

The State of Maharashtra and Another Vs. Anil and Another

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Court : Mumbai Aurangabad

Decided On : Jul-11-2014

Judge : S.S. Shinde & P.R. Bora

Appeal No. : Confirmation Case No.1 of 2014 & Criminal Appeal No. 55 of 2014

Appellant : The State of Maharashtra and Another

Respondent : Anil and Another

Judgement :

S.S. Shinde, J.

1. In Sessions Case No.28 of 2013 the learned Additional Sessions Judge Shrirampur has awarded death sentence to the accused therein, the proceedings in the said case, have been therefore forwarded to this Court for confirmation under section 366 of the Criminal Procedure Code. The accused has also preferred an appeal, which was admitted by this Court and same is registered as Criminal Appeal No.55 of 2014. As both the matters are arising out of one judgment, the arguments in both the matters are simultaneously heard and we find it expedient to decide both the matters by common reasoning. However, since the very conviction has been challenged by the convict, the only proper course would be to first decide the Criminal Appeal so filed by the accused, for the reason that, only if the order of conviction is maintained by this Court, the further question will arise whether or not the death sentence awarded by the trial Court is sustainable

and is to be confirmed or otherwise.

2. Heard the learned Additional Public Prosecutor for the State and the learned counsel appearing for the accused - Anil Jagannath Pawar.

3. Since our judgment will be in public domain, instead of referring deceased girl by name, we prefer to refer her as 'victim'.

4 .The factual matrix of the prosecution case in brief as stated before the Trial Court is as under :-

Accused Anil Jagannath Pawar was residing at Brahmangaon, Tq. Shrirampur. In October, 1995 he was working as Watchman in Nagar College at Ahmednagar. On 22/10/1995 he was on duty as Watchman on main gate of the college. His duty was over at about 7.00 p.m. on that day. One woman was supplying tiffins to girl students of Ladies Hostel of College at Ahmednagar in the morning, and evening between 6-00 p.m. to 7.00 p.m. She was going to hostel on bicycle. On 22.10.1995, she had gone to hostel for supplying tiffins. She did not return to home. Therefore, search was haunted. She was found murdered in a passage of Micro-Biology department of the college. Offence was registered. During investigation, it was transpired that, accused who was working as Watchman had raped her and committed her murder. Accused was tried for the said offence in Sessions Case bearing No. 185/1996. Learned Additional Sessions Judge, Ahmednagar, convicted accused after trial on 30.12.1996 and he was sentenced to suffer life imprisonment. After conviction, accused was lodged in Yerwada Jail.

5. On 22/09/2003, leave/parole was granted by Jail authority to accused for fourteen days. He was expected to return to Jail on 07.10.2003. However, he was absconding since then.

6. Prosecution case is that, thereafter during the period August-September, 2006, accused was residing with his relative maternal aunt Bhimabai at Rastapur, Tq. Newasa. He was working as labourer at Rastapur. His wife Jyoti Gaikwad (maiden name Jyoti Gangadhar Gaikwad) was residing with him at Rastapur.

7. In the same village Rastapur, victim aged 19 years was residing with her mother Kadubai and her sister named Chaitali. After 10th standard she was doing tailoring work and had continued her study by attending school at Chanda. She was going to Chanda from Rastapur every day on bicycle. On 01.09.2006 at about 9.30 a.m. victim had gone for attending nature's call in sugarcane crop in the field at short distance (about 1000 feet) from her house. That field is owned by Rasiklal Gandhi. Upto noon time, she had not return to home. Her sister Chaitali was also attending school. On that day, she had returned to home at about 2.00 p.m. Her mother Kadubai and Chaitali came to know that, victim had not returned to home till 2.00 p.m. as per regular time of her returning to home from school. Both of them were under impression that, she might have gone to school. But when she had not returned to home as per her routine, Chaitali made inquiry with the friend of victim named Jyoti. Jyoti told that, victim had not attended school on that day. Chaitali told about the same to her mother Kadubai. Realising that victim was missing, Kadubai started shouting. Therefore, villagers gathered near her house. Her house is at short distance from the village Rastapur. Kadubai told to the persons gathered there that, in the morning victim had gone for attending nature's call towards sugarcane crop in the field of Rasiklal Gandhi. Therefore, persons started search of victim in sugarcane crop. Her dead body was found in sugarcane crop. Various injuries were noticed on her body. Her head was damaged heavily by brutal attack. Blood was oozing from her private part. Injuries were also noticed on her private part.

8. Information was given to Sonai Police Station. Complaint about incident was given by relative of victim named Bhausahab Dada Kolte. Crime No.I-74/2006 for offence punishable under Sections 302, 376, 201 of I.P. Code and 4(25) of Arms Act was registered in Sonai Police Station.

9. Police Officer did prepare spot panchanama where dead body was found in sugarcane crop. Photographs of dead body were taken. Except brassiere all clothes of victim were lying near dead body. These clothes were collected by preparing panchanama in presence of panch witnesses. Inquest panchanama was prepared on the spot. Dead body was sent to Rural Hospital Newasa for postmortem. Autopsy was done in rural hospital, Newasa. Viscera was preserved.

Statements of various persons were recorded during investigation. Witnesses had narrated before Police Officer that, accused Anil Pawar was residing at Rastapur from some months before incident. He was residing at short distance from the house of complainant near road at Bhilla Vasti. He had maintained his hair style as 'military major hair-cut'. He was known as 'Major' to villagers. He was sitting in various shops and had contact with various persons. He was informing to villagers that, he was in Military Service. One of witness named Mukteshwar Ambade had seen that, victim had gone towards sugarcane crop with a tin box (Daba) for attending nature's call on 01.09.2006 at about 9-45 a.m. Mukteshwar had also seen accused standing near sugarcane crop on road at the same time. He (Mukteshwar) had proceeded further for his work on motorcycle. Accused had contacted with some witnesses within few hours for collecting petrol. Accused had also returned to his home within two hours without going to labour work, though he left house at about 9-00 a.m. with lunch box (tiffin). During investigation it was disclosed that, on the same day accused left village Rastapur with his wife. Having doubt about committing offence by accused, search was haunted for him by police authority at different places.

10. During close search of the house of Bhimabai, letter sent by accused from Yerwada Jail is seized. Search was made for accused at Salakwadi Tal. Ambad, but accused was not traced out in that area. Similarly, search was taken at village Subhashwadi where accused was residing. During search of that house, photograph of accused and his wife Jyoti was found. One letter sent by accused from Yerwada Jail to his father was also found in a bag. Information was received by police that, the accused was about to go to village Sukewadi, Tq. Sangamner to the house of his relative Ramdas Barde. Therefore, on 04.09.2006 Police Officer had reached to the house of Ramdas Barde at Sukewadi, however accused managed to run away from that house when he saw police near the house. His wife Jyoti was present in that house. Motorcycle used by accused was near the house. One sickle was found concealed under seat cover of motorcycle. Pair of footwear of accused is also collected from that place by Police. Wife of accused Jyoti gave statement before Police. Accused was absconding from the incident, till his arrest on 07.09.2012. He was absconding for about 2899 days from granting parole. After arrest accused was produced for medical examination. Clothes of

accused were seized. Seized clothes of victim and accused were sent to C.A. Reports about the same are collected. After completing investigation, charge sheet came to be filed in the Court of learned JMFC Newasa.

11. Case was committed to the Court of Sessions by JMFC Newasa as per his order dated 04.03.2013.

12. Charge came to be framed at Exhibit NO.6 for the offences punishable U/Sec. 376, 302, 201 of I.P. Code and U/Sec. 4(25) of Arms Act. Contents of the charge were read over and explained to accused in Marathi. Accused pleaded not guilty and claimed for trial.

13. The Court of District Judge-2 and Additional Sessions Judge at Shrirampur after framing the points for determination recorded findings with reasons and the accused, Anil Jagannath Pawar is convicted under Section 235(1) of Criminal Procedure Code for the offence punishable under Section 302 of I.P. Code and he is sentenced to suffer death sentence. He is further convicted for the offence punishable under Section 376 of I.P. Code and sentenced to suffer rigorous imprisonment for seven years. The accused is also convicted for the offence punishable under Section 201 of the I.P. Code and is sentenced to suffer rigorous imprisonment for three years. The accused is also convicted for the offence punishable under Sec. 4(25) of the Arms Act and is sentenced to suffer rigorous imprisonment for three years.

The trial Court submitted the case to this Court for confirmation of death sentence under Section 366 of Criminal Procedure Code. In respect of the seized Muddemal property i.e. spade, sickle and other articles, it is observed that the same shall be destroyed after appeal period.

Being aggrieved by the judgment and order of conviction, the appellant has also filed Criminal Appeal No.55/2014 in this Court.

14. The learned Additional Public Prosecutor appearing for the State invited our attention to the entire evidence, which formed part of record before the District Judge-2 and Additional Sessions Judge at Shrirampur in Sessions Case No.

28/2013. The learned Additional Public Prosecutor urged that, the prosecution has established beyond reasonable doubt that, the accused, Anil Jagannath Pawar has committed serious offences punishable under Sections 376 and 302 of I.P. Code. It is submitted that, the prosecution witnesses in their evidence before the Court, unequivocally, stated that, the accused was residing in village Rastapur for about two months prior to date of incident. It is submitted that, he was acquainted with the villagers (and also the road passing in-front of house of victim). The accused posed himself as Ex-Military Personnel, and therefore, the villagers used to call him as Major. It is submitted that, the fact that, the accused resided with his wife in the house of Bhimabai relative of the accused for couple of months prior to the date of incident has been firmly established by the prosecution through prosecution witnesses. It is submitted that, on the date of incident presence in the village of the accused is stated by the prosecution witnesses. It is submitted that, PW-8 in his evidence stated that, when he was going to his field at about 9.45 a.m., he saw the victim going to the sugarcane field for answering nature's call. It is submitted that, PW-8 specifically stated that, near the field of sugarcane, the accused was standing. It is submitted that, the evidence of PW-8 firmly established that, the accused was last seen in the company of the deceased. It is submitted that, though road passes nearby spot of incident, at the place of incident sugarcane crop was standing and to that effect satisfactory evidence was placed by the prosecution on record. It is submitted that, there is evidence of doctor, which would clearly show that, the victim died homicidal death. It is submitted that, the other witnesses have stated that, at about 11.30 a.m. the accused went to the shop asking for petrol. At that time, he was seen frightened and there were mud stains on the front side of his shirt. PW-20 Jyoti i.e. wife of the accused Anil, in her evidence before the Court stated that, Anil left house at about 9 a.m. so as to go for labour work, however, returned back in between 10 a.m. to 11 a.m. He was frightened. There were mud stains on front side of his shirt. He was in hurry to leave the village. Therefore, according to the learned Additional Public Prosecutor, the prosecution has established each circumstance in the chain of circumstance. The subsequent conduct of the accused to flee away from the said village and to run away when the Police persons reached to his house, is clear indication that, he committed the offence and then ran away so as to cause disappearance of the

evidence. It is submitted that, if the evidence brought on record by the prosecution is taken in its entirety, it leads to only conclusion that, the accused committed the offence punishable under Sections 302, 376 and 201 of I.P. Code and section 4(25) of the Arms Act. The learned Additional Public Prosecutor further submits that, there are no mitigating circumstances, so as to take any lenient view and this is fit case, in which the death sentence awarded by the trial Court deserves to be confirmed by this Court. The learned Additional Public Prosecutor invited our attention to various decisions of the Supreme Court dealing with cases in which death sentence is awarded. He invited our attention to the reported judgments of the Supreme Court i.e. (1) AIR2003 S.C. 3915 (Dayanidhi Bisoi V/s State of Orissa), (ii) AIR 2011 S.C. 3690 (Ajitsingh Harnamsingh Gujral V/s State of Maharashtra), (iii) AIR 2009 S.C. 2549 (M.A. Antony alias Antappan V/s State of Kerala), (iv) 2013 DGLS (Soft.) 82 (Sunder @ Sundararajan V/s State by Inspector of Police), (v) (2012) 4 SCC 37 (Rajendra Pralhadrao Wasnik V/s State of Maharashtra), (vi) (2010) 9 SCC 567 (C. Muniappan and others V/s State of Tamilnadu) and (2014) 5 SCC 509 (Dharam Deo Yadav V/s State of Uttar Pradesh).

Therefore, the learned Additional Public Prosecutor submits that, the reference deserves to be answered in affirmative and the appeal filed by the accused deserves to be dismissed.

15. On the other hand, the learned counsel appearing for the original accused submitted that, the entire prosecution case rests upon circumstantial evidence and unless there is complete chain of circumstances, which firmly establishes each circumstance, no conviction can be maintained. It is submitted that, the prosecution is required to prove each circumstance in the chain of the circumstances firmly and there should not be any room for suspicion or doubt. It is submitted that, the evidence of last seen together in the present case is lacking. It is submitted that, even if the evidence of PW-8 is taken as it is, at the most, it can be said that, the accused was standing nearby field where sugarcane crop was standing in which the victim entered to answer nature's call. However, PW-8 in his evidence has not stated that, the victim was going to the sugarcane field and the accused was following her. It is submitted that, the statement of PW-8 was

recorded by the Police after 15 days, and therefore, the evidence of PW-8 could not have been relied upon by the trial Court. The learned counsel appearing for the accused to support his contentions that, in case of circumstantial evidence, the theory that accused was last seen together with the victim assumes importance, invited our attention to the exposition of the Supreme Court in the cases (i) AIR2011 SC 2283 (Sk. Yusuf V /s State of W.B.), (ii) AIR2011 SC (Supp) 73 (Manthuri Laxmi Narasaiah V/s . State of A.P.), (iii) AIR 2007 SC (Supp) 61 (Subhash Chandra Nanda V/s Sanjay Thakran and anr.) and (iv) AIR 1991SC 1388 (Jaharlal Das V/s State of Orissa).

The learned counsel submits that, this Court in the case of Lalsing Sutarya Pawara V/ s State of Maharashtra 2011(1) Mh. L.J. (Cri) 333 laid down the parameters in respect of how to appreciate the circumstantial evidence. It is submitted that, if there is delay in recording the statements of the witnesses by the Investigating Officer, such evidence cannot be relied upon. In support of this contention, the learned counsel appearing for the accused placed reliance on the judgments reported in (I) AIR 1971 SC 804 (Balakrushna Swain V/s The State of Orissa, (ii) AIR 1980 SC 1199 (Dinanath Singh and others V/s The State of Bihar) and (iii) AIR 1986 SC 593 (Palanisamy and others V/s State of T.N.).

It is submitted that, the alleged recovery of spade and sickle is without following any procedure. It is submitted that, the said articles are not recovered from the accused, therefore, such recovery is of no consequence. It is submitted that, if it was a case of the prosecution that, due to assault by spade or sickle the victim died in that case, the said weapon should have been sent to the Finger Print Expert. In support of this contention, the learned counsel appearing for the accused invited our attention to the judgments of the Supreme Court in (i) AIR 1974SC 1193 (Datar Singh V/s The State of Punjab) and (ii) AIR 1976 SC 69 (Mohmood V/s State of D.P.).

It is further submitted that, merely because the accused absconded is no ground for conviction. In support of this contention, the learned counsel appearing for the accused placed reliance in the case of Rahman V/ s The State of U.P. reported in AIR 1972 SC 110(1). It is submitted that, the statement of the wife of the accused

recorded under section 164 of Criminal Procedure Code loses its importance since the Investigating Officer in his evidence stated that, while recording the said statement, he was present there. The learned counsel appearing for the accused draws our attention to the evidence of various prosecution witnesses so as to point out various omissions and contradictions. It is submitted that, if the evidence brought on record by the prosecution is taken in its entirety, it leads to only one conclusion that, accused Anil was not involved in commission of offence, and he deserves to be acquitted by setting aside the impugned judgment and order passed by the trial Court thereby rejecting the reference. The learned counsel ultimately submits that, the case entirely rests upon the circumstantial evidence and there are also mitigating circumstances and therefore, the reference deserves to be answered in negative/rejected.

16. We have given careful consideration to the submissions of the learned Additional Public Prosecutor and the learned counsel appearing for the original accused Anil Jagannath Pawar. With their able assistance, we have perused the entire material placed on record and also the original record and proceedings including entire evidence so as to re-appreciate the same.

17. In order to prove the case against the accused - Anil, the prosecution did examine 20 witnesses. Out of which, PW-I Bhausaheb Dada Kolte is complainant, PW-2 Bhausaheb Mande, PW-3 Yusufkhan Pathan, PW-14 Bhausaheb Sawant are panch witnesses, PW-8 Mukteshwar Ambade, PW-20 Jyoti Gaikwad (wife of accused) are the most important witnesses for prosecution. PW-16 Sadanand Inamdar Dy. S.P. Crimes, PW-18 Devram Gawali Police Inspector, PW-19 Jaising Dabhade Additional S.P. and PW-21 Rajesh Khade have completed investigation in this matter. Remaining witnesses are from village Rastapur. They have given information about different aspects of this matter.

18. PW-I Bhausaheb Dada Kolte is relative of victim and his complaint is at Exhibit-13. In his examination-in-chief before the trial Court, he stated that, Kadubai was sister of his father. Deceased was daughter of Kadubai. When she was prosecuting her studies from 5th to 10th standard, she was residing with the family of PW-I. Even after passing 10th standard for two years, she was residing

with the family of PW-1 and during that period, she completed course of Tailoring. Thereafter, she started residing with her mother at Rastapur. During the period when the incident occurred, she was studying in 12th standard at Chanda. At the time of incident, her age was 18 years. She used to go to attend the college at Chanda by bicycle.

On 1st September, 2006 at about 5.30 p.m. PW.1 received phone call from Kadubai. She told him that, victim left the house in the morning for attending nature's call but did not return till evening. Kadubai was under impression that, victim might have gone to college. However, during inquiry, it was revealed that, victim had not attended the college on that day. PW-1 went to Rastapur. Search was undertaken to find out victim . Her dead body was found in the field of Rasiklal Gandhi. PW-1 went to said spot. He stated that, the dead body was lying in sugarcane crop/channel (Sari). Her gown was found covered on her head. Her Parkar and knicker was found near her body. Blood was found near private part. There were injuries on her forehead above eye and also on head. PW-I informed the Police. Sonai Police registered the complaint. PW-I identified the contents and also his signature on the complaint and also the clothes which were found near dead body, when it was shown to him. Upon perusal of the cross examination of this witness, the defence has not brought anything on record so as to disbelieve his version in examination-in-chief.

19. The evidence of PW-4 Bharat Bansi Ambade is at Exhibit - 24. In his deposition before the Court he stated that, on 1st September, 2006 incident took place. It was period of Ganpat festival. He was present near Ganesh Mandal at about 5-30 p.m. About 20 to 25 persons were also there. House of Kadubai is about 100 feet distance from that place. They heard shouting of Kadubai from her house. Therefore, he went there. Kadubai told him that, her daughter (victim) had gone out of house in the morning for attending nature's call but she had not returned. She asked them to search her. They went to the field of Rasik Gandhi as Kadubai told them that, victim had gone towards that field for attending nature's call. In sugarcane crop dead body of victim was lying. They returned to the house of Kadubai. They called the maternal uncle of victim namely Kolte. The information was given to Police. Police came there and saw dead body in the field. Cloth was

covered on the head of dead body. That cloth was stained with blood. They called some other boys. The statement of this witness is recorded by Police on next date.

In his cross examination, the defence has not brought anything on record, which is favourable to the accused.

20. PW-2 - Bhausahab Tukaram Mande was panch witness and his evidence is at Exhibit - 19. He has stated in his deposition that, On 1st September, 2006 he was called by Police near the field of Rasiklal Gandhi. That field was in village Rastapur. Bhausahab Dukre and Geeta Kolte were also present with him. Bhausahab Kolte pointed out that place. Dead body of victim was lying near sugarcane crop. They had observed condition of dead body. There was slip/brassier on the dead body pulled over the portion of breasts. Injury was noticed behind right ear. Blood stains mark were noticed below right side of dead body. Dead body was in naked condition. Some injury marks were noticed around throat of dead body. Nails of the hands were painted. Panchanama was prepared in their presence as per their information given to Police. This witness identified the said panchanama, which was shown to him. He identified the signature on the said panchanama and signature of Bhausahab and Geeta. He stated that, the contents of the panchanama are correct, which is at Exh - 20.

This witness was cross examined. According to the learned counsel appearing for the defence, this witness stated that, no other things were noticed by him on the spot, and therefore, recovery of spade is not believable. In respect of recovery of spade, the prosecution has brought on record sufficient evidence. Prosecution witnesses including PW-6 and other witnesses have also deposed to the effect that, the spade was recovered from spot of occurrence and not only that but blood stains were found on the blunt side of the spade. The C.A. Report is placed on record by the prosecution, which clearly shows that, blood stains were found on the blunt side of the spade. Merely because PW-2 has stated that, no other things were noticed by him on the spot, would not nullify the recovery of spade.

21. PW-10 - Suresh Baburao Dake was also panch witness for recovery panchanama. He stated that, on 3rd September, 2006 at about 1 p.m. he along with Police Officer Dabhade went to the house of Bhimabai. Accused Anil Pawar

resided in the said house. One envelope containing letter was found in her house. Same was seized.

22. One Jaising Laxman Dabhade was working as Deputy S.P. Shevgaon at the relevant time. His evidence is at Exhibit - 67. He was examined as PW-19 by the prosecution. In his examination-in-chief before the Court, he stated that, he had made investigation at the initial stage in this matter. He identified the inquest panchanama and also his signature on the said inquest panchanama and also letter given to the medical Officer for postmortem of victim. He categorically stated about collecting samples of various things. From the spot he seized spade (Khore), yellow colour ear rings, simple soil, soil mixed with blood, some dry leaves of sugarcane stained with blood. White gown with blood stains. One petticoat (parkar), blue colour ladies knicker. He identified the articles shown to him and his signature on panchanama.

He further deposed that, he recorded supplementary statement of PW-6 Chaitali. He further deposed that, he could take search of house of Gangadhar Mail on 3rd September, 2006. letter sent by accused was found in his house. It was seized by him. Other details in that respect is also stated by this witness in his evidence. He further deposed that, on 8th September, 2006 seized articles were sent to C.A. with covering letter. He identified his signature on the covering letter. He stated that, thereafter, the investigation was continued by C.I.D. Officer. He stated that, accused was residing in village Rastapur for some period before the incident and left village after incident. The accused was convicted for similar crime earlier. He further stated that, when the accused was on leave, he committed the said offence. During inquiry with some witnesses, he came to know that, some of them had seen accused Anil leaving the village. He specifically stated that, Mukteshwar PW-8 had seen accused proceeding by the road where deceased had gone. He further stated that, C.A. Reports are placed on record.

The defence counsel submitted that, Investigating Officer has admitted in his cross examination that, he did not obtain the finger print expert's report on spade. Experts evidence would have been relevant. It is true that, this witness is admitted in cross examination that, spade was not sent to finger print expert. However, in

C.A. report blood was found on blunt side of spade. Therefore, on the basis of C.A. Report, the prosecution has established that, the said spade was used to assault the deceased and said assault was vital, which resulted in to the death of the victim.

23. There is evidence of other Police Officers, who were associated during the course of investigation.

24. PW-18 - Devram Shivram Gawali who was working at the relevant time as Police Inspector was also examined. He stated that, he was working at Sonai Police Station in September, 2006. He sent seized articles for C.A. Nashik for analysis. He further stated that, offence was also registered against accused Anil in Shrirampur Taluka Police Station for offence under Section 354 etc of I.P. Code. He further deposed that, he collected the documents about the matter. On 14th September, 2006 he sent blood sample, hairs sample etc given by medical officer of deceased to the Police Station to C.A. Mumbai. Map given by circle officer about spot of incident was filed on record at Exhibit No.63. Death certificate of victim was filed on record at Exhibit - 64. On 25th October, 2006 one footwear and plastic box used for attending nature's call was seized from place of incident by preparing Panchanama in presence of Panch witnesses. He identified the contents of the said panchanama.

From his cross examination, nothing substantial has been brought on record, which can be said to be useful to the defence.

25. Prosecution has placed on record the copy of the judgment and order passed by the learned Additional Sessions Judge. Ahmednagar, convicting the accused after full-fledged trial for the offence punishable under Section 302 of I.P. Code. The fact that, the accused is convicted for offence punishable under Sections 302 and 201 of I.P. Code and under Section 4(25) of Arms Act in Sessions Case bearing No. 185/1996 has not been denied or contested by the accused. It further appears that, in pursuant to his conviction under said offences, he was undergoing sentence in Yerwada Jail Pune. He was granted parole on 22nd September, 2003 by the Jail Authorities for 14 days. He was to return to Jail on 7th October, 2003. However, he did not return to Jail after 14 days parole period was over. One

Sandeep Prakash Jagtap was examined as PW-17. His evidence is at Exhibit - 51. In his evidence before the Court, he stated that, he was working as clerk in Yerwada Central Jail. On the date fixed for recording of his evidence, he came with record in respect of accused maintained by Jail Authority. Accused Anil was in jail undergoing the sentence awarded by the Sessions Judge in murder case from 11.11.1995 as prisoner No.C-9238. He was sentenced for life imprisonment. He was released on leave on 22nd September. 2003 from Jail. Leave for 14 days was granted to him. He was expected to return to Jail on 7th October. 2003. However, he was absconding since then. Again he was brought in jail by the Police Authorities after his arrest on 7th September, 2012. Information about granting leave to accused Anil was given to Police Inspector, C.I.D. Nagar by jail authority by sending letter. The said letter is filed on record. When this witness was shown the said letter, he identified his signature and also stated that, the contents of the said letter are correct. It appears that, there was no cross examination of this witness by the accused. Therefore, whatever is stated by this witness on oath before the trial Court, has been accepted by the accused. The fact that, the accused did not return back to Jail after availing parole for 14 days, is the indicative of the fact that, the accused has no respect for law. Not only that, the accused absconded and did not surrender himself till he was arrested by the Police Authorities on 7th September, 2012. Therefore, it can safely be concluded that, the accused has no respect for law.

26. The accused, Anil was convicted for offence punishable under section 302 of I.P. Code in Sessions Case No. 185/1996. It appears that, the accused wanted to have sexual intercourse with the victim in the said case and on refusal he murdered her.

27. As already discussed hereinabove, the accused did not surrender after availing parole of 14 days in the year 2003. Till the date of his arrest, he absconded and stayed at various places in Ahmednagar district and may be in other districts as well.

28. Coming to the facts of the present case, the incident took place on 1st September, 2006, therefore, it becomes relevant to find out whether the accused

with his wife stayed at village Rastapur prior and on the date of incident. In this respect, the evidence of Vasantryao Rambhau Ukirde PW-15 is important. His evidence is at Exhibit 41. In his examination-in-chief before the trial Court, he stated that, in the year 2006, he was Sarpanch of village Rastapur. Bhimabai Mali resides at Rastapur. He knew victim. The incident taken place on 1st September, 2006. On that day, he was at Rastapur. On the date of incident i.e. on 1st September, 2006, during morning period he saw Anil Pawar (Major) at village Rastapur. This witness has stated that, accused was staying at Rastapur from one month prior to incident. The accused was doing work as agricultural labour. His hair style was like Major in Military. There was one black coloured motorcycle with him. Accused Anil used to tell that, he has served in the Military. This witness had expressed doubt about correctness of the statement of the accused that, he has served in the Military. On the date of incident at 6 p.m. this witness came to know that, victim did not return from the school. When he came to village, he started inquiry along with other villagers about victim, her dead body was lying in sugarcane field. There were no clothes on her person. He noticed her dead body. There were injuries on the person of the victim. This witness specifically stated that, after said incident, he did not see the accused in village. He identified the accused Anil before the Court.

29. Upon perusal of his cross examination, though the certain questions were asked to him, nothing fruitful to the defence has been brought on record. Therefore, the evidence of this witness about presence of accused Anil on the date of incident and prior to that in village Rastapur has been established by the prosecution. There are other witnesses also who have stated that, the accused along with his wife came to reside with Bhimabai (relative of the accused) in village Rastapur prior to the date of incident and on the date of incident also they saw the accused in village Rastapur in the morning. The PW-20 Jyoti, whose evidence is at Exhibit - 81 and who is wife of the accused in her evidence stated that, two years prior to the date of the incident, she got married with accused Anil. In her evidence, she specifically stated that, she stayed with the accused at Subhashwadi, Tq. Shrirampur for about 2-3 months. Thereafter, they resided at village Chitali. At Chitali, they stayed for about three months. At that time, in village Chitali. The accused tried to commit rape on one woman and pushed her in a well.

Thereafter, again they went to Subhashwadi and started residing there. Thereafter, there was enquiry by the Police Personnel about the act of the accused in respect of attempting to commit rape on woman at Chitali. She has further stated about their movement from one place to another place. She has also stated in her evidence that, the accused had illicit relations with one lady namely Shanti. Shanti stayed in their house for about 8-15 days and thereafter said Shanti left their house. There was some quarrel on account of bringing said Shanti in the house, and therefore, this witness left the matrimonial house and went to the house of the father at Wadala. However, accused Anil went to the house of the father of Jyoti so as to fetch her back to the matrimonial home. She further stated that, accused Anil came to Wadala on motorcycle. The accused told Jyoti that, the said motorcycle was stolen by him. It is further stated that, she went along with accused Anil and for about 2-3 months, they used to change their place of residence. She has specifically stated that, before the date of incident, for about one and half month they resided at Rastapur. They stayed in Rastapur with maternal aunt of Anil. Both of them were doing agricultural labour work. Therefore, the fact that, accused Anil along with his wife Jyoti were staying at village Rastapur for a couple of months prior to the date of incident and even on the date of incident has been firmly established by the prosecution. The other prosecution witnesses have also stated in their evidence that, on the date of incident and prior to that, the accused stayed at Rastapur. Therefore, there is sufficient evidence on record to show that, prior to date of incident and also on the date of incident, the accused along with his wife resided at Rastapur in the house of maternal aunt of accused Anil namely Bhimabai. Upon careful perusal of the cross examination of PW-20 Jyoti, it appears that, there is no suggestion given to the said witness by the defence that, accused Anil and PW-20 did not stay at Rastapur prior to the date of incident and on the date of incident. Even in the cross examination of Vasantrao Rambhau Ukirde PW-15, there is no suggestion by the defence that, on the date of incident or prior to that the accused and his wife Jyoti did not stay at Rastapur in the house of Bhimabai, who is maternal aunt of the accused. Therefore, the prosecution has firmly established that, accused Anil and his wife Jyoti (PW-20) resided/stayed at Rastapur for couple of months prior to the date of incident and on the relevant date also accused Anil was seen by PW-15 and also

other witnesses in the morning in village Rastapur. It is relevant to mention at this juncture that, either in the cross examination of the PW-15 or PW-20 nothing has been brought on record by the defence so as to discard the prosecution case that, the accused along with his wife Jyoti resided/stayed at village Rastapur prior to the date of incident and also on the date of incident.

30. It has come in the evidence of PW-6 Chaitali Asaram Dukare (Exhibit - 26) that, the incident took place on 1st September, 2006. Victim was her elder sister. She was studying in 12th standard. She was attending school on bicycle. Distance of Rastapur to Chanda is about 7 Kms. Examination of victim was going on during that period. Her school time was 11 a.m. to 4 p.m. At the relevant time, this witness was studying in 10th standard. This witness has specifically stated that, on 1st September, 2006, when she had gone to school at 9.30 a.m. before that victim had gone for attending nature's call. At about 2 p.m. this witness returned to home. Her mother was suffering from illness. Therefore, she was in bed. When this witness Chaitali returned to home, victim was not available in the house. She was under impression that, she might have gone to school. At about 4 p.m. also victim did not return to home, therefore, mother asked her to make inquiry with her friend Jyoti. Jyoti told Chaitali that, victim had not attended the school. The said fact was told by Chaitali to her mother. Thereafter, mother started shouting. Some persons from the village came there. Mother told those persons that victim had gone towards the field of Rasiklal Gandhi for attending nature's call. Those persons started search for victim . The dead body of victim was found in the sugar cane crop. Chaitali and her mother went there and saw dead body. Victim's gown was covered on head. It was stained with blood. There was injury near her right ear and bleeding was there from her private part. Her knicker was lying near her leg. Spade having wooden rod was lying there. Bottom side of spade was stained with blood. This witness stated that, on next date her statement was recorded by police and thereafter, the supplementary statement was recorded by Police on 15.09.2006. This witness has specifically stated that, road approaching to their college passes from Bhilla Vasti. Accused was coming and going from front side of her house. After the incident, she had not seen accused Anil in village and accused Anil did commit murder of victim. She identified the spade, which was marked as Article 'B'. She identified other articles including knicker, footwear etc.

She stated that, victim gone for answering nature's call at about 9 a.m. in the morning. The complainant Bhausahab Kolte, son of her maternal uncle had come to their house at about 5 p.m. The complainant also saw dead body of victim. She has further stated in her cross examination that, rumor was spread in the village about committing murder of victim by accused Anil Pawar. Upon careful perusal of the cross examination of PW-6 Chaitali, she has stated two important facts, firstly on the date of incident at 9 a.m. victim left the house to answer the nature's call and thereafter after 9.30 a.m., this witness left for her school and secondly the accused was acquainted with area where family of this victim resided since the accused was coming and going from front side of their house. Therefore, the fact that on the date of incident, victim went to answer nature's call in between 9.00 to 9.30 a.m., has been firmly established by the prosecution witnesses, and from the cross examination of the said witnesses nothing has been brought on record by the defence so as to disbelieve the prosecution case that, on the date of incident victim went to answer nature's call towards field of Shri. Rasiklal in which sugar cane crop was standing. Even the complainant in his complaint stated that, mother of victim told him that, victim left the house to answer nature's call at about 9.30 a.m. and went towards field of Rasiklal. Therefore, the prosecution has proved beyond doubt that, on the date of incident at about 9.30 a.m. the victim left house and went towards field of Rasiklal to answer nature's call.

31. There is evidence of Rasiklal owner of the field wherein the incident had taken place. He was examined as PW-7 at Exhibit - 28. In his evidence before the Court, he stated that, he is owner of land situated at Gut No. 388 at village Rastapur and house of girl i.e. victim, is about 1000 Ft. from the said field. The incident had taken place 7 years prior to the date of recording of his evidence. Prior to the date of incident, his servant Zumbar Sherkar was supplying water to the said sugar cane field. On the date of incident, said Zumbar Sherkar went to Dhodegaon and therefore, he was not present on the date of incident in the said field. However, it has come on record that, during that period, the water was being supplied/given to the said field wherein the sugar cane crop was standing. Zumbar Bhaurao Sherkar was examined as PW-11 at Exhibit-33. In his deposition before the Court he stated that, on the date of incident, he went to Dhodegaon so as to sell his cow. He returned back in the evening and he came to know that, victim was murdered. He

stated that, spade was kept by him in the said field where the incident had taken place. He did identify the said spade in the Court, Therefore, there is evidence of PW-7 Rasik Amarchand Gandhi and PW-II Zumbar Bhaurao Sherkar at Exhibit - 28 and 33 respectively, which would indicate that, on the date of incident Zumbar Sherkar was not present in the field and he went to Dhodegaon to sell his cow. Therefore, on the date of incident, in the said field where the incident occurred neither the owner of the field nor servant was present.

32. PW-8 Mukteshwar Baburao Ambade (Exhibit 29) is the main witness of the prosecution, who stated before the Court that, he knew victim and also the accused, who is present in the Court. Villagers used to identify the accused as Major. The accused was staying in Rastapur village from two months prior to date of incident. He was having motorcycle. His hair style was like Major. Therefore, villagers used to identify him as Major.

On 1st September, 2006 at about 9.45 a.m. When PW-8 was going to his field on motor bike from the road which passes nearby the field of Rasiklal Gandhi. At that time, he saw victim was going to the field of Rasiklal Gandhi to answer nature's call. She was having one tin box in her hand. He saw her from very close distance while going to the field of Rasiklal Gandhi. He further stated that, sugar cane crop in the field of Rasiklal Gandhi was fully grown up. He saw Major accused standing on some distance from the said field of sugar cane crop. This witness thought that, the accused is going for some work. Thereafter, this witness left to his field. Para (2) from his evidence recorded in Vernacular before the Court reads thus :-

HINDI

Therefore, the prosecution has established that, on the date of incident not only that, accused Anil was present in the village, however, at 9.45 a.m. he was standing on some distance from the field of Rasiklal Gandhi, wherein victim was proceeding to the said field to answer the nature's call. PW-8 has stated that, the sugar cane crop was fully grown up. The prosecution has brought on record through the prosecution witnesses that, sugar cane crop was fully grown up.

33. Upon careful reading of the evidence of PW-8 in his examination-in-chief, he has in clear words stated that, he saw the accused standing on the road on some distance from the field of Rasiklal wherein the sugar cane crop was standing. Therefore, the presence of the accused near sugarcane field in which the spot of incident is situated has been clearly stated by this witness. Argument of the learned counsel appearing for the accused that, this witness has not stated that, the accused followed victim , and therefore, it cannot be said that, the accused was lastly seen in the company of the deceased deserves no consideration. The prosecution has firmly established that, on the date of incident, when victim was proceeding for answering nature's call towards the field of Rasiklal Gandhi, the accused was standing on the road on some distance from the said field of sugarcane crop belonging to Rasiklal Gandhi. Therefore, there is no slightest room for doubt that, accused Anil was standing on road on some distance from the field of Rasiklal wherein there was standing sugarcane crop. Upon careful perusal of the cross examination of this witness, it appears that, suggestion was given to him that, he had not seen accused Anil near the field of Rasiklal wherein the incident had taken place. However, this witness has stated that, it is not true to say that, he has not seen the said accused Anil near the field. His version appearing in cross examination in Vernacular to the above extent reads thus:-

HINDI

Therefore, the prosecution has established beyond reasonable doubt that, on the date of incident at the relevant time, when victim was going to the field of Rasiklal to answer nature's call, wherein sugar cane crop was standing, on some distance the accused was standing.

34. As already observed, it has come on record through the evidence of field owner Rasiklal and his servant, who was working in the said field that, on the relevant date of incident, servant Zumbar Sherkar went to Dhodegaon to sell his cow. It has also come on record that, during that period when incident did take place, the water was being supplied to the sugar cane field. Therefore, it follows that, the said land due to supply of water was wet.

35. At this juncture, it is also necessary to refer again to the evidence of PW-20 Jyoti i.e. wife of accused Anil. In her evidence she has stated that, the date of incident is 1st September, 2006. On that day, at 9 a.m. the accused asked her to prepare his tiffin because he wanted to go for labour work. She prepared a food. Thereafter, at 9 a.m. accused Anil left house. He came back in between 10 to 11 a.m. He was seen frightened. His clothes were stained by mud. He told that, his maternal aunt is ill, and therefore, to visit her he wants to go. He went in the village and brought petrol. Thereafter, PW-20 Jyoti and accused Anil went to Subhashwadi on motorcycle. They reached there at about 1 p.m. They stayed there upto 9 p.m. Thereafter they went to Sangamner to the house of maternal uncle of Anil. On that day, they stayed in the house of maternal uncle of Anil at Sangamner. Anil took bath. His blue underwear was washed by him and again he worn it. Thereafter, they went to Sukewadi. Therefore, the fact that, at the relevant date, at 9 a.m. the accused left the house has been stated by Jyoti. She further stated that, he told her that he want to go for labour work. Therefore, at the relevant time, he was not in house. The fact that, Anil returned to the house in between 10 to 11 a.m. is stated by PW-20 Jyoti in her statement and further that, he was seen in frightened condition and his clothes were stained with mud. It is relevant to note the timings of leaving her house by victim was at about 9.30 a.m. for answering nature's call and going towards the field of Rasiklal. At 9.45 a.m. PW-8 saw victim from close distance going towards the field of Rasiklal. At the relevant time, she was having tin box in her hand. The accused was standing on some distance of the said field in which sugar cane crop was standing. The time stated by PW-8 when he was proceeding to his field, and when he saw victim and accused Anil is 9.45 a.m. Time of return of accused Anil as stated by Jyoti, his wife PW-20 on relevant day, in her evidence is in between 10 a.m. to 11 a.m. on the date of incident.

36. At this juncture. it would be relevant to refer to the evidence of Dr. Ramprasad Purshottam Kulkarni, he was examined as PW-13 (Exhibit 35) and in his examination-in-chief before the Court he stated that. on 2nd September. 2006 he was working in Rural Hospital, Newasa as Medical Officer. On that day, he performed autopsy on dead body of victim. He received letter from Sub- Divisional Police Officer, Shevgaon about the same. On examination, he noticed following

things on dead body :-

"White slip, ear rings, yellow colour ring, ring in left hand, silver colour strip (Patti)"

This witness further stated that, he found the following injuries on external genitalia (Col. No.15) as follows:-

1. Bleeding stains on libia majora and inner thighs On separating libia majora - CLW on fourchette region oblique in nature, size 2 cms x 1 cm x 1/2 seen with blood stains on wound more to left side.
2. Recent rupture of hymen posterior-margins red.
3. One finger can be admitted in vagina and no injury were inside vagina.
4. CLW below hymen in perineal region size 1 x 1 X cms.

He further stated the position of limbs which is as follows :-

1. Upper limbs folded at elbow.
2. Fist semi closed.
3. No foreign body in hands and nails.
4. Mud on shoulder posteriorly and left elbow posteriorly. Mud attached to right elbow posteriorly.

Lower Limbs: Straight - Earth attached on soles.

PW-13 further stated that, he noticed the following injuries in para No. 17 of P.M. Report :-

1. Abrasion on left aspect of chin extending to ramus of mandible on left and to throat region size 3 x 2 cms red brown in colour.
2. Abrasion on middle throat below thyroid cartilage 2 x 1 cms red brownish.

3. Serial 3 abrasions on right lateral neck region in middle cm apart size x cm each.
 4. Contusion over right angle of mandible 2 x 1 cm red in colour.
 5. Contusion on right clavicular region extending to upper chest, 5 x 4 cm red blue in colour.
 6. Abrasion on upper right chest x cm.
 7. Abrasion on left clavicle region 2 in number size cm X cm apart.
 8. Abrasion near anterior superior illiac spine on left cm x 1/4 cm.
 9. Abrasion 2 in number 2 cms apart on left antero lateral thigh size x cms.
 10. Five abrasions on left lower interior thighs half centimeter apart x size each.
 11. Abrasion on left anterior knee x .
 12. Bleeding from right ear with CLW behind ear 2 x 1 x bone deep.
 13. Abrasion on right upper lateral pinna of ear posteriorly 3 x l cms.
 14. Depressed fracture on parietal occipital bone near right ear fell.
 15. Abrasion on right posterior shoulder 2 x 1 cms Penetrating wound above right eye brow on medical aspect x x bone deep.
 16. Skull position - (Para NO.19(ii))-Depressed fracture of parieto occipital bone above and behind right ear, 6 cm x 4 cms underneath injury NO.12.
 17. Fracture of base of skull in middle cranial fossa in continuation with above fractures extending two left side 11 cms in length.
- PW.13 also noticed the brain position (para NO.19(iii)) as follows :-
1. laceration of right occipital lobe above right ear region 3 x x 1 cm.

2. Heamotama 4 x 4 present.

PW-13 deposed that injury Nos.1. 2 and 4 in Col. Nos.15 are possible at the time of committing rape forcibly. Injuries mentioned in Col. Nos. 17 Serial Nos. 1, 2 and 15 and Col. Nos. 18, are possible due to rough surface. Abrasions Sr. No.3 injury mentioned in Col. No.17 and 18 is possible by nails. Injury No.4 of the same columns is possible by hard object. Injury No.5 mentioned in Col. Nos.17 and 18 is possible by pressure. Injury Nos. 6. 7, 8, 9, 10 and 11 mentioned in Col. Nos. 17 and 18 are possible by nails. Injury Nos.12, 13 and 14 are possible by hard and blunt object like spade bottom side/back side of the spade-Article B, which was shown to him. Injury No.16 is possible by sharp pointed object like article A, which was shown to him (like sickle/Koyta). In his evidence, he stated that, in his opinion victim was not habitual for sex. His opinion about cause of death is - Due to shock due to injury to brain due to hard and blunt object, assault which caused depressed fracture. He identified his signature on the postmortem report and also contents of postmortem report and he stated that, those are correct. Other articles were shown to him which he did identify. Upon careful perusal of the medical evidence, there is no slightest doubt that, the death of the victim was homicidal. This witness has clearly stated that, injury Nos. 12, 13 and 14 are possible by hard and blunt object like spade bottom side/back side of the spade-article B, which was shown to him. He further stated that, injury No.16 is possible by sharp pointed object kept Article A, which was shown to him (like sickle/Koyta).

However, merely the death is homicidal is not sufficient to establish that, the accused committed the offence of rape and murder of victim . As already discussed hereinabove, the presence of accused Anil on the date of incident in the village and also on some distance from the sugarcane field owned by Rasiklal (PW-7) in which spot of incident is located has been established through evidence of PW-8, beyond reasonable doubt by the prosecution. The link which connects the accused with the commission of offence is "Mud on shoulder posteriorly and left elbow posteriorly. Mud attached to right elbow posteriorly of the victim", as appearing in the evidence of PW-13 Dr. Ramprasad Purshottam Kulkarni. The aforementioned underlined portion would clearly indicate that, there was mud on shoulder and also on left elbow and back side of the victim's body and also on

right elbow. As already observed, it has come on record that, at the relevant period when incident had taken place, water was being supplied to the sugar cane field and therefore, land was wet. As already observed, it has come in evidence of PW-20 that, when accused Anil came to the house in between 10 a.m. to 11 a.m. he was seen in frightened condition and also there was mud on his clothes. Apart from this, there is evidence of other witness PW-5 that, on 1st September, 2006, at about 11 to 11.45 a.m. accused Anil came to the shop with empty bottle. He asked for petrol. He gave him half liter petrol. Anil told him that, he had some urgent work. Therefore, Anil demanded petrol from PW-5. In his evidence, this witness has further stated that, he was working in the shop of Arjun Pawar. Accused Anil came to his shop, therefore, he knew him. One month before the incident, Anil was residing in the village. His hair style was like Major, therefore, he use to call him as Major. He used to sit in the shop of Arjun Pawar and used to tell that, he was in Military service. This witness has specifically stated that, on 1st September, 2006, accused Anil came to his shop in between 11 a.m. to 11.45 a.m. He was in lining shirt and black pant. Accused was dripping with sweat. His clothes were stained with mud. There is also evidence of PW-9 Shahararn Babasaheb Ambade at Exhibit 30 that, on 1st September, 2006 he was in his shed in the morning. At about 11.30 a.m. accused Anil came there with a bottle and demanded petrol. He demanded half liter petrol. He was seen frightened at that time. He could not give petrol to accused since it was not available with him. His shirt was stained with mud on front side and it was wet. Accused thereafter went away from his shed. Therefore, there is evidence of PW-5, PW-9 and PW-20 that, they saw the accused in frightened condition and also his clothes were stained with mud on front side and it was wet. The fact that, accused Anil came to the house and told the wife that, he wanted to go along with her to meet his maternal aunt since she is ill was not told by him to his wife earlier before he returned back to home on the date of incident. Upon considering the evidence as appearing on the record leads to the reasonable inference that, the incident had taken place in between 9.45 a.m. till the accused left the place of incident and returned to house. As rightly stated by Jyoti PW- 20 in her deposition that, the accused came to the house in between 10 a.m. to 11 a.m. The injury nos.1, 2 and 4 in column no.15, in Postmortem report by the doctor are stated to be possible at the time of

committing rape forcibly. The reasonable inference can safely be drawn that, accused Anil over powered the victim on refusal of having sexual intercourse assaulted her by spade near right ear and also caused injuries on her forehead and thereby serious injuries were sustained by the victim.

37. It has come on record that, the spade was seen on the spot and blood was detected on the blunt side of the said spade. This fact is clearly stated by the PW-6 in her evidence. Other witnesses have also stated to that effect. The fact that, spade was lying in the said field is stated by PW 11 Zumbar Bhaurao Sherkar in his deposition before the Court. Said spade was given article number and same was identified by the PW-II before the Court.

38. The Photographs which is part of record and mentioned as Article No.O to Z and Article Nos.Z-1 to Z-16 would unequivocally show that, there was attempt to rape the victim and she sustained serious injuries near the hymen. The injury Nos.1, 2 and 4 and other injuries indicated in the evidence of Medical Officer are sufficient to attract ingredients of Section 375 of the I.P. Code. The photographs also show serious injuries on vital part of deceased including right ear near scalp. The medical evidence clearly establishes the homicidal death of the victim.

39. The conduct of the accused to leave the Rastapur immediately on the date of incident and thereafter proceeding to other places, and lastly staying at Sangamner on that day has been stated by PW-20 in her evidence. Upon careful perusal of the cross examination of PW-20, the denial of the accused in his statement under section 313 Cr. P.C. that, he did not go to Rastapur or stayed at Rastapur and he had not committed any offence deserves to be rejected in the light of overwhelming evidence brought on record by the prosecution. In fact, it is specific case of the prosecution as proved through prosecution witnesses that, the accused stayed at Rastapur in house of Bhimabai along with his wife (PW-20) prior to the date of incident and on the date of incident. While answering question no. 33 in his 313 statement that, whether accused Anil want to say anything more, he merely stated that, Jyoti hardly stayed for 15 days with him after marriage. She was not residing with him. She has given false evidence and other witnesses falsely deposed against him and due to suspicion, false case is filed against him.

He has no concern with murder of victim. In fact the prosecution has proved through Jyoti PW-20 and other prosecution witnesses that, the accused did stay at Rastapur prior to the date of incident and on the date of incident and also it has come in the evidence of Jyoti that, they did stay at Rastapur and also about the conduct of the accused at the relevant time on the date of incident when he returned to the house. Therefore, the false statement of the accused under Section 313 of Criminal Procedure Code also provides additional link in the link of circumstances to attract his guilt. Though it is stated by the defence that, motorcycle was not owned by Anil. However, on reading evidence of prosecution witnesses, it has come on the record that, Anil did possess motorcycle when he was in Rastapur. The fact that, Anil left Rastapur with PW-20 on motorcycle is also stated by PW-20 Jyoti in her evidence, therefore, the fact that, the motorcycle was recovered and one chopper from the said motorcycle was also recovered, is supported by PW-3 Yousufkhan Ahmedkhan Pathan, panch witness.

40. PW-3 Yusufkhan Ahmedkhan Pathan (Exhibit-22) in his deposition before the Court stated that, on 4th September, 2006, he was called by police near Samnapur road. Another panch Shri. Kale was present with him. They went to Samnapur to Ghulewadi road. Three houses were in that area. One motorcycle of black colour was lying there. It was without light and front mud guard was left broken. Police Officer Shri. Inamdar opened seat cover. One Weapon was found under the seat. It was like sickle-chopper. Two foot-wears of male were also lying near motorcycle. Motorcycle and footwears and weapon is seized by Police in their presence. He identified the chopper, which was shown to him. He also identified the signature of another panch witness Kale. He stated that, the contents of the panchanama are correct.

The defence criticized his evidence on the ground that, he acted as panch witness in many cases at Sangamner. This witness has specifically denied in the cross examination that, weapon and foot-wears were shown to him in police station and he had signed on panchanama at Police Station.

41. The most important aspect and circumstance is that, the accused immediately after commission of the offence fled away and did not stay at Rastapur on the

relevant day so as to escape himself from the clutches of investigation. This conduct of the accused needs to be taken into consideration in the light of provisions of section 8 of the Evidence Act and same can be taken as one of the strong circumstance in the chain of circumstance.

42. There is evidence brought on record by the prosecution that, one police personnel carried the seized articles to the C.A. Office. C.A. Reports received from Regional Forensic Science Laboratory, Nashik are at Exhibits 74, 75, 76, 77, 78 and 79. On perusal of Exhibit-78, it is mentioned in the said report that, spade (HINDI) was wrapped in paper labelled. Article was stained with blood. The other things which were recovered from the spot including ear ring of the deceased and pair of sleepers also found blood stains. There are also other articles on which blood stains were found.

43. PW-21 Rajesh Panditrao Akhade his evidence is at Exhibit - 85. He stated in his evidence that, from 26th September, 2011 investigation was handed over to him Shri. Baravkar filed charge-sheet under section 299 of Cr. P.C. He has stated further details about what had happened thereafter.

44. In the afore going paragraphs, we have re-appreciated the entire evidence on record and also the other material, which was placed on record and upon re-appreciating of the entire evidence, the following circumstances have been firmly established by the prosecution :-

(i) The accused was convicted earlier in Sessions Case No.185/1996 for life.

(ii) When accused Anil was on parole, accused was residing at Rastapur since two months prior to date of incident.

(iii) On the date of incident, accused Anil was seen in the village in the morning by PW-15 Sarpanch.

(iv) On the day of incident, accused Anil left house at about 9 a.m. (evidence of PW-20 Jyoti).

(v) On the day of incident, on 01.09.2006 at about 9.30 a.m. victim had gone for attending nature's call towards the sugarcane crop of Rasiklal Gandhi. (evidence of PW-1 and PW-6).

(vi) PW-8 Mukteshwar saw victim going to the sugarcane field at about 9.45 a.m. At the same time, PW-8 Mukteshwar had also seen accused standing near field of sugarcane crop on road on the date of incident.

(vi) The accused returned to home in between 10 to 11 a.m. (evidence of PW-20).

(vii) The accused was seen in frightened condition and his clothes were stained with mud on front side and were wet. (evidence of PW-20).

(viii) The accused was in hurry to leave village Rastapur. Accused went to shop of PW-5 and PW-9. Both witnesses stated that, he was seen in frightened condition and his shirt was stained with mud and it was wet.

(ix) After collecting the half liter petrol from PW-9 the accused along with his wife left Rastapur hurriedly on motorcycle (evidence of PW-20).

(x) Thereafter, accused went to various places to hide himself from clutches of police. (evidence of PW-20).

(xi) The accused along with wife stayed in the house of maternal uncle of accused at Sangamner. Accused Anil took bath. His blue underwear was washed by him and again he wore it. (evidence of PW-20).

(xii) On the next day and thereafter the accused fled away.

(xiii) On 4th October, 2006, the motorcycle of accused and pair of chapple were recovered.

(xiv) Thereafter, the Police Authorities arrested the accused on 14th September, 2012.

45. While going through the record of the case, it was transpired to us that, at the time when evidence of PW-20 Jyoti Gaikwad was recorded, the accused was not

present in the Court for the reason that, he was not produced from the Jail on that day. However, the cross examination was conducted by the learned counsel for the accused in his absence. The record further shows that, on 16.12.2013 before concluding the cross examination of PW-20 Jyoti, the learned counsel for the accused requested the trial Court to defer the further cross examination so that the remaining cross examination can be conducted in presence of the accused. The matter was, therefore, adjourned to 26.12.2013. On 26.12.2013, the accused was produced before the Court and further cross examination of PW-20 Jyoti was conducted in his presence. However, the further cross examination seems to have been recorded only in Vernacular and the English version of it is not on record. Two aspects were before us, as to what would be the effect of the earlier cross examination of PW-20 Jyoti taken in absence of the accused and nonrecording of the further cross examination in English. However, it has to be stated that, these issues have not been raised and/or objected by the learned counsel appearing for the accused. No such objection is also taken in memo of appeal and throughout during the course of hearing of the present appeal. Secondly, when the further cross examination was recorded in presence of the accused and the same has been recorded in Vernacular, no prejudice can be said to have been caused to the accused. We have clarified the things so that, there shall not remain any confusion on this aspect.

46. Upon re-appreciating the entire evidence on record, we are of the considered view that, each circumstance in the chain of circumstances has been firmly established by the prosecution. The chain of the circumstance is complete. The facts established are consistent only with the hypothesis of the guilt of accused Anil. The evidence brought on record and circumstances established lead to only one conclusion that, accused committed an offence punishable under section 376, 302, 201 of the I.P.Code and under section 4(25) of the Arms Act. Therefore, in our considered opinion, the findings recorded by the District Judge-2 and Additional Sessions Judge, Shrirampur in the impugned judgment and in particular, from paragraph Nos. 70 to 102 are in consonance with the evidence on record, which need no interference. The trial Court has rightly convicted the appellant/accused for the offence punishable under sections 302, 376, 201 of I.P. Code and under section 4(25) of the Arms Act.

47. The next question is whether the death sentence awarded to the accused is sustainable on the facts and circumstances of the case, i.e. whether the present case can be termed to be rarest of the rare case.

The overwhelming evidence brought on record by the prosecution, unequivocally, indicates that, the victim was brutally assaulted by the accused. The victim was helpless girl. By removing clothes of the victim, the accused committed heinous offence and also caused 23 injuries on various parts of her body. Her body was left in the naked condition profusely bleeding. The accused is an able-bodied person, has been seen the world and is married. He is already convicted for the offence punishable under Section 302 of I.P. Code. In the earlier case also the motive stated by the prosecution was to have intercourse with the victim in that case. Considering the fact that, earlier the accused was tried for the offence punishable under Sections 376 and 302 of I.P. Code and convicted for life for offence punishable under section 302 of I.P. Code and the manner in which he has committed the offence, reformation or rehabilitation is practically ruled out. The criminal test has been fully satisfied against the accused and there are no mitigating factors favouring the accused. One of the factors to order death sentence by the trial Court was that the accused has committed offence vide crime No. 79/2004 under Section 354 and 307 of I.P. Code registered with Shrirampur Police Station and also Crime No. 175/2011 punishable under Sections 376, 302 of I.P. Code registered with Shirdi Police Station. These crimes are yet to be tried. The Supreme Court in the case of Shankar Kisanrao Khade V/s State of Maharashtra reported in (2013) 5 S.C.C. 546 held that, mere pendency of few criminal cases as such is not an aggravating circumstance to be taken note of while awarding death sentence unless the accused is found guilty and convicted in those cases. The Trial Court was, therefore, in error in holding that those are relevant factors in awarding the appropriate sentence.

48. The learned trial court had noted about 8 aggravating circumstances. The learned Judge has also noted the mitigating circumstances and has ultimately reached to the conclusion that, it is the case falling in the category of rarest of rare, and therefore, awarded the death sentence. It is true that, the accused committed the present offences while he was undergoing the sentence of life imprisonment in

Sessions Case No.185/1996. From the material which has been brought on record by the prosecution, it is further clear that, two more offences of similar nature are alleged to have committed by the accused and the cases pertaining to those offences i.e. crime No. 79/2004 under Section 354 and 307 of I.P. Code registered with Shrirampur Police Station and also Crime No.175/2011 punishable under Sections 376, 302 of I.P. Code registered with Shirdi Police Station are pending against him. The learned Additional Sessions Judge has considered the aforesaid pending cases against the accused also an aggravating circumstance. However, in view of the recent judgment of the Hon'ble Supreme Court referred hereinabove in the case of Shankar Kisanrao Khade (supra), it may not be permissible to make use of these pending cases as aggravating circumstance against the accused. Further, even though, we have also reached to the conclusion after re-appreciating the entire evidence that, the entire chain of circumstances has been proved by the prosecution beyond reasonable doubt and it leads to the only hypothesis of guilt of the accused and none else, the fact remains that, our conclusions are based on circumstantial evidence. We do not wish to lengthen our judgment by referring to the series of judgments by the Hon'ble Apex Court, wherein consistently a view has been taken that, in cases based on circumstantial evidence, the Court must be cautious in awarding capital punishment.

49. Keeping in view the parameters applied by the Supreme Court in the cases of (i) Bachan Singh V/s State of Punjab, 1980(2)SCC 684, (ii) Macchi Singh and others V/s State of Punjab, 1983(3)SCC 470, (iii) Shankar Kisanrao Khade V/s State of Maharashtra, 2013(5) SCC 546 and (iv) Sandeep V/s State of Uttar Pradesh, (2012) 6 SCC 107, we cannot subscribe the order of the learned Trial Court imposing death sentence on the accused. We therefore commute it to life imprisonment.

50. The accused is undergoing life sentence in Sessions Case No. 185/1996. In the light of the judgment in the case of Shankar Kisanrao Khade (supra) since imprisonment for life means that, the convict will remain in jail till the end of his normal life. Therefore, the sentence of life imprisonment awarded in the present case, will commence immediately, if the convict Anil is to be released earlier by the Competent Authority for any reason in accordance with procedure established by

law. In other words, the period of sentence of life imprisonment awarded in the present case will commence only after completion of the period of sentence awarded to the appellant-accused in Sessions Case No.185/1996.

51. In the peculiar facts and circumstances of this case, we are constrained to observe that, the appropriate Government may not consider the case of the accused for remission.

52. In view of the above, the Criminal Appeal stands dismissed and the Confirmation Reference stands answered.

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