

Presented On : 26.12.2013
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Pronounced on: 05.03.2019
Decided On : 08.03.2019
Duration : 5Ys.2Ms.14Ds.

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, THANE,
AT : THANE.**

**(Presided over by Smt. S.A. Sinha,
District Judge - 7 & Special Judge under POCSO Act)**

**SPECIAL CASE (Child Protection) NO.138/2013
CNR NO.MHTH01-007309-2013
Exh. No.121**

**State of Maharashtra,
(Through Kasarvadavali Police Station
C.R. No. I-306/2013)**

... Prosecution

Vs.

**Ramkirat Munilal Goud,
Aged 30 years,
R/at. Chawl of Manera,
Near Unnati Woods & Transit Camp,
Anand Nagar, Ghodbunder Road,
Thane.**

... Accused

**For the offence pun. u/ss.363, 376-A,
302, 364, 201 of IPC & u/ss.4 & 8 of
POCSO Act, 2012.**

**Smt. Moholkar, Ld. APP for the State.
Shri R.S. Jagtap, Ld. Advocate for the accused.**

JUDGMENT

(Delivered on 08/03/2019)

1] Accused stands charge-sheeted for the offence punishable under sections 363, 376(A), 302, 364, 201 of IPC and under sections 4 & 8 of the Protection of Children from Sexual Offences Act, 2012.

2] In brief, facts of the prosecution case are as under :

That, complainant Manoj Bhaskar Sadavarte was doing the work of painting and residing at Juna Waghbil Gaon, Banjari Chawl, Laxmi Nagar, Thane (West) along with his mother, aged 50 years and one daughter (deceased) (name avoided) aged 3 years. His mother was doing the work of other peoples of washing their clothes and utensils. Since May 2013 wife of complainant is residing separately at Bhiwandi.

3] On 30.09.2013 at about 10.00 a.m. when mother of complainant went out of the house to take the water, that time his daughter was playing with the English female dog, because complainant was having English female pet dog. Then said girl went out of the house to play with the said female dog. Near about 10.45 a.m. when complainant came at the house he has noticed that, his daughter and that female dog were not in the house. Therefore, he has taken the search and also enquired with his mother. Then he started searching of his daughter and dog in that area and enquired with every person. Thereafter, he went in the watchman chawl where so many watchmen were residing in rooms. He found his female dog in the watchman chawl, but his daughter

was not found. Therefore, he got suspicious that unknown person kidnapped his daughter. Therefore, on same day he went in the police station and lodged complaint against the unknown person. He has given a description of his daughter, stated her age 3 years 10 months and also handed over photograph of his daughter to the police. Hence, the complaint.

4] Police registered the offence vide C.R. No.I-306/2013 under section 363 of IPC. Then police conducted the investigation. They started search of that girl but she was not found. On 02.10.2013 her dead body was found in the muddy and water pond. Thereafter, police conducted the necessary investigation, prepared the spot panchanama, seizure panchanama, recorded the statements of witnesses, sent a dead body for the post-mortem. Then police arrested the accused. Collected the samples of deceased and accused and along with the seized articles those were sent to the CA Office at Kalina. After getting the sufficient evidence, it was transpired to the Investigating Officer that, accused has committed penetrative sexual assault with the said deceased girl and committed her murder and thereafter he thrown her body in the mud and water pond. Therefore, Investigating Officer has sent up charge-sheet against the accused before the Court.

5] Accused appeared before the Court, entering into plea. He pleaded not guilty. My learned predecessor framed the charge against the accused under sections 363, 376 (2)(i), 302, 201 of IPC and under sections 4 & 8 of the Protection of Children from Sexual offences Act, 2012 vide Exh.13 on dated 07.12.2015. His defence is

of total denial and claimed to be tried.

6] Considering the above facts, following points arise for my determination on which I have recorded my findings for the reasons to follow :

Sr.No.	Points	Findings.
1.	Whether prosecution proves that, death of deceased is homicidal ?	In the affirmative.
2.	Whether prosecution proves that, on 30.09.2013 at noon time between 12.10 to 12.45 near Unnati Woods Society, in the chawl of Transit Camp at Anand Nagar, Ghodbunder Road, Thane, accused kidnapped minor deceased girl, aged 3 years from lawful guardianship of her parents and thereby committed an offence punishable under section 363 of IPC ?	In the affirmative.
3.	Whether prosecution proves that, on the given day, date, time and place accused committed rape on minor deceased girl and thereby committed offence punishable under section 376(2)(i) of IPC ?	In the affirmative.
4.	Whether prosecution proves that, on the given day, date, time and place, accused committed murder of minor deceased girl intentionally by causing her death by causing her injury to head and private part and thereby committed an offence punishable under section 302 of IPC ?	In the affirmative.
5.	Whether prosecution proves that, on the given day, date, time and place, accused knowing or having reason to believe that offence of murder of said minor deceased girl has been committed, caused evidence of said murder to disappear by throwing the dead body into water, with the	In the affirmative.

	intention of screening himself from legal punishment and thereby committed an offence punishable under section 201 of IPC ?	
6.	Whether prosecution proves that, on the given day, date, time and place, accused committed sexual assault upon the minor deceased girl and thereby committed an offence punishable under sections 4 & 8 of the POCSO Act, 2012 ?	In the affirmative.
7.	What order ?	As per final order.

: REASONS :

As to point nos.1 to 6 :

7] To prove the alleged offence, prosecution has examined in all 18 witnesses and produced the various documents on record. Firstly, prosecution has examined the complainant who is the father of deceased girl i.e. Manoj Bhaskar Sadavarte (PW1) at Exh.19. He lodged complaint at Exh.20 and produced printed complaint at Exh.61 and accordingly FIR was registered vide Exh.62. During his evidence he has also identified the photograph of his daughter which is marked at Article 1 and identified her clothes and the loongi, baniyan of accused vide Articles 'A' to 'C'. Then prosecution has examined Mujammil Makbul Daire (PW2) at Exh.22. In his presence on 03.10.2013 clothes of deceased and 9 bottles of sealed samples were seized by the police by preparing panchanama at Exh.23. When police carried the dead body of deceased girl in the hospital, that time doctor removed the said clothes and also obtained the samples and sealed it in 9 bottles and handed over to

the police. Umashankar Jokhan Pal has been deposed (PW3) vide Exh.29. In his presence Investigating Officer prepared the running spot panchanama vide Exh.30. Complainant shown those spots where his daughter and that dog were playing and people have seen them. Then Rohidas Dhansingh Rathod (PW4) examined at Exh.33. In his presence police took the search of every room of watchman chawl and in room no.2 they found bloodstains on cement coba and small hairs. Therefore, police seized the pieces of cement coba, small hairs, one shirt and baddan from the said room by preparing panchanama at Exh.34 in presence of said witness. He identified those articles before the Court vide Articles 'D', 'E' and 'F'. Then Devidas Kerba Kale has been deposed (PW5) vide Exh.35. He is working as a mason. Police called him by taking the channi and hatodi. As per that, he went in the room where bloodstains were found on the cement coba. As per the directions of police he has removed the pieces of cement coba having bloodstains and pieces of simple cement coba and handed over to the police. Therefore, police recorded his statement. He also identified the said muddemal before the court. Thereafter, prosecution has examined another witness Navnath Rama Wagh (PW6) at Exh.37. On 02.10.2013 police were called him behind the Unnati Woods, Waghbil Village near one pond near one nala and removed the body of one girl from the said pond and seized T-shirt of the said girl and also seized the water of pond and earth near the pond by preparing panchanama vide Exh.38. He has also stated that, he had seen the stamp mark of the dog near the pond. Further, prosecution has examined Santosh Prabhakar Mali (PW7) at

Exh.40. In his presence, on 08.10.2013 accused has voluntarily given his memorandum statement vide Exh.41 that he is ready to show the room where he committed sexual intercourse with the minor girl and the muddy pond where he thrown her body. As per that, he took the police and shown that room where he committed sexual assault on the minor girl and also shown the muddy pond where he thrown the body of the girl. Moreover, he shown his room where he is residing. Clothes of accused lying on the rope and hence, he produced his clothes i.e. pant, shirt, loongi, baniyan, belt and shoes. Police seized those articles by preparing panchanama vide Exh.42. Said witness also identified muddemal. It is marked at Articles 11 to 15. Then prosecution has examined Archana Akhilesh Singh (PW8) vide Exh.46. On 02.10.2013 police removed the dead body of deceased girl from the pond and prepared inquest panchanama in her presence vide Exh.47. Then Dipendrakumar Dhirendranath Shukla (PW9) is examined at Exh.49. He is the material witness. On 30.09.2013 in between 11.30 to 12.00 p.m. he had seen one girl along with the dog and after some time he had only seen the dog. No girl was with that dog and immediately he had seen the accused who was coming from the bushes on watchman uniform. But later on he left for his work and when at about 4.00 p.m. he returned at his home, he came to know that, girl was missing and therefore, he identified the photograph of that girl and accordingly given a statement before the police. Then prosecution has examined Dr. Mahendra Vitthalrao Kendre (PW10) at Exh.51. On 04.10.2013 he examined the accused as per letter of police vide Exh.52 and conducted his potency test and issued

medical certificate vide Exh.53. Moreover, on 02.10.2013 he has also received the body of deceased girl but it was highly decomposed, therefore, he sent the said body at J.J. Hospital for post-mortem vide his letter at Exh.54. Then prosecution has examined Dr. Sadanand Sangram Bhise (PW11) at Exh.55. He conducted the post-mortem of the body of deceased girl on 02.10.2013 and issued post-mortem report vide Exh.58. Then prosecution has examined ASI Kisan Lahu Korde (PW12) at Exh.60. On 30.09.2013 he was working as a PSO in the police station. He has taken the complaint vide Exh.20 and printed complaint at Exh.61 and FIR at Exh.62. His role is very limited as he registered the offence vide C.R. No. I-306/2013 and handed over the further investigation to API Lokre. Thereafter, prosecution has examined Nathuram Dhondu Chavan (PW13) at Exh.64. He was working as a fireman in the Fire Brigade Department and as per the call from police, on 02.10.2013 he went on the incident spot and removed the body of deceased girl from the pond and handed over to the police. As per that, police recorded his statement. Then prosecution has examined Pradipkumar Ganesh Rawat (PW14) at Exh.65 who had lastly seen the accused. He has stated that, on 30.09.2013 at 12.10 noon he had seen accused along with the said girl and dog and at about 12.50 p.m. he had seen dog which was tied on the window of room of Sanjay Rawat. Accordingly, he identified the photograph of the girl and accused before the Court. Therefore, police recorded his statement. Then prosecution has examined Sanjay Ganesh Rawat (PW15) at Exh.66. He has also stated that, on 30.09.2013 when he went to take the lunch that time he had

seen that dog was tied on his window and one person was enquiring with the accused "कुत्ता इधर है तो बच्ची किधर है". That time accused was standing on loongi and baniyan. Accordingly, police recorded the statement of said witness. Then prosecution has examined Investigating Officer API Vikas Sarjerao Lokre (PW16) at Exh.67. He conducted the investigation in the present crime, prepared running spot panchanama at Exh.30, used the dog squad for taking the search of girl vide report at Exh.70, circulated the photograph of girl at various police stations as per Exh.71 and forwarded the wireless to inter-state as per Exh.72. Then he prepared the panchanama of the pond at Exh.38. Seized muddemal and prepared receipt vide Exh.73. He also prepared the inquest panchanama vide Exh.47, forwarded dead body for the post-mortem as per his letter Exh.74. Then it was forwarded to the J.J. Hospital as per letter Exh.56 and 57. He seized the sample and clothes as per panchanama Exh.23, prepared receipts at Exh.75. He recorded the statements of witnesses and then handed over the investigation to Sr. PI Dharmadhikari. Then prosecution has examined material witness Anil Mahatam Singh (PW17) at Exh.77. In his presence accused has given extra judicial confession relating the commission of act at his hand. He has stated that, accused told him "मैं टेन्शन में हूँ, मैं ड्युटी नहीं करूँगा, आज के आज गांव जाऊँगा, मेरेसे गलती हुआ है, कल पुलिस ने बुलाया था उसी बारे में गलती हुआ है". Therefore, police recorded his statement and he has also handed over the attendance register of the watchmen and its relevant page to the police which is identified before the court vide Articles 'G' and 'H'. Immediately, police brought the said witness before the Court and his statement

under section 164 of Cr.P.C. was recorded by the concerned court which is produced at Exh.78. Lastly, prosecution has examined Investigating Officer Dy. S.P. Mandar Vasant Dharmadhikari (PW18) vide Exh.79. On 03.10.2013 investigation of the present matter was handed over to him. He recorded the statements and supplementary statements of witnesses, prepared the panchanama of the room no.2 where the bloodstains were found on the cement wall vide Exh.34 and seized the muddamal and prepared the receipt at Exh.80. On 03.10.2013 he arrested the accused, produced arrest form and arrest panchanama at Exhs.81 and 82. He forwarded accused for medical examination as per letter Exh.52 and collected all necessary samples of accused. Thereafter, all seized muddamal, samples of accused and deceased forwarded to the CA Office. He has produced the letter of correspondence with the CA Office and concerned hospital on record vide Exhs.83 to 87 and 89 to 90. On 08.10.2013 he has recorded the memorandum statement of accused at Exh.41, prepared the panchanama at Exh.42, produced its receipt at Exh.88. He has made entry in the log book and in station diary which is produced on record at Article 16. He has issued a letter to the Court vide Exh.91 for recording the statements of witnesses and produced those statements vide Exhs.78, 92, 93 and 94. He issued a letter to J.J. Hospital vide Exh.95, collected the post-mortem notes vide Exh.58. Then he issued a letter to Bhoomi Abhilekh Office vide Exh.96 and prepared map at Exh.97. He has also included the documents in the file i.e. C.A. Reports along with Exhs.98 to 106. He has also produced birth certificate of deceased girl at Exh.109. Furthermore, he has also

filed the final cause of death certificate at Exh.111. Thereafter, prosecution has filed evidence close pursis at Exh.107. Then statement of accused was recorded under section 313 of Cr.P.C. vide Exh.113. To disprove the alleged offence, accused neither examined himself nor examined any defence witnesses on his behalf.

8] At the time of final argument, Ld. Advocate of accused Shri Jagtap has filed his written notes of argument at Exh.115 and produced the citations along with list Exh.116. On the other hand, Ld. APP Smt. Moholkar has also filed her written notes of argument at Exh.117 and filed the citations along with list Exhs.118 and 119.

Argument of prosecution :

9] Ld. APP Smt. Moholkar though filed the written notes of argument, she has orally submitted crux of the points that, prosecution has examined material witnesses, proved all the spot panchanamas and seizure panchanamas. All witnesses identified the accused before the Court. As material witnesses are knowing to the accused, therefore, identification parade is not conducted in the present matter. Moreover, she has relied on the statement of witness who had lastly seen the accused along with the deceased girl and the dog. Moreover, she has also relied on the statement of witness Anil Singh before whom accused has given his confession that he has committed bad act with the said girl. Moreover, she has submitted that, medical report of the accused shows that there were abrasion on his private part. It goes against the accused. Furthermore, she has argued on the post-mortem report and cause

of death that, deceased girl was died due to extensive genital injuries and head injury. She explained the each and every injury of that girl and submitted that, accused committed heinous crime of penetrative sexual assault with the said girl. She has argued at length on the medical evidence and on the report of post-mortem and moreover she has invited attention of the Court towards the CA and DNA Reports which shows that bloodstains were found on the clothes of accused and earth of his shoes matched with the earth found near the pond. But, to that respect accused has maintained silence and he has not given any explanation. Moreover, she has submitted that, accused has not brought any enmity with the said witnesses or with the father of deceased girl to rebut the evidence of prosecution. Further, she has submitted that, from the said act intention and motive of the accused clearly proved by the prosecution. To satisfy his physical lust he kidnapped the deceased girl who was only aged of 3 years and committed penetrative sexual assault with her and brutally committed murder of that girl. Therefore, in short she has submitted that, prosecution proved the alleged offence beyond reasonable doubt and adduced the corroborative and trustworthy evidence. Prosecution also established the chain of circumstances. Accused has committed murder of the innocent unarmed and helpless minor girl and therefore, she prays that, accused may be punished. Furthermore, in support of her contention Id. APP relied on the following citations :

[i] Jagroop Singh Vs. State of Punjab, reported in 2012 DGLS (SC) 348;

- [ii] *Varsha Bhimrao Rasal Vs. The State of Maharashtra, reported in 2012 ALL MR (Cri) 1072;*
- [iii] *Vilas Shankar Bhilare Vs. The State of Maharashtra & Ors., reported in 2012 ALL MR (Cri) 980;*
- [iv] *Raju Raghunath Lohat Vs. State of Maharashtra, reported in 2008 ALL MR (Cri) 2160;*
- [v] *Yusuf Alamash Daryavardi & Anr. Vs. State of Maharashtra, reported in 2005 ALL MR (Cri) 1507.*

Argument of defence :

10] Ld. Advocate Shri R.S. Jagtap has argued in short and submitted that, basically present case is based on circumstantial evidence, last seen theory and extra judicial confession. Therefore, it is a burden on the prosecution to adduce conclusive and reliable evidence. But, in the present matter investigation was not properly conducted. Accused is an innocent person and falsely implicated in the present matter. He has submitted that, during the entire picture contention of female dog was reflected but police have not prepared the panchanama of female dog and also not taken the expert's opinion on the stamp mark of the dog nor the scratch marks of her nails near the window. To that respect, Ld. APP immediately replied that, dog was not missing. Moreover, Ld. Advocate for accused has further submitted that, said girl was missing from 30.09.2013 but statements of the most of the witnesses recorded on 03.10.2013 and 08.10.2013. There was a delay in recording the statements of witnesses. To that respect also Ld. APP replied that, nobody thought that his daughter was

murdered by anybody, therefore, till 02.10.2013 complainant and police were taking the search of that girl and when her body was found in the muddy pond, that time police started investigation to that direction and started enquiry with various witnesses and all panchanamas prepared on that day and completed the formality of sending the body of deceased girl at J.J. Hospital for post-mortem and on next day they have recorded the statements of witnesses. Moreover, extra judicial confession statement of witness Anil Singh was recorded on 12.10.2013. To that respect also, Ld. APP replied that it is a statement of witness before whom the accused made the confession of the said offence and it is good for appreciating his evidence because he himself voluntarily come forward to give the statement before the police which shows that there was no pressure on the said witness while giving the statement and delay in recording statement will not fatal the trial. Furthermore, Ld. Advocate of accused has submitted that, false investigation is conducted, false charge-sheet is filed against the accused and false CA and DNA Reports are produced on record. There is no reliable evidence adduced by the prosecution against the accused and hence, he prays for the acquittal of the accused.

11] In support of his contention, he relied on the following citations :

[i] *Gambhir Vs. State of Maharashtra, reported in AIR 1982 SC 1157;*

[ii] *State of Karnataka Vs. Venkatesh and others, reported in AIR 1992 SC 674;*

- [iii] Ganesh Bhavan Patel and another Vs. State of Maharashtra, reported in AIR 1979 SC 135;*
- [iv] Reena Hazarika Vs. State of Assam, reported in 2018 ALL SCR (Cri) 1880;*
- [v] Balu Sonba Shinde Vs. State of Maharashtra, reported in AIR 2002 SC 3137;*
- [vi] Prabhoo Vs. State of U.P., reported in AIR 1963 SC 1113;*
- [vii] Swinder Singh Vs. State of Punjab, reported in AIR 1992 SC 669;*
- [viii] Palanisamy and others Vs. State of T.N., reported in AIR 1986 SC 593;*
- [ix] Kanhai Mishra alias Kanhaiya Misar Vs. State of Bihar, reported in AIR 2001 SC 1113;*
- [x] Vishal @ Shivaji Mahadeo Kamble Vs. The State of Maharashtra & Anr., reported in 2017 ALL MR (Cri) 1877.*

Propositions of Law :

12] As present case is based on circumstantial evidence, last seen theory and the extra judicial confession, therefore, it is necessary to go through the well settled proposition of law.

A Criminal Trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the

animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The Court must bear in mind that “human nature is too willing, when faced with brutal crimes, to spin stores out of strong suspicious”. Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the Court to punish the accused on the basis of moral conviction or suspicion alone.” The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence”.

In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law.

In *Sarwan Sing Rattan Sing Vs. State of Punjab*, AIR 1957 SC 637 Hon'ble Apex Court observed :

“Considered as a whole the prosecution story may be true; but between 'may be true' and must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence (before an accused can be convicted)”.

Thus, the law on the point may be summarised to the

effect that in a criminal trial involving a serious offence of a brutal nature, the Court should be way of the fact that it is a human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the Court that its case has been proved beyond reasonable doubt.

Though a conviction may be based solely on circumstantial evidence, this is something that the Court must bear in mind while deciding a case involving the commission of a serious offence in a gruesome manner. In *Sharad Birdichand Sarda Vs. State of Maharashtra*, AIR 1984 SC 1622: [2009 ALL SCR (O.C.C.) 281], this Court observed that it is a well settled that the prosecution's case must stand on fall on its own legs and can not derive any strength from the weakness of the defence put by the accused. However, a false defence may be called into aid only to lend assurance to the Court where various links in the chain of circumstantial evidence are in themselves complete. This Court also discussed the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone and held as under.

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established;
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is

guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

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

13] A similar view has been reiterated by *Hon'ble Supreme Court in State of Uttar Pradesh Vs. Satish, 2005(1) Apex Criminal 437 : (2005) 3 SCC 114; Krishnan Vs. State represented by Inspector of Police, (2008) 15 SCC 430; Ramesh Bhai & Anr. Vs. State of Rajasthan, (2009) 12 SCC 603; Subramaniam Vs. State of Tamil Nadu & Anr., (2009) 14 SCC 415; and Babu Vs. State of Kerala, JT 2010 (8) SC 560*, observing that the evidence produced by the prosecution should be of such a nature that it makes the of the accused sustainable.

In *State of Gujarat Vs. Anirudhsing, 1997(4) R.C.R. (Criminal) 513 : (1997) 6 SCC 514*, *Hon'ble Supreme Court* observed as under :

“Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society. Every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the investigating officer who is enjoined to

collect the evidence and if necessary summon the witnesses to give evidence. He is further enjoined to adopt scientific and all fair means to unearth the real offender, lay the charge-sheet before the court competent to take cognizance of the offence. The charge-sheet needs to contain the facts constituting the offence/s charged. The accused is entitled to a fair trial. Every citizen who assists the investigation is further duty bound to appear before the Court of Sessions or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement. Any betrayal in that behalf is a step to destabilize social peace, order and progress.”

Undoubtedly, in a case which is based on circumstantial evidence, the burden lies on the prosecution to establish all the links which establish the commission of the offence by the accused beyond reasonable doubt. Moreover, the circumstantial evidence must be consistent only with one hypothesis viz. The guilt of the accused.

“...Circumstantial evidence must be complete and conclusive before accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, e.g. where there is a chain of circumstances linked up with one another, it is not possible for the Court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the

very concept of proof of circumstantial evidence would be defeated.”

References may also be made to the judgment of the Supreme Court in ***Gagan Kanojia Vs. State of Punjab, (2006) 13 SCC 516*** where the Court held thus:

“Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is however, necessary for the Courts to remember that there is a long gap between “may be true” and “must be true”. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas, the Court must raise a presumption that the accused is innocent and in the event two view are possible one indicating to the guilt of the accused and the other to his innocence, the defence available to the accused should be accepted, but at the same time, the Court must not reject the evidence of prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the Court should be an integrated one and not truncated or isolated. The Court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on record and analyse and assess the same objectively.”

14] **Theory of 'Last Seen' :**

The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. (2011 ALL MR (Cri) 2365).

Hon'ble Apex Court in the case of State of Uttar Pradesh Vs. Satish (cited supra) which are as under : The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

In this connection, we quote the settled legal position propounded by the Apex Court. We quote Para No.31,32,33,34 from the Judgment of the Apex Court in the case of ***Sahadevan and another Vs. State of T.N. AIR 2012 SC 2435*** cited supra as under :

31 With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent

view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.

32 Even in the case of *State of Karnataka Vs. M.V. Mahesh (2003) 3 SCC 353*, Court held that merely being last seen together is not enough. What has to be established in a case of this nature is definite evidence to indicate that the deceased had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the Court.

33 In the case of *State of U.P. Vs. Satish (2005) 3 SCC 114*, Court had stated that principle of last seen comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

34 Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”

15] **Section 313 Cr.P.C. :**

An accused can be questioned under section 313 of Cr.P.C. only for the purpose of enabling him personally to explain any circumstance appearing in the evidence against him. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material. It is the duty of the Court to examine the accused and seek his explanation on incriminating material which has surfaced against him. Section 313 of Cr.P.C. is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the Court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminating material appearing against him. Circumstances which were not put to the accused in his examination under section 313 of Cr.P.C. can be used against him and have to be excluded from consideration.

In *S.Harnam Sing Vs. State (Delhi Admn.) AIR 1976 SC 2140* Hon'ble Supreme Court held that non-indication of inculpatory material and its relevant facts by the Trial Court to the accused adds to the vulnerability of the prosecution case. The recording of the statement of the accused under section 313 of Cr.P.C. is not a purposeless exercise.

If any Appellate Court or revisional Court comes across the

fact that the trial Court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination can not be presumed to have caused prejudice. Every error or omission in compliance of the provisions of Section 313 Cr.P.C. does not necessarily vitiate trial. Such errors fall within category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to accused. Efforts should be made to undo or correct the lapse.

In *Asraf Ali Vs. State of Assam, (2008) 16 SCC 328* it is observed that,

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

In *Shivaji Sahebrao Bobade and Another Vs. State of Maharashtra AIR 1973 SC 2622* it is observed that, “it is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential

miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceeding and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstance, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction.

In *Ganesh Gogoi Vs. State Assam (2009) 7 SCC 404*, relying upon its earlier decision in *Basavraj R. Patil Vs. State of Karnataka (2000) 8 SCC 740*, held that the provisions of Section 313 Cr.P.C. are not meant to nail the accused to his disadvantage but are meant for his benefit. The provisions are based on the statutory principles of natural justice and the maxim "audi alteram partem" has been enshrined in them. Therefore, an examination under section 313 Cr.P.C. has to be of utmost fairness.

In *Shaikh Maqsood Vs. State of Maharashtra (2009) 6 SCC 583* and *Ranvir Yadav Vs. State of Bihar (2009) 6 SCC 595* Court held that it is the duty of the trial Court to indicate incriminating material to the accused. Section 313 of Cr.P.C. is not

an empty formality. An improper examination/inadequate questioning under section 313 of Cr.P.C. amounts to a serious lapse on the part of the trial court and is a ground for interference with the conviction.

In *Suresh Chandra Bahri Vs. State of Bihar AIR 1994 SC 2420*, Court rejected the submissions that as no question had been put to the accused on motive, no motive for the commission of the crime could be attributed to the accused, nor the same could be reckoned as circumstance against him observing that it could not be pointed out as to what in fact was the real prejudice caused to the accused by omission to question the accused on the motive for the crime. No material was placed before the Court to show as to what and in what manner the prejudice, if any, was caused to the accused. More so, the accused/appellant was aware of accusation and charge against him.

Thus, it is evident from the above that the provisions of section 313 of Cr.P.C. make it obligatory for the Court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the Court to question the accused on any incriminating circumstance can not ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the

Court.

16] **Section 106 of Evidence Act :**

Even in case which is found on circumstantial evidence, the Court must have give regard to the provisions of section 106 of the Evidence Act. The burden of establishing facts within the special knowledge of any person lies on that person.

Hon'ble Court in State of West Bengal (Supra) in a somewhat similar fact situation, where the deceased was abducted by the accused persons and thereafter his mangled body was found, held that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as if it admits of no process of intelligent reasoning. It was enunciated that the doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule quo the purport of presumption of fact as a rule in the law of evidence. It was observed thus :

“Presumption of fact is an interference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it

thinks likely to have happened. In that process the Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case”.

The following observations by this Court in the context of above legal provision in *Shambhu Nath Mehra Vs. State of Ajmer* was adverted to with approval.

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that it means facts that are preeminently or exceptionally within his knowledge”.

17] Considering the above position of law, now the material question arise before the Court whether accused has sexually assaulted to deceased girl aged 3 years 2 months and committed her murder.

18] Admittedly, there is no direct eye witnesses to the incident. Case is based on circumstantial evidence, therefore, it is based on the following facts.

Factual back-drop :

19] In the present case, before starting the discussion it is

necessary to see the back drop of the said case. Admittedly, it is based on the circumstantial evidence, last seen theory and on the extra judicial confession. On 30.09.2013 daughter of complainant aged 3 years was missing. He has taken the search but she was not found, therefore, he has filed the complaint and offence was registered under section 363 of IPC vide C.R. No.I-306/2013. Then search of that girl was started. Till two days she was not found. Thereafter, people saw her body was floating on the water in the pond. Said pond was of the mud and water. Her body was completely swollen and decomposed. It was removed from the pond with the help of fire brigade man. Complainant identified the body of his daughter from her ear rings, clothes and other things because her face was unidentifiable. Then inquest panchanama of the dead body was prepared. It was sent to the post-mortem. Statements of the witnesses were recorded. Then three witnesses came forward who have stated that, they had seen the deceased girl lastly along with the accused. Therefore, on the basis of that statements police arrested the accused. Prior to that, for the purpose of enquiry, police called more than 30 watchmen and also send them for the medical examination and collected their samples and enquired with them. Police also used the dog squad during the investigation. When accused was arrested he was sent for the medical examination. That time, some injuries like abrasion found on his private part. Therefore, police started investigation to that direction. Police taken the search of the spot, seized the muddemal by preparing the panchanama, collected the samples of accused, seized his clothes, shoes, belt and also collected the samples of

deceased girl and forwarded all these articles to the CA Office from which police received the CA and DNA Reports against the accused. Post-mortem report also shows that, cause of death is due to extensive genital injury with the head injury which shows that penetrative sexual assault heinously took place with the said girl and she was murdered by the accused. There are statements of the witnesses who have stated regarding the last seen of the accused with the deceased girl and also there is a statement of the witness before whom accused has given a confession of his act. In corroboration of the statements of said witnesses, there is a medical evidence, post-mortem report and forensic evidence which goes against the accused and therefore, charge-sheet came to be filed against him.

20] To prove the above said factual back drop, prosecution adduced following evidence to prove the each and every fact.

Evidence regarding the proof of age of the minor girl :

21] When evidence of complainant Manoj Sadavarte was recorded as PW1 at Exh.19, he has stated the age of his daughter as 3 years and some months. But to that respect prosecution produced the copy of her birth certificate on record at Exh.109 which is issued by the Bhiwandi Nijampur City Municipal Corporation. It is a public document and it is admissible in the evidence. Therefore, it can be read as it is which shows the birth date of the deceased girl as 11.07.2010. Present incident occurred on 30.09.2013. It does mean that, on the day of incident, age of deceased girl was 3 years 2 months. As present offence is registered under the POCSO

Act, hence it is mandatory on the prosecution to prove the age of deceased girl. Regarding age of said girl said fact is not denied by the accused. Despite of that, by producing birth certificate at Exh.109 prosecution successfully proved that, on the day of incident, said girl was minor having age 3 years 2 months.

Whether it is a homicidal death ?

22] It is the story of prosecution that, said minor girl was sexually assaulted and she was murdered. Therefore, it is a burden on the prosecution firstly to prove whether it is a homicidal death. To that respect, it is admitted fact that, on 02.10.2013 dead body of the deceased girl was found in the muddy water pond and to that respect inquest panchanama was prepared as per Exh.47 in presence of the witness PW8 Archana Singh who has been deposed at Exh.46. I have gone through the said inquest panchanama wherein the position of dead body was clearly mentioned and regarding her injuries and marks on her private part was also mentioned. Moreover, body of deceased girl forwarded to the J.J. Hospital for post-mortem and to that respect prosecution has examined Dr. Sadanand Bhise as PW11 at Exh.55 who has conducted the post-mortem of the deceased girl and he has mentioned the internal and external injuries found on the dead body in column nos.17 and 19 in his report and has stated that, said injuries mentioned in both the columns are ante-mortem injuries and those injuries along with head injury are sufficient to cause the death in the ordinary course of nature. Head injury can be caused by impact of hard and blunt object like rod, stone, lathi

or any other hard and blunt object. He has stated in detail regarding the genital injuries found on the examination of vagina i.e. uterus was intact. On examination of vagina internally lacerated injury of size 2 X 2 cm found over posterior vaginal wall margins irregular hemorrhagic. It was communicating with anal canal laterally and also it was communicating with peritoneal cavity superiorly at level of posterior fornix through which small intestine prolapse. Hymen was lacerated and tags of hymenal remnants were seen with hemorrhagic margins on inner wall of vagina submucous hemorrhages were present at places. To that respect he has given the post-mortem report at Exh.58 and also issued a final cause of death certificate which is produced on record at Exh.111. He has issued said certificate after considering the C.A. Reports, viscera and diaton test report and given a final cause of death as **“death due to head injury with the extensive genital injuries (unnatural).”** Furthermore, during the investigation, police prepared the panchanama of room no.2 where the bloodstains were found on the cement coba and therefore, police removed the pieces of said coba which shows that, head of the girl hit on the said cement coba. Panchanama of that spot was prepared vide Exh.34 and seized said articles as Article 'F'.

23] Considering the above said discussion, inquest panchanama of the dead body, post-mortem report, the evidence of PW11 Dr. Bhise at Exh.55, final cause of death certificate at Exh.111, spot panchanama at Exh.34 and the bloodstains found on the cement coba which clearly shows that, it is a homicidal death

which is an unnatural and it cannot be said that it is an accidental. Therefore, I am of the view that, by adducing said evidence prosecution sufficiently proved that, death of deceased girl is a homicidal death.

Lodging of complaint and registration of offence :

24] Complainant Manoj Bhaskar Sadavarte was residing at Waghbil Gaon along with his family members. Deceased girl was his daughter. On 30.09.2013 he went for his work and came at house near about 10.45 a.m. and he has noticed that, his daughter was not found. Therefore, he has taken search of his daughter. He was also having pet female dog. His daughter and that dog were not traceable, therefore, he has taken their search everywhere and enquired with the peoples but they were not found. When he went in the watchman chawl, that time he found his female dog but his daughter was not found. Thereafter, he got confirm that unknown person kidnapped his daughter. Therefore, on same day at about 11.30 p.m. he has filed complaint in the police station. Police registered the offence vide C.R. No.I-306/2013 under section 363 of IPC. His printed complaint filed on record at Exh.61 and FIR at Exh.62. For proving the contents of complaint, prosecution has examined complainant Manoj Sadavarte as PW1 at Exh.19. He has also stated that, later on police recorded his supplementary statement. Therefore, said complaint is exhibited and proved. In support of his contention prosecution has also examined ASI Kisan Korde as PW12 at Exh.60. On that day he was on duty as a PSO at Kasarvadavali Police Station and his duty time was from 9.00 a.m.

to 9.00 p.m. He has also stated that, near about 11.00 p.m. complainant came in the police station and filed the present complaint vide Exhs.61 and 62. Accordingly, he registered the offence vide C.R. No.I-306/2013. All these three documents also produced on record. Further he has stated that, as per the complaint he has forwarded the information to the Control Room. It is also produced on record at Exh.63. Further, complainant has stated that, on 02.10.2013 body of his daughter found floating on the muddy water in the pond. Accordingly, police removed said body. He identified his daughter from her clothes. Moreover, he also identified her clothes before the Court vide Article 'A' and clothes of accused i.e. loongi and baniyan vide Articles 'B' and 'C'. Further, he has stated that, he shown the spot to the police where his daughter was playing and when he enquired with people they also stated him and shown the spot where lastly they had seen his daughter while playing with the dog. As per that police prepared the running panchanama in his presence.

25] So considering the above said discussion, prosecution sufficiently proved the contents of complaint by examining these two witnesses and producing all these documents. Except the mere suggestions and denials, nothing material came on record in the cross-examination of these witnesses, therefore, there is no reason to disbelieve on the oral testimony of PW1 complainant Manoj Sadavarte and PW12 PSO Kisan Korde.

Investigation, spot panchanama and seizure panchanama :

26] In the present matter when complaint was registered, PW12 ASI Kisan Korde registered the offence vide C.R. No. I-306/2013 under section 363 of IPC and thereafter as per the order of senior authority he has handed over investigation to API Lokre. To that respect, prosecution has examined API Lokre as PW16 at Exh.67. When he entered into witness box he has stated that, investigation was handed over to him on 30.09.2013. Therefore, firstly he has gone through the missing complaint and made enquiry with the complainant regarding missing of his daughter and he has taken the search of that girl by having effective efforts. For that purpose he has made a wireless message to all police stations and also taken the help of D.B. Police in that area. Furthermore, on 01.10.2013 in between 7.30 a.m. to 8.45 a.m. he went along with the complainant and complainant shown all those spots where his girl lastly seen by the people along with the dog. Therefore, he has made enquiry with the people. That time, firstly he visited to the house of complainant which was situated at Banjari Chawl, Laxmi Nagar, Juna Waghbil Gaon. Then he went at brick-kiln which was situated on the distance of 300 meters where house of one person Premshankar Gupta was situated and he has stated to him that, he had seen the girl of complainant while playing with the dog near about 10.45 a.m. Thereafter, on the distance of 200 meters there was Ashapura Kirana Store. Owner of that kirana store Raju Chaudhary has also stated that, near about 11.00 a.m. he had seen the said girl with the dog. Thereafter, towards Eastern side, on the distance of 100 meter complainant

shown the transit camp area of one storied and towards South side that girl was playing on the heap of earth along with dog near about 11.15 a.m. One person Jaybhim Kamble stated to him that, he had seen the girl there. Thereafter they went towards the Eastern side of transit camp in one chawl of Manera. One person Dipendra Shukla stated that, he had seen that girl there along with the dog while proceeding in front of his room and complainant stated that, in afternoon time towards South side on the window of Room No.3 he has seen his dog which was tied on said window. Then he has noticed that there were scratch-marks of the nails of dog. One person Pradip Rawat has also stated that, at about 12.15 p.m. he had seen that girl along with the dog in the open space. Therefore, API Lokre has prepared the running panchanama of the spots enquiring with concerned peoples which is produced at Exh.30. For proving said panchanama, prosecution has examined panch witness Umashankar Pal as PW3 at Exh.29. He has also stated that, on 01.10.2013 police called him and along with the complainant and another panch witness they visited to the various spots. He has also stated all the above spots deposed by the Investigating Officer and accordingly said running panchanama at Exh.30 was drawn in his presence. No questions were put in the cross-examination except the suggestions or denials to disbelieve the version of said both the witnesses. Therefore, it is proved from the panchanama at Exh.30 and the deposition of PW3 Umashankar Pal and PW16 Vikas Lokre that, on the above said spots people had seen the girl of complainant along with the dog till 12.15 noon and it is also proved that dog was found in the watchman chawl which

was tied on the window of room no.3. There is no reason to disbelieve on their versions.

27] Secondly API Lokre brought the dog squad to take the search of deceased girl and he has taken the effective efforts but she was not traced out. To that respect, regarding dog squad he has produced his report at Exh.70. Then he circulated the photograph of deceased girl to the various police stations vide letter at Exh.71. Further, he forwarded the wireless message inter-state along with the detail description of the deceased girl. That report is also produced at Exh.72. After taking the all above effective efforts for searching the girl, she was not found. Then he went on the spot and started making enquiry with the people and recorded the statements of those witnesses who have lastly seen the girl and also recorded statement of the mother of deceased girl.

28] On 02.10.2013 when police squad was taking the search, that time dead body of one small girl was found in the muddy pond near about 2.00 p.m. which was floating and completely swollen. Therefore, with the help of fire brigade person he removed the dead body from the pond. To that respect, he recorded the statement of that fireman. In corroboration with the version, prosecution has examined said fireman Nathuram Dhondu Chavan as PW13 at Exh.64. He has also stated the same fact that on 02.10.2013 near about 2.20 p.m. he has received the call from Kasarvadavali Police Station and accordingly he went at spot which was behind the Unnati Woods and had seen one dead body of small girl floating on the pond and therefore, with the help of staff he removed that body

which was of the girl having age 3 years from the pond and handed over to the Kasarvadavali police. Accordingly, to that respect he made entry in their Fire Station register. Further, he has stated that, police recorded his statement as per his say. So, the said facts are also proved by recording the statement of concerned witnesses.

29] Thereafter, Investigating Officer prepared the spot panchanama of that pond vide Exh.38 before the panch witnesses and also taken the necessary measurements of the said pond in their presence. It was behind the Unnati Woods Society in one field near one nala. For proving the said panchanama prosecution has examined one of the panch witnesses i.e. Navnath Rama Wagh as PW6 at Exh.37. He has also stated the same fact that, on 02.10.2013 police called him at Waghbil Village behind Unnati Woods Society near one muddy pond which was near the nala. That time he had seen that body which was removed by the fireman and he has also stated that, police prepared the spot panchanama of that pond vide Exh.38 in his presence. That panchanama is also produced on record by the prosecution and properly proved. Moreover, he has also stated that, from the said spot police received the water of pond in one plastic bag and took the earth and sealed it properly with his signature. Furthermore, he also identified the photo of that deceased girl which is at Article 1. So, prosecution successfully proved the spot panchanama at Exh.38 which clearly shows the situation on the muddy pond. Then Investigating Officer has stated that, he has noted that clothes of the said girl was pink colour full sleeves T-shirt and on the distance of 20 ft. he found the

stamp marks of the legs of dog. He seized the said muddemal by preparing the panchanama. Thereafter, he prepared the inquest panchanama of the dead body. In his presence complainant identified the dead body of his daughter. Said panchanama is produced on record at Exh.47. For proving the said panchanama prosecution has examined concerned panch witness PW8 Archana Akhilesh Singh at Exh.46. She has also stated that, on 02.10.2013 police called her on the incident spot and body of small girl removed from the pond and prepared inquest panchanama vide Exh.47 in her presence.

30] Thereafter body of the said girl was forwarded to the Civil Hospital, Thane for post-mortem as per letter Exh.74. But, thereafter concerned doctor referred the dead body to the J.J. Hospital as per their letter Exh.56 as body was highly decomposed. Therefore, police took the dead body at J.J. Hospital and issued a letter to them that while conducting the post-mortem photographs and video shooting may be taken, which is at Exh.57. Accordingly, post-mortem of the girl was conducted. Concerned doctor took the samples of the deceased girl, also removed her clothes and sealed it properly and handed over said clothes and 9 sealed sample bottles. Those samples are of the part of the body of deceased girl, therefore, Investigating Officer seized said T-shirt and samples by preparing panchanama at Exh.23. For proving the said panchanama, prosecution has examined panch witness Mujammil Makbul Daire as PW2 vide Exh.22. He has also stated that, on 03.10.2013 police seized the clothes of deceased girl and 9 sealed

sample bottles in his presence and prepared the panchanama at Exh.23. So it is proved that sample bottles and muddemal was properly sealed with the signatures of panch witnesses.

31] Thereafter, it has come in his evidence that, he recorded the statements of remaining witnesses and then handed over further investigation to PI Shri Dharmadhikari. For proving the further investigation and documents, prosecution has lastly examined Dy.S.P. Shri Mandar Dharmadhikari as PW18 at Exh.79. He has also stated that, in the month of October 2013 he was attached to the Kasarvadavali Police Station as Sr.PI and on 03.10.2013 in C.R. No.I-306/2013 investigation was handed over to him from API Lokre. Therefore, he has gone through all papers and statements which were recorded by him and he started further investigation.

32] On 03.10.2013 he recorded the supplementary statements of four witnesses and again visited to the incident spot and found in the watchman chawl in room no.2 there were bloodstains on the earth and therefore, he seized it by preparing panchanama at Exh.34 and he also seized one shirt, one baddan from the spot and called one mason by name Devidas Kale to remove the pieces of cement coba where the bloodstains were found and he seized the said bloodstained pieces of the coba and above said muddemal and sealed it properly in presence of panch witnesses. He identified those articles before the Court i.e. shirt at Article 'D', baddan at Article 'E', pieces of cement coba at Article 'F'. For proving said

panchanama, prosecution has examined panch witness Rohidas Dhansingh Rathod as PW4 at Exh.33. He has also stated that, on 03.10.2013 at about 6.15 p.m. police called him to act as a panch witness and inspected spot and in one room of the chawl they found bloodstains on the earth and hairs and therefore, police seized the said muddemal in his presence and sealed it with his signature. Said panchanama is proved in his deposition vide Exh.34 and he also identified all said muddemal before the court. Furthermore, he has deposed corroborative with the version of Investigating Officer that, one person i.e. Mistri Devidas Kale obtained said pieces of coba with the help of channi and hatodi. Therefore, in corroboration of the version of said both the witnesses prosecution has also examined the said mistri Devidas Kale as PW5 at Exh.35. He has also stated same fact before the Court that, on 03.10.2013 near about 6.00 to 6.15 p.m. police called him by taking the channi and hatodi and went inside the room where there were bloodstains on the coba. Therefore, he removed the pieces of bloodstained coba with the help of channi and hatodi and also removed the pieces of coba and handed over to the police which were sealed by the police in his presence and to that respect police recorded his statement. He has also identified pieces of the coba before the court. Considering oral testimony of above three witnesses it has stated that they have corroborated with the version of Investigating Officer and it is proved from the panchanama that in room no.2 police found the bloodstains on the cement coba i.e. on the earth and bloodstained hairs and seized the said muddemal from that room.

33] Further, Investigating Officer Dharmadhikari has stated that, on the basis of the statements of witnesses on 03.10.2013 he arrested the accused Ramkirat Goud and prepared his arrest form and arrest panchanama at Exhs.81 and 82. On 04.10.2013 he forwarded accused to the medical examination vide letter at Exh.52 and also asked for the samples. Concerned Medical Officer obtained the samples of accused and sealed it properly and handed over it to the police. They have also reported to the police that, there was abrasion found on the foreskin (private part) of the accused and therefore, investigation was started regarding the accused. Police collected the samples of deceased girl and the accused and forwarded it to the FSL at Kalina for the CA Report and DNA Report vide letter Exhs.83 and 84. There was no objection received from the CA Office regarding tampering of the seal of any sample bottle. So prosecution proved that it was properly sealed and handed over to the CA Office. On same day Investigating Officer written a letter to the J.J. Hospital and asked about the reason of death and he has received a reason that, said girl died due to the sexual assault and head injury. When post-mortem was conducted of the deceased body they have received sample of sternum piece of the deceased girl and when body of the deceased found in the pond that time PI Lokre also collected sample of that water. It was forwarded to the CA Office for the necessary opinion.

34] From the above said discussion prosecution sufficiently proved all spot panchanamas and the seizure panchanamas and also identified the muddemal before the court.

Evidene relating to the discovery under section 27 of Indian Evidence Act :

35] Investigating Officer Dy.S.P. Dharmadhikari has stated in his deposition that, on 08.10.2013 accused shown his willingness voluntarily and ready to give statement, therefore, he called panch witnesses to record his statement and in presence of panch witnesses he has stated that "मैने जिस जगह पे छोटी लडकी को उठाया और जिस रुम मे जाके अत्याचार किया वो जगह मै आपको दिखाता हूं और जिस जगह पानी में उसे फेका वो जगह दिखाता हूं और मैने उस दिन जो कपडे पहने थे वो मेरे रुम मे है वो मै निकालके देता हूं". By saying said fact, he has recorded the statement of accused which is produced on record at Exh.41. Accordingly, as per the way shown by the accused they proceeded by the police jeep along with the panch witnesses and accused. He took them via Kasarvadavali Naka, Anand Nagar Naka, then by taking left turn he took them at Unnati Woods and asked to stop their vehicle. Thereafter, they followed the accused by walking and he took them at watchman chawl. Prior to that, he has shown heap of sand where said girl was playing with the dog. The reference of the said spot also came in the running spot panchanama at Exh.30 which shows the corroboration in the statement of witnesses and accused. Further he has stated that, he lifted the girl from the said spot and went in the room no.2 of the chawl where he committed rape on her and also committed her murder by hitting her head on the earth. Thereafter, he took the body of deceased girl, came out of the room and went towards the left side and thrown her body in muddy pond which was on the distance of 100 meters from the said room. Accordingly, he had shown that room to the police and also

shown pond to the police. Thereafter, he took them in room no.4 where accused was residing and handed over his uniform of watchman which wore by him at the time of commission of offence and thereafter he immediately wore the loongi and baniyan. Therefore, accused handed over those clothes to the police i.e. shirt of full sleeves having logo of Maharashtra Security and one full pant of black colour, one black belt which was also having the logo of Maharashtra Security. He also handed over the shoes of grey colour. It was having an earth of the mud at the bottom of the shoes. Furthermore, he has handed over his sandow baniyan and loongi to the police. Police seized all said articles before the panch witnesses and prepared discovery panchanama at Exh.42 and also identified all those articles before the court which are marked as Articles 11 to 15. In support and corroboration of the contention of Investigating Officer for proving the statement of accused and memorandum panchanama at Exh.42 prosecution has examined one of the panch witnesses Santosh Mali as PW7 at Exh.40. He has also stated likewise the version of Investigating Officer that, on 08.10.2013 police called him and accused voluntarily given his statement vide Exh.41 and took them at the incident spot from which place girl was lifted and also shown the room where the rape was committed and also shown the room where accused is residing and he handed over his clothes before the police which were seized in his presence and sealed it with his signature and prepared panchanama vide Exh.42 in his presence. Accordingly, he identified all said clothes before the court vide Articles 11 to 15. No material questions put in the cross-examination except the suggestions and

denials to shatter the version of said both the witnesses. It appears that panch witness PW7 Santosh Mali fully corroborated with the version of Investigating Officer. Therefore, there is no reason to disbelieve on their oral testimonies. Moreover, said documents are also produced on record at Exhs.41 and 42. Muddemal also produced before the Court which was accurately identified by both the witnesses. So, prosecution sufficiently proved the statement of accused and discovery panchanama under section 27 of Indian Evidence Act and proved that, at the instance of accused said muddemal is recovered. Accordingly, Investigating Officer forwarded said muddemal to the CA Office for necessary examinations. As per the way shown by the accused they went on the incident spot, therefore concerned Investigating Officer made entry in the log-book and produced copy of that log-book on record showing that they visited on the spot on 08.10.2013 and said log-book entry marked at Article 16. It is also corroborated and proved testimony of the Investigating Officer. So, there is no reason to disbelieve on their versions.

Evidence relating to the extra judicial confession :

36] On 09.10.2013 Investigating Officer has recorded the statements of witnesses and thereafter on 12.10.2013 he recorded the statement of one of the witness Anil Singh who has stated that, accused was working as a Watchman, but on 01.10.2013 when he was absent on the duty therefore, he enquired with him and accused replied "मुझे टेन्शन आया है, मेरे से गलती हुई है, मेरे को गांव जाने का है". Investigating Officer immediately produced said witness before

the Court and recorded his statement by the court under section 164 of Cr.P.C. which is also produced on record at Exh.78. Prosecution pointed out that statement of the said witness can be treated as an extra judicial confession. Therefore, for proving the said statement, prosecution has examined witness Anil Mahatam Singh as PW17 at Exh.77. When he entered into witness box he has stated that, he was working in the Maharashtra Guard Force Security in the Unnati Woods as a rounder. Near about 20 to 22 peoples were working as a watchman in day shift and night shift. He used to check the register regarding presentee and absentee of the concerned watchmen. All these watchmen are residing at Manera Camp in the chawl which was near the Unnati Woods. Their day duty time was from 8.00 a.m. to 8.00 p.m. and night duty time was from 8.00 p.m. to 8.00 a.m. During their lunch time in between 12.00 p.m. to 2.00 p.m. for the period of 45 to 50 minutes they used to go at their house for taking the lunch by adjusting their duty.

37] Further he has stated that, accused Ramkirat Goud joined duty prior to 6 to 7 days of the incident but his father was working since 2 to 3 years. On 30.09.2013 one girl was missing and on that day duty of the accused was in Phase No.2, Building No.5 and he was on duty. Police were came for the purpose of enquiry and took some watchmen in the police station. On next day i.e. on 01.10.2013 at about 8.20 a.m. when he took the round, that time he has noticed that, father of accused was working on Gate No.4 but accused was not present on the duty. Therefore, he sent his

father to call him on duty. When accused came there said witness enquired with him why he has not come for the duty. That time he replied "मैं टेन्शन में हूँ". Then he send him on duty. He has also stated that "मैं ड्युटी नहीं करूंगा, मैं आज के आज गांव जाऊंगा". Further said witness has stated that, accordingly police recorded his statement. Therefore, prosecution declared him hostile and after declaring him hostile he started speaking before the court entire things which were stated by him before the police. It was not necessary for the prosecution to give any suggestion to him. He has stated that, accused told him "आज ड्युटी नहीं करूंगा, टेन्शन में हूँ, मेरेसे गलती हुआ है,". Then said witness told him that "घर पे रहोगे तो टेन्शन कम नहीं होगा, तुम काम पे जावो". Then accused replied to him "मुझसे बड़ा गलती हुआ है, मैं आज के आज गांव जाऊंगा, इधर नहीं रहूंगा". Further, he has also stated that "कल पुलिस ने बुलाया था उसी बारे में मेरी गलती हुई है". Therefore, said witness tried to made detail enquiry with the said accused, but thereafter he has not stated anything to him. He admitted the contents mentioned in portion marked 'A' of his statement. Further, said witness handed over the attendance register to the police showing that, how many days accused worked in the month of September and October and also identified said register and its relevant pages which are marked at Articles 'G' and 'H'. He has also stated that, police recorded his supplementary statement and also stated that, he has also given a statement before the concerned Magistrate Court under section 164 of Cr.P.C. which is produced on record at Exh.78 and he also identified the accused before the Court.

38] Ld. Advocate of accused tried to put various questions to the said witness but nothing has come on record to disbelieve on his version. On the contrary, he has denied all suggestions given by the concerned Advocate. Moreover, accused has not put any question regarding his enmity or any dispute or quarrel with this witness. Regarding the appreciation of evidence of the hostile witnesses, it has been discussed by the *Hon'ble Supreme Court* in case of *Khuji @ Surendra Tiwari Vs. State of Madhya Pradesh*, reported in AIR 1991 SC Page 1853 wherein it is held that -

“Though witness is partly hostile, entire evidence cannot be thrown away. Evidence of hostile witness is admissible to the part of evidence to which he supports case of prosecution.”

No reason is brought on record as to why said witness deposing against the accused. Moreover, Ld. Advocate of accused has raised the question that, at late stage i.e. on 12.10.2013 statement of said witness was recorded, so it cannot be accepted. But, it shows from the said statement that, it was voluntarily given by the witness. There is no story that pressure created by any police officer on the said witness. As it is voluntarily given to the police by an independent witness, there is no enmity between them, so it is a reliable and trustworthy evidence brought by the prosecution on record. To that respect, Ld. APP Smt. Moholkar relied on the Judgment of Hon'ble Supreme Court i.e. *Jagroop Singh Vs. State of Punjab*, reported in 2012 DGLS (SC) 348 which is regarding the circumstantial evidence, last seen theory and extra judicial

confession. It has been held that -

"As per Sections 24, 25 and 26 of Indian Evidence Act - Law of Evidence in murder trial which is based on circumstantial evidence, then rule of appreciation of extra judicial confession and interestedness of witnesses. Delay in making such confession to that effect there is a settled law that extra judicial confession if and voluntarily made then it can be relied on and upon this accused can be convicted. Despite inherent weakness extra judicial confession is an item of evidence, it cannot be ignored when shown that it was made before a person who has no reason to state falsely and hence, his evidence is credible and reliable".

39] Regarding the extra judicial confession, I would like to rely on the Judgment of *Hon'ble High Court of Andhra Pradesh in Criminal Appeal No. 722/2011 Karamshriniwasu Dora Vs. State of Andhra Pradesh dated 12.06.2013* and *Supreme Court 1996, State of Rajasthan Vs. Rajaram*, wherein Hon'ble Supreme Court has observed that -

"An extra judicial confession if voluntary and true and made in a fit state of mind can be relied upon by the Court. The confession will have to be proved like any other fact. The

value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would be depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appeared to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive to attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguously and unmistakably conveyed that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touch

stone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

40] Considering the above said position of law, while accepting the evidence regarding extra judicial confession, it is necessary for the court to see all these facts. In the present matter also Ld. Advocate of accused has not brought any dispute or enmity against the said witness as to why he is deposing against the accused. Moreover, he has produced attendance register before the police which was seized by preparing panchanama and same was identified before the court and he has stated that, accused was doing the duty under his control as he was rounder. Therefore, relation of the accused and said witness also clearly brought on record by the prosecution as to why occasion arose to this witness to enquire with the accused regarding his mental situation, as to why he is not coming on the job and therefore, to that respect accused answered the said fact to said witness and hence, plainly and voluntarily said witness stated fact before the police as well as before the Magistrate Court and before this Court. His contention mentioned in portion marked 'A' of his statement also admitted by the Investigating Officer that said witness has stated said fact before him. Therefore, I have no hesitation to accept the oral testimony of the said witness and relied on his version as it is a truthful and reliable. His version clearly shows that, accused has clearly given the confession of his act before the said witness that regarding the

said deceased girl he has committed the mistake and therefore, he wants to go at his village and he was in tension as police called him for the purpose of enquiry in the police station. So, the sequence and situation of the said statement also sufficiently brought and proved by the prosecution before the Court. Therefore, there is no reason to disbelieve on the said statement and hence, prosecution brought the strong evidence on record regarding the extra judicial confession made by accused in support of their case.

Last seen witness :

41] Investigating Officer has stated that, he recorded the statements of material witnesses who had seen the deceased girl along with the dog lastly and thereafter they have seen that girl with the accused and on that basis he arrested the accused. Therefore, for proving the last seen theory prosecution has examined witness Dipendrakumar Shukla as PW9 at Exh.49. He has stated that, he was also working as a watchman in the year 2013 in Maharashtra Security at Lalani Residency and he was residing in the Transit Camp which was in front of the Unnati Woods. After leaving 2-3 lines of the houses of 15 to 20 watchmen where they are residing, his house was situated. He does not know the accused by the name but he used to identify him by his face because he was proceeding by that way. He was also residing in the same chawl along with his father, brother and other 4-5 people. Therefore, he knows the accused.

42] He has stated the material fact before the Court that, on 30.09.2013 in between 11.30 to 12.00 p.m. when he was taking

lunch by keeping open door of his house, that time he had seen that one girl aged 2½ to 3 years was proceeding by that road by taking one dog with her. That time said witness had seen her. Thereafter, near about 1.00 p.m. he came out of the house along with his father to go for his personal work. That time he had seen that dog was wandering on the road but said small girl was not with that dog. Then immediately he had seen the accused Ramkirat Goud who was coming from the side of bushes. That time he was on the uniform of watchman. Said bushes are near the Unnati Woods.

43] Thereafter he has stated that, near about 4.00 p.m. when he came at his house, he came to know from the peoples that they are taking the search of small girl and when photograph shown to him, he immediately identified that girl and told that he had seen that girl in afternoon time. Thereafter, he came to know her name as Shubhangi. Then on 02.10.2013 her dead body was found in the pond. Therefore, he narrated the entire incident which was seen by him to the police and accordingly police recorded his statement. I have gone through the cross-examination of the said witness. Nothing material admission come on record to disbelieve on the version of said witness. Despite of that, to corroboration of the said witness prosecution has examined another witness who had also seen the accused lastly with the deceased girl i.e. Pradipkumar Rawat as PW14 at Exh.65. He has also stated that, he was residing near the Unnati Woods Society in one room which is called as a watchman chawl. He knows the accused because he was also doing the work of watchman in Phase No.2, B-5. He identified the

accused before the Court and he has also stated that, on 30.09.2013 accused went to take the lunch near about 12'o clock and thereafter at about 12.10 noon he proceeded to take the lunch towards his house. That time he had seen the accused along with one small girl and one English dog who were standing on the road which was proceeding from the side of jungle. That time accused was in watchman uniform and when he came back after taking his lunch near about 12.50 p.m. and proceeding for work, that time he had seen that dog was tied on the window of Sanjay Rawat. On 02.10.2013 when the dead body of that girl was found and police called him in the police station for the enquiry and shown the photograph of that girl, said witness immediately identified her and gave a statement before the police which was seen by him that girl along with the accused. Said witness also identified photograph of that girl as well as accused before the Court.

44] Thereafter, prosecution has examined one another witness i.e. Sanjay Rawat as PW15 at Exh.66. He has also deposed before the Court that, in the year 2013 he was residing near the Unnati Woods Society in one room and working as a watchman in Phase No.1. Accused was also working there as a watchman and they were residing in the same chawl, therefore, he knows the accused very well. He has stated that, on 30.09.2013 at about 1.00 p.m. when he went at his house to take the lunch, that time he had seen that one dog was tied to the window of his room. When he came after taking the lunch he had seen one person having long hairs who was enquiring with the accused Ramkirat "कुत्ता इधर है तो बच्ची

किधर है". That time accused was on loongi and baniyan. Thereafter, said witness went away from the spot. Near about 8.00 p.m. when he came from his duty he knows regarding the missing girl from their area and on 02.10.2013 he came to know that dead body of that girl was found in the pond. Therefore, he immediately given the statement before the police and identified the accused before the Court.

45] Oral testimony of the said witness corroborated to the version of Investigating Officer as well as complainant who is the father of deceased girl. They have also stated that, they found the dog which was tied on the window of one room and father of the deceased girl enquired with the accused who was standing there on the loongi and baniyan that "कुत्ता इधर है तो बच्ची किधर है".

46] Considering the above said fact, Ld. APP has pointed out that, evidence of all these three witnesses has clearly shows that they have lastly seen the deceased girl and PW14 Pradipkumar Rawat had seen that girl with the accused. Accused tied that dog to the window but that girl was not found. Moreover, thereafter nobody came forward that anybody had seen that girl alive. Moreover, in their cross-examinations no any questions put to them to shatter their oral testimony. Furthermore, there is no evidence brought on record that whether accused had any enmity with them. Said statement also supported and corroborated by the version of PW17 Anil Singh. He has also stated that, after the 12'o clock each of the watchman used to go at his house for taking the lunch for the

period of 40 to 45 minutes by adjusting their duties. It does mean that, they had occasion to go at their house for taking the lunch and had seen the accused with the deceased girl. Moreover, PW9 Dipendrakumar Shukla has specifically stated that, when he came out of the house he had only seen the dog. That girl was not accompanied with that dog and he had seen the accused who was coming from the side of jungle and to that connection it has come on record that the dead body of that girl found in the pond. To that respect, I have already elaborately discussed above. Therefore, Ld. APP has argued that, there is no reason to disbelieve on the oral testimony of these witnesses. Regarding their attendance on the job, their attendance register is already produced on record during the evidence of PW17 Anil Singh. It is at Articles 'G' and 'H' It shows that, all these witnesses residing in their area and they identified the accused. To that respect Ld. Advocate of accused has taken the objection that, Investigating Officer has not conducted the identification parade of accused. Ld. APP immediately replied that, all these concerned witnesses were knowing to the accused very well therefore, no question arise to conduct the identification parade. Hence, on this point argument of Ld. Advocate of accused is not accepted.

47] Furthermore, Ld. APP has also submitted that, to rely on the last seen theory it is necessary for the prosecution to brought on record that, after these witnesses nobody had seen that girl alive. To that respect accused has not brought any evidence. Moreover, it is also necessary to see the **time gap** between the last seen and the

death of deceased girl. To that respect she has submitted that, on 30.09.2013 in the afternoon time said incident was taken place. On 02.10.2013 dead body of the deceased girl was found in pond. Immediately it was forwarded to the J.J. Hospital for the post-mortem. It was reached there at about 9.27 p.m. and her post-mortem was started at about 10.00 p.m. and it was finished at about 11.30 p.m. To that respect Dr. Sadanand Bhise who conducted the post-mortem has been deposed as PW11 at Exh.55 and stated time of death in between 36 to 72 hours before starting the post-mortem. So it is near to the last seen time of that girl and therefore, I have no hesitation to rely on the evidence of the prosecution witnesses for proving the last seen theory. On the contrary, accused has not brought any evidence or sufficient cause to show why their evidence is not reliable and trustworthy.

48] On the other hand, on this point Ld. APP has relied on the Judgment of Jagroop Singh Vs. State of Punjab, reported in 2012 DGLS (SC) 348. It has been discussed regarding the murder trial and appreciation of the evidence of last seen evidence and held that-

“Improvements and/or omissions in version of witnesses - Extent of impact of prosecution case - It is laid down time and again that, minor contradictions, inconsistencies, embellishments or improvements which do not affect the core of prosecution case should not be made ground to reject evidence of a witness

in its entirety.”

49] Moreover, statements of all these witnesses recorded before the concerned Magistrate under section 164 of Cr.P.C. which are produced on record at Exhs.78, 92, 93, 94. It is also corroborated with the version of said witnesses. Therefore, I am of the view that, in the present matter prosecution sufficiently proved the theory of last seen and it has come on record that, lastly deceased girl accompanied with the accused. In respect of this incriminating circumstances, questions put to the accused while recording his statement under section 313 of Cr.P.C. Except mere denials he has not given any satisfactory explanation when opportunity was available to him. So above said evidence is reliable, truthful and admissible in the present case.

Evidence relating to the medical examination of accused :

50] As per the prosecution story, considering the statements of above said witnesses, on 03.10.2013 Investigating Officer arrested the accused and send him for the medical examination on 04.10.2013 as per his letter Exh.52. To that respect Investigating Officer PW18 Mandar Dharmadhikari has deposed that, when he collected report regarding the potency test of the accused it was mentioned that, there was abrasion on the private part of the accused and therefore, he suspicious and got confirmed that accused has committed the forceful penetrative sexual assault with the deceased girl. For proving the said fact, prosecution has examined concerned Medical Officer who examined the accused i.e. Dr. Mahendra Kendre as PW10 at Exh. 51. When he entered into

witness box he has stated that, in the year 2013 he was attached to Civil Hospital at Thane as a Medical Officer and on 04.10.2013 police of Kasarvadavali Police Station brought one person by name Ramkirat Munnilal Goud for his medical examination and sample collection as per their letter at Exh.52. Accordingly, he examined the accused and found that, accused was conscious oriented, clinically stable, secondary sexual characters are normal, penis is well developed, testis descended. So he has given opinion that nothing abnormal found in him which is suggestive of he is not capable for sexual act. From this opinion it appears that, accused is a potent person.

51] Furthermore, he has stated that, he has taken the opinion of Surgeon Dr. Rokade for the injuries on genital area and said Surgeon has given his notes that there is abrasion on foreskin and congestion of glans penis. Age of injury is 4 to 5 days old. Then he has taken the sample of blood, nails, pubic hairs, semens and sealed it and handed over it to the police and also issued his medical certificate at Exh.53.

52] On this point Ld. Advocate of accused has strongly argued that, in the rape case it is for the Investigating Officer to immediately send the accused for medical examination. But, in the present case, on next day accused was forwarded for the medical examination. Moreover, regarding the injuries on the penis PW10 Dr. Kendre has not given his opinion. He obtained the opinion of Surgeon who has not been examined before the Court. Therefore, said opinion cannot be considered against the accused. But, to that

respect I am of the view that, Dr. Mahendra Kendre has deposed as an expert witness and he himself obtained the opinion of Surgeon Dr. Rokade and in his presence Dr. Rokade has given opinion and mentioned on the said certificate regarding the injuries on genital area of the accused. Therefore, his evidence is acceptable because, to that respect medical certificate is produced on record at Exh.53 wherein opinion of Dr. Rokade is very well mentioned. There is no reason for the said independent and expert witnesses to depose false anything against anybody because they are not an interested witnesses. Neither they are knowing to the accused nor to the deceased girl and as it is an expert's opinion, therefore, it is admissible in the evidence and it can be consider. To that respect also opportunity given to the accused to give explanation regarding the said injuries while recording his statement under section 313 of Cr.P.C. But, mere the denials he has not given any explanation or not adduced any evidence to that respect showing that, how said injuries came on his private part. Ld. Advocate of accused has submitted that, said injuries made by the police officer on his genital part by the blade. But, I am of the view that, it is a vague submission made by him because to that respect there is no specific evidence or any complaint found on record. No such type of history stated by accused before the Medical Officer or before the Court. Therefore, said vague statement of the Ld. Advocate of accused is not acceptable. Moreover, age of the injuries is shown is 4 to 5 days old. To that connection it has come on record that, on 30.09.2013 incident was taken place and said injuries also shown near the time of death. So, it is perfectly corroborative with the

version of witnesses and supported to the prosecution case. So, I am of the view that, again prosecution successfully brought strong medical evidence in support of their case.

Forensic Evidence :

53] It has come in the evidence of Investigating Officer that, he collected the samples of accused, deceased girl, seized their clothes and other muddemal i.e. shoes, belt, water of pond, earth near the pond and forwarded it to the CA Office by giving his letter and also asked for the opinion from the CA Office. To that respect, during his evidence said CA Reports filed on record at Exhs.98 to 106. I have gone through the all said CA Reports and DNA Report which speaks that -

- [i] From the CA Report at Exh.105 it reveals that earth collected from Ex.5 i.e. pair of shoes of the accused tallies with the earth in Ex.6 collected from the spot near the pond in respect of hue, physico-chemical characteristics and spectro-chemical composition;
- [ii] CA Report at Exh.106 reveals that Cementitious earth of coba in Exh.2 and 3 (i.e. pieces of coba taken from room of chawl) tallied with the cementitious earth of coba in Ex.4 in respect of hue physico-chemical characteristics and spectro-chemical composition;
- [iii] CA Report at Exh.104 reveals that Ex.4 loongi of accused stained with blood at places;
- [iv] Exh.103 reveals that full T-shirt of accused stained with blood;
- [v] There is no explanation by accused regarding injuries to his private part as he was examined on 04.10.2013. Moreover, no explanation by him regarding the mud found to his legs and shoes

and to that respect CA Report also speaks corroborative against the accused.

54] In respect of that, Ld. APP has relied on the Judgment of Hon'ble Bombay High Court in case of Yusuf Alamash Daryavardi & Anr. Vs. State of Maharashtra, reported in 2005 ALL MR (Cri) 1507. Regarding the appreciation of evidence in murder case it has been held that -

*"Human blood found on clothes of accused -
Group of blood could not be identified -
Absence of any other defence theory as to how
the blood stains appeared on clothes of the
accused as well as that of deceased - Held,
conclusion has to be drawn that the blood
stains on the clothes of all the concerned were
of deceased which was the result of assault at
relevant time and place".*

55] Said Judgment is perfectly applicable in the present case also. When said questions put to the accused he has given answer in negative only. He has not given any explanation as to how earth found in his shoes matched with that earth and moreover, by which occasion bloodstains came on his clothes. Furthermore, he has also not given any type of explanation relating to injuries mentioned on his private part. So, I am of the view that, prosecution again adduced the strong, technical and forensic evidence against the accused to establish the chain and to corroborate with the

prosecution story. Therefore, evidence relating the CA report, DNA report is accepted as it is which is reliable and truthful. There is no any ground shows to disbelieve on the expert's evidence.

Evidence relating to the post-mortem :

56] It has come in the evidence of Investigating Officer that, he collected the CA Reports and post-mortem report as well as final cause of death certificate which shows that, **death of deceased caused due to head injury with the extensive genital injuries (unnatural)**. I have discussed said point elaborately while discussing the issue of homicidal death. For proving the post-mortem report and said certificate, prosecution has examined witness Dr. Sadanand Bhise as PW11 at Exh.55. As present matter is regarding the rape and murder of small girl aged 3 years 2 months therefore, it is necessary for the Court to see the post-mortem reports minutely. I have gone through the oral testimony of Dr. Sadanand Bhise. He has stated that, in the year 2013 he was attached to J.J. Hospital and they have received the letter as well as dead body of one small girl aged 3 years from Kasarvadavali Police Station, Thane on 02.10.2013 and they also requested for the video-shooting of the said post-mortem. Said letters produced on record at Exhs.56 and 57. As said body was highly decomposed, therefore, immediately they started the post-mortem at about 10.00 p.m. and finished it at about 11.30 p.m. Said body was received at about 9.27 p.m. They have also gone through the ADR and inquest panchanama of the said girl which was prepared on 30.09.2013. Said body was found in the pond which was decomposed. Further

he has stated that, upon the examination it is noticed that, rigor-mortis is passed off. Facial features bloated. Body is in advanced state of decomposition. Eyes swollen and protuded tongue is protuded and bulging out. Body swollen greenish discolouration of skin at places marbling over chest abdomen, upper and lower limbs. Upper limbs are fixed at elbow joint, lower limbs are fixed at knee joint. Identifiable scalp hairs blackish in colour easily pluckable facial features identifiable maggots are of size 1 cm in length crawling over body at places foul smell is perceived distention of abdomen seen peeling of skin over palm, chest, abdomen, back and lower extremities perianal region swollen anal canal, anus, vagina, dilated. Laceratio of posterior vaginal wall communicating with anal canal with intestines protuded out. Post-mortem liquidity cannot be appreciated due to grayish green discolouration.

57] Further he has stated that, on examination of external genitals it was found that, libia majora surface is contused at places libia minora surface is hemorrhagic. Perineal tear communicating with opening of anus of size 3 X 2 cm markings irregular hemorrhagic exposing underlying muscles.

58] On external examination he found the following injuries :

- [i] Contusion of size 5 X 3 cm muscle deep is present over left calf surface lower 1/3rd posterior aspect red in colour;
- [ii] Contusion of size 3 X 2 cm X subcutaneous deep is situated to medial to contusion no.1 red in colour;
- [iii] Contusion of size 9 X 3 cm muscle deep situated over posterio medial aspect of upper reason of left thigh red in colour;

- [iv] Contusion of size 7 X 4 cm X muscle deep is situated over left arm posterior medially red in colour;
- [v] Punctured wound over midline of forehead 4 cm above globella margins hemorrhagic;
- [vi] Abrasion of size 4 X 3 cm is present over medial aspect of upper 1/3rd of right forearm dark red in colour;
- [vii] Contusion of size 5 X 3 cm X muscle deep is present over medial aspect of upper thigh of left side.

All the injuries are ante-mortem in nature, fresh. Age of injuries just before the death.

59] On internal examination he found following injuries :

- [i] Underscalp contusion of size 6 X 4 cm X bone deep is present over parietal region right side dark red in colour;
- [ii] Underscalp contusion of size 5 X 3 cm X bone deep is present over right temporal region dark red in colour;
- [iii] Underscalp contusion of size 4 X 3 cm X bone deep is present over right occipital region dark red in colour.

60] Skull – No fractures all sutures are separated due to advanced decomposition. Brain is liquified faint reddish coloured. Larynx – Intact small particles of leaves present at the level of bifurcation on left side and at the level of hilum region of left side. The leaves particles are similar with leaf particles which are present all over body externally. Uterus was intact. On examination of vagina internally lacerated injury of size 2 X 2 cm found over posterior vaginal wall margins irregular hemorrhagic. It was communicating with anal canal laterally and also it was

communicating with peritoneal cavity superiorly at level of posterior fornix through which small intestine prolapse. Hymen was lacerated and tags of hymenal remnants were seen with hemorrhagic margins on inner wall of vagina submucous hemorrhages were present at places.

61] Then he collected the samples of viscera, nail clippings, piece of sternum bone for diatoms, 4 vaginal swabs/1 anal swab/1 oral swab for chemical examination. Hairs for chemical analysis, sternum bone piece for DNA and all these bottles were sealed, labeled and handed over to WPN No.2306 of Kasarvadavali Police Station.

62] After post-mortem opinion regarding the cause of death is given as "**death due to head injury with extensive genital injuries**". Said opinion is final and accordingly, he has issued the post-mortem report vide Exh.58. Moreover, he has also stated that, all injuries mentioned in column nos.17 to 19 are ante-mortem in nature and head injury is sufficient to cause death in the ordinary course of nature. Head injury can be caused by impact of hard and blunt object like rod, stone, lathi or any other hard and blunt object. To that respect, prosecution has also produced final cause of death certificate at Exh.111 which is also issued by said Dr. Bhise and while issuing said certificate he has also considered the C.A. Report and diatom test report and after considering the injuries and said report he has confirmed his opinion that, death was due to head injury with extensive genital injuries (unnatural).

63] During the cross-examination of the said witness Advocate of accused has given a suggestion regarding the injuries caused on the genital area that it can be possible by the sharp stick or iron wire but it is strictly denied by the said witness and confirmed that, genital injuries are extensive in nature. Nothing has come in his cross-examination to disbelieve the evidence of post-mortem of the deceased girl. Considering the above said evidence, prosecution sufficiently brought the evidence regarding the injuries caused to the deceased girl and shows that, due to genital injuries and head injury she was died. It is a believable and trustworthy evidence which is supported and corroborated to the prosecution story.

64] Ld. Advocate of accused has submitted that, investigation was not properly conducted, no test identification parade was conducted, no panchanama of the female dog or her legs stamp or her nail scratches was prepared. False investigation conducted by the Investigating Officer to rope the accused in the present matter. Defect in investigation, as per well settled position of law do not affect the credibility of the prosecution witnesses. There are ample case laws on the said aspect like **Dhanaj Singh alias Shera and Ors. Vs. State of Punjab, 2004 SCC (Cri) 851** and **C. Muniappan and Ors. Vs. State of Tamilnadu (2010) 3 SCC (Cri) 1402,** wherein it is categorically held that -

"If primacy is given to such designed or negligent investigation, to the omissions or lapses by perfunctory investigation, the faith and confidence of the people would be shaken,

***not only in the law-enforcing agency but also
in the administration of justice as doing so
would tantamount to playing into the hands
of the Investigating Officer."***

Therefore, the alleged defects in the investigation which do not go to the root of the matter and do not affect the core of substratum of prosecution case have absolutely no impact on the outcome of the case. Considering the above well settled position of law I am of the view that, regarding the defective investigation argument of Ld. Advocate of accused is not acceptable.

65] In the present matter, absolutely there is no delay in lodging the FIR. On 30.09.2013 said deceased girl was missing from the house. Her father has taken the search for whole day but she was not found. Therefore, at about 11.30 p.m. he has filed a complaint regarding kidnapping of his daughter by unknown person on same day. Therefore, it has also brought on record successfully by the prosecution that there is no delay in lodging the FIR. So, it will not be fatal the trial.

66] Considering the above said evidence, as present matter is based on the circumstantial evidence and therefore, it is necessary for the prosecution to establish the chain of events/circumstances. To that respect I would like to discuss that, considering the above said evidence prosecution successfully established the chain of events/circumstances which conclusively connects with the guilt of accused. Those circumstances are as under :

[a] Deceased is a minor girl of aged about 3 years 2 months at the time of incident;

[b] On the day of incident i.e. on 30.09.2013 at about 10.45 a.m. deceased was playing outside with dog having pink colour T-shirt on her person but she did not return;

[c] Complainant PW1 Manoj Sadavarte i.e. father of deceased started her search and enquired with neighbouring persons about her whereabouts and also in that area by showing her photograph. As she was not traced out, he lodged the missing complaint in police station by giving her description and provided her photograph;

[d] On same day at about 2.00 p.m. complainant again went to watchman chawl to search victim and saw accused was standing behind his house wearing loongi and baniyan and his legs were filled with mud;

[e] On 01.10.2013 complainant showed various spots to police and panch witnesses where deceased was seen by neighbouring persons, from where she went for playing along with dog and at near Labour Camp victim with a dog;

[f] On 02.10.2013 behind Unnati Wood Society in one nala of water and near one pond body of victim found floating on the water by swelling;

[g] T-shirt of pink colour was on person of deceased and also noticed the marks of the legs of dog on the road near that pond;

[h] In room no.2 of Manera Chawl one shirt of purple colour, baddan, four long hairs and four small hairs were found and also found bloodstains on cement coba;

[i] Accused was arrested on 03.10.2013 and sent for medical examination on 04.10.2013 by PW18 Investigating Officer;

[j] Accused gave memorandum statement and shown the spot, the heap of sand where victim was playing with dog from where he kidnapped her, then the second room of the Manera Chawl where he committed rape on her and then also committed her murder by hitting her head on the earth, and a pond of water on the distance of 100 meter where he threw the body of that girl;

[k] Accused also led in room no.4 of said chawl and at his instance his clothes wore by him at the time of incident were recovered i.e. security uniform which was black colour pant, shirt of white colour, one loongi and baniyan, one belt and his shoes;

[l] PW14 Pradipkumar Rawat stated that on 30.09.2013 at about 12.00 noon he had seen the accused along with one small girl and one English dog who were standing on the road which was proceeding to the side of jungle. At that time accused was in watchman uniform. He also stated that at about 12.50 p.m. while he was proceeding for his work, he had seen that said dog was tied on the window of Sanjay Rawat;

[m] PW9 Dipendrakumar Shukla stated that on 30.09.2013 at about 11.30 to 12.00 p.m. he saw deceased proceeding with one dog. Thereafter, at about 1.00 p.m. he had seen that dog of deceased was wandering on the road but said small deceased girl was not with that dog. He also saw accused Ramkirat Gaud was coming from the side of bushes near the Unnati Woods wearing the uniform of watchman;

[n] PW15 Sanjay Rawat stated that, on 30.09.2013 at about

1.00 p.m. he had seen one dog was tied to window of his room. When he came after taking the lunch out of the house he had seen one person having long hairs was enquiring with accused Ramkirat "कुत्ता इधर है तो बच्ची किधर है". That time accused was on loongi and baniyan;

[o] Victim was lastly seen in the company of accused on 30.09.2013 at about 12.00 noon to 12.15 p.m. and thereafter nobody seen her alive;

[p] PW17 Anil Singh stated that on 01.10.2013 at about 8.20 a.m. he went for round but accused was not present there. He called him on duty. That time accused stated "मैं टेन्शन में हूँ". Then he has also stated that "मैं ड्युटी नहीं करूंगा, मैं आज के आज गांव जाऊंगा. मेरे से गलती हुआ है. मुझसे बड़ा गलती हुआ है, मैं आज के आज गांव जाऊंगा, इधर नहीं रहूंगा. कल पुलिस ने बुलाया था, उसी बारेमें मेरी गलती हुई है".

[q] On medical examination of accused on 04.10.2013 Medical Officer found that there is abrasion on foreskin and congestion of glans penis and the age of injury is 4 to 5 days old.

[r] On post-mortem of deceased external genital injuries, vaginal injuries, external body injuries 7 in nos., internal 3 injuries to scalp were found and said injuries were ante-mortem in nature, fresh and age of injuries was just before death. External genitals it was found perineal tear communicating with opening of anus of size 3 X 2 cm markings irregular hemorrhagic exposing underlying muscles. Hymen was lacerated and tags of hymenal remnants were seen with hemorrhagic margins on inner wall of vagina submucous hemorrhages were present at places. Cause of death is due to head injury along with extensive genital injuries;

[s] The samples of victim and accused and their clothes, the articles found on the spot of Manera Chawl, the articles collected from spot near the pond etc. were sent in sealed condition to FSL and DNA examination vide separate letters;

[t] The CA Report at Exh.105 reveals that, earth collected from Ex.5 i.e. pair of shoes of accused tallies with the earth in Ex.6 (i.e. collected from spot near pond) in respect of hue, physic, chemical characteristics and spectro-chemical composition;

[u] The CA Report at Exh.106 reveals that, cementitious earth of coba in Ex.2 and 3 (i.e. pieces of coba taken from room of chawl) tally with the cementitious earth of coba in Ex.4 in respect of hue, physico-chemical characteristics and spectro-chemical composition;

[v] The CA Report at Ex.104 reveals that Ex.4 (loongi of accused) is stained with blood at places. Ex.103 reveals that full T-shirt of accused stained with blood;

[w] There is no explanation by accused regarding injuries to his private part as he was examined on 04.10.2013 and Medical Officer stated age of injuries are 4 to 5 days prior to examination;

[x] No explanation by accused regarding mud to his legs and shoes and CA Report to that effect.

67] From the above said evidence prosecution successfully proved the intention and motive of accused as, on that day said deceased girl was wandering without wearing the pant. Accused had seen that girl and to satisfy his physical lust he took that girl in the room and committed penetrative sexual assault with that girl and hit her head on the cement coba and thereafter thrown her

body in the muddy water pond. Therefore, in the present case intention and motive of the accused is also proved by the prosecution.

68] Considering the above said entire evidence I am of the view that, prosecution successfully brought the evidence on last seen with the corroboration of prosecution story as well as proved the extra judicial confession which is supported by the medical evidence of accused as well as post-mortem report and forensic evidence which fully believable, considerable, truthful and clinching evidence. Absolutely there is no doubt in any manner to accept the prosecution evidence. Moreover, prosecution successfully established the chain of circumstances. As in the present matter investigation conducted by the investigating authority is prompt and commendable, therefore, it will be easy and helpful for the prosecution to establish the guilt of accused.

69] Therefore, considering the above said evidence, I am of the view that prosecution sufficiently proved that on 30.09.2013 in between 12.10 to 12.45 p.m. near Unnati Woods Society in the chawl of Transit Camp at Anand Nagar, Ghodbunder Road, Thane accused kidnapped the minor deceased girl aged of 3 years from the lawful guardianship of her parents and committed the offence under section 363 of IPC and also heinously committed the rape on said minor girl aged 3 years 2 months by the accused having age 30 years and committed the offence punishable under section 376(2)(i) of IPC and on the above said date by causing extensive genital injury and head injury to the said girl he committed her

murder and committed the offence punishable under section 302 of IPC. Further, after commission of the murder he thrown the body of that girl in the muddy water pond to disappear the evidence of murder intentionally, therefore, he committed the offence punishable under section 201 of IPC. As he has committed the penetrative sexual assault with the minor girl aged 3 years 2 months, he committed the offence under sections 4 and 8 of the POCSO Act. From the above said evidence it shows that accused committed the penetrative sexual assault and caused extensive genital injury and committed murder of innocent, unarmed, helpless and minor girl aged 3 years 2 months which is really a heinous crime committed by the accused. Hence, I hold him guilty and answer point nos. 1 to 6 in the affirmative.

70] Considering the above said discussion, accused is held guilty for the offence punishable under sections 363, 376(2)(i), 302, 201 of IPC and under sections 4 & 8 of the Protection of Children From Sexual Offences Act, 2012. Hence, I take a pause here to hear the accused and Ld. APP on the point of sentence.

Thane.
05.03.2019.

(S.A. Sinha)
District Judge-7 &
Special Judge under POCSO Act,
Thane.

71] Heard accused in person, Ld. APP Smt. Moholkar for State and Ld. Advocate Shri Jagtap for accused.

72] Furthermore, Ld. APP Smt. Moholkar has filed written

notes of argument regarding the quantum of sentence vide Exh.120 and submitted that, accused has committed heinous crime of sexual assault with the child aged 3 years and committed brutal murder who was innocent, helpless and defenceless. This crime is committed in inhuman manner. It is a crime against the wholly body of the deceased child and the soul of society. Therefore, considering the nature of offence and manner in which it was committed, said offence falls under the category of rarest rare case and therefore, she put the aggravating circumstances that said girl was of the three years and accused committed sexual assault and her brutal murder. Accused kidnapped her when she was playing. Medical evidence led by the prosecution indicates brutality in the commission of crime. The several external and internal injuries associated with the several injuries to vagina due to sexual assault were caused to the child girl.

73] The vaginal wall communicating with anal canal with intestine protruded out. Perineal tear communicating with opening of anus of size 3 X 2 cm marking irregular hemorrhagic exposing underlying muscles (shows deep and extensive genital injuries). The cause of death is given as “death due to head injury with extensive genital injuries”. Sexual assault shows the behaved of accused like wild animal mercilessly just to fulfill his lust with the victim child without the slightest consideration of human life, the tender age of victim, the extreme pain she must have suffered at the time of incidence. It is a cold blooded murder. Conduct of accused indicated that he had felt no remorse. The said crime had shocked

the collective conscience of the community. Therefore, she relied on the Judgment of *Macchi Singh & Ors. Vs. State of Punjab and Bachan Singh case as well as on the case of Dhananjay Chatterjee*.

74] Further, Ld. APP has argued that one hundred and forty countries have abolished the death penalty. In India death penalty is still in existence. The legislature has recently made amendment on 21.04.2018 the Criminal Law. Offence under section 376(A)B) is provided death penalty if rape committed on woman below 12 years. The concept of the “rarest of rare” case can be read in this section itself.

75] Considering the well settled position of law and nature and gravity of the offence, she has submitted that, the accused would be a threat to society and there are no grounds to show any leniency to the accused. Therefore, she prays that death penalty may be imposed to the accused.

76] On the contrary, Ld. Advocate of accused has finished his argument in one line that suitable order may be passed which this court thinks proper and fit. When this court enquired with the accused about his submission on the point of sentence, he has only submitted that, he is an innocent.

77] The accused has committed the offence of rape and murder and thrown her body in the pond and on third day body of

minor girl was found floating and in swollen and decomposed position.

78] It is very tragic death of minor girl aged 3 years 2 months. There are no words to console the family of the deceased. The accused has committed the offence in a brutal way. After committing rape on minor girl he hit her head on cement cobbles i.e. on floor and caused head injury to her and then thrown her in muddy water pond. Her death caused due to extensive genital injuries and head injury. After giving anxious consideration to the facts and circumstances of the present case, the following circumstances can be called out as mitigating.

The case is based on circumstantial evidence :

79] There is no direct evidence. The law does not make any distinction under the Evidence Act as to weak evidence or strong evidence, direct or circumstantial evidence and primary evidence or secondary evidence. What Court has to consider is whether the evidence is legally admissible or not. Once a finding of guilt is arrived at, on the basis of admissible evidence, then it does not matter whether the evidence was direct evidence or circumstantial evidence. There are cases in which, in spite of there being direct evidence, a convict is not hanged. Equally there are cases in which the accused is convicted on circumstantial evidence yet the death penalty is awarded. Therefore, a case based on circumstantial evidence cannot be considered to be ineligible for awarding death penalty. To that respect, in the Judgment of the Hon'ble High

Court in case of State of Maharashtra and Ors. Vs. Viran Gyanlal Rajput and Ors. Decided on 16.02.2015 in which it is observed that-

“In order to ascertain whether the accused is responsible for the 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” be proved indirectly by means of certain inferences drawn from “factus probans” i.e. 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.”

80] Moreover, in the Judgment of Supreme Court of India in case of Shivaji @ Dadya Shankar Alhat Vs. The State of Maharashtra, decided on 05.09.2008 in which it is held that -

“The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. In fact in most of the cases where death sentence are awarded for rape and murder and the like, there is practically no scope for having an eye witness. They are not committed in the public view. But very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect. The plea of learned Amicus Curiae that the conviction is based on circumstantial

evidence and, therefore, the death sentence should not be awarded is clearly unsustainable.”

The accused is of a young age hardly in his 30s :

81] As regards the age as a mitigating circumstance, it is submitted that age by itself cannot be considered as a mitigating circumstance and even in the latest Judgment i.e. **Shabnam Vs. State of U.P. (2015) 6 SCC 632** this view has been upheld. It is observed that -

“The mitigating circumstances regarding young age of the Appellants-accused at the time of commission of crime do not bear any significance in terms of outweighing the aggravating circumstances of their wanton act. Further, it has also been pointed out before us that the Appellant-accused Shabnam was pregnant at the time of commission of offence and the couple now has a dependent minor child. While the said circumstances stand as such, it is pertinent to notice that this Court has consistently held that such compassionate grounds are present in most cases and are not relevant in considering commutation of death sentence. The principle that when the offence is gruesome and was committed in a calculated and diabolical manner, the age of

the accused may not be a relevant factor, was further affirmed by this Court in Mofil Khan Case (supra). It is however shocking that at the pint of their youth, the couple indulged in such debased act of multiple murders driven by infatuation and exhibited no remorse.”

He has a wife and children to be looked after :

82] Though this mitigating circumstances not put by the accused, despite of that this is considered by this court that his family dependent on him. But to that respect, accused has not adduced any evidence and also not made any submission. On the contrary, while commission of the offence, accused has not thought about the expectations of the family members of the deceased girl as she was growing child and her parents also expected so much things from their child. Therefore, accused is not entitled for the leniency on this ground.

There is no previous conviction to his discredit :

83] Undoubtedly there is no previous conviction of the accused. But to that respect there is no evidence on record. Moreover, in which manner accused has committed the rape on small girl, a man with such a background, committing rape, only leads to an inference that he would certainly be a menace to the society if he is not given the extreme penalty of death.

There is no complaint against him from Jail Authorities during the period of his under trial detention :

84] It will not be a proper yardstick to judge a person's conduct merely on the basis of the fact, that whilst in jail, there was no occasion for the Jailor to make any complaint about his behaviour. But considering the act of accused while commission of offence, therefore, absence of any complaint whilst in custody cannot be a proper yardstick for considering leniency.

There is no material to show that alternate punishment will not meet the ends of justice and that the accused will not reform :

85] As regards the last circumstance, there cannot be any yardstick to predict as to how a person will behave in future. However, the same can be judged from the previous background, and if the previous background is considered then there are reasons to believe that accused had taken to crime, he has betrayed the confidence reposed in him by an innocent girl. Then he took that girl in the room and committed heinous crime i.e. rape with the minor girl and also committed her murder brutally and thrown her body in the muddy pond. Hence, there are no circumstances to rely upon the accused would reform.

86] There are aggravating circumstances against this accused.

[a] He has committed a heinous offence of rape and murder of a helpless girl;

[b] The offence is of diabolic nature;

[c] He has committed rape on the small girl, hitted her head on the

cement coba and thrown her body in the muddy pond.

[d] The accused confesses with PW17 Anil Singh about the offence is the aggravating circumstances coupled with the case registered against him;

[e] The girl was missing and her body was found in the muddy water pond which shaken the conscious of the society;

[f] The accused has committed cold-blooded murder of the helpless minor girl adds the gravity of the offence;

[g] The evidence also proves the motive to satisfy his lust.

87] As per section 354(3) of Cr.P.C. Court has to give special reasons for awarding death penalty.

88] The first landmark decision on the point which summarizes the law on the question of capital punishment is that of **Bachan Singh Vs. State of Punjab (1980) 2 SCC 684** in which the Apex Court has upheld the Constitutional validity of death penalty and for the first time evolved the formula of '**rarest of rare**' case and laid down the following propositions in the said case.

[i] The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

[ii] Before option 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, an 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.

89] In the words of the Apex Court, as laid down in **Bachan Singh**, there are certain mitigating circumstances in every case. Similarly, there are aggravating circumstances also. The Apex Court has listed some aggravating circumstances as follows by stating that Court may in the following cases impose the penalty of death in its discretion.

[a] If the murder has been committed after previous planning and involves extreme brutality; or

[b] If the murder involves exceptional depravity.

90] So far as mitigating circumstances are concerned, the Apex Court has laid down that Court shall take into account following circumstances namely,

[i] extreme mental or emotional disturbance;

[ii] the age of the accused. If the accused is young or old, he shall not be sentenced to death;

- [iii] the probability that accused would not commit criminal acts of violence as would constitute a continuing threat to society;
- [iv] the probability that the accused can be reformed and rehabilitated;
- [v] that in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence;
- [vi] the accused acted under the duress or domination of another person;
- [vii] that the condition of the accused showed that he was mentally defective and the said defect impaired his capacity to appreciate the criminality of his conduct.

As regards all these aggravating and mitigating circumstances, the Apex Court has made clear that these circumstances are not exhaustive and every case will again depend on the facts and circumstances of each case.

91] In the next landmark decision of ***Machhi Singh***, the Apex Court has stated that the following questions may be asked and answered as a test to determine the 'rarest of rare' case in which death sentence can be inflicted :

- [a] Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence ?
- [b] Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

92] In this authority, the Apex Court had laid down following five criterias as parameters for the assistance of the Courts in determining whether a case falls in the category of 'rarest of rare'

- I] Manner of commission of murder.
- II] Motive for commission of murder.
- III] Anti-social or socially abhorrent nature of the crime.
- IV] Magnitude of crime.
- V] Personality of victim of murder.

93] In view of law laid down in above said decisions of the Apex Court, this Court is now drawing the balance-sheet of aggravating and mitigating circumstances and after giving maximum weightage to the mitigating circumstances, will arrive at the decision of appropriate punishment.

94] Therefore, when this court is considering to draw the balance-sheet of the aggravating and mitigating circumstances, the Court has to go through the facts of the case.

Aggravating Circumstances :

Pre-planned manner :

95] The offence committed by the accused had not been committed on the spur of moment. It was pre-planned. The accused took away the deceased girl in one room to satisfy his physical lust and committed aggravated penetrative sexual assault with the minor girl aged 3 years 2 months. There was no enmity of accused with her parents. Then he hitted her head on cement coba

and with cool mind he thrown her body in muddy pond. To that respect, evidence discussed above and on 3rd day her body was found in pond in floating and swollen position. Her severe injuries over genital area specifically mentioned in post-mortem report and her cause of death also given "due to extensive genital injuries and head injury". Said facts proved that after looking to lonely girl accused made plan to commit rape and murder and in brutally manner he committed murder of this innocent girl with cool mind and also thrown her body in muddy water pond shows that he has committed all this act with pre-planning.

The diabolical manner :

96] The medical report proves that the cause of the death was "due to head injury and extensive genital injuries" which proves the gravity of commission of offence. He had applied such force while committing rape, has caused genital injury which is one of the cause of death associated with other injuries. The pain which she had experienced cannot be explained. Unfortunately, the victim is not there to explain pain caused to her during that period. It proves another aggravating circumstance against the accused. He has committed the offence in order to satisfy his lust. He has forcibly raped a defenceless girl and eliminated her life which is the ultimate insult of womanhood.

Exceptional depravity and brutality :

97] The act itself proves that he had committed it with extreme brutality. After the commission of offence, he went on the

spot and standing nearby wearing loongi and baniyan. Thereafter, when police called him for enquiry and help the dog squad he disclosed said fact to witness Anil Singh. Then he maintained silence. Due to forceful penetrative sexual intercourse he has also received injuries on his private part. He prepared himself to go at his native place by leaving his job shows that he had felt no remorse.

Anti-social nature of the crime :

98] Any crime is anti-social, then it is rape associated with murder is socially abhorrent, committed in a systematic, diabolic and pervert manner.

Incidental shocking to collective conscience of society :

99] In case of *Dhananjoy Chatterjee*, the Apex Court has held that if the incident involved in the case has shocked, the collective conscience of the society and if the test is affirmative, then the accused deserves the death penalty.

100] Because of this case the security of women and small girl is again found in danger. The girl who is 3 years 2 months was playing on the ground was missing and found her body in the muddy pond in horrifying condition to her parents is an incident of shocking to the collective conscience of the society. The question of safety of woman and girl is again arose because of this incident and one small girl subjected to most savaged form of rape and murder of this city area was shocking to one and all. It created feeling of

helplessness in parents, in women, in girls and in every section of the society. It created a fear psychosis and left a scar on the social order and becomes a burning social issue. Social abhorrence and the national shock created by this incident was just parallel to the one evoked by Nirbhaya incident in Delhi. In case of ***Devendra Pal Singh Vs. State (NCT of Delhi) 20025 SCC 234*** in which the Apex Court has held that -

“When the collective conscience of the community is shocked, the Courts must award the death sentence. The dastardly act of the accused in the said case were opined by the Court to be diabolic in conception and cruel in execution.”

Magnitude and enormity of crime :

101] The society's abhorrence to the crime of rape and murder compelled the legislature to introduce the death penalty itself proves that the rarest of rare case is implied in it when the offence of murder while committing rape is punishable with death, the act itself comes under rarest of rare case. The genital injuries and the head injuries are the cause of death associated with smothering which proves the barbaric act of the accused while committing rape. The present case thus satisfies four aggravating factors laid down in the case of Machhi Singh.

Mitigating circumstances :

102] On this aspect only mitigating circumstances are young

age of the accused, dependency of his family members.

103] The accused is 30 years of age. As a matter of fact, for the offence of rape and especially of rape of minor girl and murder, the young age of the accused cannot be a mitigating circumstance at all. Apex Court in its various authorities held that young age cannot by itself be a decisive factor to reduce punishment.

104] However, as this court is considering the option of death penalty in view of the law laid down in Machhi Singh, this mitigating circumstance is also being considered.

105] In respect of imposition of death penalty also, the Apex Court has time and again, emphasized that the young age of the accused is not by itself a determinative factor against the award of the death sentence. The cumulative circumstances have to be taken together and a comprehensive view taken after proper weightage being given to each circumstance.

106] In the authority, of *Jai Kumar Vs. State of MP, 1999 SCC (Cri) 638* wherein though the accused was a young man of 22 years of age, it was not held as a mitigating factor and the penalty of death was confirmed after taking recourse to the entire Law of Penology.

107] The young age of the accused was also advanced as mitigating factor in the case of *Dhananjay Chatterjee Vs. State of*

West Bengal 1994 (2) SCC 220 but the Apex Court has negated the said contention as mitigating factor and held that where the collective conscience of the society is shocked, then that is the relevant factor which the Court has to consider while imposing the appropriate punishment and the Apex Court has affirmed the death penalty.

108] Accused was aware about the consequences of the act. At that time he has not considered this compassionate family ground. The court should also think about the family of the deceased, she was minor child of their family and growing innocent child. It is one of the aspect arose that there is no any complaint from the jail during his stay is not available to this accused. But, as I discussed above that considering the nature of accused and offence of rape committed heinously with small girl aged 3 years 2 months and brutally committed her murder, there is no possibility of reforming.

Conclusion :

109] Therefore, in answer to the question the death or life, needless to say that all aggravating factors in the case, like the manner in which the offence was executed and the conduct of the accused, the enormity of the crime and the collective conscience of society being shocked, if the balance-sheet is drawn of mitigating and aggravating factors and maximum weightage is given to the only mitigating factors even then the aggravating factors far outweigh the balance.

110] After considering the mitigating and aggravating circumstances, I would like to consider the observations made by the Hon'ble Apex Court and High Courts while discussing the issue of death penalty in sensitive cases like rape and murder.

The *Hon'ble High Court of Bombay in Criminal Appeal Nos.1020 of 2001 and 401 of 2002 (State of Maharashtra Vs. Haresh Mohandas Rajput and Haresh Mohandas Rajput Vs. State of Maharashtra)* decided on 11.01.2008 has observed that -

“Moreover, social impact of the crime, particularly where it relates to offences against women, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude of imposition of meagre sentence or too sympathetic view may be counter productive in the long run and against social interest which needs to be cared for, protected and strengthened by string of deterrence inbuilt in the sentencing system.”

“Sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. It has been rightly said that whereas a murderer

destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The Courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and complicated provisos.”

“Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging potential criminals. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court (Dinesh Vs. State of Rajasthan MANU/SC/8078/2006 : 2006 Cri.LJ 1679).”

Judgment i.e. *Dhananjay Chatterjee Vs. State of West Bengal 1994 (2) SCC 220*, wherein the Hon'ble Apex Court has once again reiterated that,

“The measure of the punishment must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the accused but also the rights of the victims and the society at large, while considering imposition of appropriate punishment”

112] Herein the case, it has to be stated that if one has regard to all the aggravating factors which are elaborated above, then this is the fit case in which, the Court has to invoke the death penalty as the other option of life imprisonment which is prescribed in Section 302 of IPC is unquestionably closed. Law is well settled that the Court has to do justice not only to the accused but also to the victim and the society at large. As held by Apex Court itself, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the

efficacy of law and society would no long endure such serious threats. Therefore, it is the duty of this Court to award proper sentence having regard to the nature of offence and the manner in which it was executed. To expect society to be a silent spectator to this kind of deprived behaviour and to continue to extend its protective arms to the convicts would be both unnatural and ridiculous. Here the exemplary and rarest of rare punishment is required.

113] In such cases, as observed by the Apex Court in the case of ***Mahesh Vs. State of MP (1987) 2 SCR 710***, the common man understands and appreciates the language of deterrence more than the reformation language. The maximum punishment is not only to deter the accused from committing the similar offence but it is also to send a strong signal and message to the society at large that such offence will not be tolerated. There should be zero tolerance to such offences and then only the tendency of the like minded person to commit such offences will be curbed. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. Courts must hear the loud cry for justice of the society in cases of heinous crime of rape on innocent, helpless girls of tender years, as in this case, by imposition of proper sentence.

114] In case of ***Laxman Naik Vs State of Orissa***, the Hon'ble Supreme Court while dealing with a case based on circumstantial evidence of rape and murder of a 7 year old girl by her own uncle

considered the circumstances and while imposing the extreme penalty of death, made the following observations :

“26 This brings us to the question of sentence to be imposed upon the appellant for the offences for which he has been found guilty by the two courts below as well as by us as discussed above. In this connection it may be pointed out that this Court in the case of Bachan Singh Vs. State of Punjab while discussing the sentencing policy, also laid down norms indicating the area of imposition of death penalty taking into consideration the aggravating and mitigating circumstances of the case and affirmed the view that the sentencing discretion is to be exercised judicially on well-recognized principles, after balancing all the aggravating and mitigating circumstances of the crime guided by the legislative policy discernible from the provisions contained in Sections 253(2) and 354(3) of the Code of Criminal Procedure. In other words, the extreme penalty can be inflicted only in gravest cases of the extreme culpability and in making choice of the sentence, in addition to the circumstances of the offender also. Having regard to these principles with regard to the imposition of the

extreme penalty it may be noticed that there are absolutely no mitigating circumstances in the present case.”

115] In case of Rajendra Pralhadrao Wasnik Vs. State of Maharashtra, the Hon'ble Apex Court was confronted with a case of rape and murder of 3 years old girl child by a married person aged 31 years by luring her on the pretext of buying biscuits. While upholding the death sentence imposed by the Court below in the backdrop of the circumstantial evidence brought on record by the prosecution, Their Lordships analyzed the principles laid down in the case of *Bachan Singh (Supra)*. The following observations were drawn to justify the imposition of sentence of death penalty :

“35 - It can hardly be even imagined that what torture and brutality the minor child must have faced during the course of commission of this crime. All her private parts were swollen and bleeding. She was bleeding through her nose and mouth. The injuries, as described in EX.P17 (the post mortem report) shows the extent of brutal sexual urge of the accused, which targeted a minor child, who still had to see the world. He went to the extent of giving bites on her chest. The pain and agony that he must have caused to the deceased minor girl is beyond imagination and is the limit of viciousness.

37 - When the Court drawn a balance-sheet of the aggravating and mitigating circumstances, for the purposes of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing but aggravating circumstances evident from the record of the Court. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused.”

116] It is time to impose appropriate sentence which is proportionate to the crime committed and even by applying the theory of 'crime and criminal', the Court is expected to take into consideration the social interest and the consciousness of the Society for award of appropriate sentence. The discretion vested in the court to impose a death sentence is well guided by the principles evolved by catena of judicial decisions and by balancing the aggravating and mitigating circumstances. The Court is expected to administer the criminal judicial system which would provide an effective and meaningful life to a girl child and the women in this country. We also cannot be unmindful of the fact that when we talk of the right of the accused, it is equally important for us to take into consideration the expectation of the family of the victim. Crime against women which are on the rise need to be tackled on all fronts in a manner which should respond to the

Society's cry for justice against such criminals. Deceased was done to death by the accused for no-fault of her own, except for a reason that she is a girl and she fell prey to the sinister design of accused to fulfil his lust. The said attitude of the accused, according to me deserves a death sentence.

117] Thus, I am constrained to hold that the mitigating circumstances like young age of accused, his socio-economic conditions and non-existing chance of his reformation, pale into insignificance in the light of the aggravating circumstances. Hence this case, without any doubts, falls into the category of the “rarest of rare”. Therefore, if the object of punishment is to be achieved, then herein the case, only maximum punishment will send the message to the society and also to similar like minded persons. To show leniency or mercy in the case of such heinous crime and on the accused who has shown no repentance or remorse after exhibiting extreme depraved mentality would be a travesty of justice. This Court cannot do so. Hence, though this Court is fully aware of irrevocable nature of the death penalty, this Court has to award that sentence to accused.

118] Accused is found guilty for the offence punishable under section 376(2)(i) of Indian Penal Code, for which prescribed punishment is imprisonment for life and prescribed punishment for sections 4 and 8 of the POCSO Act is lesser than the punishment provided under section 376 of IPC. Hence, as per section 42 of the POCSO Act, if offender is found guilty of such offence, shall be

punished under this Act or the Indian Penal Code as provided punishment which is a greater in degree.

119] As per section 376(2)(i) of Indian Penal Code maximum punishment is a life imprisonment which is a greater in degree, therefore, no separate sentence is awarded for the offence punishable under sections 4 and 8 of the POCSO Act.

120] Considering the above said facts, accused has committed heinous crime and brutal murder of the small girl aged 3 years 2 months who was helpless, defenceless, unarmed, and innocent. Considering the nature and gravity of offence, definitely accused is not entitled for any leniency. Therefore, I proceed to pass the following order :

Order

1] Accused Ramkirat Munilal Goud, aged 30 years is hereby convicted as per section 235(2) of the Code of Criminal Procedure for the offence punishable under sections 302, 363, 376(2)(i), 201 of Indian Penal Code and offence punishable under sections 4 & 8 of the Protection of Children from Sexual Offences Act, 2012.

2] Accused is hereby convicted as per section 235(2) of the Code of Criminal Procedure Code for the offence punishable under section 302 of Indian Penal Code and be hanged by the neck till he is dead.

3] Accused is hereby sentenced to suffer rigorous

imprisonment for life which shall mean imprisonment for the remainder of his natural life and to pay fine of Rs.5,000/- (Rupees Five Thousand only) for the offence punishable under section 376(2)(i) of Indian Penal Code. In default of payment of fine, shall suffer rigorous imprisonment for one year.

4] Accused is sentenced to suffer rigorous imprisonment for 5 years and shall pay fine of Rs.5,000/- (Rupees Five Thousand only) for the offence punishable under section 363 of IPC. In default of payment of fine, shall suffer rigorous imprisonment for 6 months.

5] Accused is sentenced to suffer rigorous imprisonment for 3 years and shall pay fine of Rs.5,000/- (Rupees Five Thousand only) for the offence punishable under section 201 of IPC. In default of payment of fine, shall suffer rigorous imprisonment for 6 months.

6] All the substantive sentences of imprisonment of the accused shall run concurrently.

7] After realization of fine amount, it shall be given to the parents of deceased girl after appeal period is over.

8] Accused is in jail. Hence, he is entitled for the set off under section 428 of the Code of Criminal Procedure for the period already undergone in jail for the punishments of the offences except for the punishment under section 376(2)(i) as it implies that life imprisonment shall mean the imprisonment for remainder of life.

9] In view of section 28 (2) of Cr.P.C. the sentence of death shall be subject to the confirmation by the Hon'ble High Court. Hence, entire proceeding be sent to the Hon'ble High Court at the earliest.

10] Muddemal property being worthless be destroyed after appeal period is over.

11] The District Legal Service, Thane is hereby requested to award compensation to the parents of deceased girl, as per rule.

12] Judgment declared in open Court.

13] Copy of this Judgment be given to the accused free of costs.

Thane.
08.03.2019

(S.A. Sinha)
District Judge-7 &
Special Judge under POCSO Act,
Thane.