SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Raja Vs. State By

Raja Vs. State By

SooperKanoon Citation : sooperkanoon.com/1232233

Court : Karnataka

Decided On : Oct-21-2020

Judge : B.Veerappa and K.Natarajan

Appeal No. : CRL.A 690/2020

Appellant : Raja

Respondent : State By

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE21T DAY OF OCTOBER, 2020 PRESENT THE HONBLE MR. JUSTICE B. VEERAPPA AND THE HONBLE MR. JUSTICE K. NATARAJAN CRIMINAL APPEAL No.246/2014 C/W CRIMINAL APPEAL No.690/2020 C/W CRIMINAL APPEAL No.867/2020 IN CRIMINAL APPEAL No.246/2014 BETWEEN:

1. RAMU S/O RATHNAGIRAIAH, AGED ABOUT21YEARS, R/AT METARIDODDI VILLAGE, KAILANCHA HOBLI, RAMANAGARA TALUK AND DISTRICT.-571501. 2 . SHIVANNA S/O LATE MOTAPPA, AGED ABOUT20YEARS, R/AT METARIDODDI VILLAGE, KAILANCHA HOBLI, RAMANAGARA TALUK & DISTRICT-571501. 3 . MADDURA S/O LATE MARIYAPPA, AGED ABOUT19YEARS, R/AT METARIDODDI VILLAGE, KAILANCHA HOBLI, RAMANAGARA TALUK & DISTRICT-571501. 2 4 . ELEYAIAH @ ELEYA S/O MARIYAPPA, AGED ABOUT23YEARS, R/AT METARIDODDI VILLAGE,

KAILANCHA HOBLI, RAMANAGARA TALUK AND DISTRICT-571501. 5 . EERAIAH @ EERA S/O MUNIYAPPA, AGED ABOUT20YEARS, R/AT METARIDODDI VILLAGE, KAILANCHA HOBLI, RAMANAGARA TALUK AND DISTRICT. ...APPELLANTS (BY SRI A.V. RAGHAVENDRA, ADVOCATE) AND: STATE BY JNANABHARATHI POLICE-56060. RESPONDENT (BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE

JUDGMENT
DATED49.2013 PASSED BY THE IX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN S.C. No.487/2013- CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS427 366, 323, 324, 397, 506(B), 376(2) (g) READ WITH149OF IPC. IN CRIMINAL APPEAL No.690/2020 BETWEEN: RAJA S/O MUTHURAJA, AGED ABOUT27YEARS R/AT METARE DODDI VILLAGE3KAILANCHA HOBLI, RAMANAGARA TALUK, RAMANGARA DISTRICT. PIN CODE56210. ...APPELLANT (BY SRI A.V. RAGHAVENDRA, ADVOCATE) AND: STATE BY JNANABHARATHI POLICE REP. BY SPECIAL PUBLIC PROSECUTOR, HIGH COURT BUILDING, BENGALURU-560001. RESPONDENT (BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE

JUDGMENT
OF CONVICTION AND

ORDER
OF SENTENCE DATED2205.2017 PASSED BY THE LIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN S.C.NO.29/2014 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS427 366, 323, 324, 397, 376(2)(g) R/W149OF IPC. IN CRIMINAL APPEAL No.867/2020 BETWEEN: DODDA EERAIAH @ DODDEERA S/O EERAIAH AGED ABOUT26YEARS, R/O HEBBALA VILLAGE,

ANUGUDU HOBLI, HUNUSUR TALUK MYSORE DISTRICT. ...APPELLANT (BY SRI A.V. RAGHAVENDRA, ADVOCATE) 4 AND: STATE BY JNANABHARATHI POLICE RESPONDENT (BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO SET ASIDE THE

JUDGMENT
DATED0409.2013 AND SENTENCE DATED0609.2013 PASSED BY THE IX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU IN S.C.NO.487/2013, CONVICTING THE APPELLANT/ACCUSED NO.4 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS427 366, 323, 324, 397, 506B, 376(2)(g) R/W149OF IPC. THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT
ARE COMING ON FOR PRONOUNCEMENT OF

JUDGMENT
THIS DAY, B.VEERAPPA, J, DELIVERED THE FOLLOWING:

JUDGMENT
The unsuccessful accused persons, who have gang raped P.W.28 - Kumari Prakruti (not her real name) have filed these appeals (Criminal Appeal No.246/2014 by accused Nos.2, 5 to 8; Criminal Appeal No.690/2020 by accused No.3 and Criminal Appeal No.867/2020 by 5 accused No.4) against the impugned judgments and orders of conviction dated 4th September, 2013 made in S.C.No.487/2013 and 22nd May, 2017 made in S.C. No.29/2014 on the file of the IX and LIV Additional City Civil and Sessions Judge, Bengaluru respectively convicting all accused persons for the offences punishable under Sections 376 (2)(g) r/w Section 149, 323, 324, 366, 427, 506(B), 397 of IPC., and sentencing them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each for the offence punishable under Section 376(2)(g) r/w 149 of IPC; one year for the offence punishable under Section 323 of IPC; three years for the offence punishable under Section 324 of IPC; ten years and fine of Rs.1,000/- each for the offence punishable under Section 366 of IPC; two years for the offence punishable

under Section 427 of IPC., Seven years for the offence punishable under Section 506(B) of IPC., and seven years for the offence punishable under Section 397 of IPC., with default sentences and all the sentences to run concurrently. 6 I - BRIEF FACTS OF THE CASE2 It is the case of the prosecution that on 13.10.2012 at about 9.15 p.m. in front of old Valuation Building area situated near a road which is situated between Bangalore University Main Building and National Law School of India University, when the victim girl - P.W.28 -and her friend P.W.1 were talking to each other in a parked car belonging to P.W.1 bearing registration No.KL-02-AH-8100 by the side of the mud road situated close to main road, all of a sudden, all the accused persons surrounded the said car holding deadly weapons like iron rods, see-saws, long knives, draggers and rope in their hands in pursuance of their common object to commit offences and being members of unlawful assembly among whom accused No.1 (who was a minor produced before the learned Juvenile Justice Board, Bangalore) broke front left door and window glasses of the car by iron rod causing loss or damage to the tune of Rs.1,000/- to P.W.1. They forcibly opened the left front door of the car and holding 7 hairs of the victim girl, dragged her outside the car, abducted her with a common object of committing offence to force or seduce illicit intercourse, accused No.6 caused hurt on the right shoulder of P.W.1 by a plastic rope and at the same time, accused No.1 being member of the unlawful assembly holding iron rod in his hand, accused No.4 holding deadly weapons and all others aiding them, gave threat to P.W.1 and victim girl to do away with their lives, robbed their I-pod and mobile phones. They further dragged the victim girl into the forest area forcibly, out of whom accused No.5 committed rape on her and thereafter, dragged her near the compound where the drain water river was flowing close to it. He again committed rape for the second time on her and thereafter, made her to cross compound wall with the assistance of other accused and accused Nos.1 and 3 dragged her holding deadly weapons to create fear of death in her mind, if she resisted and then they committed gang rape one after another thereby committed offences punishable under the provisions of 8 Sections 427, 366, 323.

324. 397, 376(2)(g) r/w 149 of IPC.

3. Based on the complaint lodged by the victim girl - P.W.28, the jurisdictional police registered a criminal case against unknown persons for the aforesaid offences and the investigating officer arrested the accused persons after completion of the investigation, filed charge sheet against them.

4. After receipt of the charge sheet, the learned IX Additional CMM, Bangalore City took cognizance and registered a case in C.C.No.23227/2012 and as accused No.3 was minor, the case against him was split up and a separate case - C.C.No.2226/2013 came to be registered. Thereafter, the case was committed to the Court of Sessions.

5. On committal, the learned Sessions Judge framed charges on 12.6.2013 and 13.2.2015 against accused Nos.2, 4 to 8 for the aforesaid offences and 9 read over to the accused persons, who pleaded not guilty and claimed to be tried.

6. In order to establish the guilt of the accused, the prosecution examined 31 witnesses - P.Ws.1 to 31, got marked documents as exhibits P.1 to P.79(c) and Material Objects -M.O. Nos. 1 to 74. The documents exhibited before the Court was marked as Exs.C.1 to 3(c). After completion of the evidence of the prosecution witnesses, when the statements of the accused persons were recorded under Section 313 Cr.P.C., they have denied the incriminating evidence of the prosecution in toto and no defence witnesses were examined on their behalf.

7. The learned Sessions Judge based on the material on record formulated six points for determination and after consideration of the oral and documentary evidence on record has recorded a finding that the prosecution has proved that accused Nos.2, 4 to 8 along with accused Nos. 1 and 3 on 13.10.2012 at 10 about 9.15 p.m. in front of Old Valuation Building area situated near the road which is between Bangalore University Main Building and National Law School of India University suddenly surrounded the parked car of P.W.1, where he (P.W.1) and P.W.28 were talking to each other, holding deadly weapons like iron rods, see-saws, longs, knives, draggers and rope with their common object to commit the offences being members of the unlawful assembly of whom accused No.1 broke front left door, window glass of the car by means of iron rod, committed criminal

mischief causing damages to the tune of Rs.1,000/- to P.W.1 and thereby committed an offence punishable under Section 427 r/w 149 of IPC. The learned Sessions Judge further has recorded that accused Nos.2, 4 to 8 along with accused Nos.1 and 3 being members of unlawful assembly abducted P.W.28 victim girl by dragging her outside the car to force or seduce illicit intercourse knowing it to be likely that she would be forced or seduced to such illicit 11 intercourse committed an offence punishable under Section 366 r/w 149 of IPC. The learned Sessions Judge further has recorded a finding that in the forest area that the accused with a common object formed an unlawful assembly to cause simple hurt to P.W.1 and by means of plastic rope committed offences punishable under Sections 323 and 324 r/w 149 of IPC., and further by holding deadly weapons in their hands aiding accused Nos.1 and 4 and giving threat to P.Ws.1 and 28 to do away with their life and robbed their I-pod and Cell phones have committed the offence punishable under Section 397 of IPC. They have dragged P.W.28 - victim girl into forest area near the compound where the drain water river was flowing close to it and across the said compound wall holding deadly weapons in their hands created fear of death to her, if she resisted and committed the offence of gang rape one after another punishable under Section 376(2)(g) r/w 149 of IPC. Accordingly, the learned Sessions Judge by the impugned judgments of 12 conviction convicted all the accused persons for the aforesaid offences in terms of the charges leveled against them. Hence the present criminal appeals are filed by the accused persons.

8. We have heard the learned Counsel for the parties. II - ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE APPELLANTS9 Sri A.V. Raghavendra, learned Counsel for the accused persons mainly contended that the impugned judgments and order of conviction sentencing the accused persons is perverse, as it suffers from irregularities and infirmities and as such, the same is liable to be set aside. He would further contend that as per the charge sheet, P.W.28 - victim girl and P.W.1 alleged to be eye witnesses are the interested witnesses as their statements are not corroborative to each other. The learned Sessions Judge ignoring the inconsistencies in their statement has proceeded to pass the impugned 13 judgments on the false implication of the accused by the prosecution. He would further contend that as P.W.7 - Doctor Pramila Devei N.,

who treated P.W.28 the victim girl has deposed that no fresh tears or bleeding were noted, Cervix and vaginal appears healthy, no injuries found at vaginal introitus and in view of the fact that Forensic Science Laboratory report reveals that no stains or blood stains were detected on the cloths of victim, it is clear that the testimony of the prosecution witnesses are neither trustworthy nor corroborative with the medical evidence. On that ground alone, the impugned judgments of conviction are liable to be set aside.

10. The learned Counsel for the accused would further contend that the report of P.W.13 - Doctor Pradeep Kumar M.P., who treated and examined the appellants/accused reveals about only sexual capacity of the accused and does not disclose whether the accused committed recent sexual intercourse with P.W.28 which clearly goes to show that the accused 14 have not committed any offence as alleged in the charges leveled against them. He would further contend that the witnesses examined on its behalf by the prosecution - P.Ws.2, 3, 4, 5, 8 and 9 are independent witnesses and mahazar witnesses and their statement clearly discloses that the prosecution case is nothing, but falsely implication of the accused in the present case. The said aspect of the matter has not at all been considered by the learned Sessions Judge.

11. The learned Counsel for the accused would further contend that the accused never have given voluntary statement before the police and the Test Identification Parade was not conducted by the investigating officer which clearly goes to show that the case registered by the police is false and fabricated. He would further contend that after registration of the case against the accused persons and others, the material objects - M.Os.20 and 23 were seized and sent to FSL for examination, but the evidence of the doctor Chandrashekar - P.W.15, who has examined the objects 15 and has given the report, clearly depicts that no blood stain or semen were detected. Therefore, the accused have been falsely implicated in the present case and prosecution has failed to prove the same beyond all reasonable doubt. Therefore, he contended that the learned Sessions Judge without proper appreciation of the entire evidence on record and application of mind, coming to the conclusion to convict the accused and passing the impugned judgments of conviction, cannot be sustained.

12. The learned Counsel for the accused would further contend that the Court below ought to have given benefit of doubt to the appellants-accused taking into consideration that, when two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to their innocence, the view which is favourable to the accused has be considered. He further contended that though the written complaint lodged by the victim girl - P.W.28 as per Ex.P.48 is at 1.30 a.m., there is an improvement in 16 the evidence of P.Ws.28 and P.W.1 and therefore, their evidence cannot be relied upon. He would further contend that in the Test Identification Parade (TIP) of about 32 to 35 persons which was conducted on 17.11.2012 out of whom, seven persons were identified by P.W.28 who were at Serial Nos.4, 8, 12, 16, 20, 24 and 29 but when it was the turn of TIP of P.W.1, who is the alleged eye witness, the authority who conducted the TIP had not followed the procedure of changing the arrangement of the accused in the line of TIP. Therefore, the TIP conducted by the jurisdictional authority is erroneous. He would further contend that the accused persons are already in the judicial custody for more than seven years and as there are no other criminal antecedents, lenient view has to be taken in the facts and circumstances of the present case. Hence, he sought to allow the criminal appeals filed by the accused. 17 III - ARGUMENTS ADVANCED BY THE LEARNED ADDITIONAL STATE PUBLIC PROSECUTOR13 Per contra, Sri Vijayakumar Majage, learned Additional State Public Prosecutor while justifying the impugned judgments and order of conviction, contended with vehemence that P.W.1 - Nirmal. R., has supported the case of the prosecution with regard to abduction, assault and robbery as contemplated under Sections 366, 427, 323, 324 and 397 of IPC., by identifying the weapons used by the accused for the aforesaid offences and also identified the accused persons in the TIP through voters list as well as before the Court by both P.Ws.1 and 28 (victim). Therefore the evidence of P.W.1 is trustworthy and cannot be discarded. He further contended that the evidence of P.W.1 corroborates the evidence of P.W.28 regarding parking of car and P.W.1 running towards the car which is also identical to his own statement recorded under the provisions of Section 164 of Cr.P.C. by the learned Chief Metropolitan Magistrate. He would further 18 contend that the TIP of P.W.1 as per the check list - Ex.P.57 is on par with TIP of the victim P.W.28 as per check list Ex.P.56 in identifying the accused, who were involved in

the offences as alleged. The evidence of PW.28 with regard to involvement of the accused and electricity has remained unshakable in her cross examination and is corroborated with the evidence of Sri R. Nithin -P.W.14, Assistant Engineer, Building Sub- Division, Bengalore and hence, her evidence cannot be discarded as it is cogent and consistent.

14. The learned Additional SPP would further contend that the version of P.W.7 - Dr. Pramila Devi N., who has examined the victim girl - P.W.28 is that, from the DNA profile of the articles sent numbering 10 to 16 and articles sent in numbering 5 to 9 clearly indicates that the DNA profile of the samples bloodstains in item Nos.10 to 16 collected from accused Nos.1, 2, 4, 5, 6 and 7 the alleles (Chromosome) present in the STR loci were not matching with that of the alleles present in the DNA profiles of the seminal stains found on the nail 19 clipping, pubic hairs, vaginal swabs, vaginal smear and cervical smear sent in item Nos.5 to 8 respectively and ultimately has opined that the victim used to act like that of sexual intercourse and that is why there were no injuries found in the vaginal introitus and vagina. Because of this, there were no blood stains on the body and cloths and because of fear of death, she might have not resisted and hence, neither injuries nor blood stains were found on the body or clothes. She has confirmed that there is evidence of signs of recent sexual intercourse. Hence, her evidence being credible and trustworthy cannot be discarded.

15. The learned Additional SPP would further contend that M.O.17 - Kerchief seized at the spot as per the seizure mahazar Ex.P.4 depicts the seminal stains detected are of human in origin and are a mixture of seminal stains belonging to not less than four individuals. The seminal stains detected on the underwear sent in item No.2 are human in origin belonging to one individual i.e., accused No.5. In the 20 DNA profile of the blood sample sent in item Nos.3, 7, 8 and 9 collected from accused Nos.1, 6 to 8 respectively the alleles in all the STR loci were identical and matching with that of the DNA profiles of the seminal stains detected on the kerchief. In the identifiers DNA profiles of the blood sample sent in item No.9 collected from accused No.8, the alleles in all the STR loci were identical and matching with that of the DNA profile of the seminal stains detected on the underwear sent in item No.2. Therefore, the doctor - P.W.8 has come to the

conclusion that the blood sample sent in item Nos.3, 7 to 9 are the contributors of the seminal stains of accused Nos.1, 6, 7, 8 and 9 which are detected on the kerchief sent in item Nos.1 and 2. He further pointed out that as per the evidence of the doctor, accused No.5 is the contributor of the seminal stains found on the nail clippings, pubic hairs, vaginal swabs and vaginal smear and cervical smear sent in item Nos.5 to 8 and has finally opined that from the DNA profiles result of the articles sent in item Nos.5 to 9 in Ex.P.17, the 21 seminal stains detected were all belonging to one individual and the seminal stains detected in M.O.17 - Kerchief are mixture of not less than four individuals and are matching with accused No.5 in so far as item No.13 in Ex.P.18; accused No.1, 6, 7 and 8 in respect of item Nos.10, 14, 15 and 16 respectively in Ex.P.18 and accused No.8 in so far as item No.2 - M.O.60 in Ex.P.51 and item No.16 in Ex.P.18. Therefore , her testimony cannot be disbelieved.

16. The learned Additional SPP further contended that the evidence of P.W.28 - victim girl with regard to identification of the pictures/sketches - Exs.P.7 to 11(b) drawn by P.W.5 - Mr. Prashanth. K., an Artist is corroborated with the evidence of P.W.5 and Ex.P.6 - the panchanama; He would further contend that in view of the evidence of P.W.16 - Dr.Shehnaz Fathima, FSL Scientific Officer, who has spoken about the involvement of accused persons since there was presence of seminal stains in item Nos.38, 39, 53 and 55 which were stained with human blood in Kerchief 22 and item No.50 one underwear, proves that the accused are involved in the offence of rape. He further contended that in view of the evidence of P.W.3 Chennappa, who is the panch witness for recovery of M.Os.3, 5 to 11 at the instance of the accused persons as per Ex.P.5 -seizure mahazar and P.W.13 - Dr. Pradeep Kumar M.P. , who has spoken that the accused persons are capable of performing sexual intercourse, clearly establishes that the accused persons are involved in committing the ghastly crime on P.W.28 and therefore, the learned Sessions Judge is justified in passing the impugned judgments and order of conviction against the accused persons. He further contended that in view of the atrocity committed by the accused persons on P.W.28 victim girl, the appellants are not entitled for any leniency to be shown by this Court while exercising powers under the provisions of Section 374(2) of Cr.P.C., and hence, sought to dismiss the criminal appeals. 23 IV - THE POINT FOR DETERMINATION17 In view of the

rival contentions urged by the learned Counsel for the parties, the only point that arise for our consideration in the present appeals is: Whether the accused persons have made out case to interfere with the impugned judgments of conviction and orders of sentence convicting them for the offences punishable under Sections 376(2)(g), 323, 324, 366, 427, 506(B), 397 r/w 149 of IPC., and sentencing them to undergo imprisonment for life with fine and other punishments, in the facts and circumstances of the present case?. V - EVIDENCE OF PROSECUTION WITNESSES18 In order to re-appreciate both oral and documentary evidence on record, it is relevant to consider the evidence of the prosecution witnesses and the documents relied upon. 24 (a) P.W.1 - Sri Nirmal R., is the friend of the victim girl, has deposed on par with P.W.28. He has participated in the TIP conducted by P.W.27; has identified all the accused persons and has narrated, how the accused persons broke open the door of his car; dragging P.W.28 - victim girl to the forest; slipping up of slipper; out of five persons, one person assaulting 2 to 3 times on her cheek; snatching her mobile and sweaters; pushing on ground; He is the panch witness for seizure panchanamas - Voters list marked as Exs.P.1 and 2 and has identified his signatures at Ex.P.1(a), Ex.P.2(a), 2(b), 2(c) and 2(d) through which he has identified the photos of accused-2, 3, 5 and 8. He has also identified his signatures for seizure of Nokia E-72 mobile phone recovered by the accused persons marked as M.O.1, Apple I-pod - M.O.2, Iron rod - M.O.3, Glass pieces of the car M.O.4, M.O.5 - plastic rope, M.Os.6 & 7 - Garagasas-seesaws, M.Os.8 and 9 Machus - choppers/longs, M.Os.10 and 11 - Chakus (draggers), his statement made under Section 164 Cr.P.C. before 25 the learned Magistrate as per Ex.C.1 and his signature at Ex.P.1(c) and he has supported the case of the prosecution. (b) P.W.2 - Sri Purushotham, another panch witness for seizure mahazar Ex.P.4 for seizure of material objects - M.Os.12 to 17 - slippers of complainant, a ten rupee note, sim card, grass, mud sample and a Kerchief respectively and M.O.18 - a pair of slippers has supported the case of the prosecution. (c) P.W.3 - Sri Chennappa, who is another panch witness for drawing up of mahazar - Ex.P.1 and seizure mahazar - Ex.P.5 for seizure of material objects : M.O.3 - iron rod, M.O.5 - plastic rope, M.Os.6 and 7 - seesaws, M.Os. 8 and 9 Machus-longs, M.Os.10 and 11 choppers-draggers, M.O.19 - plastic cement bag, has supported the case of the prosecution. (d) P.W.4 - Sri L. Manjunatha, an

artist and another panch witness to the mahazars - Exs.P.7 to 11 - 26 pencil sketches of the accused drawn by him, has supported the case of the prosecution. (e) P.W. 5 - Sri Prashanth K., another artist and panch witness to the mahazars - Exs.P.7 to 11 - the pencil sketches of the accused drawn by him as per Exs.P.7 and 11, has supported the case of the prosecution. (f) P.W.6 - Sri Sachi Powdiyal who is the friend of the victim girl - P.W.28 by identifying M.O.1 - Nokia E-72 mobile and M.O.2 - Apple Company I-pod mobile and M.O.14 - Sim card, has supported the case of the prosecution. (g) P.W.7 - Doctor Pramila Devi N., who has examined the victim girl - P.W.28 has deposed that the victim girl used to act like that of sexual intercourse and that is why there were no injuries found in the Vaginal introitus and vagina and because of this, there were no blood stains on the body and clothes. Because of fear of death, the victim girl might have not resisted and hence 27 there were neither injuries nor blood stain, on the body and clothes. She issued MLC register to the jurisdictional police as per Ex.P.12; sent a letter to the FSL which is marked as Ex.P.13; the original report with final opinion marked as Ex.P.14 which bears her signature as per Ex.P.14(a); clarification of the report with regard to injuries mentioned in Ex.P.14 is marked as Ex.P.15 and her signature as per Ex.P.15(a). She has further clarified the report as per Ex.P.16 and has signed the same as per Ex.p.16(a). She has identified the material objects - Pink Paijama, black bra, black simmy, black top, nail clipping, pubic hair, vaginal swab, vaginal smear and cervical smear which are marked as M.Os.20 to 28 respectively and supported the case of the prosecution. (h) P.W.8 - Dr. Vinod J.

Lakkappa, the Scientific Officer, who examined item Nos.10 to 16 sent for examination has deposed that DNA profile of the blood samples are evaluated along with DNA profiles obtained from articles received and registered at DNA Centre, 28 Bangalore on 17th October, 2012. Accordingly he has issued DNA reports dated 9.10.2012 as per Ex.P.17; 13.11.2012 as per Ex.P.18; details of DNA report dated 20.6.2013 as per Ex.P.51 with regard to seminal stains detected in underwear M.O.60 and M.O.17 Kerchief and has supported the case of the prosecution. (j) P.W.9 - Sri Uday Kumar - owner of the hotel has deposed with regard to accused coming to his hotel. His statement recorded under the provisions of Section 164 Cr.P.C. is marked as Ex.C.3 and has signed as per Ex.C.3(a) to (c) and has supported the case of the prosecution. (k) P.W.10 - Sri

Moti K. Mathew, one of the friends of P.W.1 - Nirmal has supported the case of the prosecution. (l) P.W.11 - Dr. A.R. Raghupathy, Professor and Head of the Department of Pathology, Victoria Hospital, BMC., Bangalore, who has drawn the blood samples from the accused persons and has issued 29 acknowledgement as per Exs.P.19 to 25 and letters as per Exs.P.26 and 27 has supported the case of the prosecution. (m) P.W.12 - Dr. Dileep Kumar, who has issued medical certificate in respect to P.W.1 and has identified M.O.5 - plastic rope, has supported the prosecution case. (n) P.W.13 - Dr. Dileep Kumar K.B., Assistant Professor, Department of Forensic Medicine, Victoria Hospital, BMC, Bangalore, who has examined the accused persons viz., Mallesh @ AC, Ramu, Raja, Dodda Eeraiah @ Doddira, Shivanna, Maddura, Yeleaiah @ Yelaya and Eeraiah @ Eera on 21.10.2012, has deposed that, after physical examination of the accused persons, he has opined that the accused persons are capable of performing sexual intercourse. He collected M.Os.29 to 67 on 25.10.2012 and on examination of one Ramu, aged about 20 years, he was of the opinion that there is nothing to suggest that he is not capable of performing 30 sexual intercourse. He also collected material objects M.Os.63 to 67 i.e., brown yellow colour shirt, half sleeves banian, blue coloured hill man samay (blood stained) Nail clippings and pubic hair respectively and M.O.29 - purple colour full sleeve shirt and has issued medical certificates as per Exs.P.29 to 35 and identifying the sample seals Exs.P.36 to Ex.P.42 has supported the case of the prosecution. (o) P.W.14 - Sri R. Nithin, Assistant Engineer, who prepared the sketches as per Exs.P.43 and 44 alleged to have drawn on the spot and has put his signature at Ex.P.43(a), has deposed that the said sketches have been sent with a covering letter marked as Ex.P.45 and has supported the case of the prosecution. (p) P.W.15 - Dr. Chandrashekar, another Scientific Officers, who has identified M.Os.20 to 23 has deposed that he issued the report Ex.P.46 with his 31 signature at Ex.P.46(a) and has supported the case of the prosecution. (q) P.W.16 - Dr. Shahanaz Fathima, one of the Scientific Officers, who has issued the FSL report as per Ex.P.47 with her signatures at Exs.P.47(a) and 47(b) has deposed that after examining 57 items, she has opined that item Nos.38, 39, 53 and 55 - one banian, one pant, one shirt and one underwear were stained with human blood; Item Nos. 38 and 39 were stained with B Group of blood; item Nos.53 and 55 were stained with O

Group of blood; there was presence of seminal stains on item No.50 - underwear and item No.K - Kerchief and she could not detect presence of seminal stains in any other items examined by her. She has identified the material objects - M.Os.17, 48, 49, 63 and 65 and has supported the case of the prosecution. (r) P.W.17 - Sri Babu, Hostel in-charge security guard has given his evidence supporting the case of the prosecution. 32 (s) P.W.18 - Sri M. Masila Mani, Head Constable of Jnanabharathi Police Station has deposed that as per the direction of Police Inspector, on 16.10.2012, he has carried nine sealed articles to the FSL for examination and has supported the case of the prosecution. (t) P.W.19 - Sri Vijaykumar, Police Constable of Jnanabharathi Police Station who has taken the accused Nos. 1, 4 to 8 to the doctor at Victoria Hospital for medical examination has supported the case of the prosecution. (u) P.W.20 - Smt. Geetha Kulkarni, Police Inspector of Basaveshwaranar Police Station, who has recorded the statement of the victim girl - P.W.28 and has taken her to the Vani Vilas Hospital for medical examination has supported the case of the prosecution. (v) P.W.21, Sri Dharmegowda - Sub-Inspector of Police, Magadi Police Station, Ramanagara District has deposed that he received the complaint as per Ex.P.48 33 and has identified his signature marked as Ex.P.48(a) . He has also supported the case of the prosecution. (w) P.W.22 - Sri Srinivas, who was working as Police Constable in Jnanabharathi Police Station, Bengaluru, has deposed that on 14.10.2012 he had carried the FIR to the Magistrate Court and has apprehended accused Nos.1, 4 and 5. (x) P.W.23 - Sri Chandrashekaraiah, an independent and panch witness to the seizure mahazar - Ex.P.50 for seizure of Nokia, M.T.S., Samsung and Celkon mobile phones - M.Os.68 to 73 has deposed that he signed the said mahazar as per Ex.P.50(a) and has supported the case of the prosecution. (y) P.W.24 - Sri K.P. Sathyanarayana, who was working as Police Inspector of Kengeri Police Station has deposed that he apprehended accused Nos.7 and 8 and had fired on accused No.2 and shifted him to the hospital and has supported the prosecution case. 34 (z) P.W.25 - Sri Syed Abdul Rehman, who was working as Police Constable at Jnanabharathi Police Station on Patrol duty has deposed that on the date of the incident at Old Valuation road near the place of the incident, he found P.W.1 in abandonment condition and on enquiry, he narrated the story that had happened and had informed the same to the police. He has given his

evidence supporting the case of the prosecution. (z-1) P.W.26 - Sri Rudalf Perera, learned Senior Civil Judge, Chickmagaluru, the then CMM, Bangalore has recorded the statement of P.W.1 - friend of the victim girl, P.W.28 - victim girl and owner of the hotel under the provisions of Sections 164 Cr.P.C. as per the requisitions of the Investigating Officer - Ex.P.52 to 54 and his signatures are at Exs.P.52(a), 53(a) and 54(a) and statement of P.W.1 is marked as Ex.C.1 and his signature is marked as Ex.C.1(a), and signature of P.W.1 is marked as Exs.C.1(b) and (c); the statement of victim girl - P.W.28 is marked as Ex.C.2 and her signature is marked as Exs.C.2(b) and (c). His 35 signature is marked as Ex.C.2(c). The statement of witness Udayakumar is marked as Ex.C.3 and his signatures are marked as Exs.C.3(b) and (c). He has signed the same as per Ex.C.3(a) and has identified all the above said exhibits supporting the case of the prosecution. (z-2) P.W.27 - Smt. Suma R., who was Deputy Secretary/Taluka Executive Magistrate has deposed that she conducted the TIP in the Jail as per Ex.P.58 the list of 35 persons who participated. She has further deposed that she has sent the check lists of TIP marked as Exs.P.56, 57 and 58 to the learned Magistrate in a covering letter Ex.P.55 and she has put her signature at Ex.P.55(a). She has supported the case of the prosecution. (z-3) P.W.28 - Kumari Prakruthi (name of the victim/complainant is changed), who has lodged the complaint as per Ex.P.48 has identified all the accused persons in the TIP. She has identified her signatures at 36 Exs.P.56 to 58, Ex.P.3, 3(a) - photos of the car belonging to P.W.1, 3(b) and 3(c) - photos of the spot where the offence alleged to have been committed, 3(d) and (e) - photos of the Glass compound, the material objects M.O.3 and M.O.5 - rods, M.Os.6 and 7 - seesaws, M.Os.8 and 9 choppers, M.Os.10 and 11 - draggers, M.O. 12 her slippers, M.O.68 - her Nokia mobile and she has narrated the entire incident of rape committed on her as stated in the complaint Ex.P.48. Nothing has been elicited in her cross-examination to disbelieve her testimony with regard to involvement of the accused persons in her gang rape and her cross- examination is unshakable and has supported the prosecution case. (z-4) P.W.29 - Smt. Latha, alleged additional witness has identified the material objects - M.Os. 20 to 28 - pink paijama, black bra, black simmy, black top, nail clipping, pubic hair, vaginal swab, vaginal smear, cervical smear respectively and has deposed that they 37 belong to the victim girl -

P.W.28. She has supported the case of the prosecution. (z-5) P.W.30 - Balaraj B., Inspector of Police, who was the investigating officer, has categorically deposed that after investigation, he has filed final report at the instance of the accused when they were in custody and has recovered the weapons which were hidden by them in a fallen sheet house in presence of the panchas. Inspite of lengthy cross-examination, nothing has been elicited to disbelieve the case of the prosecution. He has identified Exs.P.48 and 49, seized the material objects - M.Os.1, 2, 4, 12 to 16 and 17 i.e., Nokia - E-72 mobile, Apple company I-pod mobile, Glass pieces of car, slippers of complainant, ten rupee note, sim card, grass, sample mud and kerchief respectively; marked the documents Exs.P.3(c) and (e) photos of spot mahazar, Ex.P.4 - seizure mahazar, Ex.P.59 PF No.198/12, Ex.P.2 - voters list, Ex.P.1 - spot mahazar, Exs.P.7 to 11 - sketch of accused persons, Ex.P.6 Mahazar, and has identified material objects - M.Os.20 to 28, Ex.P.60 38 report of Putta Swamy Gowda, Ex.P.61 PF198/12, seized material objects M.Os.68 to 73 mobile phones, drew the mahazar Ex.P.50, Ex.P.62 - PF20412, Ex.P.46 FSL report, Ex.P.63 complaint dated 20,12,2012, Ex.P.64 - FIR, seizure of material objects - M.Os.3, 5 to 11 and 19 i.e., Iron rod, plastic rope, Seesaws, longs, draggers and cement bag, recorded statement of accused persons -Mallesh, Dodda Eeraiah, Shivanna, Maddura, Eleyaiah, Eeraiah, Puttaswamy Gowda as per Exs.P.65 to 70 and 73; Exs.P.71, 72, 74 - PF20712, PF21012, 213/12 filed the report Ex.P.75, Ex.P.76 - FSL report, Ex.P.77 report to University Engineer, Ex.P.78 - RC Particulars and Ex.P.79 FSL report and has supported the prosecution case. (z-6) P.W.31 - Sri Puttabasaiah, who was the Assistant Director of FSL, Bengaluru has examined the items sent in sealed cover and has given the report - Ex.P.79 and has identified his signature at Ex.P.79(a). He has supported the case of the prosecution. 39 VI - FINDINGS OF FACT RECORDED BY THE TRIAL COURT19 Based on the oral evidence and material documents, the learned Sessions Judge has recorded a finding that the prosecution has proved its case beyond all reasonable doubt that all the accused being members of the unlawful assembly were involved in committing gang rape on P.W.28 and have committed criminal mischief by breaking the car glasses, caused simple hurt to P.W.1, intimidated criminally holding deadly weapons and created fear in their mind, if they resisted, dragged P.W.28 out of the car, abducted her to force or

seduce to illicit intercourse or knowing to be likely that she would be forced or seduced to such illicit intercourse, committed an offence of gang rape on her one after another which was their criminal act for prosecution of their common object which was punishable under the provisions of Section 366 r/w 149 of IPC. Further it was held that they caused simple hurt on P.W.1 by means of a plastic rope, committed offences punishable under Sections 323 and 324 r/w 40 149 of IPC. It was further held that as they gave threat to P.Ws.1 and 28 to do away with their life, robbed their I-pod and cell phones, committed offences punishable under Section 397 and 376(2)(g) r/w 149 of IPC for having dragged P.W.28-victim girl into forest area near the compound where the drain water river was flowing close to it and across the said compound wall holding deadly weapons in their hands created fear of death in her mind, if she resisted and committed gang rape one after one. Accordingly, all the accused persons were convicted for the aforesaid offences by the impugned judgments of conviction on 6th September, 2013.

20. The learned Sessions Judge further recorded that the report submitted by P.W. 13 and the evidence establish the fact that accused 2, 4 to 8 were compatible to commit sexual assault as there was nothing to suggest that each of them were incapable of performing sexual intercourse. Under such circumstances, the medical evidence, evidence of FSL and DNA profile 41 match with that of these accused directly and accused Shivanna and after further examination of kerchief marked as item Number K by the investigating officer and one underwear marked as item No.50 establish that Mallesha @ AC, Maddura, Eleyaiah, @ Eleya, Eraiah @ Era being the contributors of the seminal stains detected on the kerchief and Eraiah @ Era is being the contributor of the seminal stains detected on the underwear sent by item No.2 and P.W. 28 - prosecutrix girl had seen them in the street light, when they all surrounded the car and dragged her inside the forest. According to her, accused Ramu first time raped her and again she was raped by him and in all raped thrice by Shivanna followed by each one of them once one after one. She got identified each of these accused certainly before P.W. 27 Smt. Suma, Tahsildar, and Taluka Executive Magistrate, during conduct of test identification parade and she got identified also before the Court showing each of them as to how they have committed offence on her and offence on her friend 42 P.W.1. Similarly P.W. 1 got identified each of these accused before P.W. 27 during

conduct of test identification parade and he also identified before the Court showing each of them as to how they have committed offence on him. It was therefore, the contention of learned counsel for defence that it was highly improbable to identify the accused persons during night hours, that too, in thick forest was not accepted, since as already stated above, that the first time, by the side of the road, when the car was parked had seen them, in the street light. As such, how they could forget them and to that effect, Ex.P-43 sketch drawn by Mr. R. Nitin, Assistant Engineer, as shown by HC - 299 Mr. Puttaswamy gowda coupled with spot mahazar establish the fact of existence of streetlight electric pole at the place of the first incident where these accused in prosecution of their common object to commit offences formed themselves an unlawful assembly. Further, the investigating officer has obtained a report from University Engineer, Bangalore 43 University, Bangalore on 19.11.2012 certifying that electricity was available, supplied and distributed from Administrative Office JBC to National Law School of India University from 9.00 p.m. on 13.10.2012 to 1.00 a.m. on 14.10.2012 as per Ex.P-77.

21. The learned Sessions Judge further has recorded a finding that, it is not that in cross- examination of evidence of P.W. 28, P.W.1 and other material witnesses suggested that there was no electricity available, supplied and distributed to the electric pole situated by the side of the road as found in Ex.P.-43. However, their evidence is one of total denial and innocence of the case of prosecution which cannot be acceptable. It is important to note here that, no where they suggested to any of the material witnesses that, they have not committed offence of sexual assault, but the miscreants are some other persons. Even if they have taken up such defence, the evidence of P.Ws. 28,1, 7, 8,11 to 13, 15, 16 and 31 establish the fact that 44 these accused each one of them are contributors of committing the gang rape as charged by the Sessions Court. It has further recorded that from the evidence placed by the prosecution, it has considered the participation of the accused in commission of rape on P.W.28 and assault on P.W.1, and it is so probable that from such materials that a prudent man, under the circumstances of the case, has to believe. On the contrary, the defence has placed nothing, except denying evidence in cross-examination. The defence was not be able to establish or disprove especially the evidence of P.W. 28 victim girl, who is a foreigner to

these accused, as could be seen from her evidence that she had come to this country to prosecute her law studies, but was assaulted in this way. The fact that accused Ramu was caught red handed in the forest while commission of forest offence, immediately after this incident is a relevant fact to prove the fact that these accused persons were in the habit of committing of the forest offences and the said forest is the place 45 known to them. The report submitted by the Police Inspector Mr. K.P. Sathyanarayana - P.W.24 and Mr. S.K. Malathesh, Police Inspector, Channammanakere Achukattu Police Station submitted as per Ex.P-63 on the basis of which a crime case was registered against him as per Ex.P-64 in Cr. No.411/12 on 20th October 2012 by Jnanabharathi Police Station is a relevant fact to probable about his presence in the forest, as P.W.28- the injured witness-victim girl, during the course of trial has pin pointed that she was raped firstly by this Ramu and he raped thrice commencing from entering into the forest till committing of gang rape one after another. It is to be noted that by going through the entire defence of the accused from voluminous evidence, their defence is that these witnesses have deposed falsely and no such crime had occurred. It is not that the crime committed on victim girl and P.W.1 was committed by some one else and not by them, but P.W.28 victim girl has given false complaint as she had boy friends used to intercourse which is supported by evidence of P.W.7 46 Dr. Pramila Devi. The same is nullified by the oral and documentary evidence on record. Accordingly, the learned Sessions Judge has proceeded to pass the impugned judgments of conviction. VII - CONSIDERATION22 Being the appellate authority, in order to re- appreciate the entire material on records, it is relevant to consider the following circumstances: i) Evidence of the victim girl - P.W.28; ii) Evidence of the eye witness P.W.1; iii) Medical evidence of the doctors-P.Ws.7, 11, 12 and 13; iv) Scientific evidence of P.W.8, 15 and 16; v) Evidence of Police Officers -P.Ws.20, 21, 22, 24, 25, 29, 30; and vi) Recovery (i) EVIDENCE OF THE VICTIM GIRL- P.W.28 P.W.28, who is the victim girl, has deposed that she joined the National Law School of India University, 47 Bengaluru in the year 2010 and was the residing at Neelagiri Hostel in room No.304 along with Neha Raj Purohit, who was another student. On 13.10.2012 at about 8.00 p.m. she met P.W.1 for the first time outside her hostel gate. In front of Old Valuation Building area situated near a road and between Bangalore University Main Building and National Law

School of India University, when she and P.W.1 were talking each other for the first time, in a parked white Polo car belonging to P.W.1, by the side of the mud road situated close to the said road, suddenly, the said car was surrounded by the accused persons holding deadly weapons like iron rods, see-saws, longs, knives, draggers and plastic rope in their hands, who formed an unlawful assembly with an common object to commit the offence, broke open the front left door, window glass of the car by means of iron rods causing damage to the car of P.W.1 and forcibly opened the left front car door and holding hairs of P.W.28 pulled her outside the car; asked P.W.1 to move the car, three people caught hold of P.W.1 and five 48 people were holding her; though they told them that they would give money and ATM card, they were very aggressive and were talking in Kannada language. They took her towards the forest area which was a mud road and at that time, they were dragging Nirmal - P.W.1 behind her. After going 200 meters inside the forest, they hit P.W.1 with the rope, snatched phone and I-pod and after that three of them took him towards the car. Though she asked them to leave her, they behaved very rudely. At that time, she slipped her slippers, one of them slapped on her face for two to three times. She was holding mobile and wearing sweater which were also snatched by them. Showing the deadly weapons, they pushed her and hence, she fell down. At that time, one of them raped her. Though she pushed him and roared to leave her, he did not leave her. Then one of them forcibly lifted her and took her towards the forest where it was a slope and hence, she fell down, due to which, her trouser was torn, and a drain water river was flowing there. They made her to 49 cross that river. From there, at a distance, she was able to see a light in the house. Again after few steps, the guy who assaulted raped her, took her to one corner and again raped her. Thereafter, two guys, who were near the fence compound, pushed her up from one side of the compound and other guys pulled her from the other side. Thereafter, three other guys, who had gone along with P.W.1 joined them and she was raped by the same person, who had raped her for the first time. He gave his kerchief to wipe out and with same kerchief, he wiped himself. Every time, after raping her, the person who raped her, would give signal to the others to come by whistling. Then, they would wipe themselves with same handkerchief. Due to fear and anxiety, she used to urinate frequently. Few of the guys raped her twice and the accused one after another. Every time, when

she used to push them, then they used to slap her. After that the pain became unbearable to her. As her lower abdomen was paining a lot, she begged them to leave her by touching their feet, but they did not listen. They 50 were talking to themselves. After half an hour, they sat surrounding her and then one of them asked her name. She had disclosed her name as Priya. They told that they would leave her, if she should not disclose the incident to anyone. By that time, on the side of the river, a light was sparkling and hence, they threatened her to keep quite. Thereafter they left her in front of the Gandhi Bhavan road and before that they gave her the sweater and trouser after setting right. One of the accused returned the I-pod, mobile and a ten rupees note to her and then all of them left that place. Thereafter, she lodged a complaint to the jurisdictional police. On the basis of the complaint made by the victim girl, portrait of the five accused persons were drawn by the artist and thereafter, she identified the accused persons as per Exs.P.7 to 11 and on 17.11.2012. When she visited the Central Prison as per the direction of the authorities-Investigating Officer, it was between 1.30 and 2.30 p.m., and about 30 to 35 persons were 51 standing in the line for TIP. She identified the persons. who were standing at serial Nos.4, 8, 12, 16, 20, 24 and 29 as the accused. She has also identified the persons, who had raped two to three time on her viz., Ramu three times and Shivanna -two times and remaining four accused and two others raped her one after another. Though the victim has been cross-examined at length, she has withstood her statements made in her examination-in-chief. She has further deposed that after the incident, she could not continue her education and her evidence is unshakable. The following is her statement recorded under Section 164 Cr.P.C. by the learned IX ACMM: She is examined as P.W.28 and she has reproduced what she has stated above in her evidence. Her statement under section 164 of Cr.P.C. was recorded on 9.11.2012 by P.W.26. Learned 9th ACMM wherein stated that her friend P.W.1 is friend of G, her friend. He and herself were talking 52 over phone and through face book for sometime. On 13.10.2012 at 8.00 p.m. she met P.W.1 for the first time outside her hostel gate. They planned to go round and come back. They went to through Polo White Car of P.W.1. First of all, they went to Chandra Layout petrol Bunk to fill the petrol. They can went around 9.00 p.m. they were returning back to college hostel, through Bangalore University road and in front of one of the building of Bangalore

University, they stopped the car and were talking each other for few minutes. As we were about to move, few people surrounded their car. They had iron rods with which they banged the left window of the front seat of the car and then they pulled her tuft. She told P.W.1 to move the car, but they opened the car through the window and pulled her outside the car. 3 people caught hold of P.W.1. They told them that they would give money, ATM etc., to them but they were very aggressive. They took both of them quite a distance. Thereafter started to hit P.W.1. One of the guy has a white rope. They started hitting P.W.1 with that rope. They 53 were speaking in some language, she presume that the said language is kannada. P.W.1 told that his ATM card and purse is in the car, then 3 of them took him towards the car, other 5 guys dragged her to move further, she was shouting for the help, two of them were on her side, 3 people were coming behind, then her chappals slipped out, she told that she cannot move further, then they slapped her 3 or 4 times. One of the guy showed her a sickle telling her not to stop and to move on, the guys who were caught hold her were aged between 23 to 25 years. One of the guy took her a little forward, while others were waiting behind. He threatened her and made her to lie down and assaulted her. He removed her trouser till her ankle. Thereafter, he raped her. The other guys who were behind them told something to him. Then he got up and asked her to move, all the guys were dark. The guy who raped her first is around 23 to 25 years old, he was little tall and was well built. Thereafter, those guys who are walking behind also came forward and they pulled her further. She 54 asked them to stop, but by showing sickle, they were threatening her. There was a river which was very dirty. They pulled her trouser up to the knees and caught hold her both hands and made her to cross river. There was a house near by and light was there outside the house. After passing the river made her to walk 5 to 6 steps. Then the guy who has assaulted and raped her, took her to one corner and again raped her. Thereafter, among the other guys who were near the fence compound, two of them pushed her from one side of the compound and other guys pulled her from other side. Thereby, they crossed the compound. At that time, 3 other guys who had gone along with P.W.1 joined these guys. They were pushing and pulling her before crossing the river. Thereafter, they took her black colour sweater. When they crossed the compound, they laid down sweater and somebody snatched away her

phone. They made her to lie down on her sweater. By showing knife, they told her to remove her trouser. She did not remove the trouser entirely. She kept it on her ankle. 55 She had some rashes on her thighs. Hence she applied some lotion on her thighs. She did not wear any underwear. Thereafter, a guy raped her and gave his white colour handkerchief to wipe out. With the same kerchief, he wiped himself. Everytime, after raping her, the person who raped her would signal the others to come by whistling. Then, they would wipe themselves with same handkerchief. Due to fear and anxiety, she used to urinate frequently. Few of the guys raped her twice. Every time, she used to push them, then they used to slap her. After that the pain has become unbearable to her. Her lower abdomen was paining a lot, she begged them to leave her by touching their feet. They talked themselves and made her to sit for sometime. They had made a circle. They were totally 8 guys. Few of them were checking by going around. One of the guy asked her in English what is her name, she said her name is Priya. After some time, they told her to get up and move a little ahead. Again she crossed the compound, two people crossed ahead and one person was with her and other people 56 were pushing her from behind. There was a temple and opposite to that temple, there was a house which looks abandoned. While crossing the said place, they asked her to keep quiet. By gesture itself, they are asking where she is staying, They told her not to tell anything to the police. Her trouser was torn during this incident. They put safety pin for her trouser, but it did not cover up the entire torn part. Hence, they covered it with a piece of cloth. They had sickles, rod, white colour rope, knives, saw etc., with them. As they asked her to move from the place of incident, one of them gave her his slippers and once they were about to reach the road, gave her back P.W.1s phone, I-pod and Rs.10/- note and took away slippers back. They had kept her sim inside P.W.1s mobile. Since there was no network, she could not contact anybody. Then she came back to her hostel at 12.40 a.m. Her friends were very worried and they were looking for her. So she went to the room and told her friends P.W.6 and C.W.14 about the incident happened. Her friend C.W.14 talked to their warden. 57 Then, she went to the toilet and cleaned herself. The police already came to know about this incident through P.W.1 and they have been looking around for her. Their college hostel was nearby to the place of incident. The lady police inspector came along with P.W.1 outside her hostel and

she told about the incident. Thereafter, along with them she came to the police station and lodged a complaint. Thereafter, she was taken to the hospital by police for medical examination. When the guys made a circle in the place of incident, the guy who was sitting on her left side near the compound was very lean and had projecting teeth. The two other guys looked young and shorter among the guys. One of the guys was tallest among them. All the guys were wearing very dirty clothes. Except one, all others were wearing Pants. One was wearing jeans pant. Two of them wearing T-shirts and remaining were wearing dirty shirts. She can identify all of them if shown to her. She and P.W.1 were good friends, there was no other relationship between herself and P.W.1. Thus, this is all her statement 58 made before learned 9th ACMM, Bangalore on 9.11.2012 is marked as per Ex. C.2. ii) EVIDENCE OF THE EYE WITNESS - P.W.1 The evidence of P.W.1 - Nirmal R., who is the eye witness to the incident is that on 13.10.2012 at about 8.00 p.m., when he met the complainant-P.W.28 for the first time outside her hostel gate, they planned to go around and come back through his Polo White Car and they went to Chandra Layout Petrol Bunk to fill the petrol. Around 9.00 p.m. when they were returning back to college hostel through Bangalore University road and in front of one of the building of Bangalore University, they stopped the car and were talking to each other for a few minutes and when they were about to move, few people surrounded their car holding iron rods and with which they broke open the left side front glass and tried to open the doors. Since the doors were locked from inside, they hit the front side of the car. Then they broke the glass and tried to open the door where the complainant - P.W.28 was sitting. After 59 opening the door, they caught the victim girl and pulled her outside. So he opened all the doors and came out of the car. Though he told them that he would give money and not to do anything to the victim girl, they did not listen. Five of them caught hold of the victim girl, another one, who was holding the rope, hit him at the back due to which there was a wound. Another one was holding see-saw. All the three hit him and robbed I- pod, mobile from him. They also asked him to give money, but when he told that the purse was in the car, so they sent him to bring the purse. About 50 meters away, he saw a police man seeing his damaged car. So the person, who was with him, ran inside the forest. Then he went near the car and informed the police about the incident. Thereafter, about three to four

policemen came to the spot. Along with them, he also went in search of the complainant, but they did not find her or the accused. By then it was about 12 to 12.30 midnight. At that time, the policeman received a phone call from the National Law College informing that the 60 complainant has returned to the hostel. He went to the hostel along with police men at 12.40 midnight, the police enquired about the incident and the victim girl - P.W.28 explained about the incidence that occurred to the police as well as to him (P.W.1). She has further deposed that after crossing the stream and a compound wall, all the accused persons raped her holding deadly weapons with them creating fear of death in them. Though he has been cross-examined, nothing has been elicited to disbelieve his evidence. iii) MEDICAL EVIDENCE OF THE DOCTORS- P.WS.7, 11 AND13(a) Dr. Pramila Devi - P.W.7, who was the Senior Specialist, Department of OBG, Vani Vilas Hospital, Bangalore, has deposed that one Smt. Latha, Assistant Sub-Inspector of Police of Jnanabharathi Police Station had brought a victim girl - P.W.28 aged about 20 years on 14.10.2012 at about 3.40 a.m. and she had examined her in front of Smt. Sudha, Sister of Vani Vilas Hospital, who was on duty in the first Ward and 61 the victim girl narrated the story around 9.00 p.m. on 13.10.2012. She had collected four cloths of the victim and has specifically deposed that she had given T.T. injection and registered a medico legal case as per Ex.P.12. She has further deposed that injury Nos.1 to 3 found on the patient could be possible due to forcibly dragging the person in thick forest coming in contact with bushes and injury No 4 due to forcibly dragging the victim forcibly with palm and nail coming in contact to that part. She has further opined that no injury could be possible in vagina, if a woman co-operates for sexual co-habitation out of threat. With reference to FSL report she has deposed that there was presence of seminal stain from the DNA profile result of the articles sent numbering 10 to 16 and articles sent in numbering 5 to 9 which are follows:

1. In the DNA profile of the samples bloodstains in item No.13 collected from Mr. Shivanna S/o Late Sri Motappa, the alleles in all the STR locus were identical and matching in 62 all the STR loci with that of the DNA profiles of seminal stains found on the nail clippings, pubic hairs, vaginal swabs, vaginal smear, and cervical smear, and cervical smear sent in items 5 to 9 respectively.

2. In the DNA profile of the sample blood sent in item No.10 to 12, 14 to 16 collected fro, Mr. Mallesha @ A.C. S/o Late Mallaiah, Mr. Ramu S/o Mr. Rathna Giraiah, Mr. Dodda Eraiah @ Dodda Hera S/o Sri Eraiah Mr. Maddura S/o Late Mariyappa, Mr. Eleyarah @ Eleya S/o Mr. Mariyappa, Mr. Eraiah @ Era S/o Sri Muniyappa respectively the alleles which that of the alleles present in the DNA profiles of the seminal stains found on the nail clippings, pubic hairs vaginal swabs, vaginal smear & cervical smear sent in items 5 to 8 respectively.

3. Thus on perusal of DNA report, FSL report, cervical Examination of victim done on 14.10.2012 at 3.40 am on 63 Sunday. I have formed of the opinion that victim girl used an act like that of sexual intercourse. I now see the original final report submitted to police Inspector, Jnanabharathi Police station, which bears my signature. This report with final opinion is marked as Ex.p.14. The signature of the witness is marked as Ex.P.14(a). After sending my report to PI he sought some clarifications from me, accordingly I have clarified as per Ex.P15 which bears my signature at Ex.P15(a). I have clarified that the injuries mentioned in Ex.P14 certificate can be happen while passing through bushy area in the forest on human body. Further on 18.11.2012 as per Ex.P.16 I have clarified No.1) With out ejaculation of semen, penetration of the penis in the vagina can happen.

2) Ejaculation in between thighs can happen.

3) Inability to produce erection of penis can happen.

4) Slightest penetration of the penis with the vulva 64 (labiaminora) without emission of semen can happen.

5) Penetration and ejaculation of semen (semen will present in the vagina) can happen.

6) When victim wiped and washed her sexual parts after intercourse then also seminal stains may not present over the body and cloths. As victim is used to an act like that of sexual intercourse that is why there were no injuries found in the vaginal introitus and vagina, because of this there were no blood stains and the body cloths. Because of fear of death she might have not resisted and no injuries

and no blood stains found on the body or clothes. Ex.P15(a) and 16(a) are my signatures which I now identified that my signature. In her cross-examination, she has denied the suggestion that if a girl or a woman is raped one after one that too by 8 persons, normally internal injuries and injuries at thigh area is bound to occur and volunteered to say that 65 it may not occur. She has further added that the victim girl stated that she was raped by 8 persons which has been mentioned in her certificate, her hymen were absent and it does mean hymen was already used. She has further admitted that abrasions over right forearm on the ventral aspect could also be due to thorn bushes while in such area and in her opinion the incident has happened 5 to 6 hours prior to her examination of the victim girl - P.W.28. She has denied the suggestions that on 14.10.2012, the victim girl was not brought by Woman Assistant Sub-Inspector of Police for examination with history of sexual assault on her; she has examined the complainant from 3.40 a.m. till 1 hours there onwards; she has not collected M.Os.20 to 28 from the victim girl-P.W.28 during her examination; and the complainant was not sexually assaulted by anyone. P.W.7 when cross-examined by the learned Counsel for accused No.4 has deposed that she has given the history that the victim girl was raped by eight 66 persons, who was accompanied by her girl friend. If a girl aged about 20 was raped by three or more persons can walk for about 1 to 2 kms., and it always depends upon the mental stability of the victim even though she is raped by 8 persons. She has further denied the suggestion that she has been influenced by Police Inspector of Jnanabharathi Police Station to give evidence in support of the prosecution; and at their instance, Exs.P.12 to 16 and M.Os.20 to 28 are created for the purpose of this case. P.W.7 in her re-examination-in-chief has deposed that, according to her, the girl who was examined by her has stated that she was raped by 8 persons and she has opined that the girl used to act like that of intercourse. Further in the cross-examination, she has denied the suggestions that she is deposing falsely that the victim girl has stated that she was raped by eight persons and that she has examined the victim girl. 67 (b) Dr. A.R. Raghupathy, P.W.11, Professor and HOD Pathology, Victoria Hospital, BMC, Bangalore has deposed that on 25.10.2012, he received a request letter from the Police Inspector, Jnanabharathi Police Station to draw the blood samples from six persons, who were involved in the alleged gang rape case in Crime No.401/2012.

On 25.10.2012, Head Constables - 299, 627 and Police Constables - 7994 and 4594 brought six persons before him to draw their blood samples. Accordingly, he instructed his subordinate to draw the blood samples from each of those persons and was kept sealed in front of Head Constable 299 - Mr. Puttaswamy Gowda and was handed over to him by obtaining acknowledgement to that effect from the said policeman. He has also obtained left thumb marks of the persons from whom blood samples were drawn and were marked as Exs.P.19 to 27. He has further deposed that he had not separately requested the Head of the Artho Unit as to the requisition of Ex.P.26 of Police Inspector and has not orally contacted the Head of the 68 said unit. He has denied the suggestion that to draw blood sample of a person taking treatment in other unit permission of the Head of the said Unit is required. Either himself or Mr. Vijaykumar have no acquaintance with Mr. Ramu before receipt of Ex.P.26 and he is not able to say, who was the duty doctor in the Artho Unit at that time of drawing blood samples and he has not ascertained as to who were all present at the time of drawing of blood sample of Mr. Ramu from his technician. The Left Thumb Mark of all six persons were taken by him but he had obtained Left Thumb Mark of Mr. Ramu. He has denied the suggestion that he had not obtained LTMs of those six persons; has not instructed Mr. Vijaykumar, technician to draw the blood sample of Mr. Ramu from Ortho Unit; and he is deposing falsely in order to help the police. (c) P.W.12 - Dr. Dileep Kumar K.B., Assistant Professor, Department of Forensic Medicine, Victoria Hospital, BMC, Bangalore has deposed that he has examined Mr. Nirmal - P.W.1, who had come with the 69 history of injuries on 17.10.2012 at about 2.00 p.m. with his consent and has noted the following injuries:

1. Linear abrasion measuring 3cm x 0.5cm present over outer aspect of right shoulder covered with brownish black scab with linear contusion measuring 9cm x 2cm central area shows paleness with mile tenderness.

2. Linear abrasion Horizontally placed measuring 2cm x 0.05cm present over front of right leg at its middle situated 24cm below knee and covered by brownish black scab.

3. Abrasion measuring 0.1cm x 0.1cm present over front of the right leg situated 2cm below injury No.2 and covered by brownish black scab. He has further opined that the above injuries are simple in nature which are caused by hard and blunt objects and are four days old. Accordingly, he had issued the 70 certificate as per Ex.P.28 and has put his signature as per Ex.P.28(a). He has also opined that injury No.1 could be caused by the plastic rope - M.O.5 and linear abrasions could be caused if a person is dragged in a forest area consisting of thorn bushes which come in contact with the body. He has not separately noted down the history presented by the injured. He has denied the suggestion that number of patients used to visit the hospital with history of injuries. He has admitted the suggestion that it is not possible to say as to the history of such patients out of remembrance. He had not questioned the patient as to the delay in visiting the hospital for examination. His opinion as to the age of injury is on the basis of the scientific examination and the facts observed by him. He has denied the suggestions that injury No.1 is likely to be caused due to fall of light weight object; he is deposing falsely though such injury is likely to be caused by such light weight object and to support the police. 71 (d) Dr. Pradeep Kumar M.P. - P.W.13, Assistant Professor, Victoria Hospital, Bangalore, who has examined all the six accused persons on 21.10.2012, who were brought before him on 20.10.2012 by the Head Constable - 627, Police Constables -10534, 4594, 10040 with the alleged history of gang rape. He examined one Mallesha @AC - accused No.1, Dhodda Eraiah @ Dodda Era - accused No.8, Shivanna - Accused No.5, Maddura - accused No.6, Elaiah @ Elaiahya - accused No.7 and has collected one purple colour full sleeves shirt - M.O.29, white colour half banian - M.O.30, grey colour pant - M.O.31, green colour shorts - M.O.32, blue colour underwear - M.O.33, Nails and pubic hairs - M.Os.34, 35, 39, 40, 45, 46, 51, 52, 56, 57, 61 and 62, 66 and 67, one violet colour shirt - M.O.36, black colour pant - M.O.37, green colour shorts - M.O.38, one grey and black colour tea shirt - M.O.41, brown colour pant - M.O.42, dark blue colour banian - M.O.43, brown colour underwear - M.O.44, black and white colour shirt - M.O.47, grey 72 colour banian - M.O.48 grey colour pant - M.O.49, brown colour underwear - M.O.50, light green colour shirt - M.O.53, grey colour pant - M.O.54, red colour underwear - M.O.55, black colour shirt - M.O. 58, grey colour pant - M.O.59, blue colour underwear - M.O.60, one brown yellow colour shirt - M.0.63,

one half sleeve banian - M.O. 64, one blue colour underwear - M.O. 65 respectively of the accused persons. The legs and thighs of Ramu were covered with plaster of paris, so he went to artho ward to examine him. On examination of all the seven accused persons, he has opined that there is nothing to suggest that they are incapable of performing sexual intercourse and the certificates issued to the effect are marked as Exs.P.29 to 35. The material objects collected from them - M.Os.29 to 67 were sent for FSL through concern police along with sample seal marked as Exs.P.36 to 42. He has identified all the accused persons including the one who was not present before the Court. Nothing has been elicited in his cross-examination with regard to 73 incapability of the accused persons, who had sexual intercourse with P.W.28 on the date of the incident. (iv) SCIENTIFIC EVIDENCE - P.Ws. 8, 15 and 16 (a) Dr. Vinod J.

Lakkappa - P.W.8 , Scientific Officer, DNA Centre, Bangalore has deposed about he receiving nine sealed articles pertaining to CR No.401/2012 and the seals on those articles were intact and tallied with the sample seal sent. He has further deposed that DNA profiles of male fraction of the stains detected on nail clippings, pubic hairs, vaginal swabs, vaginal smear and cervical smear sent in item Nos.5 to 9 were identical and matching with one another under both the identifiler and Y filer STR loci viz., accused No.5. He has further deposed that on his analytical method of examination from the identifiler and Y filer DNA Profile results of the articles sent in item Nos.5 to 9 is found that stains detected on nail clippings, public hairs, vaginal swabs, vaginal smear and cervical smear sent in item Nos.5 to 9 are of human in origin and a 74 mixture of both male and female sex viz., accused No.5, who had sexually assaulted the victim on three occasions as stated by P.W.28-victim. In his cross-examination, P.W.8 has given his report as follows:

1. The seminal stains detected on the kerchief sent in item No.1 are of human in original and is a mixture of seminal stains belonging to not less than four individuals.

2. The seminal stains detected on the underwear sent in item no.2 are human in original belonging to one individual.

3. In the DNA profiles (both Identifiler and Y filer) of the sample bloss sent in item nos. 3,7, 8 and 9 collected from Mr. Mallesha @ AC S/o Late Sri Mallaiah, Mr. Maddura S/o Late Sri Mariyappa, Mr. Eleyaiah @ Eleya S/o Sri Mariyappa & Mr. Eraiah @ Eera S/o Sri Muniyappa respectively, the alleles in all the 75 STR loci were identical and matching with that of the DNA profiles of the seminal stains detected on the kerchief sent in item no.1.

4. In the Identifiler DNA profiles of the sample blood sent in item no.9 collected from Mr. Eraiah @ Eera S/o Sri Muniyappa, the alleles in all the STR loci were identical and matching with that of the DNA profile of the seminal stains detected on the underwear sent in item no.2. He has further deposed that he has considered the possibility of:

1. Mr. Mallesha @ AC S/o Late Sri Mallaiah, Mr. Maddura S/o Late Sri Mariyappa, Mr. Eleyaiah @ Eleya S/o Sri Mariyappa & Mr. Eraiah @ Eera S/o Sri Muniyappa sample blood sent in item nos. 3,7,8 and 9 respectively, are being the contributors of the seminal stains 76 detected on the kerchief sent in item no.1.

2. Mr. Eraiah @ Eeera S/o Sri Muniyappa, sample blood sent in item no.9, is being the contributor of the seminal stains detected on the underwear sent in item no.2. He has further deposed that he had finally opined from the DNA profiles that: In my further final opinion that from the DNA profiles result of the articles sent in Item Nos.5 to 9 in Ex.P.17 the seminal stains detected are all belongs to one individual. Further after examination of blood samples sent in Item Nos. 10 to 16 in Ex.P.18 those seminal stains are matching with Mr. Shivanna S/o late Sri Motappa, whose blood samples sent in item No.13 in Ex.P.18. The seminal stains detected in Mo.17 kerchief are mixture of not less than 4 individual and those are matching with Mr. Mallesha S/o Late Sri Mallaiah, Mr. Maddura S/o Late Sri 77 Mariyappa, Mr. Eleyaiah S/o Sri Mariyappa & Mr. Eraiah S/o Sri Muniyappa the sample blood sent in item nos. 10, 14, 15 & 16 respectively in Ex.P.18. The seminal stains detected in underwear Mo.60 sent in item No.2 in Ex.P.51 is matching with blood sample of Mr. Eraiah S/o Sri Muniyappa sample blood sent in item no.16 of Ex.P.18. Nothing has been elicited in his cross-examination, who has withstood his statements made in examination-in- chief based on the material on record. (b)

P.W.15 - Dr. Chandrashekar, another Scientific Officers, FSL, Bangalore, who has identified M.Os.20 to 23 has deposed that, he has issued the report Ex.P.46 with his signature as Ex.P.46(a) and supported the case of the prosecution. (c) P.W.16 - Dr. Shahanaz Fathima, one of the Scientific Officer, FSL, Bengaluru who has issued the FSL report as per Ex.P.47 with her signatures at 78 Exs.P.47(a) and 47(b) has deposed that, after examining the 57 items on the request made by the Police Inspector, Jnanabharathi Police Station, she has opined to the effect that item Nos.38, 39, 53 and 55 - one banian, one pant, one shirt and one underwear were stained with human blood; Item Nos. 38 and 39 were stained with B Group of blood; item Nos.53 and 55 were stained with O Group of blood; presence of seminal stains on item No.50 - underwear and item No.K - Kerchief and she could not detect presence of seminal stains in any other items examined by her. She has identified the material objects - M.Os.17, 48, 49, 63 and 65 and has supported the case of the prosecution. Nothing has been elicited in her cross-examination to disbelieve her evidence. (v) EVIDENCE OF THE POLICE OFFICERS P.Ws.20, 21, 22, 24, 25, 29 and 30 (a) P.W.20 Smt. Geetha Kulkarni, Woman Police Inspector, who has assisted the investigating officer as a Woman Police Officer right from P.W.28 returning to the 79 hostel after the offences alleged were committed on her by the accused, has deposed that on 13.10.2012 at about 10 p.m., she received wireless message from Dy.S.P., West and therefore, she went to Jnanabharathi Police Station on patrol duty, and at that time, she came to know that a student of Nilgiri Hostel, (the complainant) was missing. Thereafter, she heard that the complainant had gone back to the hostel. Therefore, she went to the said hostel at about 12.30 night. At that time, one Mr. Babu was in-charge of the hostel and he was talking with the complainant. When she went, the complainant was afraid, so she consoled her. When she enquired with them, the complainant said that after coming back, she had a bath and then she told about the offence committed on her. As being a Woman Police Officer, she took the complainant to the Jnanabharathi Police Station along with Neha and Sachi - P.W.6. One Mr. V. Balaraju, - P.W.30, the Police Inspector who was present in the police station, took the complaint, on the basis of which he registered 80 a case. Then she took the complainant to medical examination along with her friend to the Vani Vilas Hospital. One Dr. Pramila Devi, examined her and thereafter, she took

them back to the hostel. She has further deposed that on 14.10.2012, the Deputy Commissioner of Police, West formed a team to nab the accused persons including her consisting of 7 to 8 people headed by the enquiry officer - Balaraju. Accordingly, the pictures of the suspected persons were drawn by an artist - P.W.5 at the instance of the complainant. Thereafter, on the information that the suspected persons were there near the bus-stand which was situated in front of Ramanagara Kandaya Bhavan, she along with Balaraju and other staff went and accordingly, apprehended four accused persons whose names were announced openly. On searching their body, some of the mobiles along with sim cards were recovered under seizure panchanama in presence of panch witnesses - Chandrashekar - P.W.23 and Srinivas - P.W.

22. Thereafter, all the four accused 81 persons along with recovered material objects were brought to the Jnanabharathi Police Station. Though she has been cross-examined at length, nothing has been elicited to disbelieve her evidence. (b) P.W.21 Sri Dharmegowda, Sub-Inspector of Police, Jnanabharathi Police Station has deposed that on 14.10.2012 when he was in-charge of that police station, at about 1.15 a.m., the victim girl visited the police station and had lodged a complaint in writing at about 1.30 a.m. Accordingly, he had accepted the same and a case in Crime No.401/2012 was registered. On the basis of the first information as it was in writing, he filed FIR to the jurisdictional Magistrate and the same was also intimated to the higher Officer. The complaint was marked as Ex.P.48, his signature in FIR as Ex.P.48(a), FIR as Ex.P.49 and his signature as Ex.P.49(a). Though he has been cross-examined at length, nothing has been elicited to disbelieve his evidence. 82 (c) P.W.22 - Srinivas, who was working as Police Constable at Jnanabharathi Police Station, has deposed that, on 14.10.2012 when he was deputed to attend the Court regarding submission of FIR to the IX ACMM Court, and it was about 2.30 a.m. and as there was no conveyance, in the early morning on the next day, he came to Magestic bus-stand and took the Koramangala Bus to reach the learned Magistrates residence. By the time, he reached there, it was 7.30 a.m. Since the learned Magistrate had gone out to attend the medical emergency, he stood waiting there until he returned back and it was about 6.30 p.m.(evening). Then he submitted the FIR and returned back to the police station and gave the report. Nothing has been elicited in his cross-

examination to disbelieve his evidence. (d) P.W.23 - Chandrashekaraiah, the independent panch witness for seizure of material objects M.Os.68 to 70 - Nokia Mobiles, M.O.71 MTS Mobile M.O.72 Samsung Mobile and M.O.73 Others mobiles as per seizure mahazar Ex.P.50 in presence of accused Nos.1, 83 4 and 5 has deposed regarding apprehension of the accused supporting the case of the prosecution, but nothing has been elicited in his cross-examination to disbelieve his evidence supporting the prosecution case. (e) P.W.24 - K.P. Sathyanarayana, who was the Police Inspector of Kengeri Police Station, has deposed regarding he apprehending accused Nos.7 and 8 viz., Eleyaiah and Eraiah and also with regard to encounter of accused No.2 - Ramu and shifting him to the hospital. Nothing has been elicited in his cross- examination to disbelieve his evidence supporting the prosecution case. (f) P.W.25 - Syed Abdul Rehaman, another Police Constable who was working in Jnanabharathi Police Station on OOD has deposed that he found P.W.1 in pretended condition, who has narrated the story and he had reported the same to the Police Station. Nothing has been elicited in his cross-examination to disbelieve his evidence. 84 (g) P.W.29 - Smt. Latha, Woman Assistant Sub- Inspector has deposed that she had been to her house on 13.10.2012 after completion of her duty, at about 1.30 p.m. the Sub-Inspector of Police, Jnanabharathi Police Station, called her to come to the police station. Accordingly, she went to the police station at about 1.30 a.m. on that day and her quarters is about 1 kms away from the police station. Accordingly, she went to the Police Station in Hoysala Vehicle where she found the victim girl - P.W.28, who is the complainant. Accordingly, she took the complainant to the Vani Vilas Hospital where Dr. Pramila Devi, the duty doctor - P.W.7 has examined the complainant. On that day Smt. Geetha Kulkarni, PSI was also present. She has further deposed that she has recovered some materials which were sealed and has sent the material objects M.Os.20 to 28 to the FSL and the same was given to the Police Inspector of Jnanabharathi Police Station. Nothing has been elicited in her cross examination to disbelieve the case of the prosecution. 85 (h) P.W.30 - B. Balaraju, the Sub-Inspector of Police, who was the Investigating Officer has categorically deposed that on 13.10.2012 when he was on patrol duty in the Departmental Vehicle at 9.30 p.m., he received an information that unknown persons have kidnapped the Law College Student (the complainant), therefore, he had been

there and in the street light, he found a white car parked where its front door was damaged and some of the glass pieces were found inside the car. Therefore, he suddenly called the Police Officer through wireless phone and sent an information. Accordingly, he deputed the staff to the spot and went in search of the complainant and also to the hostel where the victim was residing and instructed the in- charge concerned to inform him, if the complainant returns. Thereafter, he went into the forest which is to an extent of 1400 acres in search of the complainant and at about 12.40 midnight, they received an information from the hostel that the victim had returned to the hostel. Therefore, he along with Smt. Geetha 86 Kulkarni - P.W.20 -Lady Sub-Inspector of Police, Woman Assistant Sub-Inspector of Police - Smt. Latha and other staff went to the hostel and consoled the victim and proceeded to nab the accused persons. Accordingly, on 14.10.2012, the Deputy Commissioner of Police constituted a team to nab the accused persons headed by him. Accordingly, he proceeded with the investigation and ultimately the accused were apprehended and thereafter, he has filed the final report against the accused. (vi) RECOVERY As per the evidence of P.W.30 - the Investigating Officer has deposed that under seizure mahazar - Ex.P.4, the material objects - M.Os.12 to 18 were recovered in presence of P.W.2 the panch witness. He has further stated that under mahazar Ex.P.1 and seizure mahazar - Ex.P.5, the material objects - M.Os. 3, 5 to 11 and 19 were recovered in presence of panch witness P.W.3. Under seizure mahazar Ex.P.50, the material objects - 68 to 73 were seized in presence of 87 the panch witness - P.W.

23. He has further deposed that under seizure mahazars - Exs.P.48 and 49, he had recovered material objects - M.Os.1, 2, 4, 12 to 17 and had recorded the voluntary statement of all the accused persons when they were in the custody as per Ex.P. 65 of accused No.1, Ex.P.66 of accused No.4, Ex.P.67 of accused No.5, Ex.P.68 of accused No.6, Ex.P.69 of accused No.7, Ex.P.70 of accused No.8 which has lead them to discover the weapons kept or hidden by them in a fallen sheet house in presence of panchas - P.W.2 and P.W.3 i.e., M.O. 12 - slippers of complainant, M.O.13 - a Ten rupees note, M.O.14 sim card, M.O.15 grass, M.O.16 mud sample, M.O.17 - Kerchief, M.O.18 slippers, M.O.19 cement bag. He further seized M.O.1 Nokia E-72 mobile, M.O.2 Apple Company I-pod, M.O.4 - glass pieces of car, under seizure mahazars Exs.P.4, Ex.P1, Ex.P.6, Exs.P. 7 to 11

portraits of accused persons. The material objects M.Os.20 to 28 and M.Os.29 to 67 were collected from P.W.7 - Dr. Pramila Devi and P.W.13 Dr. Pradeep Kumar M.P.. Further 88 M.Os.68 to 73 -mobile phones were seized under seizure mahazar Ex.P.50 from Chandrashekaraiah, who was an independent panch witness. The material objects - M.Os.3, 5 to 11 viz., iron rod, plastic rope, see-saws, longs and draggers under the seizure mahazar.

23. On meticulous reading of the documents relied upon particularly the evidence of the prosecution witnesses - P.W.28 - victim girl, P.W.1 - eye witness, P.Ws.7, 8, 9 to 13, 15, 16, 27 and 31, it clearly depicts that the prosecution has proved its case beyond all reasonable doubt that each one of the accused persons have contributed to the offence of gang rape on the victim girl P.W.28 which attracts the provisions of Section 376(2)(g) r/w 149 of IPC. Therefore, the contention of the learned Counsel for the appellants- accused that the accused are innocent cannot be accepted. 89 VIII - LIFE OF THE VICTIM - P.W.28

24. (a) P.W.28 - Prakruthi (not her real name), victim girl, who is a foreigner, all the way from Khatmandu of Nepal had come to India and had joined the LLB Course in a reputed Law College i.e., National Law School of India University, Nagarbhavi, Bangalore, with full of dreams and on the date of incident, she was studying in II Year LLB Course. On the unfortunate day, the accused had dragged her out from the car of P.W.1, abducted her into the forest area, thereafter, they made her to cross the stream and near the corner of the compound wall, one person raped her and thereafter, accused No.2 - Ramu sexually assaulted the victim three times and accused No.5 - Shivanna two times and the other accused persons raped one after another, even though she requested them at the time of barbaric act by the accused to leave or to kill her, they continued their barbaric act of rape on P.W.28 aged about 21 years. She was in a helpless condition since all the accused persons were brandishing deadly 90 weapons and were terrorising her, saying that if she rises hue and cry, they would kill her and her helplessness is analysed by this Court, that she was the victim in the circumstances. The accused persons have acted like a deadly beasts in the forest. It was, as if the wild animals were hunting their helpless prey like a rabbit for satiating their sex hunger. In the present case, these accused persons have hunted victim girl - P.W.28 in order to

satisfy their desire of lust and have gang raped simultaneously one after another and some of them twice and thrice, which is barbaric against an human being, who are worst than cruel animals, and cannot be tolerated. In the wake of this incident, there has been public furor over the safety and security of womenfolk. The incident that occurred in the vicinity of the National Law School of India University in the forest area is an incident that all the human beings have to bow their heads. It is a solitary incident of ghastly crime, which has raised a question mark on the safety of all. It is to be noted that there are more than seven 91 lakhs working women in Bangalore as their strength in India alone is 20% as per the information from the World Bank. (b) It is also relevant to state that when the ghastly incident occurred on 13.10.2012, no human being was there except nature. The nature has viewed the barbaric gang rape by the accused and thereby it has made them to leave a clue of their barbaric act i.e, a kerchief - M.O.17 (left on the spot), one of important piece of evidence, where seminal stains of the accused and victims found on it helped in proving that the accused persons were involved in the gang rape which is the law of nature and that is why Law is called as the King of Kings and nobody can escape from the justice as M.O.17 - Kerchief has become the Sudarshana Chakra (weapon of Lord Sri Krishna) to punish the accused persons.

25. The imposition of appropriate punishment is the manner in which the Court responds to the 92 society's cry for justice against the criminal. Justice demands that the Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence. The Court must not only keep in view the rights of the criminal, but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

26. In the present case, Second Year Law Student of the National Law School of India University, Nagarbhavi, Bengaluru who had come to India from Khatmandu, Nepal and joined the Law College with so many dreams and because of the ghastly incident in her life by the accused persons, she has discontinued her studies and has gone back to her native place cursing our country (India) with all frustration. Because of the ghastly incident committed by the accused on the victim girl, the law and order of the entire nation particularly Karnataka State is made responsible. Since the reputation of the Country is at stake, no lenience can

be shown to the accused persons. Any misplaced 93 sympathy to the accused comes in the way of upholding dignity of the court, majesty of law, traditions and cultures right from our ancient times.

27. Under the Constitution of India, Right to live with dignity is a fundamental right guaranteed and it is the fundamental duty of the State to protect it. Sexual violence by the accused apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent woman, child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of P.W.28 i.e., her dignity, honour, reputation and chastity. Rape is not only an offence against P.W.28 victim girl, but a crime against the entire society. It is a crime against basic human rights and also violates the 94 most cherished fundamental right guaranteed under Article 21 of the Constitution of India.

28. Alarming increase in crimes depicts that the criminals are not afraid of the present criminal justice system. We feel that more stringent punishment has to be introduced by further amending the provisions of Section 376D stated supra imposing death penalty or life as stated supra and due publicity has to be given to the amended provisions in discharging and deterring others from committing such crimes. The media, which is rightly called the Fourth Estate of Democracy, can play a pivotal role in bringing about the awareness of the amended provisions of law and in sensitizing the general public on the traumatic impact of the invasion of a womens body. IX - MANU-SMRITI29 Manu-Smriti, which is basically a compilation of Vedic Laws, unequivocally states the reverence with which women were to be treated:

95. Aiv Ai dAv g Av vv zv : Aiv v dAv v s : QA ii : Where women are worshipped, the Gods rejoice; Where they are not respected, all tasks become fruitless. The Gods are kind to the homes where women are treated with honour. Where women are not honoured, there all actions (rituals) go in vain. Families where women are unhappy are doomed to be destroyed soon. Homes where women are not

unhappy are destined always for greater prosperity. The woman form the foundation of a prosperous society. X - IN VEDAS30 In Vedas, all women have to be treated as mothers or elder sisters by male students and the admonition is:

96. gdw Ugw, e w v Z, w iv iv Z AZv ivg: v The King's wife, the Guru's wife, the elder brothers' wife, the mother-in-law and one's own mother are considered as mothers. One is ordained to prostrate oneself before them every morning or whenever one meets them for the first time in the day. This is evident from the reference in the Ramayana. When search is being made for the path that Ravana took in abducting Sita to Sri Lanka, certain jewels were found strewn in the way, and Lakshmana says he could identify only the jewels worn by Sita on her feet which he worshipped every morning. The fact that he could not identify the other jewels shows that young men did not even stare at women who were other people's wives or those who were not married to them. Similarly, women could have education and study 97 independently. This is clear from the life of the greatest of all law-givers, Yagnavalkya. He was the most prominent jurist and philosopher at the time of King Janaka of Mithila. So far as marriage was concerned, woman was considered as equal to man. In fact, she is in a prime position as Dharma Pathni who leads her husband in the path of Dharma as sahadharma- charini and as traveller in the path of righteousness, she did not have any inferior position at all. The word Grihini, as stated already, would prove how she was held in high esteem in the home. In fact all the Grihya Sutras-Apasthamba, Aswalayana, Bodayana and Gowthama-state that when a Patni enters the house, the mother-in-law should welcome her as Lakshmi, the Goddess of wealth, and should hand over the keys to her to take charge of the household and conduct it according to Dharma.

31. The meaning of the Saptapadi Mantra, which is compulsory even today for the completion of the marriage in Hindu Law runs as follows:

98. F KP s, He s , gAiAii w s, iAi s Ai Zv s , es: AZ s, Ivs l s , g s, iPv s , Az A Av dgz Ai. The seven steps represent the prayer by the husband to the wife for: (1) nourishment in full, (2) mutual strength, (3) health and prosperity, (4) comfort, (5) progeny (6) enjoyment of the seasons; and (7) the seventh step to be his friend

and companion for life, and he 99 invokes the Gods for the blessings for the birth of numerous long- living children. The society that provides respect and dignity to woman flourishes with nobility and prosperity and a society that does not put woman on such a high pedestal have to face miseries and failures regardless of how so much noble deed they perform otherwise.

32. Now the woman is typically stereotyped as sexual object of pleasure and not as a respectful motherly force. Hence, despite all material progress, western world is still inflicted with insecurity and lack of inner peace. A woman should always ensure that she is protected. It is the duty of the father, husband and son to protect her.

33. There is no chance of the welfare of the world unless the condition of woman is improved. It is not possible for a bird to fly on one wing. 100 The best thermometer to the progress of a nation is its treatment of its women so said a Great Saint Scholar, Swami Vivekananda.

34. As is being rightly held by the Courts, including the Apex Court, a girl or a woman, in the tradition-bound non-permissive society of India, would be extremely reluctant even to admit that any incident ,which is likely to reflect on her chastity, had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society, including her own family members, relatives, friends, and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home. If she is unmarried, she would apprehend that it would be difficult to secure a befitting life partners and a respectable matrimonial home. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to the book. And when in 101 the face of these factors the crime is brought to light, there is a built-in assurance that the charge is genuine rather than fabricated."

In the present case, admittedly the victim girl -P.W.28 has identified all the accused in the TIP and was mentally strong to lodge a complaint before the jurisdictional police at about 1.30 a.m. despite the traumatic which she was subjected.

35. Admittedly, in the present case, the prosecution witnesses including the victim P.W. 28 in categorical terms has deposed that the accused persons were involved in the ghastly offence of gang rape and she would be aware of the possible consequences for disclosure of the incident. The very fact that inspite of such possibility, she coming forward and deposing before the Court as to the conduct of the accused persons, would require appreciation and that by itself shows that her evidence is genuine and wholly reliable.

36. It is also relevant to state, at this stage, that inspite of gang rape by the accused persons on the 102 victim between 9.30 p.m. to 12.30 midnight; she has boldly lodged the complaint at 1.30 a.m. in order to protect Dharma. Her tolerance and courage to proceed against the accused in accordance with law has to be appreciated.

37. Taking into consideration all these aspects, we find that there is no scope to presume the innocence of the accused persons and they have to pay the price for the brutal crime they have committed. The learned Sessions Judge has considered all these aspects in detail. After re-appreciation of the entire evidence, we find that the conclusion arrived at by the trial Court viz., about the guilt of the accused persons having been proved beyond all reasonable doubt, is just and proper.

38. The accused persons have no principles in life that is: i) Daiva preeti, (love for God) ii) Papa bheeti, (fear of sin); and iii) Sangha neethi (morality in society) 103 If there is no morality in a person in life, it is his death itself.

39. The accused persons have forgotten the fact that life consists of: i) Reaction; ii) Resound; and iii) Reflection. The perpetrators of the barbaric acts are liable to be punished in the form of reaction, resound and reflection.

40. The rape is not only a crime against woman - P.W.28 but it is a crime against the entire civilized society. Physical scar will heal up but mental scar will remain for ever. The evidence of the prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital as held by the Honble Supreme Court in the case of State of Himachal Pradesh -vs- Asha Ram reported

in 104 AIR 2006 SC381wherein at paragraph-5 it is held as under: 5. We record our displeasure and dismay, the way the High Court dealt casually with an offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on minor girls. The High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of 105 her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. (emphasis supplied) 41. Even the prosecutrix has a right to privacy and no person can rape her just because a woman is of a easy virtue, as held by the Honble Supreme Court in the case of State of Maharashtra v. Madhukar Narayan Mardikar reported in (1991) 1 SCC57at paragraph 8 as under:

106. 8. The High Court observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a

woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence. But in the present case we find that her evidence is not only corroborated in material particulars by the evidence of 107 her husband but also by the evidence of PSI Ghosalkar and other members of the police party who had accompanied him on receipt of a phone call from the respondent. As pointed out earlier Banubi who was herself living in a glass house considering her antecedents could never have behaved in the manner she is alleged to have behaved if the respondent had merely raided her house and drawn up a nil panchnama. In that case she would not have approached the District Superintendent of Police at the earliest opportunity and would not have lodged a complaint of misbehaviour against the respondent. We, therefore, find it difficult to agree with the High Court that merely because Banubi is a woman of doubtful reputation it is unsafe to rely on her testimony. We have carefully examined the evidence tendered before the Inquiry Officer and we are satisfied that the High Court was completely wrong in concluding that her evidence was not corroborated in material particulars by independent evidence. 108 We are afraid that the High Court embarked upon a reappreciation of the evidence as if it were sitting in appeal against the decision of the departmental authorities. Its reappreciation of the evidence is also unsustainable.

42. Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour, as held by the Honble Supreme Court in the case of Pushpanjali Sahu v. State of Orissa, (2012) 9 SCC705at paragraph-12 as under: 12. Before parting, we wish to reflect upon the dehumanising act of physical violence on women escalating in the society. Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience-offending her self- esteem and dignity. This Court in State of H.P. v. Shree Kant Shekari [(2004) 8 109 SCC153:

2005. SCC (Cri) 327]. has viewed rape as not only a crime against the person of a woman, but a crime against the entire society. It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not

the least her chastity. It destroys, as noted by this Court in Bodhisattwa Gautam v. Subhra Chakraborty [(1996) 1 SCC490:

1996. SCC (Cri) 133]. the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

43. The accused-appellants have not made any attempt to rebut the presumption. Therefore, the accused are liable to be punished under the provisions 110 of Section 376(2)(g) of IPC r/w Section 114 of the Indian Evidence Act. Our view is fortified by the judgment of the Honble Supreme Court in the case of Mohan Lal -vs- State of Punjab reported in AIR 2013 SC2408wherein at pargraphs-18, 21 and 22 it is held as under: 18. As there was a fiduciary relationship between the accused and the prosecutrix being in their custody and they were trustees, it became a case where the fence itself eats the crop and in such a case the provisions of Section 114-A of the Evidence Act, 1872 (hereinafter referred to as the Evidence Act) (which came into effect from 25-12- 1983) are attracted. Undoubtedly it is a case which provides for a presumption against any consent in a case of rape even if the prosecutrix girl is major, however, every presumption is rebuttable, and no attempt had ever been made by any of the appellants or other accused to rebut the said presumption. 111

21. In view of the above, we are of the considered opinion that it is a fit case where the provisions of Section 114-A of the Evidence Act are attracted and no attempt had ever been made by any of the appellants or other accused to rebut the presumption. In such a case, we do not see any reason to interfere with the finding of fact recorded by the courts below.

22. So far as the conviction is concerned, as it was a case of gang rape by teachers of their student, the punishment of 10 years' rigorous imprisonment imposed by the trial court is shocking, considering the relationship between the parties. It was a fit case where life imprisonment could have been awarded to all

the accused persons. Unfortunately, Smt Jasbir Kaur had been acquitted by the High Court, and the State of Punjab did not prefer any appeal against the same. One of the accused, Ranjit Singh, had approached this Court and his special leave petition has been dismissed 112 [Ranjit Singh v. State of Punjab, SLP (Cri) No.2225 of 2011, order dated 18- 3-2011 (SC), wherein it was directed:We find no reason to interfere with the impugned judgment in exercise of our discretion under Article 136 of the Constitution. The special leave petition is, accordingly, dismissed.]. . Thus, in such circumstances, we are not in a position even to issue notice for enhancement of the punishment to the accused.

44. The probative value of the forensic report and the statement of Assistant Chemical Analyser are very high on account of perfect mach of samples and absence of evidence to discredit DNA analysis process. Admittedly, in the present case overwhelming eye witness account, substantial evidence, DNA analysis have conclusively proven the guilt of the accused persons and hence, they are liable to be convicted. Further the object and purpose of determining quantum of sentence has to be society centric, suitable, deterrent 113 and commensurate with the gravity of offence. The victim-the de facto sufferer of a crime had no say in the adjudicatory process and was made to sit outside the court as a mute spectator. Therefore, sentencing policy needs to strike a balance between the aggravating and mitigating circumstances. The Court has to deal with the rapists with iron hand. Admittedly, in the present case, the appellants-accused persons have not expressed any remorse or repentance for the gory crime, rather they opted to remain silent while recording their statement under Section 313 Cr.P.C. Their deliberate, well-designed silence with a standard defence of false accusation reveals their lack of kindness or compassion and leads to believe that they can never be reformed.

45. Our view is fortified by the dictum of the Honble Supreme Court in the case of Ravi v. State of Maharashtra, AIR 2019 SCC5170wherein at paragraphs 33, 35, 36, 55, 56, 59, 61, 68 and 86, it is held as under:

114. 33. Shrikant Lade (PW11 accordingly prepared the DNA report which is duly attested by the Assistant Chemical Analyser also. On seeing the contents of his

report, PW11has pertinently deposed that I can opine on going through the reports, Exts. 75-76 that there were sexual intercourse and unnatural intercourse on the victim by the accused Ravi. (emphasis supplied) 35. We are, however, not swayed by the submission. The globally acknowledged medical literature coupled with the statement of PW11Assistant Director, Forensic Science Laboratory leaves nothing mootable that in cases of sexual assault, DNA of the victim and the perpetrator are often mixed. Traditional DNA analysis techniques like autosomal-STR are not possible in such cases. Y-STR method provides a unique way of isolating only the male DNA by comparing the Y-chromosome which is found only in males. It is no longer a matter of scientific debate that 115 Y-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence and is extensively relied upon in various jurisdictions throughout the world [Y-STR analysis for detection and objective confirmation of child sexual abuse, authored by Frederick C. Delfin - Bernadette J.

Madrid - Merle P. Tan - Maria Corazon A. De Ungria.]. & [Forensic DNA Evidence: Science and the Law, authored by Justice Ming W. Chin, Michael Chamberlain, Amy Rojas, Lance Gima.]. . Science and researches have emphatically established that chances of degradation of the Loci in samples are lesser by this method and it can be more effective than other traditional methods of DNA analysis. Although Y-STR does not distinguish between the males of same lineage, it can, nevertheless, may be used as a strong circumstantial evidence to support the prosecution case. Y-STR techniques of DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of 116 sexual assault and also as a method to identify suspects in unsolved cases. Considering the perfect match of the samples and there being nothing to discredit the DNA analysis process, the probative value of the forensic report as well as the statement of PW11are very high. Still further, it is not the case of the appellant that crime was committed by some other close relative of him. Importantly, no other person was found present in the house except the appellant.

36. There is thus overwhelming eyewitness account, circumstantial evidence, medical evidence and DNA analysis on record which conclusively proves that it is the appellant and he alone, who is guilty of committing the horrendous crime in

this case. We, therefore, unhesitatingly uphold the conviction of the appellant.

55. In Khushwinder Singh v. State of Punjab [Khushwinder Singh v. State of Punjab, (2019) 4 SCC415: (2019) 2 117 SCC (Cri) 283]. , this Court affirmed the death sentence of an accused who had killed six innocent persons, out of which two were minors, by kidnapping three persons, drugging them with sleeping tablets, and then pushing them into a canal. Thereafter, three other members of the same family were also done away with. This Court upheld the award of capital punishment observing as follows: (SCC pp. 427-28, para

14) 14. Now, so far as the capital punishment imposed by the learned Sessions Court and confirmed by the High Court [State of Punjab v. Khushwinder Singh, 2013 SCC Online P&H26937 is concerned, at the outset, it is required to be noted that, as such, the learned counsel appearing on behalf of the accused is not in a position to point out any mitigating circumstance which warrants commutation of death sentence 118 to the life imprisonment. In the present case, the accused has killed six innocent persons, out of which two were minors - below 10 years of age. Almost, all the family members of PW5were done to death in a diabolical and dastardly manner. Fortunately, or unfortunately, only one person of the family of PW5could survive. In the present case, the accused has killed six innocent persons in a pre- planned manner. The convict meticulously planned the time. He first kidnapped three persons by way of deception and took them to the canal and after drugging them with sleeping tablets, pushed them in the canal at midnight to ensure that the crime is not detected. That, thereafter he killed another three persons in the second stage/instalment. Therefore, considering the law 119 laid down by this Court in Mukesh v. State (NCT of Delhi) [Mukesh v. State (NCT of Delhi), (2017) 6 SCC1: (2017) 2 SCC (Cri) 673]. , the case would fall in the category of the rarest of rare case warranting death sentence/ capital punishment. The aggravating circumstances are in favour of the prosecution and against the accused. Therefore, striking a balance between the aggravating and mitigating circumstances, we are of the opinion that the aggravating circumstance would tilt the balance in favour of capital punishment. In the facts and circumstances of the case, we are of the opinion that there is no alternative punishment suitable, except the death sentence. The crime is committed with extremist brutality and the

collective conscience of the society would be shocked. Therefore, we are 120 of the opinion that the capital punishment/death sentence imposed by the learned Sessions Court and confirmed by the High Court does not warrant any interference by this Court. Therefore, we confirm the death sentence of the accused imposed by the learned Sessions Court and confirmed by the High Court while convicting the appellant for the offence punishable under Section 302 IPC.

56. In a recent three-Judge Bench decision of this Court in Manoharan v. State [Manoharan v. State, (2019) 7 SCC716: (2019) 3 SCC (Cri) 337]. , the appellant's capital punishment was confirmed [State v. Manoharan, 2014 SCC OnLine Mad 751 :

2015. Cri LJ1215 by the High Court in a case in which he along with his co-accused was held guilty of kidnapping a 10-year-old girl and her 7-year-old brother. After committing gang rape of the minor girl, 121 both the victims were done away with by throwing them into a canal which caused their death by drowning. This Court (by majority) upheld the death sentence, concluding as follows: (SCC p. 751, para

34) 34. In the circumstances, we have no doubt that the trial court and the High Court have correctly applied and balanced aggravating circumstances with mitigating circumstances to find that the crime committed was cold-blooded and involves the rape of a minor girl and murder of two children in the most heinous fashion possible. No remorse has been shown by the appellant at all and given the nature of the crime as stated in para 84 of the High Court's judgment [State v. Manoharan, 2014 SCC OnLine Mad 751 :

2015. Cri LJ1215 it is unlikely that the appellant, if set free, would not be capable 122 of committing such a crime yet again. The fact that the appellant made a confessional statement would not, in the facts of this case, mean that he showed remorse for committing such a heinous crime. He did not stand by this confessional statement, but falsely retracted only those parts of the statement which implicated him of both the rape of the young girl and the murder of both her and her little brother. Consequently, we confirm the death sentence and dismiss the appeals.

59. The minimum sentence for an aggravated penetrative sexual assault has been thus increased from 10 years to 20 years and imprisonment for life has now been expressly stated to be imprisonment for natural life of the person. Significantly, death sentence has also been introduced as a penalty for the offence of aggravated penetrative 123 sexual assault on a child below 12 years.

61. In the light of the above discussion, we are of the considered opinion that sentencing in this case has to be judged keeping in view the parameters originating from Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC684:

1980. SCC (Cri) 580]. and Machhi Singh [Machhi Singh v. State of Punjab, (1983) 3 SCC470:

1983. SCC (Cri) 681]. cases and which have since been strengthened, explained, distinguished or followed in a catena of subsequent decisions, some of which have been cited above. Having said that, it may be seen that the victim was barely a two- year-old baby whom the appellant kidnapped and apparently kept on assaulting over 4-5 hrs till she breathed her last. The appellant who had no control over his carnal desires surpassed all natural, social and legal limits just to satiate his sexual hunger. He ruthlessly finished a life which was yet to bloom. The appellant instead of 124 showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. The unnatural sex with a two-year-old toddler exhibits a dirty and perverted mind, showcasing a horrifying tale of brutality. The appellant meticulously executed his nefarious design by locking one door of his house from the outside and bolting the other one from the inside so as to deceive people into believing that nobody was inside. The appellant was thus in his full senses while he indulged in this senseless act. The appellant has not shown any remorse or repentance for the gory crime, rather he opted to remain silent in his Section 313 Cr.P.C. statement. His deliberate, well-designed silence with a standard defence of false accusation reveals his lack of kindness or compassion and leads to believe that he can never be reformed. That being so, this Court cannot write 125 off the capital punishment so long as it is

inscribed in the statute book.

68. I am in agreement with the view expressed by my learned Brother, to the extent of upholding conviction, as such, there is no need to appreciate the evidence on record in detail. As such, I confine consideration of such evidence on record to the extent to modify the sentence on the appellant.

86. In Surendra Pal Shivbalakpal v. State of Gujarat [Surendra Pal Shivbalakpal v. State of Gujarat, (2005) 3 SCC127:

2005. SCC (Cri) 653]. , this Court has held that the involvement in any previous criminal case by the accused, was considered to be a factor, to be taken into consideration, for the purpose of awarding death sentence. Para 13 of the said judgment reads as under: (SCC p.

131) 13. The next question that arises for consideration is whether this is a rarest of rare case; we do not 126 think that this is a rarest of rare case in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case. We confirm conviction of the appellant on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment.

46. The learned Counsel for the appellants- accused contended that the accused persons are innocent and hence lenient view has to be taken while 127 imposing sentence of extreme punishment of life. The said contention cannot be accepted as the prosecution has proved that the accused persons have committed an offence of gang rape beyond all reasonable doubt where the society insists adequate sentence. The Lord Denning while appearing before the Royal Commission on Capital Punishment expressed the view as under: Punishment is the way in which society express its denunciation of wrongdoing and in order to

maintain respect for law, it is essential that punishment inflicted for grave crimes should reflect revulsion felt by the great majority of the citizens. For them it is a mistake to consider the object of punishment as being deterrent or reformative or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment because the wrong doer deserves it, irrespective of whether it is deterrent or not. 128

47. The Honble Supreme Court in the case of Mahesh -vs- State of M.P. reported in (1987) 3 SCC80 the Hon'ble Supreme Court while considering death sentence at paragraphs-6 has observed thus; 6. It will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justice system of this country suspect. The common man will loose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon

48. The Honble Supreme Court in the case of Sevak Perumal -vs- State of Tamilnadu reported in (1991) 3 SCC491at paragraph-10 has held as under: 10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the 129 efficacy of law, and society could not long endure such serious threats. The duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

49. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct

50. The Honble Supreme Court while considering the punishment in the case of Jashubha Bharatsinha v. State of Gujarat reported in (1994) 4 SCC353has held at paragraphs-12 as under: 12. It is needless for us to go into the principles laid down by this Court regarding the enhancement of sentence as also about the award of sentence of death, as the law on both these subjects is now well settled. There is undoubtedly power of enhancement available with the High Court which, however, has to be sparingly 130 exercised. No hard and fast rule can be laid down as to in which case the High Court may enhance the sentence from life imprisonment to

death. Each case depends on its own facts and on a variety of factors. The courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in the legislative intendment relating to award of capital punishment notwithstanding, the opposition by the protagonist of abolition of capital sentence, shows that it is expected of the courts to so operate the sentencing system as to impose such sentence which reflects the social conscience of the society. The sentencing process has to be stern where it should be.

51. It is the nature and gravity of the crime and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is 131 not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and the victim belong.

52. In view of the pronouncements and declarations made by the Honble Supreme Court, it is true that reformation as a theory of punishment had become the trend but that theory is applicable to such crimes, in which the damage is repairable or even if the damage cannot be repaired, salvation by other mode is possible. That theory is inapplicable in offences where damage is immense, irreparable and cannot be retractable and as such, severe punishment is the only mode. Admittedly in the present case, the damage caused by accused persons is immense, irreparable and cannot be retractable and the victim has to suffer throughout her life. Therefore, the appellants-accused are not entitled for any leniency to be shown as rightly contended by the learned Additional SPP for the State. 132

53. Stringent legislation and punishments alone may not be sufficient for fighting the increasing crimes against women. In our tradition-bound society, certain attitudinal changes are required to be brought about in the mindset to ensure gender justice.. A child should be taught to respect women in the society in the same way as he is taught to respect men. Gender equality should be made a part

of the school curriculum. The school teachers and parents should be trained, not only to conduct regular personality-building and skill- enhancing exercise, but also to keep a watch on the actual behavioural pattern of the children so as to make them gender sensitised. The educational institutions, government institutions, the employers and all concerned must take steps to create awareness with regard to gender sensitisation and to respect women. Sensitisation of the public on gender justice through TV, and press should be welcomed. On the practical side, few of the suggestions are worthwhile to be considered. Banners and placards in the public transport vehicles 133 like autos, taxis and buses, etc. must be ensured. Use of streetlights, illuminated bus-stops and extra police patrol during odd hours must be ensured. Police/Security guards must be posted at dark and lonely places like parks, streets, etc. CCTV cameras have to be installed in the important places. Mobile apps for immediate assistance of women should be introduced and effectively maintained. Apart from effective implementation of the various legislation protecting women, change in the mindset of the society at large and creating awareness in the public on gender justice, would go a long way to combat violence against women. XI - DUTY OF THE COURT IN APPRECIATION OF EVIDENCE WHILE DEALING WITH THE CASE OF RAPE54 The Honble Supreme Court in the case of State of Karnataka -vs- Krishnappa reported in (2000)4 SCC75while considering the provisions of Section 376(2)(g) of IPC., at paragraphs 15 and 16 has held as under:

134. 15. Sexual violence apart from being a dehumanising act is 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 where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Dealing with the offence of rape and its traumatic effect on a rape victim, this Court in State of Punjab v. Gurmit Singh observed: (SCC p. 403, para

21) 21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres,

we show little or no concern for her honour. It is 135 a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. (emphasis supplied) 136 16. A socially sensitised Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

55. The Honble Supreme Court while considering the provisions of Sections 342, 354 and 376 of IPC., in the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat reported in (1983) 3 SCC217at paragraphs 9, 10 and 11 has held as under: 9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?. To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the 137 need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the western society that

a female may level false accusation as 138 regards sexual molestation against a male for several reasons such as : (1) The female may be a good digger and may well have an economic motive - to extract money by holding out the gun of prosecution or public exposure. (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males. (3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account. (4) She may have been induced to do so in consideration of economic rewards, by a person 139 interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta. (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self- importance in the context of her inferiority complex. (6) She may do so on account of jealousy. (7) She may do so to win sympathy of others. (8) She may do so upon being repulsed.

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false 140 allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition-bound non- permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would 141 apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in

mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless 142 of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eyewitness account of an independent witness may 143 often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world (obeisance to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the probabilities factor does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification :

Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of 144 self-preservation. Or when the probabilities factor is found to be out of tune.

56. The Honble Supreme Court in the case of State of H.P. v. Asha Ram reported in (2005) 13 SCC766while considering the provisions of Sections 375 and 376 of IPC at paragraph-5 has held as under: 5. We record our displeasure and dismay, the way the High Court dealt casually with an offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on minor girls. The High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are 145 compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. 146 57. The Apex Court while considering the provisions of Sections 375 and 376 of IPC in the case of Narender Kumar v. State (NCT of Delhi) reported in (2012) 7 SCC171at paragraphs 20 and 21 has held as under: 20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her

statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. 147

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject- matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial (sic circumstantial), which may lend assurance to her testimony. (Vide Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Vishnu v. State of Maharashtra.

58. In Vedic Society, great value was attached to the chastity of women. Therefore, any attempt to rob her off of chastity was considered to be a sin. The Punishment as per Manu for such crime included throwing the perpetrator out of the society. 148

59. Interestingly, the scriptures provide an insight into not only how the perpetrator of offence of rape was dealt with but also how the victim was dealt with by the Society. It is surprising to note that when victims of rape in modern India are admonished by the Society, the Vedic Society was much more supportive of survivors of rape. XII - RECOMMENDATION60 It is unfortunate, a horrific act that all the accused persons have committed heinous and inhumane crime of gang rape on the victim - P.W.28 for satisfaction of their lust and ruined her life for which she has to suffer throughout her life. Rape is not only a crime against woman-P.W.28 victim girl, but it is a crime against the entire civilized society.

61. Punishment must also respond to the cry of the society for justice against the criminals. While considering the punishment to be given to an accused, the Court should be alive not only to the rights of the 149 criminal for awarding just and fair punishment by administrating justice tempered with such mercy, as the criminal may justly deserve, but also to the rights of the victim of the crime to have assailant appropriately punished and the societys reasonable expectations from

the Court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

62. As time and again held by the Honble Supreme Court that shockingly large number of criminals go unpunished or get milder punishment thereby increasing, encouraging the criminals and in the ultimate making, justice suffers by weakening the systems credibility. The imposing of appropriate punishment is the manner in which the Court respondents to the cry of the society for justice against criminals.

63. The Honble Supreme Court in the case of Krishna Mochi -vs- State of Bihar reported in 2002 SCC150(CRIMINAL) 1220 has observed that in the rarest of rare cases when the conscience of the community is so far that it will expect the holders of the judicial power center to inflict death sentence, irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.

64. It is high time for the Legislature, Executive, Judiciary, Media as the Fourth Estate of Democracy and General Public to pool in their collective wisdom to curb the menace of rape, which is more dangerous than the Disease of Cancer to the future generation of our great Country.

65. It is relevant to state at this stage that in Halsburys Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that, even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation with violence of the private person of a woman-an-outrage by all means. By the very nature of the offence it is an obnoxious act of the 151 highest order. The physical scar may heal up, but the mental scar will always remain. In the present case, the victim is deprived of the dreams of Spring of Life and she is pushed into the Torment of Winter. When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the Court and to such a demand; the Courts of Law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the Court..

66. When a woman is ravished, what is inflicted is not merely physical injury, but the deep sense of some deathless shame. Between Nirbhayas case and the present case, the only difference is that in the case of Nirbhyaya, the victim died after brutal incident on her, but in the present case, the victim has discontinued her Law Course and returned to her native Country - Nepal with all curse. The victim - woman 152 body is not a mans play thing and they cannot take advantage of it in order to satisfy their lust and the society will not tolerate such things any more. Crimes against women continued in a never-ending cycle. According to National Crime Record Bureau (NCRB data 2018), the Government has released the data that on an average one rape case on woman is reported in every 15 minutes in India. The annual crime report released by the Ministry of Home Affairs, almost 34,000 rape cases were reported in the year 2018 against women, barely changed from the year before. Just over 85% led to charges, and 27 per cent to convictions.

67. Gang rape is more dangerous than Murder. The demand for justice has to be made fully within legal frame work. In view of the provisions of Section 10 of Indian Penal Code the word Man denotes a male human being of any age; and the word Woman denotes a female human being of any age. The provisions of Section 376DB of Indian Penal Code prescribes punishment for gang rape on 153 woman under twelve years of age, which shall be imprisonment for life, which shall mean imprisonment for the remainder of that persons natural life and with fine or with death. Since the unfortunate incident has occurred on 13.10.2012 and the provisions of Section 376(2)(g) of Indian Penal Code provides rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to life and shall also be liable to fine. The provisions of Section 376D of Indian Penal Code has been amended by the Criminal Law (Amendment) Act 2013 (13 of 2013) which has come into force with effect from 3.2.2013 imposing punishment of rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to life, which shall mean imprisonment for remainder of that persons natural life and with fine. In view of the provisions of Section 10 and Section 376DB of Indian Penal Code stated supra, in our considered opinion, now it is appropriate for 154 the Legislature/Central Government in order to curb the menace of gang rape against woman, the provisions of Section 376D of Indian Penal Code requires further amendment imposing punishment for death in

addition to the existing provision of imprisonment for life and shall also liable to fine on par with the provisions of Sections 376AB and 376DB of Indian Penal Code keeping in view the definition of Woman under Section 10 of Indian Penal Code.

68. Now time warrants for the father, mother, brother, husband of the victim and the society at large, who admonishes the rapists, who are violators of law, should be supportive of survivors of rape so as to ensure right to life of such person/s is mandatory under Article 21 of the Constitution of India.

69. Though Indian Penal Code was enacted by Act 45 of 1860, and even after lapse of 74 years of independence, still woman is not safe in the hands 155 of rapists/violators of law. Last but not the least, we want to send a strong message to the Society by reminding ourselves, the famous Quote of the Father of the Nation, Mahatma Gandhi, immediately after independence that, The day a woman can walk freely on the roads at night, that day we can say that India has achieved independence. Therefore, we express our anguish towards safety of the vulnerable woman folk in the society that when an educated woman studying Law Course was unable to go out of the hostel with her friend at 9.30 p.m. as the accused ravished her by abducting and committing gang rape on her and we cannot say that we have achieved the Mahatma Gandhis dream of Indian Independence stated supra, otherwise, we are not proud to say that India achieved empowerment of woman even after seven decades of Independency of our Country. 156

70. We, the Judges are the societal parents. If our concern for the society of girls/ women can be summed up in one sentence that An attack on anybodys daughter is an attack on our daughter. XIII - CONCLUSION71 For the reasons stated above, the point raised in the present appeals held in negative holding that the accused persons have not made out any ground to interfere with the impugned judgments and order of conviction in exercise of appellate powers of this Court under the provisions of Section 374(2) of Cr.P.C.

72. Accordingly, we pass the following: XIV -

ORDER

i) All the appeals are dismissed; ii) The impugned judgments and order of conviction dated 4.9.2013 and 22.5.2017 made in S.C.Nos.487/2013 and 29/2014 on the file of the IX and 157 LIV Additional City Civil and Sessions Judges, Bengaluru respectively convicting all the accused persons and imposing sentence for imprisonment of life is hereby confirmed; and iii) We hereby recommend the Legislature/Central Government to further amend the provisions of Section 376D of Indian Penal Code - Gang rape into capital punishment in addition to the existing provision for imprisonment of life and with fine on par with the provisions of Section 376AB and 376DB of Indian Penal Code keeping in view of definition of Woman under Section 10 of Indian Penal Code in order to curb the menace of gang rape in the society at large. 158

73. We hope and trust that the increasing gender sensitivity is crucial to enhance womens safety. The safety of women is a not a guarantee despite the stringent amended law is placed after Nirbhayas case. It is high time for the Home Department, State Legal Services Authorities, Woman Organisations, and Prints and Electronic Media to start conducting awareness programmes for the general public.

74. We appreciate the courage of the prosecutrix - P.W.28 for fighting in the legal battle against the accused to get justice in an unfortunate incident in her life. We also appreciate the courage, erudition and sincere efforts of the learned District and Sessions Judge in passing the impugned judgments strictly in accordance with law, the Investigating Officers (Police Team), Doctors (Medical Team) and the learned Additional Public Prosecutor, who appeared for the State before the Sessions Court for their sincere efforts in ensuring that the justice is done at last. 159

75. We also place on record our full appreciation for rendering effective assistance and discharging their role as Officers of the Court by the learned Counsel for the appellants-accused and the learned Additional State Public Prosecutor.

76. The Registrar General is directed to send a copy of this judgment to: i. Ministry of Home Affairs, Government of India, New Delhi; ii. The Ministry of Law, Justice and Parliamentary Affairs, Government of India, New Delhi; iii. Additional Chief

Secretary to Government of Karnataka, Home Department, Bangalore; iv. All the learned District and Sessions Judges in the State; 160 v. Legal Services Authority for taking steps in initiating awareness programmes; vi. Judicial Academy for appraisal of the Trainee Judicial Officers; vii. All the Deputy Commissioners and Superintendents of Police in the State for conducting effective awareness programmes. Sd/- JUDGE Sd/- JUDGE Nsu/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com