

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 516 OF 2012

Jawedkhan @ Tingrya s/o Habibkhan,
Age: 50 years, Occu: Labour,
R/o. Dukhinagar, Tq. & Dist. Jalna.

... **APPELLANT**
(Original Accused No.1)

VERSUS

The State of Maharashtra,
Through Jinsi Police Station,
Aurangabad, District Aurangabad.

... **RESPONDENT**
(Original Complainant)

...
Mr. M. A. Tandale, Advocate (appointed) for Appellant.
Mr. S. P. Sonpawale, APP for Respondent / State.
...

WITH

CRIMINAL APPEAL NO. 281 OF 2012

The State of Maharashtra,
Through Jinsi Police Station,
Aurangabad.

... **APPELLANT**
(Original Complainant)

VERSUS

- 1) Jawedkhan @ Tingrya s/o Habibkhan,
Age 47 years, R/o Dukhinagar,
Taluka and District Aurangabad.
- 2) Pradip s/o Askaran Chandaliya,
Age 47 years, R/o. Pundliknagar,
Aurangabad.

- 3) Ram s/o Sheshrao Bodkhe,
Age 32 years, R/o Raje Sambhaji
Colony, Jadhavwadi, Aurangabad.

... **RESPONDENTS**
(Original Accused)

...
Mr. S. P. Sonpawale, APP for Appellant / State.
Mr. M. A. Tandale, Advocate (appointed) for Respondent No.1.
Mr. N. S. Ghanekar, Advocate for Respondent Nos.2 and 3.

...
AND

CRIMINAL APPEAL NO. 468 OF 2012

The State of Maharashtra,
Through Jinsi Police Station,
Aurangabad, District Aurangabad.

... **APPELLANT**
(Original Complainant)

VERSUS

- 1) Jawedkhan @ Tingrya s/o Habibkhan,
Age 47 years, R/o Dukhinagar,
Taluka and District Jalna.

- 2) Pradip s/o Askaran Chandaliya,
Age 47 years, R/o. Pundliknagar,
Aurangabad.

- 3) Ram s/o Sheshrao Bodkhe,
Age 32 years, R/o Raje Sambhaji Colony,
Jadhavwadi, Aurangabad.

... **RESPONDENTS**
(Original Accused)

...
Mr. S. P. Sonpawale, APP for Appellant / State.
Mr. M. A. Tandale, Advocate (appointed) for Respondent No.1.
Mr. N. S. Ghanekar, Advocate for Respondent Nos.2 and 3.

CORAM : **A. V. NIRGUDE & INDIRA K. JAIN, JJ.**

RESERVED ON : 22nd January, 2016.

PRONOUNCED ON : 8th March, 2016.

JUDGMENT : (Per Indira K. Jain, J.)

These three appeals arise out of judgment and order passed on 24th January, 2012 by the learned Additional Sessions Judge-3, Aurangabad in Sessions Case No.463 of 2009. By the said judgment and order Accused No.1 Jawedkhan, Accused No.2 Pradip Chandaliya and Accused No.3 Ram Bodkhe were convicted and sentenced for various offences as under :

Accused No.1 Jawedkhan :

<u>Conviction under Section</u>	<u>Sentence</u>
456	Rigorous Imprisonment for one year and fine of Rs.300/- in default Simple Imprisonment for ten days.
457	Rigorous Imprisonment for three years and fine of Rs.300/- in default Simple Imprisonment for ten days.
458	Rigorous Imprisonment for three years and fine of Rs.300/- in default Simple Imprisonment for ten days.

392 read with 397	Rigorous Imprisonment for seven years and fine of Rs.300/- in default Simple Imprisonment for ten days.
302	Imprisonment for life and fine of Rs.300/- in default Simple Imprisonment for ten days.
376	Rigorous Imprisonment for ten years and fine of Rs.300/- in default Simple Imprisonment for ten days.
201	Rigorous Imprisonment for one year and fine of Rs.300/- in default Simple Imprisonment for ten days.

Accused No.2 Pradip Chandaliya :

<u>Conviction under Section</u>	<u>Sentence</u>
411	Fine of Rs.1000/- in default Simple Imprisonment for fifteen days.

Accused No.3 Ram Bodkhe :

<u>Conviction under Section</u>	<u>Sentence</u>
411 and 414	Fine of Rs.1000/- each in default Simple Imprisonment for fifteen days each.

2. Learned Additional Sessions Judge found that Accused were not guilty of some of the offences alleged against them and accordingly acquitted the Accused as under :

<u>Accused</u>	<u>Acquittal under sections</u>
Accused No.1 Jawedkhan	394 and 459
Accused No.2 Pradip Chandaliya	412, 414, 109 and 212
Accused No.3 Ram Bodkhe	412, 109 and 212

3. Criminal Appeal No.281 of 2012 is by the State of Maharashtra for enhancement of sentence awarded by the Trial Court. Criminal Appeal No.468 of 2012 is also by the State of Maharashtra against the order of acquittal. Accused No.1 Jawedkhan being aggrieved by the judgment and order of conviction has preferred Criminal Appeal No.516 of 2012.

4. The instant case reveals a sordid story in which the alleged brutal sexual assault on a young helpless girl followed by merciless murder by dastardly act of the Accused is said to have been committed. Most disgusting feature is that an innocent college going girl of 21 year fell a prey to the unbridled lust of the Accused. The story sends shocking waves to everyone having slighted sense of human value and dignity.

5. Factual matrix of prosecution case may be stated in brief as under –

i. Complainant Aniket Shankarrao Deshpande was resident of Purwa Apartment situated at Ahinsa Nagar, opposite Akashwani, Aurangabad and was serving in Sterlight Technology Company situated at MIDC Waluj, Aurangabad. Mansi 21 year old sister of Aniket was residing with him. She was studying in IInd year B.C.S. in MGM College, Aurangabad. Aniket and Mansi lost their mother in 2006. At the time of incident their father was posted at Shrinagar.

ii. On 11th June, 2009, Aniket left for office at around 09:00 am. Mansi was alone in the house. Aniket was to return home from work at 07:00 pm. He could not return on time as some problem had cropped up in one machine and he was required to over stay in the company to attend the problem of machine. Aniket came back home on 12th June, 2009 at 05:00 am. He

called Mansi on her mobile at around 05:00 am.

Her phone was switched off. For 5 to 10 minutes Aniket knocked the door. He did not receive any response from Mansi so again he phoned her. He thought that Mansi might be fast asleep and her mobile battery might have discharged. So instead of disturbing Mansi he went to the house of his friend Vivek Agrawal who was residing in Bhagyanagar at Aurangabad. Till 09:00 am to 09:30 am Aniket slept at the house of his friend. By that time Vivek had already left to his workplace. Aniket then locked the door of the house of his friend and came to his house at around 10:00 am.

- iii. Aniket noticed that house was closed from inside. He knocked the door and also called his sister on phone but he did not receive any response. After few minutes as the door was not opened Aniket suspected something wrong and went down stair to the house of owner

Bankar Patil. Aniket was staying on the first floor. He informed the owner of the house that he wanted to climb from the grill of their *Varandha* in order to go to his house. Then he climbed the grill and went to the gallery of his flat. He noticed that door of the room attached to balcony was opened. He entered the drawing room and then to bedroom of Mansi.

- iv. Aniket was shocked to see Mansi lying on the bed in injured condition. Her hands were tied with wire of headphone of mobile and legs were tied with big scarf of Mansi. Aniket found bed-sheet covered around her face. He removed the bed-sheet and saw no clothes on her person. He noticed injury to her neck and profused bleeding. A screw driver and a scissor were lying there. Many articles in the house were found scattered.
- v. Aniket was frightened and immediately rushed to his neighbour Mrs.Soni. Mrs.Soni accompanied

Aniket. She called other neighbourers. Aniket called his friend Vivek Agrawal and Vishal for help. He asked Mr. Khadke who was providing tiffin to him and residing in the next apartment, to come with doctor immediately. Mr. Khadke then came with doctor. In the meanwhile Police were informed. Police also rushed to the house. Doctor examined her and declared that she died before 3-4 hours.

- vi. Aniket lodged report with the police station. Crime No.65 of 2009 was registered at Jinsi Police Station under Section 302 and 201 of the Indian Penal Code. Police took dead body in custody. It was sent for postmortem to Ghati Hospital. Before referring the dead body for postmortem, *inquest* Panchanama was drawn by P.S.I. Akmal in the presence of Panch witnesses. P.S.I. Akmal seized black mobile, one scarf, one T-shirt, one blood stained bracier under separate Panchanama. *Inquest*

Panchanama and seized articles were handed over by P.S.I. Akmal to PW-32 Investigating Officer Sopan Borse.

- vii. PW-32 P.I. Sopan Kisan Borse was entrusted with the investigation of crime. He visited the spot. At the time of recording scene of occurrence Panchanama, blood stained bed-sheet, scissor, screw driver, green Salvar and a nicker were seized. Photographs were taken.

Statements of witnesses were recorded.

- viii. On 13th June, 2009, blood sample of Mansi, pubic hair, vaginal swab preserved by Medical Officer at the time of performing postmortem, viscera and seized clothes of Mansi were sent to Forensic Science Laboratory Mumbai for analysis and DNA test to find out whether girl was ravished.

- ix. During investigation supplementary statement of Aniket was recorded. In his supplementary statement Aniket informed Police that Mansi was

having a mobile phone and he did not find her mobile phone in the room. A.P.I. Gautam Patare attached to Chavni Police Station was conversant with cyber crimes. Three teams were formed for further investigation. It was revealed that Mansi had purchased mobile from Zee Corner Mobile Shop. Statements of PW-6 Sheetal Satish Sonawane friend of Mansi who accompanied her to purchase a mobile and mobile shop owner PW-18 Abdul Rauf came to be recorded. A receipt regarding purchase of mobile by Mansi was collected. A.P.I. Patare obtained information from Airtel company on the basis of IMEI number mentioned on the receipt regarding purchase of mobile. From IMEI number of mobile of Mansi, it could be revealed that said IMEI number was visible on the mobile having simcard number "9503667292". From tower location A.P.I. Patare could also know the spot from where mobile was being used. It was from hotel Pancham.

x. A.P.I. Patare then visited hotel Pancham. Accused No.2 Pradip Chandaliya was present. Mobile was seized from Accused No.2 under seizure Panchanama.

xi. Accused No.2 Pradip Chandaliya was interrogated regarding possession of mobile with him. Accused No.2 informed police that his son Mayur had given a simcard to him and a customer Jawedkhan @ Tingrya gave him the mobile towards a bill of his hotel. Information in respect of mobile purchased by Mansi as per the receipt exactly tallied with the mobile seized from Accused No.2 Pradip Chandaliya.

xii. On the basis of information received from Accused No.2 Pradip Chandaliya, P.I. Borse arrested Accused No.1 Jawedkhan on 22nd June, 2009. Before arrest, Investigating Officer confirmed from Jawedkhan whether he had given the mobile to Pradip Chandaliya. Jawedkhan admitted that he gave mobile to

Pradip Chandaliya.

xiii. After arrest Accused Jawedkhan was interrogated. During interrogation it could be revealed that gold ring of Aniket which was found missing from the house was given by Jawedkhan to Accused No.3 Ram Bodkhe against some dues which Accused Jawedkhan owed to Ram Bodkhe. On getting clue Accused No.3 Ram Bodkhe was also arrested on 22nd June, 2009.

xiv. Accused No.1 Jawedkhan was referred to Ghati Hospital for medical examination. Medical Officer was requested to take his blood, pubic hair, semen sample and nail clippings. Investigating Agency could recover the clothes of Jawedkhan at his instance which clothes he was wearing at the time of commission of offence. Those clothes were concealed in garbage just in front of the spot of incident. The shirt of Accused Jawedkhan was stained with

blood.

xv. Accused No.3 Ram Bodkhe gave statement to recover gold ring received by him from Accused Jawedkhan. At the instance of Accused No.3, gold ring of Aniket was recovered from a room of electric motor near Tulsi Chambers. Its seizure Panchanama was recorded.

xvi. It appears that after the incident Accused Jawedkhan changed his clothes and wore clothes of Aniket. He had shown his readiness to produce those clothes hidden in the garbage near Tapadia Natyagraha. Memorandum of Accused Jawedkhan was accordingly recorded and clothes of Aniket were recovered at the instance of Accused Jawedkhan. Investigating Agency then forwarded clothes of Accused Jawedkhan and clothes of Aniket recovered at the instance of Accused No.1 to Forensic Science Laboratory for analysis.

xvii. On 25th June, 2009, original simcard of Vodafone company which was in the mobile of Mansi was recovered from the shutter of godown of Tulsi Chamber at the instance of Accused Jawedkhan.

xviii. Identification parade in respect of gold ring and clothes of Aniket was held before the Executive Magistrate. Aniket identified that gold ring and clothes were belonging to him. An opinion was also sought from Medical Officer Ghati whether Accused Jawedkhan was capable to perform sexual intercourse or not. Several witnesses were examined in the course of investigation. After completing investigation charge-sheet was submitted to the concerned Magistrate who committed the case for trial to the Court of Sessions.

6. Charge came to be framed against the Accused vide Exhibit 13. They pleaded not guilty to the charge vide Exhibits 14 to 16. Their defence was of total denial.

7. Prosecution examined in all 33 witnesses during trial. After going through the evidence adduced in the case, the learned Additional Sessions Judge convicted and sentenced the Accused and also acquitted in respect of some of the offences as stated in paras 1 and 2 above.

8. We have heard the learned counsel for parties *in extenso*. With the assistance of the learned counsel for parties, we have carefully gone through the evidence of prosecution witnesses. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned advocates for parties, reasonings recorded by Trial Court and the evidence on record, for the reasons stated below we are of the opinion that the judgment and order of conviction and sentence recorded by the Trial Court against the Accused in respect of various offences as stated in paragraph No.1 above, except sentence awarded for the offence punishable under Section 302 of the Indian Penal Code is just and proper and needs to be upheld. So far as order of sentence in respect of offence punishable under Section 302 of the Indian Penal Code is concerned, we find that in the facts and circumstances of the case

life imprisonment imposed by the Trial Court would be an inadequate sentence and capital punishment is the only punishment which is adequate punishment.

9. Needless to state that in a case of murder exclusive burden lies on the Prosecution to establish that death of a human being is caused. Prosecution has to overrule the possibility of natural, accidental or suicidal death by adducing reliable and convincing evidence clearly indicating the mode of death as homicidal. In the present case to prove homicidal death Prosecution has placed strong reliance on medical and circumstantial evidence.

10. So far as factum of homicidal death is concerned, evidence of PW-25 Dr. Anand Bassaiya Mugadalimath and PW-30 Dr. Sachin Gade is important. On 12th June, 2009 Dr.Mugadalimath was attached to Forensic Science Department Government Medical College and Hospital, Aurangabad. Dead body of Mansi Deshpande was brought to the hospital by Jinsi Police. Dr. Mugadalimath stated that history of alleged assault was given by police in the *inquest* Panchanama. Dead body was identified by Aniket Deshpande brother of Mansi.

On external examination the team performing postmortem including Dr. Mugadalimath noticed the following injuries –

- 1) Crescentic abrasion over lower part of cheek with concavity anteriorly right side of size 3 cm, reddish in colour.
- 2) Two linear scratch abrasion over lower part of cheek right side of size 7 cm and separated by 0.2 cm anteriorly and 0.5 cm posteriorly and reddish in colour.
- 3) Three crescentic abrasions over mandibular area right side of size 4 cm, 4.5 cm and 5 cm each, 5 cm, 5.5 cm and 6 cm. below and lateral to chin with concavity downwards reddish in colour.
- 4) Two crescentic abrasions over right side of neck of size 2 cm and 3 cm with concavity backward and 5.5 cm and 6 cm below and forward to right mastoid, reddish in colour.
- 5) Stab wound over neck anteriorly over mid line irregularly slit shaped, horizontally placed of size 3.5 cm x 0.5 cm x cavity deep on approximation 3.9 cm, margin irregular, contused blood infiltrated both angles blunted. Stab wound in 10 cm from chin and 8 cm from supra sternal notch.

On dissection tract of stab wound – skin – subcutaneous tissue – platysma – deep cervical fascia – thyroid cartilage – vocal cord – left carotid sheath – Left common carotid artery – left

internal jugular vein.

Direction of stab wound – backwards – downwards – laterally.

- 6) Stab wound over neck anteriorly over midline, irregularly oval in shape, horizontally placed of size 3 cm x 0.5 cm x cavity deep on approximation 3.4 cm in length, margin irregular, contused and blood infiltrated and both angles blunted.

Stab wound is 13 cm from chin and 5 cm from supra sternal notch. On dissection tract of stab wound – skin – subcutaneous tissue – deep cervical fascia – tracheal rings – oesophagus. Direction of stab wound – backwards and downwards.

- 7) Stab wound over right side of neck 15 cm below and laterally to chin, 8 cm from right mastoid with lower margin, anteriorly of size 1 cm x 0.5 cm x cavity deep. On approximation 1.4 cm in length and irregularly oval in shape, margin irregular, contused and blood infiltrated, both angles blunted. On dissection tract of stab wound – skin – subcutaneous tissue – platysma – deep cervical fascia – right side strap muscles.

Direction of stab wound – downwards – backwards and medially.

- 8) Two stab wounds over neck right side of size 0.6 cm x 0.6 cm and 0.3 x 0.3 cm, both cavity deep and 4 cm x 6 cm below right mastoid. On

approximation 0.8 cm and 0.5 cm in length and both irregularly oval in shape, margins irregular contused and blood infiltrated with both angles blunted. On dissection tract of wound – skin – subcutaneous tissue – platysma – deep cervical fascia – sternocleido mastoid muscles.

Direction of stab wound – backwards, downwards and medially.

- 9) Two contusions over upper medial of quadrant of left breast, upper contusion have 2 arches of size 4.5 cm each with concavity downwards & distance between two arches is 2 mm. Lower contusion have single arch with concavity upwards and 5 cm long. Both contusions are reddish in colour.
- 10) Contusions over both ala of nose, irregular in shape and reddish.
- 11) contusions over both lips whole length, irregular in shape and reddish.
- 12) Laceration of frenulum of upper lip, margins irregular contused & blood infiltrated.
- 13) Two stab wounds over right side of chest laterally of size 2 cm x 1 cm x cavity deep and 4 cm x 1 cm x cavity deep, on approximation 2.4 cm and 4.4 cm in length, irregularly oval in shape, margins – irregular contused and blood infiltrated with tailing posteriorly and anterior angles rounded and both placed horizontally.

On dissection tract of stab – skin –

subcutaneous tissue. Direction of stab wound – Anteriorly and downwards.

- 14) Contusion over right thenar aspect of palm of size 4 cm x 4 cm, irregular and reddish.
- 15) Contusion over left thenar aspect of palm of size 4 cm x 3 cm, irregular and reddish.
- 16) Contusion over right foot medial aspect of size 6 cm x 5 cm, irregular and reddish.
- 17) Contusion over left foot medial aspect of size 6 cm x 4 cm, irregular and reddish.
- 18) Stab wound over left side of chest laterally of size 0.5 cm x 0.5 cm x cavity deep on approximation 0.7 cm in length, irregularly oval in shape, margins – irregular, contused and blood infiltrated both angles blunted.

On dissection tract of stab wound – skin – subcutaneous tissue.

Direction of stab wound – Anteriorly downwards.

- 19) Two stab wounds over left gluteal region laterally of size 0.5 cm x 0.5 cm x cavity deep and 0.2 cm x 0.2 cm x cavity deep, separated by 0.3 cm, irregularly oval, on approximation 0.8 cm x 0.3 cm in length, margins irregular, contused and blood infiltrated, both angles blunted.

On dissection tract of stab wound – skin – subcutaneous tissue.

Direction of stab wound – Anteriorly downwards.

- 20) Two stab wounds over left gluteal region

posteriorly of size 0.5 cm x 0.5 cm x cavity deep and 0.2 cm x 0.2 cm x cavity deep separated by 0.3 cm. On approximation 0.8 cm x 0.3 cm in length, irregularly oval in shape, margins irregular, contused and blood infiltrated, both angles blunted.

On dissection tract of stab wound – skin – subcutaneous tissue.

Direction of stab wound – Anteriorly downwards.

- 21) Evidence of multiple contusions over left side of neck of sizes varying from 6 cm x 0.2 cm to 0.5 cm x 0.5 cm, irregular and reddish.

On neck dissection – evidence of hemorrhages in all strap muscles. Evidence of petechial hemorrhages above and below epiglottis and larynx. No evidence of fractures of Hyoid bone. No evidence of fractures to cricoid and thyroid larynxes except stab injury as mentioned in injury no. (5).

11. On internal examination and dissection of neck, doctors found evidence of haemorrhage in all strap muscles. Petechial haemorrhage above and below Epiglottis and larynx was noticed. All the above injuries were found *ante-mortem*. Further on external examination of genital organs doctors noticed Labia minora contused along the whole length, reddish in colour.

Hymenal remnants seen at places. There was loss of rugosity of vaginal wall. There was also found contusion on the vaginal wall anteriorly lower 1/3rd reddish in colour. On internal examination they noticed as follows –

“Uterus of size – 6 cm x 4 cm x 2.5 cm of weight 50 grams. On opening blood clots seen. Cervix closed transversely slit like. Ovaries and fallopian tubes normal.”

12. The evidence of Dr. Mugadalimath shows that viscera was preserved, blood, pubic hair, nails, vaginal swab and smear, swab from left breast, matted vaginal hair, aspirated vaginal fluid of the deceased were collected for chemical analysis. Those samples were forwarded to FSL, Aurangabad for analysis. For DNA test samples were sent to FSL, Mumbai. The letters addressed to FSL have been proved by Dr. Mugadalimath at Exhibits 104, 105 and 106. Medical Officers opined cause of death due to multiple penetrating wound over neck with transection of carotid vessels associated with signs of strangulation and smothering with injury over external genitals. It was also noticed by doctors that injuries over external genitals mentioned in column No.21 of the postmortem report were

pointing forcible sexual intercourse with the victim. Dr. Mugadalimath further stated that injuries 1 to 21 in column No.17 could be possible by pointed blunt edge weapon like screw driver, scissor etc. It is stated by Dr. Mugadalimath that he along with Dr.Sane and Dr.Gadge performed postmortem. Postmortem report is duly proved by Dr. Mugadalimath as Exhibit 32. It is pertinent to note that Accused have not disputed genuineness of postmortem report Exhibit 32.

13. It is then stated by Dr. Mugadalimath that they received DNA test report and CA reports from concerned laboratories i.e. Mumbai and Aurangabad. DNA report is at Exhibit 107 and CA reports are at Exhibits 108, 109, 110 and 111.

14. After receiving DNA report and CA reports doctors had opined final cause of death of Mansi as multiple penetrating wounds over neck with transection of carotid vessels associated with signs of strangulation and smothering with and forceful sexual intercourse. Final cause of death certificate signed by all the three doctors is proved by Dr. Mugadalimath at Exhibit 112. Dr. Mugadalimath had stated that injury on neck of victim could be possible by hands, nails and blunt tipped weapon. The

smothering could be possible by shutting the mouth and nostrils by palm.

15. The entire evidence of Dr. Mugadalimath and Dr.Sachin Gade is most natural and believable as Accused did not dispute the genuineness of postmortem report and further Accused No.1 Jawedkhan though cross-examined Dr.Mugadalimath, could not bring on record anything adverse affecting the reliability of medical evidence.

16. In addition to medical evidence, prosecution has relied upon uncontroverted *inquest* panchanama (Exhibit 31), photographs (Exhibits 35/1 to 35/5) of the spot taken by PW-3 Baburao Sitaram Batade and spot panchanama (Exhibit 29).

17. So far as *inquest* panchanama is concerned, PW-32 P.I. Borse deposed that P.S.I. Akmal had drawn *inquest* Panchanama (Exhibit 31) and seized various articles from the spot vide seizure Panchanama (Exhibit 30). Accused have not disputed genuineness of *inquest* Panchanama (Exhibit 31). From *inquest* panchanama it can be seen that multiple injuries were found on the dead body of Mansi.

18. In respect of photographs, evidence of PW-3 Baburao Sitaram Batade would be relevant. Baburao Batade (PW-3) was running Paras Photo Studio at Kailashnagar, Aurangabad. On 12th June, 2009 he was called by Police to take photographs of the scene of offence. Accordingly, he took 14 photographs and handed over the photographs and its bill to Police. The photographs are at Exhibits 35/1 to 35/5. PW-3 Baburao has not been cross-examined by the Accused.

19. Further it can be seen from the evidence of Investigating Officer (PW-32) P.I. Borse that he visited the scene of offence and recorded spot Panchanama in the presence of Panch witnesses. Several articles mentioned in Panchanama (Exhibit 29) were seized from the spot. Accused have not disputed genuineness of spot Panchanama (Exhibit 29). It shows that articles in the house were lying scattered. Accused did not cross-examine the Investigating Officer in respect to the factual position of scene of offence clearly indicative of the fact that victim was done to death by the assailants.

20. Before we advert to each of the circumstances enumerated above it would be essential to evaluate the evidence

regarding occurrence of incident. PW-7 Aniket Shankarrao Deshpande is a crucial witness. He is complainant and brother of victim Mansi. It can be seen from the evidence of Aniket that he alongwith his sister Mansi was residing in Purwa Apartment since October, 2006. Their mother died in June, 2006. Father was in Government service and posted at the relevant time at Shrinagar. At the time of incident Mansi was studying in IInd year B.C.S. in MGM College, Aurangabad. She answered her examination and being holidays was staying alone when Aniket was attending his office.

It is stated by Aniket that on 11th June, 2009 at around 09:00 am he left for the office. Mansi was alone in the house. He was to return home at about 07:00 pm. Due to some problem in a machine, he was required to over stay and came home at around 05:00 am on the next day. Before coming home Aniket called Mansi on her mobile phone. The mobile was switched off. After reaching home he knocked the door for 5 to 10 minutes. Thinking that Mansi might be fast asleep he went to the house of his friend Vivek in Bhagyanagar at Aurangabad and slept there. He woke up at 09:00 to 09:30 am. By that time Vivek had already left for the work. He locked the door of the house of Vivek and came to

his house at around 10:00 am.

Aniket found that the door was closed. He knocked the door and also called Mansi on phone. But he did not receive any response. He waited for 5 minutes and then suspected something wrong. The flat of Aniket was on the first floor. He came down stair to the house of owner Bankar Patil and told him that he has to enter his house by climbing the grill of their *Varandha*. Then he climbed the grill and went to the gallery of his flat. He saw door of room of balcony opened. Then he entered the drawing hall and bedroom of Mansi. He found that hands of Mansi were tied with wire of headphone of mobile. Her legs were tied with a big scarf. Her face was covered with a bed-sheet. He removed bed-sheet and saw that body of Mansi was stiff and she was not talking. No clothes were found on her body. He also saw injury to her neck and profused bleeding. Many articles in the house were lying scattered. A screw driver and scissor were lying there. He got frightened and immediately rushed to neighbour Mrs. Soni.

Aniket then states that Mrs.Soni accompanied him. After seeing Mansi she started calling Mrs. Bankar. Aniket phoned his friends Vivek and Vishal for help. He requested Mr.

Khadke residing in front of the house and who was providing tiffin to them to call the doctor immediately. Mr. Khadke came with doctor within 10 minutes. Police also reached the spot. Doctor examined Mansi and declared her dead. Then Aniket lodged FIR. The same is proved at Exhibit 41. Police seized articles lying on the spot. Aniket noticed that his clothes and gold ring were missing. He identified those articles before the Court.

21. Aniket was cross-examined by Accused No.1. Accused Nos.2 and 3 did not cross-examine him. Nothing substantial could be elicited in the cross-examination of Aniket to disbelieve his testimony. The evidence of Aniket is thus consistent, trustworthy and believable.

22. Another witness examined by prosecution is PW-1 Vivek Chandrakant Agrawal. Vivek Agrawal was serving in Sterlight Company, MIDC Waluj, Aurangabad as Deputy Manager. Complainant Aniket was serving in the same company. It appears from the evidence of PW-1 Vivek that on 11th June, 2009 he had been to company in the morning. Aniket also joined duty at about 09:30 am. PW-1 Vivek came home at 07:30 pm. At around 08:00 – 09:00 pm Vivek called Aniket on phone. Aniket

informed him that he was in company. Then Vivek asked him when would he return home. Aniket told him that there was major fault in the machine and he would be late in returning home.

23. It is further stated by PW-1 Vivek that on the next day at around 05:30 am Aniket rang the door bell of his house. He opened the door. Thereafter, Aniket went to sleep in a room. PW-1 Vivek also went to sleep in his room. According to Vivek at around 08:45 am he left the home for office. That time Aniket was sleeping. At 09:30 am he received phone call from Aniket informing that his sister Mansi was raped. PW-1 Vivek then rushed to the house of Aniket. He saw people gathered near his house. He also saw that both the hands of Mansi were tied with wire of headphone and legs were tied with clothes. He could see bleeding injuries on her neck and blood on the bed-sheets. Many household articles were lying scattered in the room. Police had already reached the house. Accused have not cross-examined PW-1 Vivek and we do not find any reason to disbelieve his testimony.

24. PW-2 Vaishali Vivek Khadke used to provide tiffin to Aniket and Mansi. She was residing in front of Purwa Apartment.

She stated that on 12th June, 2009 at around 09:00 am she heard that Mansi was murdered. She had gone to the house of Mansi and learnt that mobile phone, gold ring, cash and pant of brother of Mansi were stolen. Mansi was student. From the evidence of PW-2 Vaishali it can be seen that Aniket and Mansi only two persons were residing in the house and incident of theft and murder had taken place. This witness was not cross-examined by the Accused.

25. Next important witness is PW-4 Shanta Rameshwar Soni to whom Aniket had rushed for help after seeing Mansi lying injured in pool of blood. According to PW-4 Shanta Soni on 12th June, 2009 at around 05:30 am she opened the door of her house. She saw Aniket knocking the door of his house. She asked Aniket not to knock the door as his sister would get up. Aniket told PW-4 Mrs. Soni that he returned home after attending night duty in the office. PW-4 Mrs. Soni told Aniket that he should wait for some time as Mansi might be sleeping. She asked Aniket to sit in her house and went for plucking flowers. PW-4 Mrs. Soni stated that when she returned after collecting flowers she saw that Aniket was not in her house. She thought that Mansi might have

opened the door and Aniket might be inside the house.

It is then stated by PW-4 Mrs. Soni that at about 11:25 am again Aniket came and knocked the door of her house. She opened the door. Aniket asked her to come to his house and see whether his sister Mansi is alive or not. PW-4 Mrs. Soni accompanied Aniket. She went to his house. She saw that hands and legs of Mansi were tied. Blood was oozing from her mouth. She checked her veins and pulse and then called Bankar Patil from the gallery of house. Mrs. Bankar immediately came. She asked to call the Police. Thereafter, Police were informed. This witness is also not cross-examined by the Accused.

26. PW-5 Manoj Sajan Mali, a medical practitioner was running Shree Clinic at Kailashnagar, Aurangabad at the relevant time. On 12th June, 2009 at about 10:30 am he was in his clinic and received a phone call from his patient Mr. Khadke residing in front of Purwa Apartment informing him about the incident and asking him to attend the girl. As PW-5 Dr. Mali was not aware of residential address, he told Mr. Khadke to come and take him to the place. Accordingly, Mr. Khadke came on bike and Dr. Mali attended Mansi.

It is stated by PW-5 Dr. Mali that articles in the house were scattered. He saw hands of Mansi tied with wire and legs tied with clothes. He also noticed profused bleeding around her neck. He could gather from the circumstances that it was a case of murder and so he expressed his inability to examine Mansi and told Aniket to call Police before touching the body of Mansi. Aniket asked him that he had already informed the Police and requested PW-5 Dr. Mali to see whether there is any chance of survival of Mansi. On the request of Aniket, he examined Mansi and found that her respiratory system and pulses were not functioning. Body was stiff. PW-5 Dr. Mali told Aniket that Mansi was no more. PW-5 Dr. Mali confirms the factual position in the room as per the photographs Exhibit 35/4 and 35/5. Accused did not cross-examine this witness.

27. The next witness Shobhana Deelip Patil (PW-9) was the owner from whom Aniket sought permission to climb the staircase to go to his house. She stated that on 12th June, 2009 at around 11:15 am Aniket came to her house and asked her son Abhikshekh that he was not having the key of his flat and wanted to go to his flat through their iron ladder. Abhikshekh allowed him

and accordingly Aniket climbed the ladder and went to his house.

This witness is not cross-examined by the Accused.

28. Thus from the evidence of PW-25 Dr. Mugadalmath and PW-30 Dr. Sachin Gade, postmortem report (Exhibit 32), final cause of death certificate (Exhibit 112), spot Panchanama (Exhibit 29), seizure Panchanama (Exhibit 30), the manner of incident and circumstances brought on record as discussed above an irresistible conclusion must follow that death of victim girl was homicidal in nature.

29. Now in order to ascertain whether Accused No.1 is responsible for rape on victim girl and causing her death, we have to evaluate the evidence of prosecution witnesses. There is no direct evidence in the matter. Prosecution case exclusively rests on the circumstantial evidence. It may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct or ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or "*factum probandum*" may be proved indirectly by means of certain

inferences drawn from "*factum probans*" i.e. evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence on various other facts in issue that taken together forms a chain of circumstances from which the existence of a principal fact can be legally inferred or presumed.

30. On the law relating to circumstantial evidence, it has been consistently laid down by the Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. A legal trend would further show that for a conviction in murder case on circumstantial evidence, following conditions must be fulfilled :

- i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, they should not be explainable on any other hypothesis except that the accused is guilty.
- iii) The circumstances should be of a conclusive

nature and tendency.

- iv) They should exclude every possible hypothesis except the one to be proved.
- v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability, the act must have been done by the accused and the accused alone.

31. Keeping in view the settled law we shall examine the circumstantial evidence on which reliance is placed by the prosecution. In the case on hand prosecution has relied upon the following incriminating circumstances which according to the prosecution prove the guilt of the Accused beyond reasonable doubt.

- (I) (a) Recovery of mobile of Mansi from Accused No.2.
- (b) Accused No.1 had given mobile to Accused No.2.
- (II) Recovery of simcard in the mobile of Mansi at the instance of Accused No.1.

- (III) (a) Recovery of gold ring of Complainant at the instance of Accused No.3.
- (b) Accused No.1 had given gold ring to Accused No.3.
- (IV) Recovery of blood stained clothes of Accused No.1 at his instance.
- (V) Discovery of clothes of Complainant in pursuance to the information given by Accused No.1.
- (VI) Medical evidence showing that girl was forcibly raped and then done to death.
- (VII) Motive.
- (VIII) Failure of the Accused to offer plausible explanation to the incriminating circumstances against him.

32. (I) (a) **Recovery of mobile of Mansi from Accused No.2.**

(b) **Accused No.1 gave mobile to Accused No.2.**

As stated by Investigating Officer, P.I. Borse (PW-32) on 19th June, 2009 supplementary statement of Aniket was recorded. From the supplementary statement it was revealed that Mansi had purchased a mobile of Sony Erikson company. The

statements of shop owner and salesman of mobile shop came to be recorded and receipt of purchase of mobile Exhibit 39 was collected. The said receipt contains details of mobile purchased by Mansi. P.I. Borse formed separate squad for further investigation.

33. On recovery of mobile of Mansi, prosecution examined PW-7 complainant Aniket, PW-6 Sheetal Sonawane, PW-11 Amirkhan – a Panch, PW-16 Mohammed Mubin – a witness on test identification parade in respect of mobile handset of Mansi, PW-18 Abdul Rauf – owner of mobile shop, PW-19 Ravindra Bahule – a police constable in the team of detection of stolen mobile, PW-20 A.P.I. Gautam Patore and PW-24 Shaikh Nadeem – a salesman at the mobile shop.

34. PW-6 Sheetal Satish Sonawane was college mate of Mansi. They were studying in MGM college in Ist year B.C.S. and were together in one class since XIIth standard. Mansi was her best friend. She stated that Mansi was calm and quiet. Mansi told her that her marriage was arranged with Dinesh residing in America. Both Sheetal and Mansi were often visiting each others house.

35. According to Sheetal in 2009 Mansi called her on phone and told her that she wanted to purchase a mobile phone. This happened before 15 days of incident. Sheetal stated that both then went to Nirala Bazaar, 'Z' Corner at Aurangabad. Mansi purchased a mobile phone of Soni Erickson company having simcard of Vodafone company for Rs.7,000/-. The model of mobile phone was G-502. After purchasing mobile Mansi was given a receipt. Sheetal identified receipt Exhibit 39 and mobile phone seized in the crime from Accused No.2 Pradip Chandaliya as the same mobile which was purchased by Mansi. Witness Sheetal has not been cross-examined by Accused persons.

36. Prosecution had examined PW-11 Amirkhan a Panch on seizure of mobile from Accused No.2 Pradip Chandaliya, but this witness did not support the prosecution and his evidence needs to be kept out of consideration.

37. Another witness Assistant Police Inspector Gautam Keshav Patare (PW-20) was attached to Jinsi Police Station at the relevant time. He conducted investigation in the case. On 21st June, 2009, A.P.I. Patare received information that stolen mobile

was in possession of owner of hotel Pancham. So along with Panch witness and other staff he went to hotel Pancham on Jalna Road and gave information at the counter of hotel about purpose of his visit.

38. Accused No.2 Pradip Chandaliya was available on the counter. A.P.I. Patare asked Pradip Chandaliya whether he was possessing mobile. Pradip Chandaliya told him that he was having mobile handset of Soni Ericson company which was given to him by his customer Jawedkhan on 14th June, 2009 towards a bill of hotel. Pradip Chandaliya also stated that simcard in the mobile was given to him by his son Mayur. Pradip Chandaliya handed over the mobile to A.P.I. Patare. It was seized under Panchanama Exhibit 77. A.P.I. Patare identified the mobile and the simcard before the Court. The evidence of A.P.I. Patare is consistent throughout and nothing otherwise could be elicited in his cross-examination to disbelieve his testimony.

39. In order to ascertain whether mobile seized from Accused No. 2 belonged to Mansi, reliance is also placed on the evidence of PW-18 Abdul Rauf and PW-24 Shaikh Nadeem. PW-18 Abdul Rauf Mohammad Yakub was running Zee Corner

mobile shop at Nirala Bazar, Aurangabad. He confirmed that mobile seized in the present case from Accused No.2 Pradip Chandaliya was sold by him to Mansi on 26th May, 2009. Accused did not cross-examine this witness.

40. The next witness Shaikh Nadeem Sk. Saleem (PW-24) was a salesman working at Zee Corner mobile shop. He stated that on 28th June, 2009 at 06:30 pm owner of the shop Abdul Rauf called him on phone and asked him to attend Jinsi Police Station. He went to Jinsi Police Station. Police had shown him a photograph of a girl who came to purchase mobile from their shop. He identified the photograph as of the same girl who purchased mobile from their shop. He also identified the receipt regarding purchase of mobile which bears his signature. According to this witness receipt Exhibit 39 and mobile article 25 were the same. He states that mobile was purchased by Mansi Deshpande a girl in the photograph. He was not cross-examined by Accused Nos.2 and 3. In the cross-examination by Accused No.1, nothing substantial could be brought on record to doubt his testimony.

41. Another witness (PW-19) Ravindra Murlidhar Bahule was a police constable in the team formed for detection of stolen mobile. He identified mobile article 25 and supported Panchanama of recovery of mobile. Since Accused No.2 Pradip Chandaliya has not seriously disputed that mobile was recovered from him by Police the evidence of P.C. Bahule is not of much importance. He was not cross-examined by Accused Nos.1 and 3.

42. According to prosecution, mobile which was seized from Accused No.2 Pradip Chandaliya was identified by complainant PW-7 Aniket as of Mansi. Test identification parade in respect of mobile was conducted by PW-22 Datta Bharaskar. Mr. Datta Narhari Bharaskar (PW-22) was Naib Tahsildar attached to Tahsil Office, Aurangabad. On 28th June, 2009, letter Exhibit 90 was received by him from P.I. Borse of Jinsi Police Station for conducting identification parade of Muddemal. The evidence of this witness shows that he conducted identification parade in respect of gold ring, clothes and mobile. Aniket identified gold ring and clothes belonging to him and mobile as of Mansi. TIP Panchanamas were duly proved by Mr. Bharaskar.

He was cross-examined at length by Accused. Except some minor contradictions and omissions, the evidence of Mr.Bharaskar remained consistent throughout on TIP.

43. The evidence of Naib Tahsildar is corroborated by PW-16 Mohammed Mubin Mohammad Abbas. PW-16 Mohammed Mubin proved identification of mobile handset of Mansi by Aniket and its identification Panchanama Exhibit 68.

44. The other important witnesses on recovery of mobile are PW-31 Ganesh Pawar and PW-33 Sachin Bhadange.

PW-31 Ganesh Ramrao Pawar was serving in Bharti Air-Tel company as Nodal Officer. The company was providing mobile services to customer. It is stated by Ganesh Pawar that on 2nd July, 2009, Aurangabad Police demanded certain information on E-mail. E-mail was received from the office of Commissioner of Police, Aurangabad. Details of mobile telephone No.9503667292 were demanded by Police for the period 12th June, 2009 to 21st June, 2009. Accordingly details were given to Police pertaining to said mobile.

This witness had given detailed information in respect of the calls made, from which number calls were received, time of

conversation traceable from IMEI number and simcard number. He stated that IMEI number is of 15 digits. Last digit '0' is common in all IMEI number, whereas first fourteen digits are unique. He stated that information regarding said mobile number was asked by Police on 12th June, 2009. Said mobile was actually activated on 16th June, 2009 and therefore, they could give the information in respect of said mobile from 16th June, 2009 to 21st June, 2009. The IMEI number of mobile in question was 354610029004620. Information regarding IMEI number was also given to Police by them. It was a computerized information. Mobile call details Exhibit 131, certificate thereon Exhibit 132 and certificate regarding information of mobile Exhibit 130 have been proved by this witness. Information regarding IMEI given by Air-Tel company is at Exhibit 129.

45. (PW-33) Sachin Shantaram Bhadange was a Nodal Officer in Vodafone company. He stated that mobile No.9764079190 was of their company. Police inquired about call details of said mobile from 1st January, 2009 to 18th June, 2009. Last call from said mobile was made on 12th June, 2009 at 01:54 hours. IMEI number was 354610029004620. He stated that after

12th June, 2009, no telephone call was made from said mobile.

This witness has proved call details at Exhibit 196.

46. It can be further seen from the evidence of A.P.I. Patare that before arrest he interrogated Pradip Chandaliya regarding possession of mobile and Pradip Chandaliya disclosed to him that mobile was given to him by his customer Jawedkhan i.e. Accused No.1 towards payment against the bill of hotel.

47. Through the evidence of above witnesses, prosecution could establish beyond reasonable doubt that –

(i) Mobile recovered from Accused No.2 Pradip Chandaliya belonged to deceased Mansi.

(ii) The said mobile identified at article 25 was given by Accused No.1 Jawedkhan to Accused No.2 Pradip Chandaliya towards the payment against hotel bill.

(iii) IMEI number mentioned on the receipt of purchase of mobile (Exhibit 39) exactly tallied with IMEI number visible on the mobile seized from Accused No.2 Pradip Chandaliya.

- (iv) Receipt Exhibit 39 shows that the said mobile was purchased by Mansi.
- (v) Accused No.1 Jawedkhan did not explain possession of mobile with him.

48. Thus on recovery of mobile of Mansi, evidence of prosecution witnesses named above is consistent throughout and prosecution has succeeded in establishing the link of recovery of mobile of Mansi from Accused No.2 with Accused No.1.

49. **(II) Recovery of simcard in the mobile of Mansi at the instance of Accused No.1.**

On the recovery of simcard in the mobile phone of Mansi prosecution examined PW-12 Mukram Khan Abdul Gaffar Khan, PW-23 Vinod Kharat, PW-26 Mayur Chandaliya, A.P.I. Patare (PW-20) and P.I. Sopan Borse (PW-32).

PW-12 Mukram Khan did not support the prosecution and his evidence needs to be kept out of consideration.

PW-23 Vinod was working in Hotel Pancham owned by Accused No.2 Pradip Chandaliya. He was examined to show that simcard given by PW-26 Mayur to his father Pradip was

inserted in the mobile by him. According to PW-26 Mayur he purchased three simcards from a mobile shop. One was given by him to his friend Mayur Jain. He handed over two simcards to PW-23 Vinod Kharat who was working in their hotel. He denies that he had given simcard to his father. To that extent contradiction is proved through the evidence of Investigating Officer. Mayur however admits that simcard which was given to his father was purchased by him. The evidence of this witness suggests that simcard which was found in the mobile recovered from Accused No.2 Pradip Chandaliya given by Accused No.1 Jawedkhan was purchased by Mayur and it further suggests that mobile handset given by Jawedkhan to Pradip Chandaliya was without simcard.

50. The next important witnesses on recovery of simcard are PW-20 A.P.I. Patare and PW-32 P.I. Borse. It is stated by A.P.I. Patare that he interrogated Accused No.2 Pradip Chandaliya regarding possession of mobile handset with him and during interrogation Pradip Chandaliya stated that simcard in the said mobile was given to him by his son Mayur. A.P.I. Patare seized the simcard under Panchanama. The said simcard was

given by PW-26 Mayur to his father Pradip Chandaliya for being used in the mobile seized from Pradeep Chandaliya.

51. Further link in the circumstances has been established through the evidence of PW-32 P.I. Borse. P.I. Borse interrogated Pradip Chandaliya regarding possession of mobile. Pradip Chandaliya told him that simcard was given to him by his son Mayur and mobile handset was given to him by Jawedkhan @ Tingarya s/o Habib Khan a customer of his hotel towards the bill of hotel. P.I. Borse then interrogated Mayur who admitted that he had given the simcard to his father for being used in the mobile handset. This evidence clearly establishes that while handing over mobile to Accused No.2 simcard was removed by Accused No.1 Jawedkhan.

52. Now the crucial question which is to be answered is regarding the simcard used by Mansi. In this connection P.I. Borse interrogated Accused Jawedkhan on 25th June, 2009. Accused Jawedkhan made a statement that original simcard in the mobile was kept by him in the shutter of godown of Tulsi Chamber behind Pancham hotel. The memorandum was drawn accordingly at Exhibit 54 and in pursuance to the information

given by Accused Jawedkhan simcard was recovered from the place stated by him. It was seized and it's Panchanama Exhibit 54-A was drawn in presence of Panchas. Article 21 simcard has been identified by P.I. Borse as the same.

53. True, Panch witnesses do not support the prosecution on recovery of simcard. In our view that alone would not be enough to discard the testimonies of police officers whose evidence is otherwise found to be trustworthy and believable. On the basis of their evidence we hold that prosecution has proved this clinching circumstance against Accused Jawedkhan beyond doubt.

54. (III) (a) **Recovery of gold ring of Complainant at the instance of Accused No.3.**

(b) **Accused No.1 had given gold ring to Accused No.3.**

It can be seen from the evidence of PW-7 Aniket that gold ring gifted to him by his friend on his birthday was found missing from the house. PW-8 Damodhar Manik Ghuge was doing welding work in Sterlight company where Aniket was serving. Damodhar and Aniket were working in the same

department. He stated that in March 2008 he had attended birthday of Aniket and offered him a gold ring weighing 5½ grams. He purchased the gold ring from the shop of R.C.Bafna at Aurangabad. He came to know that gold ring given by him to Aniket was stolen. Police called him to identify the gold ring. He went to Police Station and identified the gold ring as the same given by him to Aniket.

55. This witness was cross-examined on identification of gold ring. Damodhar stated that gold ring was containing name of R.C.Bafna and white imitation stone. Despite cross-examination at length, evidence of Damodhar has remained unshaken and consistent throughout. No material omission or contradiction could be brought in his cross-examination. The testimony of Damodhar thus inspires confidence.

56. The next witness on recovery of gold ring is PW-29 Ashok Kesharlal Chopra, Manager working in the shop of R.C.Bafna. This witness was examined to show that PW-8 Damodhar had purchased gold ring from the shop of R.C.Bafna. PW-29 Ashok stated in his evidence that gold ring seized in the crime was having monogram of their shop. The same was sold

from the shop. He identified gold ring article 26 as the same ring sold from their shop. The evidence of PW-29 Ashok could not be shattered in the cross-examination. Through his evidence prosecution could prove that gold ring article 26 given to Aniket was purchased from the shop of R.C.Bafna.

57. According to prosecution gold ring article 26 was recovered at the instance of Accused No.3 Ram Bodkhe. During investigation Accused No.3 Ram Bodkhe was interrogated. He showed his readiness to produce gold ring. Memorandum of Accused Ram Bodkhe was recorded vide Exhibit 64 in the presence of Panch witnesses. Then at the instance of Accused Ram Bodkhe gold ring was recovered from the room of electric motor in Tulsi Chambers. The gold ring was kept below a brick in the room. It was seized under Panchanama Exhibit 65. P.I. Borse has duly proved recovery Panchanama of gold ring and identified the gold ring article 26 as the same ring recovered on the basis of information given by Accused Ram Bodkhe.

58. Another witness PW-15 Asif Mohammad Akbar was examined on recovery of gold ring at the instance of Accused No.3 Ram Bodkhe. He sticks up to his evidence regarding

memorandum Exhibit 64 given by Accused No.3 to discover gold ring and recovery Panchanama of gold ring Exhibit 65. Nothing could be elicited in his cross-examination to disbelieve his testimony.

59. It is pertinent to note that test identification parade was conducted by PW-22 Naib Tahsildar in respect of gold ring and Aniket identified gold ring Exhibit 26 as the same ring which was gifted by his friend Damodhar. Mohammed Mubin (PW-16) was a witness on identification Panchanama of gold ring recorded by Tahsildar Bharaskar vide Exhibit 67. He too supports the identification of gold ring by Aniket at the time of test identification before Executive Magistrate.

60. Further it was revealed during investigation that Accused Jawedkhan had to pay some dues to Ram Bodkhe and against the payment of dues Accused Jawedkhan had given gold ring article 26 to Ram Bodkhe. Prosecution through the evidence of Complainant, Panch witnesses and Investigating Officer has proved that gold ring recovered at the instance of Accused No.3 Ram Bodkhe was given to him by Accused No.1 Jawedkhan and the said ring was gifted to Aniket by his friend Damodhar.

61. (IV) Recovery of blood stained clothes of Accused No.1 at his instance.

It is the case of prosecution that on 23rd June, 2009 Accused No.1 Jawedkhan made a memorandum to discover his clothes concealed in garbage in front of the building in which incident took place. PW-15 Asif Mohammad Akbar was the Panch witness on recovery of clothes of Accused No.1 Jawedkhan. It is stated by Asif that in his presence Accused Jawedkhan had shown his readiness to discover the clothes which he was wearing at the time of incident. Memorandum Exhibit 61 was drawn in his presence. At the instance of Accused No.1 Jawedkhan his blood stained clothes were recovered from the heap of waste material. Discovery Panchanama was recorded vide Exhibit 62 in the presence of PW-15 Asif by PW-32 P.I. Borse. P.I. Borse fully supported memorandum and discovery Panchanama of the clothes of Accused Jawedkhan and identified T-shirt article 28 and Jeans Pant article 27 as the clothes which were recovered on the basis of information given by Accused No.1 Jawedkhan.

62. It further appears from the evidence of Investigating Officer that seized clothes of Accused No.1 Jawedkhan were sent for chemical analysis. The blood sample of Mansi was also sent for chemical analysis to find out the blood group of the deceased. C.A. report Exhibit 119 shows that blood group of deceased was AB. Another C.A. report Exhibit 117 indicates that T-shirt of Accused Jawedkhan was having blood stains of blood group AB.

63. Accused Jawedkhan was also sent for medical examination after his arrest. PW-21 Dr.Heena Khan examined Accused Jawedkhan on 23rd June, 2009. She was Casualty Medical Officer at Ghati Hospital at the relevant time. The evidence of Medical Officer shows that blood sample of Accused was collected and it was sent for DNA and chemical examination. She has proved the medical certificate of Accused Jawedkhan at Exhibit 87. It can be seen from C.A. report Exhibit 115 that on examination blood group of Accused Jawedkhan was found as A. The blood stains found on the shirt of Accused Jawedkhan were of blood group AB which was the blood group of the deceased. This is a strong clinching circumstance against Accused Jawedkhan confirming his presence on the spot and tilting the

needle towards him and him alone to show that he is the culprit.

Since no plausible explanation is coming forth from the side of Accused No.1 we have no hesitation to rely upon this circumstance too.

64. (V) Discovery of clothes of Complainant in pursuance to the information given by Accused No.1.

It was revealed during investigation that Accused Jawedkhan had changed his clothes after the incident and put on the clothes of complainant Aniket. The clothes of Aniket were recovered at the instance of Accused Jawedkhan.

65. On 24th June, 2009 during interrogation Accused Jawedkhan had shown his readiness to produce the clothes of Aniket hidden below garbage near Tapadiya Natya Graha. Memorandum of Accused Jawedkhan was recorded in the presence of Panch witness PW-32 P.I. Borse vide Exhibit 56. As per memorandum accused led the police and Panch witnesses to the place where clothes of Aniket were kept concealed in garbage near Tapadiya Natya Graha. In pursuance to the information given by Accused Jawedkhan clothes of Aniket were recovered

and recovery Panchanama Exhibit 57 was drawn by P.I. Borse. The clothes of Aniket were also sent for chemical analysis. No blood stains were found on the clothes of complainant. The blood stains which were found were only on the shirt of Accused Jawedkhan.

66. During test identification parade Aniket identified the clothes recovered at the instance of Accused Jawedkhan as the clothes belonging to him (Aniket). This is another clinching circumstance to indicate that Accused Jawedkhan after the incident had changed his clothes and wore the clothes of Aniket which were available in the house.

67. **(VI) Medical evidence showing that girl was forcibly raped and then done to death.**

The evidence of Medical Officer Dr.Mugadalimath (PW-25) and Dr. Sachin Gadge (PW-30) has been elaborately discussed herein above. On examination of genital organs Medical Officers found that the girl was sexually assaulted. Postmortem Report Exhibit 32 duly proved by Medical Officers shows clear evidence of forcible sexual intercourse with the victim.

68. Accused Jawedkhan was sent to Ghati Hospital for medical examination as stated above. PW-21 Dr. Heena Khan examined the Accused and found that he was capable of performing sexual intercourse. She proved the certificate Exhibit 87. During examination Dr. Heena Khan collected blood, public hair, semen samples and nail clippings of Accused Jawedkhan. Those samples were sent for DNA test vide letter Exhibit 85. Accused Nos. 2 and 3 did not cross-examine PW-21 Dr. Heena Khan. There was no effective cross-examination of this witness from the side of Accused No.1 Jawedkhan.

69. In respect of DNA test of Accused Jawedkhan it was revealed during investigation by P.I. Borse that special kit was required for taking blood and semen samples of the Accused. The special kit was available only at FSL, Kalina, Mumbai. Head Constable Hiwale was deputed by P.I. Borse for calling the special kit from FSL Mumbai. He then sent the special kit along with Accused Jawedkhan to Medical Officer Ghati Hospital, Aurangabad and wrote a letter Exhibit 147 to take blood and semen samples of Accused Jawedkhan in special kit for performing DNA test. The samples were accordingly collected

and forwarded to FSL Mumbai for DNA test of Accused Jawedkhan.

70. The DNA test reports are at Exhibits 118 and 119. The opinion of expert on examination was as under :

“For all the 17 genetic systems analysed with the PCR using male specific Y STR system the male haplotypes obtained in Semen stains detected on bed sheet (FSL ML Case No. DNA 356/09 - Exh.1) **exactly matched** with male haplotypes in control blood sample of accused Jawedkhan.”

71. On the basis of the results of analysis it is crystal clear that Accused Jawedkhan had committed rape on Mansi as male haplotypes of Jawedkhan were found in the aspirated vaginal fluid of Mansi clearly indicative of the fact that it was Accused Jawedkhan who committed rape on victim girl.

72. Further from DNA report Exhibit 119 it can be seen that in the DNA extracted from the semen stains on the bed sheet in the house of Mansi, male haplotypes in control blood sample of Accused Jawedkhan were found. This makes it clear that Accused had committed sexual intercourse with victim Mansi.

From another report Exhibit 120 it can be seen that blood stains detected on the bed-sheet, T-shirt of the Accused and the control blood stains of deceased were of same biological individual. In this background, it can be safely concluded that prosecution could successfully prove that Accused No.1 Jawedkhan sexually assaulted victim Mansi.

73. (VII) Motive.

In a case based on circumstantial evidence, motive assumes pertinent significance as existence of motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that surmises and conjectures do not take place of legal proof.

74. From the incriminating circumstances discussed herein-above motive of the Accused in the present case has been established i.e. to commit theft, satisfy the unbridled lust of the Accused and then to cause death of victim girl so that his acts can be simply buried forever. As motive is apparent, prosecution does safely cross this hurdle too.

75. (VIII) Failure of the Accused to offer plausible explanation to the incriminating circumstances against him.

The last circumstance against the Accused is his failure to offer plausible explanation to the incriminating circumstances against him. In his statement under Section 313 of the Code of Criminal Procedure Accused has not given any explanation whatsoever for any of the clinching circumstances brought on record by the prosecution against him. We consider the silence of Accused as an additional link to complete the chain in the circumstantial evidence and on the close and critical examination of the evidence on record we hold that all the circumstances proved by the prosecution clearly indicate that accused and accused alone is responsible for the acts attributed to him.

76. Further in our view all the above circumstances conclusively prove that all links in the chain are so complete that they do not leave any reasonable ground for a conclusion consistent with the hypothesis of the innocence of the accused. On the contrary, the same are of exclusive nature consistent only with the hypothesis of the guilt of the accused and conclusively lead to an irresistible conclusion that it is Accused No.1 who

committed lurking house trespass with an intention to commit theft and then committed rape on the victim and done her to death.

77. This takes us to the crucial task of determining the quantum of sentence. Learned counsel for Accused Jawedkhan @ Tingarya s/o Habibkhan is heard on the point of quantum of sentence. Learned counsel submits that Accused Jawedkhan is 25 year old young boy. Considering his age it is submitted on behalf of Appellant Jawedkhan that it is not a rarest of rare case and Trial Court was right in not awarding capital punishment to the Accused.

78. In response to the submissions made on behalf of Appellant Jawedkhan, learned APP Mr. Sonpawale strenuously submitted that considering the nature of offence, manner in which it was committed and its impact on the society at large it is a rarest of rare case in which capital punishment needs to be awarded and life imprisonment would be an inadequate sentence. On the point of death sentence learned APP relied upon the following authorities:

a) ***Bachan Singh V/s. State of Punjab***¹

1 (1980) 2 Supreme Court Cases 684

- b) ***Macchi Singh and Others V/s. State of Punjab***²
- c) ***State of Rajasthan Vs. Kheraj Ram***³
- d) ***State of Maharashtra Vs. Shatrughna Baban Meshram***⁴

79. In *Macchi Singh's case (supra)*, the Hon'ble Supreme Court justified capital sentence in rarest of rare cases. It was observed that death sentence can be awarded when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. In paragraphs 32, 34, 35, 36 and 37 of the judgment various circumstances were stated where the community may entertain such sentiments. They are :

- (i) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- (ii) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward or cold-blooded murder for gains of a person vis-a-vis whom the

2 (1983) 3 Supreme Court Cases 470

3 (2003) 8 Supreme Court Cases 224

4 2015 (4) Bom.C.R.(Cri.) 744

murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

- (iii) When murder of member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
- (iv) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality, are committed.
- (v) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

80. In this case, Their Lordships have observed that guidelines indicated in *Bachan Singh Vs. State of Punjab (supra)* will have to be culled out and applied to the facts of each

individual case where the question of imposing the death sentence arises. The following positions emerge from *Bachan*

Singh case (*supra*) :

- (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
- (ii) Before opting for the death penalty the circumstances of the “offender” also require to be taken into consideration along with the circumstances of the “crime”.
- (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

81. Before the new Code of Criminal Procedure both alternative sentences provided in Section 302 of the Indian Penal Code were normal sentences but position is now modified by Section 354(3) of the Code of Criminal Procedure which mandates the Courts convicting a person for an offence punishable with death or in the alternative with imprisonment for life or any other term of imprisonment not to impose sentence of death on that person unless there are "special reasons" to be recorded by the Court for such sentence. The expression "special reasons" in Section 354(3) means "exceptional reasons" founded on exceptional grave circumstances of the crime as well as the criminal as held in Bachan Singh's case. In this connection, it is necessary here to refer the relevant paragraph from the judgment in *Bachan Singh's case (supra)* :

"As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two

aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because style is the man. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

82. In case of *State of Rajasthan Vs. Kheraj Ram (supra)* Accused was suspecting chastity and fidelity of his wife. He was also doubting that his wife did not beget children through him. Accused caused death of his two innocent children, wife and brother-in-law. Considering the circumstances established against Accused the Honourable Supreme Court held that death sentence imposed by the Trial Court was most appropriate. In paras 36 to 38 it is observed by the Honourable Apex Court as under:

"36. The principle of proportion between crime and punishment is a principle of just desert that

serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment need not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

37. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably, to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the traffic results of his crime. Inevitably, these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

38. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in

the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.”

83. In the case of *State of Maharashtra Vs. Shatrughna Baban Meshram* (*supra*) this Court following the law laid down by the Honourable Supreme Court particularly in the case of *Bachan Singh* and *Macchi Singh* and relying upon the evidence brought on record held that the case falls in the category of rarest of rare case and accordingly confirmed the death sentence awarded by the learned Trial Judge.

84. Reverting to the case on hand, we have given our anxious consideration to the submissions made by the learned counsel for Appellant and learned APP for the State. Keeping in view the proposition of law and guidelines laid down by the

Constitution Bench of the Hon'ble Supreme Court time and again it appears to us that for deciding just and appropriate sentence to be awarded for an offence aggravating and mitigating factors and circumstances in which crime has been committed are to be delicately balanced in a dispassionate manner. We now propose to deal with aggravating and mitigating circumstances in the present case.

85. **AGGRAVATING CIRCUMSTANCES :**

- a) The offence committed by Accused No.1 Jawedkhan had not been committed on the spur of moment. It was preplanned. Accused No.1 entered the house to commit theft but did not stop there and in order to satisfy his lust forcibly raped a young defenceless lone girl and then eliminated her life in a beastly, brutal and barbaric manner. We consider this grisly and a gory episode as an ultimate insult to the humanity in general and womanhood in particular.
- b) Subsequent conduct of accused indicates that he had felt no remorse.
- c) Neither the victim nor her family members had any animosity with the accused.

- d) The *modus-operandi* to commit the crime by resorting to diabolical method exhibits depravity, degradation and uncommonality of the crime which had shocked the collective conscience of the community.

86. **MITIGATING CIRCUMSTANCES :**

- a) Accused was 21 years old at the relevant time.

87. The hard facts of the present case are that Accused Jawedkhan entered the house in the odd hours to commit theft, brutally and sexually assaulted victim girl who was sleeping alone in the house and then mercilessly caused her murder. The *modus-operandi* of Accused clearly shows that he would be a menace to the society and there is no possibility of the Accused being reformed.

88. What is so hard for us is the unpleasant reality that every woman who is not even victim of violence has had her way of life profoundly affected by the fear of such violence. This is unfortunate that a country which claims to be more tolerant, more civilized and more secular has to face such instances of violence against women and the continued sense of insecurity instilled in women.

89. In the light of growing menace of violence against women we are required to examine the quantum of punishment. It may grossly be unrealistic to hold that age of culprit the only mitigating circumstance in isolation would come in the way of imposing capital punishment in the present case. Needless to state that victim of crime cannot be forgotten. A college going girl who was to marry after some time with a boy staying in America was required to stay alone in the night as her brother could not come home due to official constraints and Accused taking disadvantage of situation not only brutally ravished her but also done the helpless girl to death. Such an act of the Accused in our view has to be dealt with stern hands.

90. The circumstances established by the prosecution listed above show how a precious life of a young girl was taken away by Accused in a most cruel, barbaric and inhuman manner. Further how brutal and diabolical act of causing sexual assault and death of victim was, is apparent from the *modus-operandi* of Accused proved through various circumstances brought on record.

91. It would not be out of place to mention here that at all levels may be International, National, State or local commitment has been made that women have an inherent right to life which includes right to live with dignity, honour and respect. If this inherent right is taken away just to satisfy the lust, it is to be put down with heavy hands. Any leniency in our view would result into an inadequate punishment.

92. During investigation, previous criminal record of Accused Jawedkhan was collected on 3rd July, 2009. It was revealed from his past antecedents that Accused Jawedkhan was involved in five offences relating to housebreaking and two offences of theft. The extracts of crime registers (Exhibits 152 to 158) were proved by the Investigating Officer clearly indicating that past antecedents of Accused Jawedkhan were not clean and clear. In this background and considering the nature of offence, manner in which it was committed and upon evaluating the aggravating and mitigating circumstances according to us this is a case which falls in the category of rarest of rare case. We have therefore no hesitation in awarding sentence of death to Accused No.1 Jawedkhan.

93. So far as remaining two Accused Pradip Chandaliya

and Ram Bodkhe are concerned they were convicted basically for the offences relating to receiving stolen property. Both did not challenge the order of conviction recorded by the Trial Court against them. It is the State of Maharashtra who came in appeal for enhancement of sentence against all the Accused. On appreciation of the evidence against Accused No.2 Pradip Chandaliya and Accused No.3 Ram Bodkhe we find that the reasons and findings recorded by the learned Additional Sessions Judge are based upon due appreciation of evidence and are consistent with the evidence on record as well as the settled legal principles. We are therefore not inclined to enhance the sentence against Accused Nos.2 and 3.

94. In respect to the appeal against acquittal under some of the provisions of the Indian Penal Code, we upon evaluation of evidence do not find any perversity, illegality or incorrectness in the findings recorded by the Trial Court. We thus find that appeal against acquittal filed by the State of Maharashtra deserves to be dismissed.

95. In the above premise and in the totality of the facts and circumstances, we proceed to pass the following order –

ORDER**Criminal Appeal No.516 of 2012**

- I. Criminal Appeal No.516 of 2012 is dismissed.

Criminal Appeal No.281 of 2012

- I. Criminal Appeal No.281 of 2012 is partly allowed against Accused No.1 Jawedkhan @ Tingarya s/o Habibkhan.

- II. Conviction of Accused No.1 Jawedkhan @ Tingarya s/o Habibkhan under Sections 456, 457, 458, 392 read with 397, 376 and 302 of the Indian Penal Code is maintained.

- III. The order of sentence of imprisonment for life in respect of offence punishable under Section 302 of the Indian Penal Code is modified and instead Accused No.1 Jawedkhan @ Tingarya s/o Habibkhan is sentenced to death, he be hanged by neck till he is dead.

IV. The order of sentence in respect to the other offences mentioned in II above is confirmed.

V. Appeal Against Accused No.2 Pradip s/o Askaran Chandaliya and Accused No.3 Ram s/o Sheshrao Bodkhe stands dismissed.

VI. Copy of judgement shall be given free of cost to Accused No.1 Jawedkhan @ Tingarya s/o Habibkhan immediately.

Criminal Appeal No.468 of 2012

I. Criminal Appeal No.468 of 2012 is dismissed.

Sd/-

[INDIRA K. JAIN, J.]

Sd/-

[A. V. NIRGUDE, J.]

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