted the figure of Rs.2200/-. However, the said person did not agree to the quoted fare and left. After some time, the same person returned with other two persons and this time he was ready to pay

the amount of Rs.2200/-. PW-6 then told him that he would take one more passenger in the car. In the meantime they kept their luggage including one red bag in the dickey and the two persons sat in the car. PW-6 took the fare in advance. The person who had met him first and had negotiated with him regarding the fare did not travel to Pune. PW-6 took one more passenger at Vashi, who sat in the front, and was dropped at Shivaji Nagar, Pune. The two passengers sitting in the back, who boarded at Dadar, got down at the bus stop in front of Pune Station. They took their luggage but at that time PW-6 did not notice it. On 20.5.2014 the police approached him with his employer. They made enquiries about the passengers whom he had brought to Pune from Mumbai. The car was seized by them. His statement was recorded by the police. On 17.6.2014, he attended the test identification parade at Yerwada Jail. At that time, there were 10-15 persons in the parade. He identified two persons who had travelled in his car. After half an hour, he was made to identify one more person from about 5-6 suspects. This time he identified one more person as the same person who had first met him and had negotiated about the fare. PW-6's statement was recorded under Section 164 of Cr.P.C. on

5.9.2014. He identified the accused Nos.1 & 2 in the Court as the persons who had travelled with him in his car. He also identified the accused No.3 as the person who had settled the fare. He identified the red trolley bag which was shown to him as Article No.1.

In the cross-examination, he admitted that he was carrying passengers without permit. He stated that the trolley bag at Article No.1 was big. He denied that on 7.5.2014, when the passengers sat in the car, the light was dim. He denied the suggestion that he had given description of the persons who had travelled with him but he could not explain as to why it was not written in his police statement. This line of cross-examination was not pursued with the investigating officer. He further stated that he had thrown away the bill receipt. He denied the suggestion that the accused were shown to him before the police recorded his statement. He did not know as to why it was not written in his police statement that the person who had settled the fare had gone away and did not travel with him. However, this fact is recorded in his statement under Section 164 of Cr.P.C.. He denied the suggestion that the police showed him the accused prior to the test

identification parade.

33. PW-7 Vinod Kumar Singh was the employer of PW-6. He corroborated the evidence of PW-6 about PW-6 going to Mumbai on 6.5.2014 in his car. On 20.5.2014 he had gone to Uttar Pradesh to attend a wedding in the family. The vehicle was seized by the police and it was returned after four months under the order of the Court. He came to know about the murder and the trolley bag being carried in his car

34. PW-16 Imtiyaz Ansari had taken the accused Nos.1 & 2 from Urse Toll Plaza to Dadar and he had identified both of them in the test identification parade held on 18.6.2014. He deposed that he was serving as a driver in a Tours and Travels Company. On 7.5.2014, at about 5.30 a.m., he carried one family from Borivali to Wakad, Pune. Then he started returning to Mumbai via Urse Toll Plaza on the expressway. He stopped after crossing Urse Toll Plaza to go to washroom. When he was returning towards his vehicle, two persons approached him and told him that they also wanted to go to Mumbai. They negotiated the fare. He told them that he would charge Rs.200/- per seat. They sat in the car. PW-16 was waiting for more passengers but those two persons told him that

they had to attend a meeting at Dadar urgently and showed willingness to pay Rs.900/-. Therefore, he took them to Dadar bus-stand. He did not wait for other passengers. They paid Rs.900/-. Subsequently he came to know that those two persons had committed a murder. He was called by the police. His statement was recorded. The statement was also recorded by the Magistrate. That statement recorded under Section 164 of Cr.P.C. is produced on record at Exhibit-232. He attended the test identification parade at Yerwada Prison. He identified the accused nos. 1 & 2 in the test identification parade. He also identified both of them in the Court. They were produced through Video Conferencing.

In the cross-examination, he stated that his company had not issued an appointment letter to him. He did not hand over his identity card to the police. He travelled in Indica Vistsa Car. That car had a small dickey. Significantly his evidence shows that the accused Nos.1 & 2 while returning back to Dadar did not have the trolley bag with them. He admitted that he would pick up passengers on highway illegally. He denied the suggestion that he was in touch with the police.

35. The prosecution examined some pancha witnesses in

respect of the CCTV footage taken from certain spots. PW-8 Avinash Kurane was one such pancha. He deposed that he was an electrician working with Fun Fiesta Company. On 23.5.2014, his Manager told him about the incident captured in the CCTV camera. The recording was shown to him. He observed that two persons came in front of the gate of Fun Fiesta Company with a red coloured bag. After some time, one taxi arrived there. The taxi driver opened the dickey. Out of those two persons, one person kept the red trolley bag in the dickey and they went away. This recording was copied on one DVD and delivered to Police Officer Rajendra Jadhav. It was sealed. The police also seized the hard-disc of recording. The panchnama was prepared. It is produced on record at Exhibit-173.

In the cross-examination, he admitted that the colour of the trolley bag was not identifiable. The faces of the persons were not seen clearly and they were blurred.

36. PW-10 Tanaji Chakrupe was a pancha for various panchnamas including seizure of some CCTV footages. He deposed that on 13.5.2014 he was called at LCB at Tadiwala Road. He went there. The police took him to Somathane Phata Toll Naka. They

went to the recording room. They watched the CCTV recording of 7.5.2014. He observed that one rickshaw had passed from a two-wheeler lane. There were two passengers in the back seat with a red trolley bag. The police copied that CCTV footage in one DVD in his presence. The DVD was packed in one envelope and the labels of their signatures were affixed on it. From there they went to Urse Toll Naka. Again the CCTV footage of 7.5.2014 was seen. They saw that the two accused were walking on the road from Pune to Mumbai. There was one white car. They sat in that car and then they went towards Mumbai. This CCTV was also copied on one DVD and a panchnama was prepared. Those CCTV footages were produced on the DVD in the Court at Exhibits-183 & 184. He was again called by the LCB officers on 20.5.2014. He acted as pancha in seizure of the Mahindra Scorpio car bearing No. MH 14-BC-4965 in which the accused had travelled from Dadar to Mumbai. He was also a pancha for the arrest of the accused No.4.

In the cross-examination, he admitted that the rickshaw number was not seen in the recording. The driver and the two passengers were not seen clearly in the rickshaw. The registration number of the white car was not seen in the CCTV footage of Urse

Toll Plaza. The faces of two persons were not clear.

37. PW-9 Sandip Shetty was a pancha in whose presence the CCTV footage of Karishma Bar was seized. He was called by his Manager on 23.5.2014 to act as a pancha. The police were present. The CCTV recording was played. They saw that one person came at the first instance. He was joined by the other two persons after about half an hour. They ate their food and they sat there till 2.45 p.m.. Then they left. The panchnama was prepared. The CCTV footage was copied on a pendrive. The panchnama was produced on record at Exhibit-177.

In the cross-examination, he stated that faces in the CD produced at Exhibit-178 were blurred and not identifiable. He further admitted that on 23.5.2014 the CCTV cameras and the storage device were not working.

38. PW-21 Tahsildar Lejindra Bobade had conducted the test identification parade. He deposed that he was an Executive Magistrate. He received a letter dated 23.5.2014 requesting to hold the test identification parade in C.R. No.95/2014. He was a Naib Tahsildar at Tehsildar Office at Vadgaon Maval. He forwarded that letter to the Prison Authority. The test identification parade was

conducted on 18.6.2014 at Yerwada Prison. He went there. He requested for the dummies. He selected twelve dummies who were looking similar to the accused. He then deposed about the test identification parade. In the first round, the accused Nos.1 & 2 were put for identification. According to him, PW-11 Shivhare (the taxi driver from Nalasopara to Sion) identified accused No.1 Rahul, but, did not identify the accused No.2 Jishan. PW-17 Shrivansingh Rajpurohit (the bag shop owner from where the bag was purchased) identified the accused Nos.1 & 2. After that PW-6 Laxman Hajare (taxi driver from Dadar to Pune) identified both the accused Nos.1 & 2. Then PW-16 Imtiyaz Ansari (driver from Urse Toll Plaza to Dadar) was asked to identify the accused but he did not identify the accused No.1. He identified the accused No.2. After that PW-25 Vivek Tiwari was asked to identify the accused. He identified both the accused Nos.1 & 2.

In the second round, the accused No.3 was made to stand for identification. PW-21 deposed that he selected six dummies who were similar looking to the accused No.3. He also added three more dummies. PW-11 Shivhare did not identify the accused No.3 but in any case it is not the prosecution case that the

accused No.3 was present at Fun Fiesta Mall. PW-17 Shravansingh Rajpurohit (the bag shop owner) identified the accused No.3. PW-6 Laxman Hajare identified the accused No.3. PW-16 Imtiyaz Ansari did not identify the accused No.3. According to the prosecution case at that place near Urse Phata the accused No.3 was not present. PW-25 Vivek Tiwari then identified the accused No.3. The test identification memorandum panchnama is produced on record at Exhibit-286.

PW-21 was extensively cross-examined by the defence as to whether he had made proper arrangements for the witnesses to sit, what precautions he had taken etc.. But his evidence was not shaken in the cross-examination. He deposed that that he did not change the dummies after identification by each of the witnesses. But this was not important because there is nothing to show that the witnesses could interact with each other and describe about the dummies. He accepted that he had not mentioned in the memorandum as to for what purposes those witnesses were identifying the accused.

39. PW-4 Mahesh Gaikwad was a pancha witness. On 7.5.2014 he was present when the panchnama of seizure of clothes

of the victim and the bag was prepared. He was a witness to seizure of the SIM card, nylon rope, the clothes of the victim and the bag. Those articles were seized and sealed in his presence and the panchnama is produced on record at Exhibit-120. On 9.5.2014, he was a pancha when the accused were arrested and their personal belongings were seized. He deposed that when the accused No.1 Rahul was arrested, apart from other articles one mobile phone was seized. Similarly from the accused No.2 Jishan apart from other articles one mobile phone was seized. He further stated that even search of the accused No.3 showed that he was possessing one mobile phone apart from other articles. That panchnama is produced on record at Exhibit-130. He identified the mobile phones in the Court. On 17.5.2014, he was again called in the LCB office. The accused No.2 Jishan Kureshi showed willingness to show the place where the other clothes of the victim were thrown by them near a dust-bin at Dadar but when the police and the panchas went to that place, nothing was found. He identified both the accused in the Court. He identified all the three accused in the Court. The arrest panchnama is produced on record at Exhibit-130 which shows that at that time the accused No.3 was

also arrested on 9.5.2014 at the same time. Significance of this arrest and seizure panchnama at Exhibit-121 and Exhibit-130 is that the panchnama recorded on 9.5.2014 between 2.20 p.m. to 3.00 p.m. specifically mentions the IMEI numbers of the mobile handsets seized from all three accused. This is significant because the prosecution has connected these IMEI numbers with the respective telephone numbers of those handsets. The call detail records are, therefore, important in this case.

In the cross-examination he deposed that two mobile phones were recovered from the accused No.2 but he could not give description of those handsets. There is hardly any effective cross-examination of this important witness.

40. PW-5 Ashok Payal is another important pancha witness in this case. He was called by the Crime Detection Branch for preparing a panchnama on 10.5.2014. He deposed that at that time the accused No.1 Rahul was in the custody of the police. He gave a memorandum statement that he would show the place where he had kept a knife, nylon rope and cash of Rs.62,200/-. The memorandum statement was recorded. It is produced on record at Exhibit-134. Pursuant to that memorandum statement the panchas

and the police started from Pune to Nalasopara. They were led by the accused No.1 Rahul to Flat No.704 on the 7th floor of Yashwant Nagar area building. The key was kept with one Mishra. He came with them and opened the room. They entered the flat. The accused No.1 Rahul climbed on the kitchen platform and took out one black sack kept behind the water-tank. It was opened. There was an amount of Rs.62,200/-. There was one mobile phone handset and there was a yellow nylon rope and a knife. All those articles were seized. That panchnama is produced on record at Exhibit-135. He identified those articles produced in the Court. On 11.5.2014, again he was called by the police for taking search of the same house. They went there. At that time they found about 40 to 45 ATM cards, passbooks etc.. Importantly they also seized a receipt of purchase of a red bag. This panchnama is produced on record at Exhibit-136. The memorandum of accused No.1 Rahul's statement was recorded between 2.00 p.m. to 2.30 p.m. on 10.5.2014. The recovery panchnama then started at 2.40 p.m. and it ended at 10.50 p.m.. The house search panchnama was conducted on 11.5.2014 between 9.00 a.m. to 2.00 p.m. on 11.5.2014.

In the cross-examination, he deposed that after reaching Nalasopara they first went to the police station and then they went to the flat. They were there for about one hour. This witness identified the accused No.1 in the Court. The panchnama at Exhibit-136 regarding house search on 11.5.2014 mentions that one mobile phone was checked for the messages and there were four objectionable messages dated 22.4.2014, 23.4.2014 and 5.5.2014. Two of them were of 22.4.2014. The first three messages were regarding complaints against "R" that she was causing trouble and the last message was for asking to arrange for a chopper. However, the pancha (PW-5) has not deposed about this important messages and there is no further investigation in particular about these messages.

41. PW-24 Chetan Patil was the Nodal Officer working with Bharati Airtel Cellular Company at Swargate, Pune. He received a letter from the police on 11.6.2014. He was requested to supply information of four mobile phones and CDR between the period of 5.5.2014 to 8.5.2014. He has mentioned the phone numbers in his deposition. The important phone numbers were "7709808065", which according to the prosecution case was used by the accused

No.2 Jishan Kureshi. The other important number was “9665184135” which according to the prosecution case was used by the accused No.1 Rahul. The CDR showed their location during the relevant period. The CDR is produced on record at Exhibit-318. This CDR is very important in this case. He also issued certificate under Section 65-B of the Evidence Act. It is produced on record at Exhibit-319. The CDR had different columns, as follows :

(i) Calling number, (ii) Called number, (iii) Date, (iv) Time, (v) Duration, (vi) & (vii) Tower locations, (viii) Call type, (ix) IMEI number, (x) IMSI number, (xi) Connection type, (xii) SMS center number, and (xiii) Roaming network.

He deposed that the mobile phone of the accused No.1 showed activity between 1.20 a.m. to 7.45 a.m. on 7.5.2014 in Mumbai circle. After that, the tower location was shown at Railway Station, Pune, then at Maval, Pune, then at Talegaon, Pune, then at Kamshet, Pune, and then back to Nalasopara. Similarly the analysis of the call details of the phone used by the accused No.2 was at the locations of Vadgaon, Old Pune highway and then Nalasopara on 7.5.2014.

The prosecution has connected these phone numbers

with the respective accused from the IMEI numbers of the mobile phones seized from them at the time of arrest and through this call data analysis which connected those numbers with the phone numbers.

In the cross-examination, he was asked about registration of these phone numbers, number of tower locations between Nalasopara to Pune. Mobile phone number “7709808065” attributed to the accused No.2 was registered in the name of one Jyoti Gaygavali.

42. PW-27 Vishal Kokadwar was working with Forensic Science Laboratory, Kalina as a Scientific Officer. He analyzed the hard-discs sent to him. He analyzed the CCTV footage recordings. He also analyzed the data in various mobile phones.

43. This is the evidence led by the prosecution in this case.

44. **Learned counsel Shri Deokar made the following submissions on behalf of the accused No.1 Rahul:**

- i. The case is based on the circumstantial evidence. The prosecution has not proved any of the circumstances beyond a reasonable doubt. The chain of circumstances is not complete. PW-25 Vivek Tiwari, who was the star witness for

the prosecution did not know accused No.1. There is nothing to show that he had seen him anytime. PW-25 Vivek Tiwari's conduct is unnatural. If he was aware of such serious crime of rape being continuously committed on "R", he should have informed the police about the same but he did not inform anybody about it. He did not try to rescue "R".

- ii. PW-12 Narayan Gujar in the cross-examination made a statement that he had seen the accused No.1 Rahul at his shop at 8.30 a.m. on 7.5.2014. In that case, the prosecution fails, as according to them the accused No.1 Rahul had travelled to Pune from Mumbai at that point of time.
- iii. The CCTV footage was not clear. The witnesses have admitted that the faces were not clear. The colour of the bag was not seen. Most importantly there is no certificate under Section 65-B of the Indian Evidence Act and, therefore, this evidence is required to be discarded.
- iv. PW-17 Shravansingh Rajpurohit, the bag shop owner, was declared hostile. He has not identified any of the accused including the accused No.1 in the Court.
- v. The police officers have accepted that Talegaon Railway

Station was a crowded place and, therefore, it was not possible for anyone to keep a big bag near the platform without anyone from the crowd noticing it and reporting it to the police immediately.

- vi. The recovery evidence from Flat No.704 is not believable. The keys were with one Mishra, who is not examined. Admittedly, the panchas and the police had started from Pune to Nalasopara at around 2.30 p.m. on 10.5.2014 when it was not possible to start recovery panchnama immediately at around 2.40 p.m. on 10.5.2014 at Nalasopara which was at a distance of at least four hours travel.
- vii. The recovery of articles is not believable. The articles were planted in that flat. He submitted that when the panchas and the police had entered that flat on 10.5.2014, they had not noticed around 50 passbooks and ATM cards but surprisingly on the next day i.e. on 11.5.2014 all those articles were recovered. He, therefore, submitted that those articles were planted in the flat.
- viii. There is no evidence to show as to how the police traced PW-6 Laxman Hajare. Therefore, he was clearly a got up witness.

There is no connecting evidence to show as to how the accused No.1 Rahul travelled from Pune to Somathane Phata. The CCTV footage did not show the rickshaw and the passengers clearly. There is nothing to show that the accused No.1 Rahul had any connection with Flat No.704. The agreement regarding that flat was not with the accused No.1 Rahul. There is no evidence to show that the accused No.1 Rahul had any interaction or connection with the accused Nos.2 or 3. The accused No.1 was never seen at Wadala where “R” was residing with her family. None of the witnesses had seen them together.

45. Submissions of learned counsel Ms. Maindad on behalf of the accused No.2 Jishan Kureshi are as follows :

- i. She submitted that the accused No.2 Jishan had no connection with the accused No.1 Rahul or the accused No.3 Santosh. He had no motive to commit this murder.
- ii. There is no evidence to show that he committed rape on “R”. His identification by the witnesses is not beyond doubt.
- iii. There is no recovery of any incriminating article at his instance.

- iv. The CCTV footages are not clear. She supported the submissions of Shri Deokar in respect of inadmissibility of those CCTV footage.
- v. She submitted that the shop owner from where the bag was purchased did not identify him. The grocery shop owner had never seen him.

46. Learned counsel Shri Vagal appearing for the accused No.3 Santosh made the following submissions :

- i. The evidence of the father of the deceased does not assist the prosecution in any case. Admittedly, his entire deposition is in the form of omission. He had not stated anything to the police, that he had deposed before the Court.
- ii. PW-3 Jayada Shaikh's evidence cannot be treated as an evidence of 'last seen together' because the dead body was discovered much later. She has not deposed clearly as to on which date exactly the accused No.3 Santosh had taken "R" with him.
- iii. The accused No.3 Santosh had no connection with the flat No.704 where allegedly the murder was committed.

- iv. There were no messages exchanged between the accused Nos.1 & 3. There is nothing to show that the accused Nos.1 & 3 were in any way connected. Even as per the prosecution case he had not travelled to Pune and back.
- v. The meeting in Karishma Bar is not proved because the CCTV footage is not admissible and the video is not clear.
- vi. Nobody from the area of Nalasopara had seen the accused No.3 visiting that particular flat. Even PW-25 Vivek Tiwari had not seen him near that flat.
- vii. There is no evidence to show that the accused No.3 had withdrawn the amount of Rs.75,000/- and had paid the accused No.1.
- viii. The evidence of PW-6 Laxman Hajare is doubtful. There is important omission from his police statement regarding the accused No.3 negotiating the fare and going away. In any case, identification of the accused No.3 by PW-6 Laxman Hajare is not free from doubt.
- ix. The conduct of test identification parade shows that it was

held in two rounds. In the first round, twelve dummies were kept for identification of the accused Nos.1 & 2. Out of them, three dummies were repeated and three different dummies were added when the accused No.3 was made to stand in the test identification parade.

- x. At the highest even it is assumed that the accused No.3 had arranged for the taxi, there is nothing to show that the accused No.3 was aware as to what the accused Nos.1 & 2 were carrying in the trolley bag.

47. **Submissions by Ms. Kranti Hiwrale, learned APP for the State and by Shri Tamhankar and Shri Kanani, learned counsel for the Respondent No.2:**

- i. Learned APP submitted that it was a cruel murder. Before the murder, the victim was brutally assaulted. She was subjected to violent sexual assault. It is only because of the sharp intelligent step taken by the victim to conceal the SIM card, this offence could be detected.
- ii. There is no substance in the submission that since Talegaon Railway Station was a crowded place, the bag could not have

been left or abandoned at that place without anybody noticing it.

- iii. The most important witness i.e. PW-25 Vivek Tiwari has given clear evidence against all the three accused. The information given by the deceased to this witness is admissible. This information relates to all the three accused and relying on this evidence alone the conviction can be sustained.
- iv. All the important witnesses regarding travel etc. have identified the accused in the Court.
- v. It was a preplanned murder. The accused had purchased a bag before committing the murder on 6.5.2014. A receipt was found in the house of the accused No.1. The same bag was identified by various witnesses.
- vi. The CDR produced on record connects the accused with the mobile phone handsets seized from them. The CDR is incriminating showing the complicity of the accused.
- vii. There is recovery of nylon rope and a knife from the flat occupied by the accused No.1. The forensic report shows that

the pieces of nylon rope recovered from the accused No.1's house matched with the nylon rope recovered from the trolley bag, which was used for tying the hands of the deceased.

viii. The prosecution has established each and every circumstance right from the time of taking away "R" from Wadala by the accused No.3, keeping her at Nalasopara, commission of rape on her, her murder in the night of 6.5.2014 and 7.5.2014, carrying her dead body in the trolley bag from Nalasopara to Dadar and then from Dadar to Pune, abandoning the bag at Talegaon Railway Station by the accused Nos.1 & 2, and then both of them returning to Mumbai and meeting the accused No.3. The CDR and the tower locations established their presence at those various places. Thus, the prosecution has proved each and every circumstance against the accused forming a complete chain point unerringly to the guilt of all the three accused.

Reasons and conclusions :

48. We have considered these submissions. The prosecution first needed to prove as to how "R" was residing at Nalasopara

when her family was staying at Wadala. For that purpose the prosecution has examined PW-2 father of “R”, PW-3 Jayada Shaikh a neighbour at Wadala and PW-13 Shabnam Shaikh a friend of the deceased. Though PW-2 had not given detailed statement to the police but it is undisputed that since last week of April, 2014 “R” was not found at Wadala. This fact is corroborated by PW-2 father of the deceased, PW-3 Jayada Shaikh and PW-13 Shabnam Shaikh.

49. PW-3 Jayada Shaikh’s evidence is important. She has deposed about the accused No.3 Santosh taking away “R” on his motorcycle. Though she had not given the dates but her statement under Section 164 of Cr.P.C. mentions those dates as 27th or 28th April, 2014. Her evidence can be relied on to prove that the accused No.3 had taken “R” with him on his motorcycle and after that nobody had seen her at Wadala.

50. As per the prosecution case, “R” was then kept in Flat NO.704 on 7th floor in New Home Classic Building. Learned counsel for the accused No.1 Rahul tried to submit that the accused No.1 Rahul had no connection with that flat; but the prosecution has examined PW-23 Rohit Jaiswal to show as to how that flat was

taken on rent by PW-23 Rohit Jaiswal and the accused No.1 Rahul and as to how PW-23 Rohit Jaiswal had left that flat within a couple of days. The evidence of this witness PW-23 Rohit Jaiswal is clear enough to show that the accused No.1 Rahul was occupying that flat.

51. PW-12 Narayan Gujar was a grocery shop owner having his shop in the same building New Home Classic Building. He knew the accused No.1 Rahul. He has categorically stated that the accused No.1 Rahul was staying in flat No.704 of New Home Classic Building. He was staying with "R". This witness also knew "R" because she used to come to his shop for buying grocery. He has mentioned her age between 15 to 16 years. At this stage, it must be noted that the age of the victim is hardly in dispute. Her birth-certificate is produced on record which shows that her date of birth was 13.7.1998. It is produced on record at Exhibit-389. At the time of incident, she was below sixteen years.

52. PW-12 Narayan Gujar's evidence is also important on another aspect because he has deposed that on 6.5.2014 at about 6.30 p.m., the accused No.1 Rahul had come to his shop to buy something. At that time, the accused No.2 Jishan was also with

him. They had a red coloured trolley bag with them. On the next day, the accused No.1 Rahul had told one Shailesh that “R” had gone to her native place. The murder had taken place in the night between 6.5.2014 and 7.5.2014. PW-12 Narayan Gujar had identified both the accused Nos.1 & 2. He had also identified the red bag which he had seen in the evening on 6.5.2014. That bag was identified by him in the Court. Learned counsel for the accused No.1 tried to take advantage of one sentence from his cross-examination when he deposed that he saw the accused No.1 Rahul on the next day at 8.30 a.m.. However, the prosecution case cannot be thrown out only on this stray statement when there is contrary CDR available on record. Thus, all this evidence shows that the victim “R” was kept in that particular flat. She was taken away from her house by the accused No.3 Santosh and was kept in the flat occupied by the accused No.1 Rahul. Thus, there is a direct connection of accused Nos.1 & 3. The evidence of witnesses shows that the accused No.2 Jishan was seen with the accused No.1 Rahul at various points, as discussed above.

53. As submitted by all the learned counsel for the respective accused and the learned APP, PW-25 Vivek Tiwari is the

most important witness for the prosecution. We have carefully considered his evidence. He has given details of the torture faced by “R”. His evidence shows that “R” was in a totally helpless situation. She had left her family. She was kept in the flat but the accused wanted to get rid of her. She did not want to go to a village in Uttar Pradesh. She was desperately seeking help from PW-25. The statement made by her to this witness PW-25 Vivek Tiwari is admissible under Sub-section 1 of Section 32 of the Indian Evidence Act. Sub-section 1 of Section 32 of the Indian Evidence Act reads thus :

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. —

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —

- (1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under

expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

XXXX

XXXX”

54. “R’s” statement was relevant and hence admissible though at that point of time she was not under expectation of death. Her statement is admissible not only regarding her cause of death but also to any of the circumstances of the transaction which resulted in her death. Such statement is relevant in the trial in which cause of her death came into question. Therefore, her statement to PW-25 Vivek Tiwari was relevant and admissible under Section 32(1) of the Indian Evidence Act. Considering the importance of her statement, her statement needs to be reproduced, as stated by PW-25 Vivek Tiwari. It is as follows :

“She told me Santosh came, he slept with her at night, he also gave her sexual trouble. Sexual trouble means he raped. She told me Rahul and Zishan also done same thing as Santosh did with her. He also torn her clothes. Thereafter, she told Santosh asked her to go village. However, she was not willing to go village. Thereafter, she told me that Santosh made phone call to her that Rahul and Zishan will come to the railway station and he will stay there. Thereafter she told Rahul torn her clothes and she needs new clothes.”

55. In the present case, commission of sexual assault was followed by her murder. It forms the same chain of transaction and hence it is relevant and admissible. It is also corroborated by other circumstances. PW-25 Vivek Tiwari had deposed that he had given a SIM card to her so that she could communicate with him. She had kept it concealed and was using it whenever she could. Ultimately it is the same SIM card that led to discovery of the offence and the offenders. The same SIM card was found concealed in her underwear. As mentioned earlier, this witness was in a close relationship with “R”. According to him, he had identified all the accused. Not only that, as mentioned earlier, his statement before the Magistrate also shows that he was knowing them as he had told her that all the three accused had passed from in front of him.

56. The other important circumstance is about finding of the nylon rope and a knife in the house of the accused No.1 Rahul at his instance. This is an important piece of circumstance. The nylon rope which was used for tying the hands of the dead body was found from the bag recovered at Talegaon Railway Station. The said rope and the pieces of nylon rope found at the instance of

the accused No.1 Rahul were sent for forensic examination and the report showed that they matched with each other. Thus, the rope which was used in tying the dead body was used by the accused No.1 Rahul. The knife and the remaining pieces of the rope were found in his flat at his instance. According to the prosecution case, the murder was committed by strangulating her with her odhani, which is supported by the evidence of the Medical officer.

57. Another important aspect about this recovery is that on 11.5.2015 a receipt for purchasing that red trolley bag was found from a small bag kept in the house of the accused No.1. Learned counsel for the accused No.1 Rahul submitted that the timings of the panchnamas did not match. However, we are unable to accept that submission. The memorandum panchnama was completed at Pune at around 2.30 p.m. on 10.5.2014 and from that point onwards the next panchnama started and, therefore, the time of the next panchnama is immediately after completion of recording of memorandum panchnama. It cannot be said that the panchnama should have started after the police and the panchas had reached Nalasopara from Pune. The evidence of the investigating officer shows that till about 10.50 p.m. in the night

they were in the flat of the accused No.1 to effect recovery. Obviously it was quite late. After that the accused No.1 was kept in the lock-up at Nalasopara police station and only on the next morning they again visited the same flat when the other articles including the ATM cards, passbooks and more importantly a receipt of purchasing the trolley bag was recovered. We do not see any unusual aspect in conducting seizure panchnama on the next day when the procedure was incomplete on 10.5.2014. It was completed only on the next day. Therefore, it cannot be said certain articles were planted on the next day.

58. One more important witness in this case is PW-6 Laxman Hajare. He has clearly stated as to how the accused No.3 Santosh approached him for fixing the fare and as to how the accused Nos.1 & 2 alone travelled with him from Dadar to Pune. He has identified all of them not only in the test identification parade but also in the Court. This witness had spent sufficient time with all the three accused to enable him to identify all of them.

59. Learned counsel for the accused No.3 tried to show the flaw in the test identification parade by submitting that three of the dummies were also in the second round when PW-6 Laxman Hajare

had identified the accused No.3 Santosh. However, no such questions were put to PW-6 Laxman Hajare and PW-21 Tahsildar Lejindra Bobade on this aspect. The Tahsildar had brought three different dummies and in all six dummies had stood in the second round. In any case there is substantive evidence of identification of all the three accused in the Court by these important witnesses.

60. Though we have discussed that the evidence of the taxi driver who had carried the accused Nos.1 & 2 from Nalasopara to Dadar may not be useful to the prosecution case because the accused were shown to him before the identification parade, there is still evidence of the driver who had taken the accused Nos.1 & 2 from Urse Toll Naka to Mumbai. His evidence has stood firm. As mentioned earlier, the prosecution has connected the phone numbers of all the three accused through IMEI numbers of the mobile handsets recovered and seized from them at the time of their arrest. According to the prosecution case, the IMEI number of the mobile handset found from the accused No.1 Rahul was “359320/04/230606/7”. It corresponded to the mobile phone number “9665184135”.

The IMEI number of the mobile handset seized from the accused No.2 Jishan was “351960057273229”. It had a double SIM card and, therefore, the other IMEI number was “351960057273237”. His first IMEI number corresponded to the mobile SIM card No.7709808065. The IMEI number of the mobile handset seized from the accused No.3 Santosh was “359364/05/375229/8”. It corresponded to mobile SIM card No.9022074774.

61. In this context, the evidence of PW-24 Chetan Patil the Nodal Officer is important. He has given details about analysis of those CDR. The location of the mobile phone numbers of both the accused Nos.1 & 2 matched with the prosecution case of them travelling from Mumbai to Pune. Before that they had travelled from Nalasopara to Dadar which was in the Mumbai circle. Similarly the prosecution has proved their travel to Pune and back. The evidence of the taxi driver PW-6 Laxman Hajare shows that the accused Nos.1 & 2 had travelled to Pune but his taxi was hired by the accused No.3 Santosh. It was in the early hours. The connection of all these accused is established. This has to be read with the statements given by the deceased to PW-25 Vivek Tiwari involving

all the three accused.

62. The evidence further shows that the evidence of PW-16 Imtiyaz Ansari showed that the accused Nos.1 & 2 returned to Mumbai without that bag. Therefore, they travelled to Pune with the bag, and they travelled back to Mumbai without the bag and that bag was found at Talegaon Railway Station. Thus, the accused Nos.1 & 2 abandoning the bag at Talegaon Railway Station was sufficiently proved. As mentioned earlier, that bag was identified by all the relevant witnesses. The dead body was found from the bag. Hence, the prosecution has established all the circumstances leading to murder, leaving the dead body in the bag, recovery of the bag and tracing of the accused.

63. The next question is whether the prosecution has proved that it was a case of murder or it was a case of gang rape with murder. As we have discussed earlier, the medical evidence shows that “R” was subjected to violent penetrative sexual assault. The deceased “R” herself had named all the three accused as having committed rape on her. Section 376-D, which was introduced on 2.4.2013(w.e.f. 3.2.2013), gives definition of gang rape as follows :

“376D. Gang rape.-- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

. Before that, the term “gang rape” was mentioned in Section 376(2)(g), as is stood before the 2013 amendment. Explanation 1 explaining “gang rape” was similar. The Hon’ble Supreme Court had explained the ingredients of “gang rape” in the case of *State of Rajasthan Vs. Hemraj and another*¹. Paragraph-8 of the said judgment reads thus:

“8. A bare reading of Section 375 makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. Section 376(2) makes certain categories of serious cases of rape as enumerated therein attract more severe punishment. One of them relates to "gang rape". The language of Sub-section (2)(g) provides that whoever commits ‘gang rape’ shall be punished etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention each such person shall be deemed to have committed gang rape within this Sub-section (2). That cannot make a woman guilty of committing rape.

1 (2009) 12 SCC 403

This is conceptually inconceivable. The Explanation only indicates that when one or more persons act in furtherance of their common intention to rape a woman, each person of the group shall be deemed to have committed gang rape. By operation of the deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. "Common intention" is dealt with in Section 34 IPC and provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. "Common intention" denotes action in concert and necessarily postulates a pre-arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be actuated by the same common intention, which is different from same intention or similar intention. The sine qua non for bringing in application of Section 34 IPC is that the act must be done in furtherance of the common intention to do a criminal act. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the counsel for the appellant is right in her submission that the appellant cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g)."

. The same observations are applicable to the definition of "gang rape" given under Section 376D of IPC (after it was introduced in the year 2013). Thus, applying the provisions and the definition of "gang rape" it can be seen that each of the three accused can be said to have committed the offence under Section 376D of IPC. The prosecution has proved that "R" was murdered by strangulation with the help of odhani. Therefore, the conviction

recorded by the trial Court cannot be faulted with.

64. We have also heard the learned counsel for the accused as well as learned APP for the State on the question of the sentence imposed by the trial Court. Learned counsel Shri Vagal submitted that it was not within the powers of the learned Sessions Judge to have sentenced the accused for the remainder of their natural life while imposing the sentence of life imprisonment under Section 302 of IPC. We have considered these submissions and we agree with that submission. The same view is taken by the Hon'ble Supreme Court in the following two cases :

[i] **Ravinder Singh Vs. State Government of NCT of Delhi**²

[ii] **Gauri Shankar Vs. State of Punjab**³

. However, the Hon'ble Supreme Court has explained the power of the High Court to sentence such offenders for punishment upto the remainder of his natural life. In the case of **Gauri Shankar**, the Hon'ble Supreme Court had observed that the trial Court has no such power to look at the circumstances confirming the sentence of imprisonment for life to mean the remainder of natural life while upholding the conviction under Section 302 of IPC. The relevant observation in paragraph 15 of the said judgment is as follows:

2 (2024) 2 SCC 323

3 (2021) 3 SCC 380

“It is true that the punishment of remainder of natural life could not have been imposed by the learned trial Judge but after looking into the entire case, we consider it appropriate to confirm the sentence of imprisonment for life to mean the remainder of natural life while upholding the conviction under Section 302 of IPC.”

65. As far as Section 376D of IPC is concerned, the learned trial Judge was well within his powers to sentence all the accused for life imprisonment to mean remainder of their natural life.

66. We have seriously considered the aspect of sentencing; and we have heard the parties. All of them submitted that leniency be shown to them and all of them be sentenced to a lesser sentence. However, no special reasons were pointed out to justify why leniency be shown. Section 376D of IPC provides for minimum sentence of twenty years which could extend to life imprisonment which was to mean imprisonment for remainder of that person's natural life. We have considered these submissions seriously. We have also perused the reasons recorded by the learned trial Judge in imposing the sentence for the remainder of their natural life.

67. We have already noted the brutal manner in which the victim “R” was subjected to forcible sexual assault. She was a helpless fifteen year old girl kept against her wish in that flat. She

had no where to go. The accused were forcing her to go to Uttar Pradesh. When she resisted, they committed her murder in the most brutal manner. The medical evidence shows that her head was banged. Her dead body was kept in a bag. Her injuries were antemortem. Her spine was fractured. All this shows that the offence was committed in the most brutal manner. The offence was committed in cold blood with pre-planning. She was subjected to extreme physical and mental torture. She was a minor. The offence shows extreme depravity on the part of the accused.

68. In this view of the matter, it is not possible to show any leniency to any of the accused. With the result, we do not find it necessary to reduce the sentence. Though the learned Judge could not have sentenced the Appellants to suffer imprisonment for life i.e. natural life, the High Court can impose life imprisonment to mean imprisonment for remainder of natural life. As a result, we do not see any reason to interfere with the impugned judgment and order. Accordingly, the Appeals are dismissed. With dismissal of the Appeals, the connected Interim Applications are also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)