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

(Presided over by Smt.V.V.Virkar)

Sessions Case No. 282/2010.

Exh.No.

Sate of Maharashtra,
(through Shantinagar Pol.Stn.
Bhiwandi, Cr.No.I-126/2010) .. ***Complainant***

Versus

Raju Shantaram Koli,
Age 28 years,
R/at.Gajanan Mhatre Chawl,
Bhadwad, Tal. Bhiwandi. .. ***Accused.***

For the offences punishable u/s.
376, 302, 342 of the I.P.C.

A.P.P. Mr.Khamkar for the state
Adv.Mr.Rajan Salunke for accused

: *J U D G M E N T* :

(Delivered on this 27th day of September, 2013)

1] The accused stands prosecuted for the offences punishable u/s.376, 302, 342 of Indian Penal Code for committing rape on minor girl Ritu Subhash Kesari aged about 12 years on 29.04.2010 at about 10.30 hours and thereafter committing her murder by confining her in her house at Sitabai Mhatre Chawl, Bhiwandi.

2] In short the facts giving rise to the prosecution of the accused are that, the accused and the complainant, the mother of the victim girl have been staying in the same vicinity and the accused was well acquainted with the complainant and the deceased girl. One Suman the sister of accused had been the friend of the complainant and by taking disadvantage of the acquaintance, the accused used to go to the house of the complainant and used to demand favour of sexual relationship with her, but she used to refuse to have any such relations with him. That the complainant was having two daughters deceased Ritu and one Gauri and one son Rupesh and was staying at Sitabai Mhatre Chawl in a room alongwith the children.

3] It is the further the case of the prosecution that, on 29.04.2010 the accused had been to the house of complainant in the morning at about 08.00 a.m. and sat in the door, but the complainant asked him to leave. Even after the complainant took a bath and came out, he was still there and then slept in her house at about 10.00 a.m. Her children Ritu, Rupesh and Gauri all were there in the house. The complainant then went to her friend Sunita Pal in Dinkar Naik Chawl. At about 10.45 a.m. her daughter Ritu went to the house of Sunita Pal and told that accused is calling her, but she asked her daughter Ritu to tell him that her mother i.e. the complainant went out and Ritu therefore, returned back. It is also further the case of prosecution that at about 11.15 a.m. when she went to her house alongwith her friend Sunita, her daughter Gauri was playing outside the house and the door of the house was closed from inside. She knocked the door but it did not open. She therefore, kicked the door. Then the accused opened the door from inside and her daughter Ritu was lying on the floor. When she was asking the accused as to what he did with her daughter and tried to catch him, he gave a jerk to her hand and ran away. She then noticed that her daughter was lying on the floor with the wire tied to her neck and was not talking. The complainant and her friend

Sunita Pal then took her daughter Ritu to lady doctor at Bhiwandinaka, but she referred them to Indira Gandhi Memorial (I.G.M.) Hospital. Accordingly they took their daughter to I.G.M. Hospital. There it was reported by the doctor that, she is raped and throttled and expired. The intimation about the incident was given to police by the hospital authorities and the complainant then lodged complaint about the incident on the same day.

4] On the basis of her complaint, the offence as per Cr.No.I-126/2010 was registered u/s.376 and 302 of the Indian Penal Code and the work of investigation was entrusted to P.I., J.V.Babar. The inquest panchanama of the dead body was prepared and the body was sent for postmortem examination. The autopsy findings given were suggestive of death due to ligature strangulation associated with genital injuries. During the investigation panchanama of the spot was prepared. At the spot a pair of black coloured chappal, mobile charger broken wire, pieces of bangles also charger found on spot were seized. The blood samples from the blood stains found on the spot on the floor also were obtained. The clothes on the person of the deceased were seized. The accused was caught at Solapur and was brought and was arrested in the crime. It is also the

case of the prosecution that, while in custody the accused made a statement that he has kept clothes on his person at the time of incident in his house and he would discover it. It was recorded as per his narration in the presence of panchas. Then in accordance with the statement the accused discovered his clothes i.e. full pant having blood stains at chain portion, one shirt and one sandow bbanian with blood stains and they came to be seized under panchanama. The accused was then referred for medical examination and the certificate of his potency was obtained. The muddemal seized in the offence and clothes of the deceased as well as the clothes of the accused were sent to C.A. for D.N.A. test and D.N.A. test report was obtained and after completion of investigation accused was charge sheeted for the offences punishable u/s.376, 342, 302 of the Indian Penal Code.

5] The offences punishable u/s.376 and 302 of the Indian Penal Code are exclusively triable by the Court of Sessions. The learned Judicial Magistrate First Class, Thane therefore, committed the case to the Court of Sessions and it was made over to this Court for trial.

6] The accused produced before the Court. A charge

u/s.376, 342 and 302 of the Indian Penal Code was framed against the accused as per Exh.2. The contents of the charge were readover and explained to the accused in vernacular. He pleaded not guilty. His defence as it revealed from the cross examination of the witnesses and his statement recorded u/s.313 of the Code of Criminal Procedure was that he is not involved in the crime and was not in Bhiwandi at the time of incident and was at Solapur and he was brought from Solapur and is falsely implicated in the crime. He claimed to be tried.

7] For establishing the charges levelled against the accused, the prosecution examined in all nine witnesses. PW1 Priti Subhash Kesari the complainant, mother of the deceased, PW2 Sunita Suresh Pal the friend of the complainant, PW3 Rupesh Subhash Kesari the son of the complainant, PW4 Dayanand Raghunath Joshi the panch witness of spot panchanama, PW5 Mohammed Yakub Siddiq Ansari the panch witness of panchanama of seizure of clothes of the deceased, PW6 Dr.Jaywant Namdeo Dhule who examined the accused and certify that he is potent and capable of having sex, PW7 Mohammed Karim Sujauddin Shaikh the panch witness on memorandum statement of accused who turned hostile, PW8 Ramakant Bhimrao

Mhatre another panch witness on the memorandum statement and discovery panchanama, PW9 P.I., Janardhan Vitthal Babar the investigation officer, PW10 Dr.Gajanan Sheshrao Chavan, Medical Officer who conducted autopsy on the dead body of deceased, PW11 Head Constable Shankar Khandu Sarode who arrested the accused on Solapur railway station, PW12 A.P.I., Ramdas Ganpat Komane who brought the accused from Sadarbajar police station, Solapur and handed over him to P.I. Babar and PW13 A.P.I., Raghunath Ramchandra Naikwade who had been to the I.G.M. Hospital and recorded statement of complainant on the basis of which offence was registered and he had also prepared the panchanama of the dead body of Ritu Kesari. The prosecution also produced, proved and relied upon the documents in the form of complaint Exh.11, panchanama of spot of incident Exh.16, panchanama of seizure of clothes of deceased Exh.21, notes of postmortem examination Exh.23, D.N.A. report Exh.24, potency certificate of accused Exh.26, memorandum statement of accused Exh.34, discovery panchanama Exh.35, sketch of the spot Exh.37, arrest panchanama of the accused Exh.38, letter given for medical examination of the accused Exh.39 and the copies of letters alongwith which muddemal was sent to C.A. Exh.40 to 42.

8] The statement of accused u/s.313 of the Code of Criminal Procedure was recorded. The accused did not examine himself on oath and had not examined any defence witness. I heard both the learned A.P.P. and the learned advocate for the accused.

9] On the basis of the above facts of the case, the points which arose for my determination and my reasons and findings for the same are as under :

POINTS	***FINDINGS***
1] Does the prosecution prove that, the deceased girl Ritu Subhash Kesari was subjected to forcible sexual intercourse ?	… Proved.
2] Does the prosecution prove that the death of deceased Ritu Subhash Kesari is homicidal ?	… Proved.
3] Does the prosecution proves that, on 29.04.2010 at about 10.30 hours at Sitabai Mhatre Chawl, Bhadwad the accused wrongfully confined in a room complainant's daughter Kum.Ritu Subhash Kesari a minor girl age of 12 years and thereby committed an offence punishable u/s.342 of I.P.C.?	… Proved.
4] Does the prosecution prove that, on the same day, date, time and place the accused committed rape on complainant's daughter Kum.Ritu	

	Subhash Kesari a minor girl age of 12 year and thereby committed an offence punishable u/s.376 of I.P.C.?	… Proved.
5]	Does the prosecution proves that, on the same day, date, time and place the accused committed murder intentionally or knowingly causing the death of complainant's daughter Kum.Ritu Subhash Kesari a minor girl age of 12 years and thereby committed an offence punishable u/s.302 of I.P.C.?	… Proved.
6]	What offence if any committed by accused or any of them?	… Accused has committed offences punishable u/s.342, 376 and 302 of IPC
7]	What order ?	.. As per final order.

: ***R E A S O N S*** :

As to the Point Nos.1 and 2 **:-**

10] Both these points are interlinked and required to be decided on the basis of same evidence and therefore, I have taken up said points for determination together for discussion.

11] As is clear as per the prosecution case the incident had taken place on 29.04.2010 and the complaint in regard to the death of the deceased was lodged by the

mother of the deceased on the same day on 29.04.2010. As is further clear that, on the basis of complaint lodged by the mother of the deceased, an offence as per Cr.No.I-126/2010 was registered and the deceased was taken to I.G.M. Hospital, Bhiwandi and inquest panchanama on the dead body was prepared as per Exh.60.

12] Then so far as the point as to whether the death of the deceased was homicidal one and whether there was rape on the deceased, the prosecution relied upon the testimony of complainant, police witness and medical evidence. On careful perusal of evidence of prosecution witnesses in that regard revealed that, PW13 A.P.I. Raghunath Naikwade in his evidence deposed that, when he was on duty as Station Officer on 29.04.2010 at Shantinagar police station, he received message from I.G.M. Hospital, Bhiwandi that the dead boy of the girl who is raped and murdered is brought to I.G.M. Hospital. He therefore, went alongwith PC Mogre, etc. to the hospital and complainant Priti Subhash Kesari showed the dead body and after recording the complaint of the complainant as per Exh.11 he prepared inquest panchanama in presence of panchas. He specified that the dead body was having ligature mark on throat and the lady panch examined her

private part and it was stated that the girl must have been raped and accordingly he prepared the inquest panchanama on the dead body as per Exh.60.

13] A careful perusal on his cross examination on behalf of the accused reveal that, except suggestion that he deposed falsely that at the time of inquest panchanama he had noticed ligature mark on the throat, etc., nothing contrary to his version in that respect is brought on record.

14] Even from the perusal of inquest panchanama Exh.60 it reveal that, it is specifically mentioned therein that the dead body was examined through lady panch and it was noticed that, the blood was oozing from vagina and that the eyes and mouth of the deceased were closed, scar was found at the neck and the body was handed over to Medical Officer, I.G.M. Hospital, Bhiwandi.

15] Then it is also clear that the postmortem examination on the dead body was conducted at J.J. Hospital, Mumbai by Dr.Gajanan Chavan and postmortem notes as per Exh.23 were prepared. (Postmortem notes were admitted on behalf of the accused). But since the offences charged are of rape and murder, the prosecution examined

Medical Officer who examined the dead body for postmortem in regard to the nature of injuries and cause of death, etc. then from the testimony of the Medical Officer in that regard it reveal that, it is also clear that, the body was sent for postmortem examination to J.J. Hospital, Mumbai and postmortem examination was conducted by Dr.Gajanan Chavan. Then from the perusal of testimony of Dr.Chavan PW10 reveal that, he stated that on 29.04.2010 when he was on duty as Assistant Professor in Forensic Department in J.J. Hospital, Mumbai he alongwith Dr.M.N.Wankhede conducted postmortem examination on the dead body of Ritu Subhash Kesari brought alongwith inquest panchanama and noticed following injuries on external genitals,

1. Hymen torn between between 5 o'clock to 7 o'clock position with bleeding, torn edges with midline perineal tear of size 5 x 4 x 4 cm deep with haemorrhage in surrounding areas.

He had also noticed the following external injuries,

i. Ligature mark over neck above thyroid cartilage, horizontal of size 31 x 0.4 width, completely encircling with faint at places in between, reddish coloured. It is situated 5 cm below from right ear lobule and 5 cm below from left ear lobule and 4 cm below from mandible midline. On dissection skin under ligature is contused and haemorrhage seen over right side of larynx.

ii. Abrasion of size 2 x 1 cm over right shoulder posteriorly red in colour,
iii. Two contusion of size 1 x 1 cm over left lower back, dark red in colour,
iv. abrasion of size 0.5 x 0.5 cm over left forehead laterally, red in colour.

Accordingly he prepared postmortem notes as per Exh.23.

16] From perusal of postmortem notes Exh.23 it reveal that, the injuries sustained by the deceased have been specifically mentioned in the postmortem notes and the cause of death as stated by the doctor and mentioned in the postmortem notes was death due to ligature strangulation associated with genital injuries. Then it is also clear from the testimony of the Medical Officer that all the injuries sustained by the deceased were antemortem in nature and the injury No.1 ligature mark was sufficient to cause death in ordinary course of nature. He also further stated that the injuries sustained by the deceased as mentioned in column No.15 which are the injuries to external genital indicates to purging are due to forceful recent sexual intercourse. He also specified that, there was excessive perineal tear to genitals which lead to excessive bleeding and that had according to him added to the cause of death.

17] A careful perusal of the cross examination of the Medical Officer on behalf of the accused reveal that, he has specifically denied the suggestion that the hymen rupture is possible by any other activity like cycling swimming or any sport activity. Even he appear to have added that, the injuries of the nature sustained by the deceased to her genital parts were so extensive that they are not possible by any other activity like cycling, etc. Then though it is accepted by him that, he has reserved his opinion about final cause of death for receipt of chemical analysis report and mentioned so in the postmortem notes it has to be mentioned that, in his evidence he has categorically stated that, according to him the cause of death was the death due to ligature strangulation associated with genital injuries and there appear no doubt in his mind about the cause of death at the time of deposition. He even specified that, the kind of ligature mark injuries on the dead body are possible by hard material like rope or wire.

18] Then in the light of the peculiar nature of the injuries sustained by the deceased who is stated to be a girl of about 12 years, to the extent of ligature mark around the neck coupled with the grievous injuries to her private part which according to the Medical Officer are stated to have

added to the cause of death by excessive bleeding because of such injuries to private part.

19] Then it is also specifically stated by the doctor that the injuries as described in column No.15 of the postmortem notes are due to recent forceful sexual intercourse. Even from the postmortem notes it is clear that, in column No.15 the injuries to vaginal part of the deceased are mentioned and as discuss above, the Medical Officer has ruled out the possibility of such injuries being sustained by the deceased by any other reason except recent forceful sexual intercourse. Then when it is categorically stated by the Medical Officer that the said injuries were antemortem, it is clear that the deceased was raped immediately before her death. In view of all the above discussion, I am of the view that it has to be held as established by the prosecution that the deceased was subjected to forceful sexual intercourse i.e. rape and it was a homicidal death. Point Nos.1 and 2 are therefore, answered in the affirmative.

<u>As to the point Nos.3 to 5</u> :-

20] As per the prosecution case it was the accused who had committed rape on girl on the given day, date, time and place and had committed her murder by throttling her

by means of mobile phone charge wire. In that respect it was argued on behalf of the prosecution that the testimony of the complainant corroborated by the testimony of the independent witness PW2 Sunita Pal, the neighbouring person and the testimony of the child witness PW3 Rupesh Kesari coupled with the medical evidence and the circumstantial evidence brought on record by the prosecution go to establish the allegations against the accused beyond all the reasonable doubt. It was pointed out that both the parties were knowing each other very well and even it is there on record that the children including the deceased were calling the accused as Mama (maternal uncle) and that shows the acquaintance of the victim with the deceased. It was pointed out that immediately after the incident the accused left the spot and went to Solapur and he was caught there in accordance with the information received during the investigation. It was pointed out that, the fact that the accused was caught at Solapur is accepted by the accused in his statement u/s.313 of the Code of Criminal Procedure and that is in full corroboration to the prosecution case.

21] It was also submitted that after his arrest the accused had discovered his clothes which were on his

person at the time of incident and even it was submitted that, chappal of the accused was also found at the spot which is strong incriminating circumstance against the accused. It was also argued that, there is no reason or motive for the witness to depose against the accused. It was also pointed out that, it is brought on record in the evidence of the complainant that on the day of incident immediately before the incident the accused had demanded sexual favour from the complainant in her house and the complainant had refused that and left the house and immediately thereafter the accused had committed offence of rape with the victim girl and had murdered her with an intention that, that shall not be disclosed by the victim to anybody.

22] It was submitted that the accused had put forth a defence that, on the day of incident he was not present at the spot but had already left for Solapur by taking a train and in a way it is the defence of alibi put forth by the accused and, therefore, it was necessary for the accused to establish his defence by at least preponderance of probabilities. It was submitted that, by adducing cogent and reliable evidence of eye witnesses, who noticed the accused coming out of the house of the victim and running away and

at the same time the victim was found lying dead in the house and as such the initial burden of establishing presence and role of the accused is discharged by the prosecution and in such circumstances the defence of alibi as tried to be put forth by the accused was required to be established by the accused. But as is clear no material is brought on record by the accused even to show the probabilities of his such defence. It was argued that the oral as well as documentary evidence adduced by the prosecution coupled with the circumstances that the clothes of the accused were found to be having blood stains and also the fact that the accused was caught at Solapur in the midnight and go to establish the guilt of the accused and the offences charges against him are proved and he is liable to be convicted.

23] As against this it was argued on behalf of the accused that the evidence adduced by the prosecution is not sufficient to establish the guilt of the accused beyond all the reasonable doubts. It was submitted that the prosecution case is mainly based upon the three witnesses, PW1 complainant, PW2 the neighbouring person and the friend of the complainant and PW3 the son of the complainant. But their testimonies are full of contradictions and variance

which make their testimonies unreliable and untrustworthy. It was pointed out that as per the complainant's version the accused had come their in the house of complainant at the relevant time for sleeping and even had slept there and the complainant has stated to have left the house leaving the accused in her own house and the said facts are totally improbable. It was also pointed out that, there are material contradictions between the testimonies of these three witnesses as to who had gone to call the complainant and when the complainant and her friend had been to the spot, etc. It was submitted that, the chronology of the event is material and important which is not established by the prosecution and the version of the prosecution witnesses in that respect is full of contradictions, omissions and variance and therefore, it would not be safe to rely upon testimonies of the witnesses. It was also pointed out that the complainant had improved her version in her supplementary statement which do not find place in F.I.R. and her said supplementary statement is recorded only to add the motive to the alleged act. It was submitted that the case put forth by the complainant that the accused had been there in the house of the complainant for demanding sexual favour, is unbelievable and if at all it would have been so he would not have allowed the complainant to go out of the

house and such case put for forth by the complainant is not realistic and is an exaggerated and unbelievable statement.

24] It was also pointed out that, the case put forth by the prosecution that the accused was caught and arrested at Solapur has not been proved and established. It was submitted that the testimony of the police witness on that point has been shattered and shakened and cannot be said to be reliable and trustworthy. It was submitted that the admission of the accused u/s.313 of the Code of Criminal Procedure cannot be said to be of any help to the prosecution in establishing the fact alleged against the accused. It was submitted that the relative of the accused who alleged to have given the information about the accused arriving at Solapur has not been examined by the prosecution and no satisfactory explanation is offered. It was submitted that as per the prosecution case itself the complainant was not there in the house and the victim was alone and after she returned home she noticed the deceased in dead condition and in absence of any cogent and reliable evidence in regard to the actual involvement of the accused in the crime, the possibility of offence being committed by somebody else is also there and therefor,e it cannot be said that the prosecution has established beyond all reasonable

doubt the involvement of the accused in the crime and he is entitled to be acquitted.

25] As is clear so far as the incident of rape and murder of the deceased, there is no direct evidence and asper the prosecution case itself at the time of incident the complainant not not been there in the house and she left the house and when she returned back she noticed the house bolted from inside and when she knocked the door initially it was not opened and later on it was opened and the accused came out. As such it is clear that, the case is based on circumstantial evidence.

26] Then so far as the circumstantial evidence is concern, it is well settled that the conviction can be based on circumstantial evidence but when a case rests upon circumstantial evidence, such evidence must satisfy the following tests ;

i) *the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,*

ii) *those circumstances should be of definite tendency unerringly pointing towards guilt of the accused,*

iii) *the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the*

conclusion that with all human probability the crime was committed by the accused and none else and

iv) *the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

Though a conviction may be based solely on circumstantial evidence, however, the court must bear in mind the aforesaid tests while deciding a case involving the commission of a serious offence in a gruesome manner. Even it has to be born in mind that in the circumstances from which the conclusion of guilt is to be drawn shall be fully established and such facts would be consistent and should be of conclusive nature and tendency and they shall exclude every possible hypothesis except the one to be proved and must show that in all human probability the act must have been done by the accused.

27] So far as the present case is concern, the circumstances alleged against the accused are : i] that, on 29.04.2010 the accused had been to the house of complainant and victim and had demanded sexual favour from the complainant, ii] that the complainant then left

the house and went to the house of her friend Sunita Pal but still the accused stayed there in the house and that time the victim girl also was there in the house, iii] that after sometime the accused asked the victim girl and then the son of the complainant Rupesh to call the complainant from the house of Sunita Pal, iv] that the complainant alongwith her friend Sunita Pal had been to the house of complainant and noticed that the door was latched from inside and they knocked the door, but initially it was not opened but later on it was opened and the accused came out of the house, v] that the complainant accosted and tried to catch him, but he pushed her and ran away, vi] that immediately after they went inside the house they noticed the girl lying in unconscious condition with the mobile charge wire around her neck and injury to her private part and blood oozing from her private part, vii] that the chappal of the accused was found lying out side the door of the house of complainant where the incident took place, viii] that the accused ran away from the spot and directly went to Solapur and he was caught in the night at Solapur railway station by Sadarbajar police, Solapur, ix] that while in police custody the accused made a statement that he had kept his pant stained with blood and his shirt and baniyan in his residential house and he would discover it and in

accordance with his statement he discovered the said clothes which were having blood stains and x] that the clothes of the deceased as well as the accused were sent for chemical examination and that D.N.A. profile of blood of deceased Ritu matched with the D.N.A. profile of the blood found on the sandow bbaniyan of the accused and the D.N.A. profile of the blood sample of the accused did not match the blood found on the baniyan of the accused and the clothes of the deceased,etc. and according to the prosecution, the said circumstances go to establish that the accused and nobody else than the accused had committed rape on the victim and murdered her on the given day, date, time and place.

28] Then is is required to be seen as to whether such circumstances alleged against the accused are established by the prosecution by cogent and reliable evidence and that such circumstances go to establish the allegations against the accused beyond all the reasonable doubt and leave no scope for doubt that the accused and nobody else than the accused on the given day, date, time and place confined the victim in the house of complainant and had committed said act of rape and murder of the victim.

29] In that respect the testimony of the complainant if perused, she appear to have stated that, the deceased Ritu was her daughter and that on 29.04.2010 the accused had been to her house at about 09.30 a.m. and had asked her for sexual relations, but she refused and she had expelled the accused from her house and went to take bath. But then the accused started knocking the door and after taking bath she came out and opened the door and that time the accused told her that he was suffering from headache and want to sleep over there, but she told him to go to his house. However, he had picked up a pillow and started sleeping in her house. She also stated that, at that time she received a phone call of Sunita Pal her friend and she went to her house and that, at that time her daughter Ritu the deceased girl and her other children Gauri and son Rupesh were at home and accused also was at her home. She also further stated that, after sometime her son Rupesh came there and at about 10.45 a.m. her daughter Ritu came there and told that accused is calling her. But she told her to communicate the accused that she has gone somewhere and then Ritu went home. Thereafter after some time she also went home alongwith her friend Sunita Pal. She also further stated that, at that time her daughter Gauri was playing outside the house and door of the house was bolted from

inside. They knocked the door and thereafter kicked the door, but the door did not open and after ten minutes the accused opened the door and hurriedly started running away and she had seen her daughter Ritu lying on the floor. Thereupon she tried to catch hold of the accused but he pushed her and ran away from that place. She also stated that she had seen mobile charger wire around the neck of her daughter and her nicker stained with blood and also blood was there on the floor and even she herself and Suman took her daughter to the hospital. She also specified that the daughter was unconscious and doctor told her to take her to I.G.M.Hospital and that she took her to I.G.M. Hospital, but there doctor declared her dead. She further stated that police had recorded her statement as per Exh.11.

30] Then a careful perusal of her complaint reveal that, so far as the material fact that on that day in the morning the accused had been to her house and had slept there and that time the deceased girl and other children were there in the house and she had been to the house of Sunita Pal and that her daughter Ritu came to call her and she sent her back and further that afterwards when she and Sunita Pal had been there, the house was latched from inside and that they knocked it, but initially it was not

opened and after it was opened the accused came out of the house and ran away, etc., has been categorically stated, is in full corroboration to her version before the Court.

31] Even a careful perusal of cross examination of the complainant on behalf of the accused reveal that, so far as the said facts stated by her, nothing contrary contrary to her version appear to have brought on record and except suggestion that, the accused did not come at her house at that time and she is deposing falsely that accused was asking for sexual favour, etc. and that he took rest at her house and when she come back she found her room was bolted from inside and accused was inside and they tried to catch the accused and that he had left his chappal at her house, etc., nothing appear to have been elicited from the witness so as to create doubt in the mind about her version. Even the suggestion put to the witness that the accused was not present in Bhiwandi at that time is also denied by the witness and except such suggestion which she denied, absolutely nothing is brought on record to substantiate such defence put forth by the accused.

32] Even so far as the arguments advanced on behalf of the accused that there are lot of improvements made by

the witness in her evidence in regard to alleged reason for the accused to come to her house, to the effect that he had demanded physical relations from her and she refused, etc. and it was pointed out that the complaint lodged by the complainant immediately after the incident is silent on that point and such facts appear to have been stated in the supplementary statement only to attribute motive to the act, etc. is concern, it has to be mentioned that, no doubt in her complaint, no such allegations appear to have been there that the accused used to demand physical relations from her and on that day also he had been there with that demand, etc.

33] But then as rightly argued on behalf of the prosecution, the incident appear to have taken place all of a sudden in which the daughter of the complainant stated to have been raped and murdered. Though even specified by the complainant in the complaint that it was the accused who was there in the house at the time when the incident took place and the complainant herself had noticed the accused coming out of the house, then it is also clear from the testimony of the complainant and her cross examination that the accused was of well acquaintance with the complainant and the daughter of the complainant and even

her other children used to call the accused as Mama (maternal uncle), the accused was frequently visiting the house of the complainant and in the light of that it is obvious that after happening of such dreadful incident in regard to the daughter aged about 12 years, not mentioning about her relations with the accused or the alleged demand of physical relations by the accused with her, who is also a married person, by her in the complaint immediately lodged o the same day of the incident, cannot be said to be fatal lacuna or infirmity and nothing is abnormal and no fault can be found if such facts are stated by the complainant in her subsequent supplementary statement. Even it is not the case that the complainant had disclosed such facts for the first time in Court, but as is clear during the investigation only in her supplementary statement such facts appeared to have been stated by the complainant and therefore, that cannot be termed as an after thought version only with a view to alleged motive to the accused. Therefore, such submissions on behalf of the accused that such version of the complainant is after thought and made only to allege motive to the accused cannot be said to be sustainable.

34] Even so far as such allegations made by the complainant in her supplementary statement and her

evidence, as is clear the complainant appear to have been cross examined at length on behalf of the accused. But a careful perusal of her cross examination in that respect reveal that, her testimony was not shattered or shakened in any manner. Not only that it is brought on record in her cross examination that, even her husband was having good relations with the accused and the complainant had not disclosed about such demand of sexual relations with the complainant by the accused 2-3 times, to her husband. But even that cannot be said to be the reason for disbelieving her version in that regard. That is because there is nothing abnormal and unnatural if a woman do not disclose about such behaviour or gesture of a third person to her husband unless and until that takes a serious modes and when such facts are stated by her in her supplementary statement and even in her evidence on oath before the Court, there is no reason to disbelieve her. Even it is not expected or believable and acceptable that any woman would make such false statement at the risk of her defamation that too for no apparent reason. Even no enmity is suggested or alleged between the accused and the complainant for which she can be said to make such false allegation against him. In such circumstances her such contentions are to beheld as believable and true narration of facts.

35] Then even keeping apart that and assuming for a while that her such version being after thought one, cannot be taken into consideration, that itself do not make her other testimony unreliable and untrustworthy and it is required to be seen as to whether her such version in regard to the facts that the accused came to her house on that day and had stayed there even after she went out and after she returned back she she noticed accused in the house alongwith deceased alone, etc. is reliable and trustworthy and believable and worth consideration.

36] In that regard it is further material to mention that, her version is fully corroborated by the testimony of PW2 Sunita Pal who also stated to be with her at the relevant time and also by another witness PW3 Rupesh Kesari who was also with them at that time.

37] Before discussing their evidence it is necessary to mention that, so far as the identity of the accused and his identification by the witnesses is concern, as discussed above the accused has been of well acquaintance of the witnesses since he was staying there in the same area and it is brought in cross examination of the witness Rupesh Kesari PW3 that he was even calling him Mama (maternal uncle)

and witness Sunita Pal PW2 also was knowing him very well. Therefore, there is no dispute about the identification of the accused by the said witnesses. Therefore, their evidence is required to be scrutinized only in regard to the presence of the accused in the house of the complainant at the relevant time. In that regard PW2 Sunita Pal categorically stated that on 29.04.2010 at about 11.00 a.m. she had called complainant Priti Subhash Kesari to her house and accordingly she had been to her house and when they were talking with each other, witness Rupesh PW3 had come to her house and told that accused is calling her at her home. The said version again is in full corroboration to the version of complainant. She further stated that after half an hour she herself and Priti went to the house of complainant and saw that the door of the house was closed from inside and Rupesh and Gauri were playing outside and they tried to open the door,but the door could not be opened. They had then knocked the door, but the door was not opened and after 10 to 15 minutes the accused opened the door and the accused and Ritu the deceased girl were inside the room. She also stated that Ritu was lying on the floor and blood was oozing from her private part and also that the complainant PW1 Priti Kesari had tried to catch the accused, but he pushed her and ran away.

38] It is very much material to mention that her such version is in full corroboration to the version of the complainant in all material particulars and a careful perusal of her cross examination on behalf of the accused reveal that, nothing contrary to her version is brought on record and only suggestion was put that she had not been to the house of PW1 Priti Kesari on the given day, date, time and place alongwith Rupesh and did not notice the door closed from inside, etc., which she denied and nothing is elicited from her mouth so as to create doubt about her version in that respect.

39] Much was argued on behalf of the accused that there is contradictions between her testimony before the Court and statement before police in regard to the fact that Rupesh told Priti Kesari PW1 that accused was calling her or omissions about the fact that blood was oozing from the private part of the deceased girl. But then as is clear the said improvement, omission or contradiction do not appear to have proved and the witness was not given an opportunity to state as to whether the said fact was stated by her in her statement to police and no opportunity to explain reasons for such omission in her statement appear to have been given. Even it is material to mention that, the reference that

Rupesh PW3 had been to her house for calling PW1 Priti Kesari and also further reference that the accused was there in their house is also there in the statement and unless that portion is contradicted and confronted with the statement of witness before the Court, the improvement cannot be said to have been established and therefore, such submissions on behalf of the accused that since there is omission in the statement and improvement in her version before the Court, her testimony is not believable, etc. cannot be said to be sustainable.

40] In any case the main purport of the manner is that, on the given day, date and time the complainant had been to her house and that they had been to the house of complainant, the house was latched from inside and it was opened by the accused after 10 to 15 minutes and that the deceased was lying in the house and the accused ran away by pushing the complainant, etc., have been categorically stated by the witness and that is in full corroboration to the version of the complainant and nothing is brought on record in her cross examination which would make her testimony unreliable or untrustworthy.

41] Similarly the version of the complainant is

further corroborated by witness PW3 Rupesh Kesari in all material particulars. Even this witness has categorically stated that, on the day of incident at about 10.00 a.m. the accused came to their house. In all fairness he accepted that he cannot be able to state as to why he had come to their house. Even looking to the age of the witness who stated to be 13 years old, it is not expected that he would be knowing the purpose that has been stated by the complainant in her evidence. He also further stated that, the accused was sitting on the cot and when his mother told him to go out since she wanted to take bath, he came out, but was standing there itself. He also further stated that, then his mother went to the house of Rahul's mother and then Ritu went to call his mother since accused asked her to call his mother and his mother sent Ritu back. Then accused told him to call his mother and he went to call his mother and his mother asked him to tell the accused that she had gone to market and then they started playing outside the house and he specified that, afterwards when they both went to the house the house was closed from inside. He also stated that, then they started playing and afterwards his mother and mother of Rahul came there and saw the door of the house closed and they knocked the door, but it could not be opened and then they kicked the door and then accused

opened the door and accused started running from that place and his mother caught hold of his baniyan, but he gave jerk to his mother and ran away. He also stated that, his sister Ritu was lying on the floor inside the house and mobile charger wire was around her neck and there was blood on the floor. Even it is brought on record that, PW2 Sunita Pal is the mother of his friend Rahul.

42] It is very much clear from such testimony of the witness that, he has corroborated testimony of the complainant in all material particulars. Even his presence at the spot at the relevant time was natural and therefore, his testimony inspires confidence in the mind about the truthfulness and trustworthiness. A careful perusal of his cross examination also reveal that, it has not been shattered or shakened in any manner and he categorically denied the suggestion that, he has been deposing falsely at the instance of his mother. He also denied the suggestion that, before his evidence he was tutored by his mother and deposing as per the instructions by his mother. It is material to mention that, except some suggestions which have been denied by this witness that he is deposing false facts, nothing contrary to his version is brought on record.

43] Not only that it is very much material to mention that, in his cross examination it is further brought on record that his mother shouted only once to open door. He also specified in his cross examination that, nobody from his neighbor had gathered when the door was not opened and that is also in full corroboration to the version of the complainant in that regard. He also stated that he had called his father by making a phone. It is a natural conduct of a 13 years boy that after noticing such incident when his mother took deceased to hospital, he would call his father and his such conduct cannot be said to be abnormal or unnatural. Though he was not able to state the mobile number of his father, the fact cannot be overlooked that the witness was deposing after a gap of two years after the incident and looking to the age of the witness it is but natural that he would not recollect the phone number. Even his further version that when his mother and sister Ritu had been to hospital, he himself and father stayed at home, also appear to be a natural conduct of a father that after happening of such a disastrous incident in their house, the father might have felt that, the son should not be taken to hospital immediately or he should be with him.

44] Much was argued on behalf of the accused on the

point that, there are contradictions and variances between the testimonies of PW1 to PW3 in regard to chronology of the events and as per the version of the complainant, first witness Rupesh had been to call her and then Ritu went there, while as per the version of Priti PW1 only Rupesh went there and she stated nothing about the deceased Ritu coming there and as per the version of PW3 Rupesh, Ritu went first to call her mother as per the direction of accused and later on he went and on that basis it was tried to argue that the witnesses are not reliable and trustworthy.

45] No doubt such variance in regard to the said facts appear to be there between the testimonies of the witness and even there are little omission and contradiction between the testimony of the witness interse and between their statements recorded by police and their evidence before the Court. However, so far as contradictions and omissions are concerned, it has to be mentioned that, some variance or contradictions, omissions are bound to be there in the testimony of the witnesses when the witnesses are deposing after a long period and it is not expected that, the witnesses shall depose verbatim to their statements or all the witnesses shall depose in same manner and same wordings or chronological order of events and it is always

the main purport of the matter which is required to be seen and minor contradictions and omissions cannot be given much importance. On the contrary if such contradictions and omissions are not there, that indicates that the witnesses are tutored one while such contradictions and omissions lend assurance to the aspect that the witnesses are deposing as per their memory and experience and about the facts actually taken place and are not tutored one. Even it is well settled that the contradictions, omissions which are not in respect of the main purport of the matter cannot be said to be fatal to the prosecution case and no much weightage can be given to that while appreciating the evidence and credibility and reliability of the witnesses cannot be decided only on the basis of such minor contradictions or omissions. Therefore, the arguments advanced on behalf of the accused that because of such contradictions and omissions, the testimonies of the witnesses become unreliable or untrustworthy is not acceptable, and it is required to be seen as to whether the omissions and contradictions in the testimony of the witness are in respect of material facts.

46] In the light of above it is required to be seen as to whether the variance of contradictions between the

testimonies of the witnesses are in regard to the material facts and that had affected the credibility and reliability of the witnesses. In that regard if the testimony of witnesses is considered it cannot be said that omission and contradiction are in regard to material facts. The material fact in my view is that, the accused was present in the house of complainant and the witness Rupesh and deceased Ritu were sent by the accused to call the complainant and accordingly they had been there and were sent back by the complainant. Whether the deceased went first or the witness Rupesh went first, cannot be of much importance and at least that cannot be said to be of that much importance which would make testimonies of the witnesses unreliable. The main purport of the matter appear to have been stated by the witnesses and merely because the witness PW2 Sunita Pal omitted to state that the deceased girl had been there to call the complainant, her other version cannot be disbelieved or held to be unworthy of credence or even the testimonies of other witnesses also cannot be stated to be shattered or shakened for that reason. Therefore, the material fact about presence of the accused in the house of the complainant on the given day, date and time as has been stated by the witnesses appear to be believable and inspire confidence in the mind and there is no reason to disbelieve them.

47] Even the testimony of the witnesses PW1 to PW3 about the presence of the accused in the house of the complainant PW1 Priti Kesari on the given day, date, time and place and about the further fact that the accused left the house after the incident and ran away leaving his chappal lying there further gets support from the panchanama of the spot wherein it is mentioned that, outside the house of the complainant i.e. the spot of incident two chappals were lying.

48] The panch witness in his evidence categorically stated that on the day of incident he was called on the spot and he had seen pair of black chappal on oata of the house and he described the situation of the spot and also the other articles found at the spot and stated that Exh.16 is the panchanama which was prepared in his presence and he also identify the chappal to be the same found at the spot. Even the contents of the panchanama Exh.16 if perused carefully it reveal that the fact that the chappals were found lying outside the house has been mentioned specifically therein and the chappals were seized under panchanama.

49] It is very much material to mention that, article No.1 are the chappals and the PW1 complainant Priti Kesari

in her evidence categorically stated that, the article No.1 pair of chappal are the same belonging to the accused and found outside the house and a careful perusal of the cross examination of this witness reveal that, her said version do not appear to have been disputed or denied. As such the fact that the chappals of the accused were lying at the spot is in further corroboration to the prosecution case that the accused had ran away leaving his chappals there at the spot.

50] It is further material to mention that, as per the prosecution case, immediately after the incident the deceased was taken to doctor and then to I.G.M. Hospital, where she was declared dead and the clothes on the person of deceased were seized under panchanama and were sent for examination to Chemical Analyzer. It is further material to mention that, as per the prosecution case the accused had ran away form the spot and kept his clothes which were on his person at the time of incident, in his house and left his house and directly went to Solapur and he was caught by police at Solapur and was arrested in the present crime after he was brought from Solapur.

51] In that respect the prosecution appear to have examined the police official PW11 Head Constable Sarode

who stated that on 29.04.2010 he was on night duty at station police chowky of Sadarbajar police station, Solapur. He alongwith PC Rakesh Patil had been to Solapur railway station and the accused came out from railway station at about 11.30 p.m. and the witness Suman Hatkar and Santosh Kale pointed out towards him and they took him in custody and brought him to police station and on inquiry he told his name as Raju Shantaram Koli. He also stated that, he intimated about the arrest of accused to Bhiwandi police station and police from Bhiwandi police station had been to Solapur and then he handed over the custody of the accused said Rajesh Koli to Bhiwandi police station. He also stated that, he had given application to P.I., police station intimating about the arrest of the accused as per Exh.55.

52] A careful perusal of Exh.55, a carbon copy of report reveal that, the said report is submitted by the concern witness to Sadarbajar police station as per station diary entry No.120/2010 at Sr.No.6 on 30.04.2010 at 01.30 p.m. and as per the said report the accused was caught on that day. As is clear, his version that the accused was caught at railway station, Solapur on that day is also corroborated by the testimony of PW12 A.P.I. Komane who stated that, on 30.04.2010 he was crime detection officer and the Cr.No.I-

126/2010 i.e. present crime was registered at police station and the name of the accused revealed in the investigation to be Raju Shantaram Koli and they were searching for him and during inquiry it revealed that, he had left for Solapur by train leaving in the afternoon from Kalyan railway station and such information was received from the relative of the accused from Solapur. As per his version he informed Sadarbajar police station on phone that the accused in the said crime is likely to come to Solapur by train and then he was in touch with Sadarbajar police. It was stated by him that in the night Sadarbajar police intimated him that the accused Raju Koli is arrested by their police station and therefore, he went to Solapur and took accused in his custody. He also stated that, he had given the report for handing over the custody of the accused as per Exh.58. Then from the perusal of Exh.58 it reveal that, the aid report is given by A.P.I., Komane for receiving the custody of the accused and it was received by Sadarbajar police on 30.04.2010 at 10.30 a.m.

53] So far as the submissions on behalf of the accused that, the very fact that the accused was caught at Solapur cannot be said to have been established and so far as the submissions that the testimony of the witnesses is

contrary to the documents proved by them as per Exh.57 and 58 reports is concern, no doubt as per the version of witness PW11 Head Constable Sarode the relatives of the accused had been to the police chowky and gave intimation about the incident and about the accused coming to Solapur, etc. and according to that intimation they had been to railway station and caught the accused since the witnesses identified him, while as per report Exh.55, it appears to be a report that the accused was caught on suspicion when the concern police officials were on patrolling duty at the railway station and as such there appear variance between his oral testimony and the report submitted by him.

54] But that cannot be given much importance that is because the fact that the accused was at railway station at the relevant time is clear from the said report. Even as per the version of PW12 A.P.I., Komane also the information about the fact that the accused would be travelling to Solapur was given to them by the relatives of the accused staying in Solapur, which is also in support of the version of PW11 HC Sarode in his evidence that the relatives of the accused had been to police station, etc. and therefore, also merely because in the report it is mentioned that the

accused was caught on suspicion, his version that the accused was caught at that particular point of time cannot be disbelieved.

55] One more aspect of the matter in regard to the arrest of the accused at Solapur on the given date is concern is that, when such incriminating facts stated by the witnesses were put to the accused when his statement was recorded u/s.313 of the Code of Criminal Procedure, the accused appear to have accepted the fact that he was arrested on railway station, Solapur on that day. The only case put forth by the accused in that regard is that, he had been to Solapur on that day and left his house in the morning. In his detail submissions in the statement recorded u /s. 313 of the Code of Criminal Procedure, he appear to have stated that, he do not know anything about the incident, he had been caught from Solapur railway station on that day by police, he left Kalyan station at 10.30 by Siddheshwar Express and reached to Solapur at 07.45 to 08.00 p.m. and that he had been to Solapur since his wife was operated at Afjalpur in Government hospital prior to two days of the incident and he had received a phone call on 28.04.2010 about that and he left on next day on 29.04.2010 and that without any evidence he had been

falsely implicated in this matter and that he had not committed any offence.

56] But then it is very much material to mention that, as discussed above the presence of the accused at the time of incident between 10.30 a.m. to 12.00 noon at the spot of incident at the house of complainant, is stated by the witnesses and their testimony is found to be reliable, trustworthy and inspire confidence in the mind. In such circumstances when the accused has come up with the specific defence that he was not present in Bhiwandi at the relevant time, had already left for Solapur and he has put forth the defence of alibi and not only that, when he has further come up with the same specific defence that he left Kalyan station by train, boarded a train there and reached Solapur at a particular time, all such facts are very well with the personal knowledge of the accused and the accused also must be having proof in that regard. But inspite of that except his statement u/s.313 of Code of Criminal Procedure, he do not appear to have brought any material on record to substantiate his defence in that regard and even has not brought any material on record to establish the probability of the said fact and therefore, on one hand the variance between the oral version of the witness PW11 HC Sarode

and written report Exh.55 about the circumstances in which he was caught at Solapur railway station cannot be given much importance and on the other hand it has to be mentioned in that regard that the responsibility to establish preponderance of probability of the defence of the accused is there on the accused and he has not discharged that.

57] The submissions on behalf of the accused that, the statement u/s.313 of the Code of Criminal Procedure cannot be used against the accused and it is required for the prosecution to establish the allegations against the accused beyond all reasonable doubt. No doubt it is the basic principal that the prosecution is required to establish all the allegations against the accused on its own and cannot rely upon the fact that the accused has not proved his defence. But then as discussed above the accused appear to have come up with the defence of alibi. Then at the cost of repetition it can be stated that the presence of the accused at the spot at the time of incident has been stated by the witnesses and established. In such circumstances absence of any material brought on record by the accused to establish his defence even on preponderance of probabilities is of much significance and importance. In the light of that, the fact that the accused in his statement recorded u/s.313 of

the Code of Criminal Procedure accepted the position that he was caught at Solapur railway station has to be take into consideration which is in corroboration to the evidence of the witnesses and can be used as an aid to and in support of the evidence of the prosecution witnesses and when accused failed to bring any material on record it show that, he had left Kalyan by railway in the morning and even he failed to show such probability or possibility, it has to be held that, the testimonies of prosecution witnesses that the accused was caught at Solapur railway station in the night and then he was taken in custody by the investigating officer in the crime is truthful and believable and sufficient to establish the said fact.

58] It is further material to mention that, as per the prosecution case the accused while in police custody made a statement that he had kept his clothes on his person at the time of incident, in his house and he would discover it and according to his statement he discovered his clothes which were found to have blood stains and the said clothes alongwith the clothes on the person of the victim were sent for examination to chemical analyzer and its report show that the blood on the clothes of the accused was having same blood group which was there on the clothes of the

deceased. In that respect the testimony of PW8 Ramakant Mhatre the panch witness and PW9 P.I., Babar the investigating officer appear to be material.

59] PW8 Ramakant Mhatre, the panch witness, in his evidence stated that, on 02.05.2010 the accused made a statement in his presence that he had kept his clothes which were on his person at the time of incident, in his house and he would discover it and his statement was recorded by police as per his narration as per Exh.34. He also stated that in accordance with his statement the accused had taken them to his house in Mhatre Chawl, Bhadwad, he took out a key kept above the door frame and opened the door and entered the house and discovered his shirt, pant and baniyan kept in a plastic bag. It was also stated that the full pant and baniyan were having blood stains on it and police seized the same under panchanama Exh.35.

60] His version in that respect is fully corroborated by the testimony of PW9 P.I., Babar the investigating officer who also stated that, the accused made such statement and discovered the clothes in accordance with the statement in the presence of panchas and pant and baniyan were having blood stains on it. A careful perusal of evidence of both

these witnesses in regard to the said fact reveal that, their testimonies have not been shattered or shakened in their cross examinations. Then even PW8 Ramakant Mhatre the panch witness, being independent witness, there is no reason for him to depose falsely against the accused and the contents of memorandum statement Exh.34 and panchanama Exh.35 are fully in support of the prosecution case that, accused made such statement and discovered the same and that fact has to be held as proved.

61] As is clear section 27 of the Indian Evidence Act is an exception to the rule that statement made before the police is not admissible and it is provided that when any fact is deposed to and discovered in consequence of information received from a person accused of any offence, while in the custody of a police officer, so much of such information as relates distinctly to fact thereby discovered, may be proved against the accused and is admissible in evidence. In the light of that if the statement Exh.34 and discovery panchanama Exh.35 is perused it is clear that, the fact is stated by the accused in his statement Exh.34 that he had kept his clothes on his person in his house and he would show it and then as per his statement he had taken panchas and police to his house and discovered his clothes

from his house as stated and the clothes were found to be having blood stains on the pant and baniyan. It is clear that the fact that said clothes of accused were in his house at a particular place was strictly within the knowledge of the accused and nobody else and they were found at the place stated by the accused, such statement of the accused in Exh.34 that the said clothes are his clothes has to be held as proved and when they were found to be having blood stains it is strong incriminating circumstance against the accused and in favour of the prosecution case.

62] Then as is clear, as per the version of PW9 P.I., Babar the investigating officer the clothes of the accused seized under panchanama Exh.35 and his blood samples and also the clothes on the person of the deceased and her sample of blood and vaginal swab,etc. were sent to chemical analyzer alongwith letter for D.N.A. test vide Exh.41 and 42 and he received D.N.A. report which is on record at Exh.24. There is no reason to doubt such version of the investigating officer and even a careful perusal of his cross examination on behalf of the accused reveal that such fact stated by the witnesses has not been disputed, denied or challenged and therefore, it is clear that Exh.24 is D.N.A. report in regard to the clothes and blood stains of the deceased and accused.

63] Then from the perusal of the D.N.A. report Exh.24 it is clear that, it is opined that,

1) The DNA profile of Ex.3 blood stained filter paper of Ritu Subhash Kesari and blood detected on Ex.6 skirt of deceased Kum.Ritu Subhash Kesari and Ex.7 full pant, Ex.9 sandow baniyan of accused Raju Shantaram Koli is identical & from one and same source of female origin. DNA profiles match with the maternal and paternal alleles in the source of blood.

2) The DNA profile of Ex.3 blood stained filter paper of Ritu Subhash Kesari, blood detected on Ex.6 skirt of deceased Kum.Ritu Subhash Kesari and Ex.7 full pant, Ex.9 sandow baniyan of accused Raju Shantaram Koli and blood sample of Raju Shantaram Koli of F.S.L.M.L. Case No.DNA 182/2010 is not identical & not from one and same source. DNA profiles did not match with the maternal and paternal alleles in the source of blood.

64] From such opinion of chemical analyzer it is very much clear that, the blood found on the clothes of the accused discovered by him in accordance with the statement was matching with the blood of the accused and blood stains found on the clothes of the deceased. Even there is no scope for any doubt that the clothes of the accused were having blood stains of his own blood, because the D.N.A. report makes it further clear that the blood samples of the accused did not match with the blood found on the clothes of the deceased or the clothes of the accused. That makes it

very clear that the only because the accused was there present at the spot and came in contact with the blood of the deceased, the clothes of the accused were having blood stains of the blood of the deceased. Then it is clear that the blood on the body of the deceased was oozing from the private part and the location of the blood stains on the pant of the accused make it clear that the private part of the accused came in contact with the blood found on private part of the accused.

65] It is material to mention that, though it is contended on behalf of the accused that, the accused is falsely implicated in the crime, it is brought on record in the cross examination of the witnesses PW1, PW2 and PW3 that the relations between the accused and the complainant and her husband and even with the children of the complainant were very cordial. It is further clear that the accused was on visiting terms to the house of the complainant and the children were even calling the accused Mama (maternal uncle) and absolutely no reason is put forth on behalf of the accused as to why the accused would be implicated by the complainant or the witnesses falsely in the heinous crime like rape with murder.

66] It would not be out of place to mention here that, the circumstances brought on record that on the day of incident the accused had been to the house of complainant and though the victim deceased girl and her other children were present in the house, the complainant had left the house in all confidence and faith with the accused when her friend called her and it is clear that the accused even stated that he went to sleep in the house and then he slept in the house and still the complainant left the house leaving her children with the accused. Then even it is further brought on record, the children even went to call the complainant with the message of the accused that he had called the complainant and though initially the complainant did not pay any heed to it, later on she decided to return back and therefore, she returned back after sometime, but by the time it is clear that the incident had taken place.

67] All those circumstances make it very clear that the complainant or children did not have even a single bit of doubt against the accused. Even there is nothing put forth on behalf of the accused to show that the complainant had any enmity against the accused for which she would implicate him falsely. Then from the chronology of the event and the manner in which all the events took place, it is clear

that the complainant did not have doubt in respect of the intention of the accused in regard to the minor girl and that appears to be the reason why she left the house. But it appears that, the accused had sent one after the other messages to call her back. Then it is clear that, at first instance the complainant did not respond and sent the daughter back and then the accused appear to have sent Rupesh the son leaving the deceased alone in the house and in the light of that the absence of any enmity between the parties or the motive for the witnesses including the complainant and the police officials to depose against him, the probability or possibility of the false implication of the accused by the complainant do not appear to be there. Even as is clear the witnesses have stated facts seen and noticed by them and have not exaggerated the facts in any manner.

68] As such, as discussed above the testimonies of the prosecution witnesses Nos.1 to 3 corroborated each other in all material particulars on the point of presence of the accused. Even the other circumstantial evidence on record go to establish beyond all reasonable doubt the fact that the accused had been to the house of the complainant on that day and was there in the house and further that he had latched the door from inside and when the complainant

knocked the door, he took 10 to 15 minutes time to open the door and then when he opened the door, he did not stop there and ran away even leaving his chappal at the spot.

69] In view of all the above discussion, all the incriminating circumstances alleged against the accused i.e. on the day of incident the accused had been to the house of complainant and demanded sexual favour from her, complainant then left the house still accused stayed there and victim girl also was there, then the son of the complainant Rupesh went to the house Sunita Pal to call complainant on the say of accused, then complainant alongwith her friend Sunita Pal had been to her house and noticed that door was latched from inside, they knocked the door, but initially it was not opened and later on it was opened and the accused came out, the complainant and witness tried to catch him, but he pushed them and ran away, then they went inside and noticed the girl lying in unconscious condition with the mobile charger wire around her neck and injury to her private part and blood oozing from her private part, the chappal of the accused was found lying out side the door of the house of complainant, the accused ran away from the spot and went to Solapur and was caught in the night at Solapur railway station by

Sadarbajar police and while in police custody accused made statement that he had kept his pant stained with blood and his shirt and baniyan in his house and he would discover it and in accordance with his statement he discovered the said clothes and that the clothes of the deceased and accused were sent for chemical examination and that D.N.A. profile of blood of deceased Ritu matched with the blood found on the sandow baniyan of the accused and the D.N.A. profile of the blood sample of the accused did not match the blood found on the baniyan of the accused and the clothes of the deceased, etc. have to be held as proved.

70] Then it is required to be seen as to whether the said incriminating circumstances proved against the accused are sufficient to conclude that the accused had raped the deceased and caused her death by throttling her neck with charger wire. In that respect it has to be mentioned that, from the circumstances proved against the accused it is clear that, it was the accused and none other than the accused who was in the house of the complainant at the relevant time. It is also clear that, when the accused opened the door of the house, only the deceased and the accused were present in the house and immediately after the accused opened the rood, he ran away and that time the deceased

was found lying in the house and it is clear that the wire of charger was around the neck of the deceased and even blood was oozing from her private part. In such circumstances the only irresistible conclusion which can be arrived is that, it was the accused who had caused such injuries to the deceased. Even from the testimony of the Medical Officer PW10 Dr.Gajanan Chavan it is clear that the injuries sustained by the deceased to her private part were indicating that she was subjected to recent forceful sexual intercourse and he also specified that perennial tear to genital part lead to excessive bleeding and that had added to the cause of death. It is also clear from his version that, the kind of ligature mark injuries on the dead body are possible by the material like rope and wire and he also clarified that the said injuries are possible by charger wire like article No.7 shown to him. It is also material to mention that, the deceased was also found to be having suffered abrasion injuries which as per the Medical Officer are possible by friction to hard and rough surface and injury No.3 is possible by impact with hard and blunt object, which are obviously possible during the forceful sexual intercourse or while throttling the neck of the deceased by a charger wire. Even on one hand PW10 Dr.Gajanan Chavan categorically denied the suggestion that such hymen rupture

or injury of the nature sustained by the deceased are possible by cycling or swimming or any other activity and clarified that they are not possible by any other activity except forceful sexual intercourse and on the other hand nothing is brought on record on behalf of the accused to show that, the deceased victim had indulged in any such activity immediately before the incident so as to sustain such injuries and rule out the possibility of forceful sexual intercourse.

71] One more aspect of the matter is that, as per the prosecution case the incident took place between 10.30 a.m. to 11.30 a.m. on 29.04.2010 and postmortem examination was conducted between 10.15 p.m. to 11.45 p.m. on 29.04.2010, on the same day. In the light of that if the testimony of Medical Officer in regard to the approximate time of death if taken into consideration he appear to have stated that, on the basis of rigor mortise existing on the dead body, the probable time of death as 12 to 24 hours before postmortem and looking the condition of the stomach contents the death might have been caused after two to four hours of last meal, that is in full corroboration of the prosecution case about the timing of incident when the accused and the deceased were together in one room.

72] In view of all the above discussion it has to be concluded that it is the accused who had entered the house of the complainant. It has to be concluded that, an unbroken chain of events established by the prosecution lead to the only conclusion that, on the given day, date, time and place the accused had been to the house of complainant and after the complainant left he had sent the deceased to call her but she did not pay heed, then he sent the son of the complainant to call her, but since still the complainant did not come, the accused latched the door from inside and raped the deceased girl which caused her injuries to her genital and excessive bleeding and then he throttled the deceased by charger wire and caused her death. It is also clear that, such an act of the accused was only with an intention to cause death of the deceased and in all probabilities it appear that, such murder was committed by the accused, when the complainant and the witnesses had knocked the door and were trying to open the door.

73] Much was argued on behalf of the accused that, from the chronology of the events it is clear that, at the time when the accused entered the house of the complainant he might not be having any intention to commit rape on the victim or murder her. No doubt it is not the case that, the

accused entered the house of the complainant with intention to rape or murder the victim. But it is also to be mentioned that, it is very much clear that when the complainant did not return back, he appear to have raped the victim and killed her by strangulating by charger wire and therefore, it has to be concluded that he has caused such injuries to the deceased only with intention to kill her. Then even keeping apart that, when he committed forceful intercourse with a girl aged about 12 years and throttled her by charger wire, at least, knowledge that, his such an act is likely to cause death or serious injury which is likely to cause death, has to be attributed to the accused and there is no scope for any doubt, much less reasonable doubt in that regard. Even it is clear that, the accused had confined the victim at one place i.e. house of the complainant and in the light of the fact that the door of the house was latched from inside, his intention not to allow her to move from that house is also clear. In view of all the above discussion it has to be concluded that the prosecution has established beyond all the reasonable doubt that the accused had committed rape on the victim and murdered her and also wrongfully confined her in the house of the complainant on the given day, date, time and place.

74] It is also to be mentioned that, as per the version of the complainant the deceased girl was 12 years old at the time of incident. No doubt that fact is stated by the complainant and even mentioned in the panchanama of the dead body as well as postmortem examination notes and that fact do not appear to have been disputed or denied by the accused. Even in the light of the fact that the accused was of well acquaintance of the deceased, it is obvious that he is very well aware of the age of the victim and in such circumstances when that fact is not disputed or denied by the accused, it has to be concluded that the prosecution has proved that the deceased girl was minor below 16 years of age at the time of incident.

75] But then for establishing the offence punishable u/s.376(2)(f) of the Indian Penal Code the girl has to be proved to be below 12 years of age and witnesses appear to have stated the age of the girl only by approximation and though the school leaving certificate is produced on record, it is not proved by the prosecution by cogent and reliable evidence and therefore, it cannot be said the prosecution proved that the girl was below 12 years of age and therefore, the offence punishable u/s.376(2)(f) cannot be said to have been proved. But it has to be concluded that, it

is established that the girl was minor below 16 years of age and the accused raped and murdered her. Then since the accused is proved to have forceful sexual intercourse with a minor girl of about 12 years old and murdered her by confining her in the house, the accused is liable to be convicted for the offences punishable u/s.376, 302 and 342 of the Indian Penal Code. I therefore, held the accused guilty and convict the accused for the offences punishable u/s.376, 302 and section 342 of the Indian Penal Code.

At this stage the dictation of the Judgment is postponed for hearing the accused on the point of sentence.

Thane. (Smt.V.V.Virkar)
Additional Sessions Judge,
Date : 27.09.2013. Thane.

76] It is informed to the accused that, the offences punishable u/s.376, 302 and 342 of the Indian Penal Code are proved against him and the offence u/s.376 of the Indian Penal Code is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine, the offence u/s.302 of the Indian Penal Code is punishable with death or imprisonment for life and shall also be liable to fine and the offence u/s.342 of the Indian Penal Code is punishable

with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both and he can submit on the point of sentence.

77] I heard the accused, the learned advocate for the accused and the learned A.P.P. on the point of sentence.

It is submitted by the learned A.P.P. that the offences proved against the accused are of very serious nature and the accused is proved to have committed heinous crime of rape on a minor girl and also committed her murder. It was submitted that he has committed the offence with cold blood without having any repentance over his act. It was argued that not only the accused committed the heinous offence of raping the minor girl, he even committed her murder and then ran away and therefore, from the nature of offence and manner in which it is committed, it is a rarest of the rare case in which the accused is liable to be awarded death sentence.

78] As against this it was submitted by the accused that it is his first offence and leniency be shown to him. It was also submitted on behalf of the accused by learned advocate representing him that, though the offence is

proved against the accused is of serious nature, from the circumstances proved against the accused, it is clear that the accused had not been there with the intention to commit rape or to cause murder of the deceased and as per the prosecution case only such incident had happened on the spur of moment. It was therefore, argued that, the case is not falling under the category of rarest of the rare case and even looking to the age of the accused and that he is having family consisting of his wife and children, this is not a rarest of rare case wherein the capital punishment is warranted. It was therefore, argued that, the accused be given chance to reform and he be shown leniency.

79] So far as the death sentence it is well settled and also observed in the ruling cited on behalf to the accused in case of ***Haresh Mohandas Rajput Vs. State of Maharashtra reported in 2011 (0) AIJEL-SC 50398,*** that

The guidelines in regard to awarding death sentence laid down in Bachan Singh Vs. State of Punjab, AIR 1980 C 898 may be culled out as under

i) *The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability,*
ii) *Before opting for the death penalty, the circumstances of the offender also required to be taken into consideration alongwith the circumstances of the crime.*

iii) *Life imprisonment is he rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*

iv) *A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.*

Even it is further observed that,

> *"Rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of th society. The crime may be heinous or brutal but may not be in the category of "rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur of the moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate*

punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulge in organized criminal activities, death sentence should be awarded."

80] Keeping in the mind about principles and guidelines in regard to awarding of death sentence it is required to be seen as to whether the case in hand falls under the category of rarest of the rare case warranting death sentence. In that regard as rightly argued on behalf of the accused from the circumstances proved against the accused, it is clear that it is not the case that the accused had been there in the house of the complainant either to rape the minor girl or commit her murder and it appears that the incident appear to have occurred in lust for sex and spur of moment and though the crime is heinous and of a brutal nature I am of the view that this cannot be said to be a rarest of the rare case, warranting death sentence.

81] Then so far as the quantum of sentence is concern so far as the offence of murder is concern, if the death sentence is not awarded the accused is liable to suffer

imprisonment for life. Then so far as other offences are concern it has to be mentioned that, it is well settled that it is the duty of the Court in every case to award proper sentence, having regard to the nature of the offence, the manner in which it is committed and to all mitigating circumstances. Even it is also well settled that in the matter of fixation of punishment for any particular crime, the Court should take into consideration the nature of offence, the circumstances in which it was committed and the degree of deliberation shown by the offender and also that the measure of punishment should be proportionate to the gravity of the offence and it is also the responsibility of the Court to see that the sentence should not be excessive and at the same time it should not be too lenient or liberal.

82] Taking into consideration the above settled principles in respect of grant of punishment the quantum of punishment for offences u/s.376 and 342 of the Indian Penal Code is required to be decided in the present case. Then as discussed above it is clear that the victim girl was minor aged about 12 years. She was well acquainted with the accused and even was calling him Mama (maternal uncle). Even the accused was on frequent visiting terms to the house of victim and inspite of that without thinking of

the consequences thereof and without bothering about the age of the girl and his relations with the family the accused appear to have raped the victim only to fulfill his lust of sex at the relevant time and also did not stop there and even gone to the extent to murder her. In such circumstances he cannot be said to be entitled to any leniency.

83] The submissions on behalf of the accused that it is his first offence and that there is no genesis of the offence and he has a family consisting of a wife and children, etc. cannot be said to be mitigating circumstance, in the peculiar circumstances of the offence entitling him to leniency.

84] Then the offences proved against the accused are u/s.376 and 342 of the Indian Penal Code for committing rape on a minor girl below 16years of age by detaining her in her own house. Not only that as is clear the injuries sustained by the deceased at her genital part aggravated and added to the cause of death and that also is required to be taken into consideration while deciding quantum of sentence to be awarded. In such circumstances I am of the view that the accused is liable to the maximum punishment prescribed for the offence u/s.376 of Indian Penal Code i.e. the imprisonment for life.

85] Even in view of the manner in which the offence is committed and the nature of the offences proved against the accused I am of the view that both the sentences of imprisonment for life awarded to the accused need to be directed to run consecutively one after the other and not concurrently.

86] In the result I pass the following order.

O R D E R

1. The **accused Raju Shantaram Koli** is hereby **convicted** u/s.235(2) of the Code of Criminal Procedure **for the offence punishable u/s.302** of the Indian Penal Code and **sentenced to suffer Imprisonment for Life and** also to **pay fine of Rs.5,000/- and in default** of payment of fine to suffer **Simple Imprisonment for five months**.
2. The accused is further convicted for the offences punishable **u/s.376 and 342** of the Indian Penal Code and **sentenced to suffer Imprisonment for Life and** also to **pay fine of Rs.5,000/- and in default** of payment of fine to suffer **Simple Imprisonment for five months, on both counts.**

3. The substantive sentences awarded to the accused shall run consecutively one after the other and not concurrently.

4. The accused is in jail since 30.04.2010. A set off u/s.428 of the Code of Criminal Procedure is granted to the accused for a term of the period of detention undergone by him during the investigation, inquiry and trial against the substantive sentence imposed upon him.

5. The muddemal property being worthless be destroyed after the appeal period.

6. A copy of Judgment be given to the accused free of cost.

= Proceeding closed.

Thane. (Smt.V.V.Virkar)
Additional Sessions Judge,
Date : 27.09.2013. Thane.