**TEAM CODE: M116**

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**3RD MANIPAL RANKA NATIONAL MOOT COURT COMPETITION**

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**BEFORE THE HON'BLE SUPREME COURT OF INDIA**

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**CRIMINAL APPELLATE JURISDICTION UNDER ARTICLE 134(1)(b) OF THE INDIAN CONSTITUTION**

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**IN THE MATTER OF**

Naveen & Anr. ….. Appellants

Versus

State for NCT of Delhi & Ors. …..Respondents

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**MOST RESPECTFULLY SUBMITTED BEFORE THE HONOURABLE CHIEF JUSTICE AND HIS COMPANION JUSTICES OF THE SUPREME COURT OF INDIA**

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**MEMORANDUM ON BEHALF OF RESPONDENT**

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| & | And |
| AIR | All India Report |
| Art. | Article |
| CR.P.C. | Criminal Procedure Code |
| Govt. | Government |
| Hon'ble | Honourable |
| CRC | Convention of the Right of Child 1989 |
| JJA | Juvenile Justice (Care and Protection of Children) Act 2015 |
| Ltd. | Limited |
| MACR | Minimum Age of Criminal Responsibility |
| Pg. | Page |
| Pun. | Punjab |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SCR | Supreme Court Reports |
| Sec. | Section |

| | |
|---|---|
| | |
| U.P. | Uttar Pradesh |
| UDHR | Universal Declaration of Human Rights |
| UOI | Union of India |
| U.P. | Uttar Pradesh |
| V. | Versus |
| W.B. | West Bengal |
| W.P. | Writ Petition |

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## STATEMENT OF JURISDICTION

The appellants have approached the Hon'ble Supreme Court under Article 134(1)(b) of the Constitution of India[1]

The Hon'ble Supreme Court has consolidated these aforementioned appeals in exercise of its inherent powers under order LV, Rule 5 of the Supreme Court Rules, 2013[2].

[1] Has withdrawn from trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to the death; or

[2] Where there are two or more appeals arising out of the same matter, the Court may at any time either on its own motion or on the application of any party, order that the appeals be consolidated. Unless otherwise ordered by this Court the liability of the parties to pay separate Court-fees shall not be affected by any order for consolidation.

## SYNOPSIS OF FACTS

1. The cold evening of Delhi on 16th December, 2015 the twenty two year medico namely Sunita, who had gone with her friend Suneel, a medico, to watch a film at EP, while returning for the girls hostel was standing at Jawahar Circle. A classic Car 'Innova' 7seater, with all gadgets, bar, pillows and CC TV Camera etc. driven by a commerce graduate Shri Naveen along with his three co-students named Ramesh, Suresh and Dinesh (minor) stopped and offered them lift to drop at the girls hostel on Jawahar Lal Nehru Marg, which was readily accepted.
2. She got prey to the savage lust of this gang of four, who threw Suneel in a dense forest beyond Jagatpura after robbing him and giving threats of murder, where he became unconscious, was naked and all the four one by one assaulted her in the Car. Her private parts were ruptured to fulfill their pervert sexual appetite, unthinkable and sadistic pleasure.
3. The attitude, perception, the beastial proclivity, inconceivable self-obsession and individual centralism of the four made the young lady to suffer immense trauma and, in the ultimate eventuate, the life-spark that moves the bodily frame got extinguished in spite of availing of all the possible treatment that the medical world could provide. Her uterus, vagina and other parts were damaged by iron-rod. She was thrown out of the Car naked. The death took place at a hospital in IIMS, New Delhi where she had been taken to with the hope that her life could be saved.
4. Shri Suneel (PW-1) survived. A motor cycle arrived and the said man Shri Raj Kumar (PW-72) gave the shirt and contacted control room. The PCR Van took him to SMS Hospital for treatment. Sunita was searched by the police was found unconscious and naked, was provided with clothes and was carried to SMS Hospital and later to New Delhi.
5. Wide and vast publicity was given by the print and electronic media, the Government agency became active. In depth investigation was continuously made and to bring the charge, modern and progressive scientific methods were adopted. The Innova Car No. RJ-14c-476 was seized with iron rod, whisky bottles and glasses and CC TV footage.
6. The accused persons were arrested. Prosecutorix's and Suneel's mobiles were recovered along with a lady wrist watch make Sonata, her stained clothes and Rs. 1,000/- robbed from (PW-1). After arrest all the accused were medically examined.

The MLCs of all the first three accused show various injuries on their person, the struggle marks. Dying declaration of the deceased was also recorded in SMS Hospital. DNA tests were done.

7. FIR was filed on 20.12.2015 by (PW-1), which was handed over to S.I. Pratibha Sharma (PW-80) for investigation. Charge sheet filed on 3.1.2016 under sections 376(2)(g), 302, 120-B, 377, 365, 366, 396, 397, 307, 412, 201 and 34 of IPC and Sections 354(3) and 235(2) of Cr. P.C.

**TRIAL COURT**

8. The learned trial Judge directed the sentences under Sections 20B/365/366/376(2)(g)/377/201/395/ 397/412 IPC to run concurrently and that the benefit under Section 428 Cr.PC would be given wherever applicable. He further recommended that appropriate compensation under Section 357A CrPC be awarded to the legal heirs of the prosecutrix. That apart, as death penalty was imposed, he referred the matter to the High Court for confirmation under Section 306 CrPC.

**HIGH COURT**

9. The High Court vide judgment dated 13.3.2017, affirmed the conviction and confirmed the death penalty imposed upon the accused by expressing the opinion that under the facts and circumstances of the case, imposition of death penalty awarded by the trial court deserved to be confirmed in respect of all the four convicts.

## SUMMARY OF ARGUMENTS

**CONTENTION 1: WHETHER THE CASE AGAINST APPELLANT ARE FALSE AND FABRICATED OR NOT.**

The Respondent humbly submits before the Hon'ble Supreme court that mere delay in registration of FIR is not a ground to doubt the prosecution case. The principal object of the First Information Report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and bring to book the guilty. Merely because names of some of the accused persons are not mentioned in FIR or accused mentioned in FIR have not been identified during trial, the evidence of the complainant cannot be discarded.

**CONTENTION 2: WHETHER THE AGE OF DINESH SHOULD BE CONSIDERED AS PER MATRICULATION SCHOOL CERTIFICATE OR MEDICAL CERTIFICATE ISSUED BY THE DOCTOR.**

The respondent humbly submits that in **Section 49 of Juvenile Justice Act, 2000** it was stated that the court shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or the child or not. Ossification test shall be preferred over matriculation certificate as an appropriate method to determine the age of a juvenile.

**CONTENTION 3: WHETHER THERE IS CRIMINAL CONSPIRACY OR NOT.**

It is submitted before the hon'ble court that criminal conspiracy is a substantive offence and was charged under section 120B of IPC for the same as stated in the facts. Before investigating the present facts with reference to Section 120A IPC keeping in mind the end goal to see if the charge of criminal conspiracy is demonstrated in regard of each of the accused, it is applicable to take note of the real nature and imply of Section 120A IPC and unified arrangements.

**CONTENTON 4: THAT THERE IS ADMISSIBILTY AND ACCEPTABILITY OF THE DYING DECLARATION OF THE PROSECUTRIX WHEN NO NAMES WERE SPELL OUT.**

The respondent humbly submits before the court that it would be immensely seemly to appreciate the acceptability and reliability of the dying declaration made by the prosecutrix as merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. In Indian Law, there is a principle ***"memo moritutus proesumitur mentiri"*** which means **"Dying man can never lie"** or **"Truth sits upon the lips of a dying man"** which governs the credibility of dying declaration, does require serious examination.

**CONTENTION 5: WHETHER THERE WAS INSERTION OF IRON ROD IN THE RACTUM AND VAGINA AFTER RAPE BY ALL THE CONVICTS.**

The Respondent humbly submits before the Hon'ble Supreme Court that we shall advert to the contentions raised as regards the use of iron rod for causing recto-vaginal injury. In the present case the accused, in most inhumane and unfeeling manner, inserted iron rod in the rectum and vagina of the prosecutrix. Her private parts were ruptured. Her uterus, vagina and other parts were damaged by iron-rod.

**CONTENTION 6: WHETHER THE PROPER PROCEDURE IS FOLLOWED DURING THE PROCESS OF RECOVERY OR NOT.**

It is humbly submitted before the Hon'ble Supreme Court as per the ***Section 27 of Evidence Act*** a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. ***Section 27*** has prescribed two limitations for determining how much of the information received from the accused can be proved against him: **(i)** The information must be such as the accused has caused discovery of the fact, i.e. the fact must be the consequence, and the information the cause of its discovery; **(ii)** The information must 'relate distinctly' to the fact discovered.

## ARGUMENTS ADVANCED

**CONTENTION 1: WHETHER THE CASE AGAINST APPELLANT ARE FALSE AND FABRICATED OR NOT.**

The Respondent humbly submitted before the Hon'ble Supreme Court that the appeal filed by the appellant is not false and fabricated as the statement of PW-1 is not bereft of doubt for several reasons **(a)** Delayed registration of FIR **(b)** Inconsistencies and omissions amounting to contradictions in the testimony of PW-1 **(c)** Non-mentioning the name of assailants in FIR.

### 1.1 Delayed registration of FIR

The Respondent humbly submits before the Hon'ble Supreme court that mere delay in registration of FIR is not a ground to doubt the prosecution case as nothing is mentioned in **Section 154 of Cr.P.C** that any time is fixed for filing First Information Report[3]. The principal object of the First Information Report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and bring to book the guilty[4]. After all it is natural in these circumstances for them to take some time to go to the police station for giving the report.

#### A. Circumstances for delay in lodging FIR

The court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the court, it cannot be counted against the prosecution[5]. In the case of ***Amar Singh v. Balwinder Singh[6],*** their lordship of the Supreme Court held thus *"There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful**. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR** which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of*

Person [3] *Gurudev Singh v. State of Rajasthan,* (2003) 1 Raj LW 146.
[4] Section 154 of Criminal Procedure Code,1973
[5] *State of Rajasthan v. N.K.,* AIR 2000 SC 1812.
[6] *Amar Singh v. Balwinder Singh*, AIR 2003 SC 1164

*injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR".*

So, in the present case, there is no delay in registration of FIR as the sequence of events are natural in the present case as both victim and her friend Suneel were thrown out of the car[7]. The victim was seriously injured and was in a critical condition and it has to be treated as a natural conduct that giving medical treatment to her was of prime importance. The admission of victim and PW-1 in the hospital and the completion of procedure must have taken some time. Further victim is not in a condition to file a FIR and PW-1 is also injured which took time to recover and after that he registered the FIR on 20.12.2015[8].

In the case of ***Raghava Nadar Reghu v. State[9],*** it was held that when the person affected by the crime were too shocked had taken reasonable time to go to police station, their evidence cannot be doubted on account of delay.

**B. FIR delayed due to medical aid**

In the case of ***State of Himachal Pradesh v. Shree Kant Shekari[10]***, "Delay per se is not a mitigating circumstance for the accused when acccusations of rape are involved. Delay in lodging First Information Report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search and consider if any explanation has been offered for the delay. Once it is offered, the court is to only to see whether it is satisfactory or not". In the present case, the complaint was lodged 4 days later because the heinous crime against Sunita shook the root of humanity, her family was in a great trauma. Giving medical treatment to her is of prior importance than fighting the accused. When their efforts failed and the last hope of saving deceased is lost they immediately reported the incident to the police and lodged the FIR.

So, there is no delay in registration of FIR as in the case of ***State of Karnataka v. Diwakara bhat[11],*** when relatives of the victim became busy in arranging for medical aid and therefore

[7] Refer fact sheet, para 1.
[8] Refer fact sheet, para 3
[9] *Raghava Nadar Reghu v. State*, 1988 CrLJ 1364 (Ker-DB)
[10] *State of Himachal Pradesh v. Shree Kant Shekari*, AIR 2004 SC 4404.
[11] *State of Karnataka v. Diwakara bhat,* 1996 AIR SCW 4132.

FIR was lodged, the delay did not create any suspicion about the prosecution story. Where the delay in filing FIR is due to attending the injured persons, and taking them to the hospital, the delay is not fatal to the prosecution[12]. Where priority is given to the treatment of the deceased and the injured witness, which occasions delay in the lodging of the FIR, the delay in filing of FIR stands explained[13].

**C. FIR delayed due to the concern for reputation and honour**

The court cannot overlook the fact that in sexual offences, delay in lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complaint about the incident which concerns the reputation of the prosecutrix and the honour of the family[14]. In the rape case of ***Vidyadharan v. State of Kerala[15],*** it was held that some delay in lodging the FIR is natural in a traditional bound society to avoid harassment is inevitable when women reputation is concerned.

**D. Delay in lodging of FIR by the Police**

The appellant submits that mere delay in the lodging of FIR by the police officials is not fatal to the prosecution[16]. In the case of ***State of Rajasthan v. Maharaj Singh[17],*** it was held that where the medical officer attending the deceased in the hospital sent information to the police station regarding the incident, SHO came to the hospital, but the deceased was not in condition to make any statement, the police did not register the case for two days, the delay was not held fatal, the acquittal recorded by the High Court was set aside.

In the present case, police came to the hospital but both victim and PW-1 were not in a fit condition to make any statement which leads to delay in lodging of FIR for four days. Strangely enough, the police did not take any action thereafter and they swung into action only when PW-1 report to the police and lodged the FIR. The delay in registering the case was due to the ignorance and negligence on the part of the police.

[12] *Raghubir Singh v. State of Hryana, (*2000) 9 SCC 88.
[13] *Vikram v. State of Maharashtra,* AIR 2007 SC 1893.
[14] *State of Punjab v. Gurmeet singh,* AIR 1996 SC 1393; *Dildar Singh v. State of Punjab,* AIR 2006 SC 3084
[15] *Vidyadharan v. State of Kerala,* (2004) 1 SCC 215
[16] *Rulda Singh v. State of Punjab,* 1999 CrLJ 3577 (P&H-DB)
[17] *State of Rajasthan v. Maharaj Singh,* AIR 2004 SC 4205

**E. Delay of lodging FIR is acceptable**

In many rape cases, the Supreme Court noticed the delay in lodging FIR which is a normal phenomenon.

A reference may be fruitfully made to ***Satyapal v. State of Haryana***[18]**,** wherein Supreme Court echoed similar sentiments: "*This court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is natural phenomenon*". In the case of ***Mukesh and Another v. State (NCT OF DELHI) and others***[19]**,** it was also held that we have no hesitation in arriving at the conclusion that there is no delay in lodging the FIR according to facts and circumstances of case.

As far as delay in lodging FIR is concerned it is not of much consequences especially in cases of rape with young girls, in which the reputation of the family is at stake. The possibility of difficulty arising in marrying the girl is also there[20]. A mere delay in lodging the FIR cannot be a ground itself for throwing the entire prosecution case overboard.[21]

So, in the present case FIR is valid as all the precedents stating that it is natural in a rape case to be delay in lodging FIR and Supreme Court upholds many cases related to this[22].

**1.2 Non-mentioning the name of assailants in FIR**

It is submitted before the Hon'ble Supreme Court that the FIR is not substantive evidence and can be used only for contradiction or corroboration.[23] Prosecution cannot base its case solely on FIR which is not substantive piece of evidence.[24] In this case Appellant tried to be free from all the charges only on the base of non-mentioning their names in FIR which is not the substantive piece of evidence. Though author of first information report was not examined but another witness, a constable who worked with him and sub-inspector who

[18] *Satyapal v. State of Haryana,* AIR 2009 SC 2190.
[19] *Mukesh and Another v. State(NCT OF DELHI)and others,* 2017 SCC ONLINE SC 533
[20] *Rishi v. The State of U.P.,* Criminal Appeal no. 1217 of 2015.
[21] *Ibid.'*
[22] *State of Punjab v. Gurmeet Singh,* (1996) 2 SCC 384; *State of Rajasthan v. N.K.,* (2000) 5 SCC 30; *Mohd. Kallu v. State,* CRL.A. 214/2010
[23] *Aghnoo Nagesia v. State of Bihar,* AIR 1966 SC 119; *Hasib v. State of Bihar* AIR 1972 SC 283; *Nisar Ali v. State of U.P.,* AIR 1957 SC 366; *Apren Joseph v. State of Kerala,* AIR 1973 SC 1; *Dharma Ram Bhagare v. State of Maharashtra,* AIR 1973 SC 476; *Nankhu Singh v. State of Bihar,* AIR 1973 SC 491; *Ravi Kumar v. State of Punjab,* AIR 2005 SC 1929; *Sohan Lal v. State of Punjab,* AIR 2003 SC 4446.
[24] *Suresh Pandurang Tigare v. State of Maharashtra,* 1997 CrLJ 157 (Bom)

was acquainted with his signature and handwriting were examined. It was held that the first information report stood proved.[25]

**i) FIR is not substantive evidence**

In ***Rattan Singh v. State of H.P.***,[26] the Court, while repelling the submission for accepting the view of the trial court took note of the fact that there had been omission of the details and observed that the criminal courts should not be fastidious with mere omissions in the first information statement since such statements can neither be expected to be a chronicle of every detail of what happened nor expected to contain an exhaustive catalogue of the events which took place. The person who furnishes the first information to the authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often, the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement and hence, any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all. The Court also referred to the principles stated in ***Pedda Narayana v. State of A.P.***[27]; ***Sone Lal v. State of U.P.***[28]; ***Gurnam Kaur v. Bakshish Singh***[29]**.**

In ***State of Uttar Pradesh v. Naresh and others***[30], reiterating the principle, the Court opined that it is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration.

[25] *Amarsingh Gond v. State*, 2007 CrLJ 1560 (MP)
[26] *Rattan Singh v. State of H.P.*, (1997) 4 SCC 161
[27] *Pedda Narayana v. State of A.P.*, (1975) 4 SCC 153
[28] *Sone Lal v. State of U.P.*, (1978) 4 SCC 302
[29] *Gurnam Kaur v. Bakshish Singh*, 1980 Supp SCC 567
[30] *State of Uttar Pradesh v. Naresh and others*, (2011) 4 SCC 324

Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. For the aforesaid purpose reliance was placed upon ***Rotash v. State of Rajasthan***[31] and ***Ranjit Singh v. State of M.P***.[32]

**ii) Omission of Non-Mentioning of Name in FIR**

Merely because names of some of the accused persons are not mentioned in FIR or accused mentioned in FIR have not been identified during trial, the evidence of the complainant cannot be discarded.[33] In information relating to dacoity with murder names of the accused were not given. It was held immaterial as informant was shocked by violent murder of their dear relatives as well as reign in terror let loose by the miscreants. Hence omission to mention specific details in GD entry could not lead to conclusion of disbelieving eye witnesses.[34] It is not necessary that the accused persons must be named in FIR.[35] While considering the effect of some omissions in first information report on the part of informant, a Court cannot fail to take into consideration the probable physical and mental condition of the first informant.[36]

In ***Rotash*** (supra)[37] this Court while dealing with the omission of naming an accused in the FIR opined that:

> "14. …. We, however, although did not intend to ignore the importance of naming of an accused in the first information report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that PW 1 did not name him in the first information report, we do not find any reason to disbelieve the statement of Mooli Devi, PW 6. The question is as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case. PW 6 received as many as four injuries."
>
> In view of the aforesaid settled position of law, we are not disposed to accept the contention that omission in the first statement of the informant is fatal to the case. We

[31] *Rotash v. State of Rajasthan*, (2006) 4 SCC 64
[32] *Ranjit Singh v. State of M.P.*, (2011) 4 SCC 336
[33] *State of Maharashtra v. Lahu Laxman Pabale,* 2003 Bom CR (Cr) 400; *Venkateshwarlu v. State of A.P.,* AIR 2003 SC 574; *State of U.P. v. Naresh,* 2011 CrLJ 2162 (SC).
[34] *Naresh Das v. State,* 2007 (5) AIR Bom R 764 (NOC).
[35] *State of Maharashtra v. Mohd. Sajid Hussain,* (2008) 1 SCC 219.
[36] *Animireddy Venkataramana v. Public Prosecutor,* AIR 2008 SC 1603; *Khalil Khan Bismilla Khan v. State of Maharashtra,* 2008 (2) AIR Bom R 494
[37] *Supra* 9

> are disposed to think so, for the omission has to be considered in the backdrop of the entire factual scenario, the materials brought on record and objective weighing of the circumstances. The impact of the omission, as is discernible from the authorities, has to be adjudged in the totality of the circumstances and the veracity of the evidence. The involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR.[38]

The victim and PW-1 were thrown out of the car and after some time they were admitted to the hospital. The injuries on PW-1 person and the gruesome acts against the victim must have put him in a traumatic condition and it would not have been possible for him to recall and narrate the entire incident to the police at one instance. It cannot be said that merely because the names of the accused persons are not mentioned in the FIR, it raises serious doubts about the case.

**1.3 Inconsistencies and omissions amounting to contradictions in the testimony of PW-1.**

It is submitted before the Hon'ble Supreme Court that while normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.[39] When the related eye witness withstood the test of cross-examination and their evidence was found to be reliable and not tainted, minor contradictions or omissions in their evidence were held to be immaterial.[40] As it is clearly mention in the clarification No.1 that there is only minor inconsistencies and omissions are cross-examination of PW-1 were noticed. Where the presence of related eye-witness at the place of occurrence of murder is found natural and proved by the FIR lodged promptly by him, evidence of such a witness cannot be discarded merely due to some minor discrepancies in his statement made before the court and before Investigating Officer if otherwise it is found truthful and reliable.[41] As, it is clearly mentioned in the facts that PW-1 is present at the place of occurrence and the FIR was lodged promptly by him and that cannot be discarded due to some minor discrepancies in cross-examination.

**A. Appreciation of evidence of PW-1**

[38] *Mukesh and Another v. State (NCT OF DELHI) and Others*, 2017 SCC ONLINE SC 533
[39] *Mukesh and Another v. State (NCT OF DELHI) and Others*, 2017 SCC ONLINE SC 533; *Dalip Singh v. State of Rajasthan*, AIR 1953 SC 364; *Lehan v. State of Haryana*, (2002) 3 SCC 76
[40] *Bhanwara Ram v. State of Rajasthan*, 2001 CrLJ 3230 (para 14 and 15) (Raj).
[41] *Shree Man Nayak v. State of Bihar*, 2002 AIR Jhar HCR 691

In ***Mano Dutt and another v. State of Uttar Pradesh***[42]**,** it was held that:

We may merely refer to ***Abdul Sayeed v. State of M.P***.[43] where this Court held as under:

> "28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.'

The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."[44]

With reference to the above case in the present case it is clearly stated before the court that the PW-1 and the prosecutrix were surrounded and attacked by the four persons as mention in the facts.[45] The accused persons were in group and were also armed with iron rod. As, PW-1 was thrown out of the car and it was not possible for the PW-1 to resists the number of accused persons and save the prosecutrix. The evidence of PW-1 cannot be doubted on the ground that he had not interference with the occurrence. The improvements made in the statement need not necessarily render PW-1's evidence untrustworthy more so when PW-1 has no reason to falsely implicate the accused.

Minor variations in the testimony of the witnesses are often the hallmark of truth of the testimony. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Due to efflux of time, there are bound to be minor contradictions/discrepancies in the statement of the prosecutrix but such minor discrepancies and inconsistencies are only

[42] *Mano Dutt and another v. State of Uttar Pradesh*, (2012) 4 SCC 79
[43] *Abdul Sayeed v. State of M.P.,* (2010) 10 SCC 259; *Krishan v. State of Haryana,* (2006) 12 SCC 459
[44] *Mukesh and Another v. State (NCT OF DELHI) and Others,* 2017 SCC ONLINE SC 533
[45] Refer to para 1 fact sheet

natural since when truth is sought to be projected through human, there are bound to be certain inherent contradictions. But as held in ***Om Prakash v. State of U.P.***[46], the Court should examine the broader probabilities of a case.

In ***Ugar Ahir v. State of Bihar[47],*** a three-Judge bench held:

The maxim **falsus in uno, falsu in omnibus** (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

In the present case, there is minor contradictions in the statement of PW-1 that did not mean that he was reconstructing the story of its own out of the rest. Minor contradictions and omissions in the statement does not mean that he was speaking untruth and disbelieve the material parts of the evidence.

In ***Inder Singh and another v. State (Delhi Administration)[48]*** "Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes." In the present case Court had to rely upon the statement of PW-1 as there is only minor contradictions and the truth had to suffer the infirmity when projected through human processes. And the Court cannot acquit the accused on the basis of minor differences.

Keeping the aforesaid aspects in view, the Court should rely upon the testimony of the PW-1. It is no doubt true that there are certain omissions, but the main thing to be seen is whether the omissions go to the root of the matter or to pertain to significant aspects. The evidence of PW-1 is not to be disbelieved simply because there were certain omissions. The trail Court and High Court found his evidence credible and trustworthy and we find no reason to take a different view.

[46] *Om Prakash v. State of U.P.*, (2006) 9 SCC 787
[47] *Ugar Ahir v. State of Bihar*, AIR 1965 SC 277; *Mukesh and Another v. State (NCT OF DELHI) and Others*, 2017 SCC ONLINE SC 533
[48] *Inder Singh and another v. State (Delhi Administration),* (1978) 4 SCC 161; *Mukesh and Another v. State (NCT OF DELHI) and Others*, 2017 SCC ONLINE SC 533

It has also highlighted before the court that the version of PW-1 is absolutely consistent and the trial Court as well as High Court has correctly relied upon his testimony. He has drawn our attention to the version of PW-1 in the FIR, the statement recorded under **Section 164 of CrPC** and his testimony before the trial court. We have given anxious consideration and perused the FIR, statements recorded under Section 164 CrPC and appreciated the evidence in court and we find that there is no justification or warrant to treat the version of the witness as inconsistent. The consistency is writ large and the witness, as we perceive, is credible.

As we find, we had come to the conclusion that the incident has been aptly described by PW-1, the injured. The injuries on his person do show that he was present in the car at the time of the incident. Suffice it to say for the present, the contradictions in the statement, PW-1 are not material enough to destroy the substratum of this case. From the studied analysis of the evidence of PW-1, it is the only inevitable conclusion because the appreciation is founded on yardstick of consideration of totality of evidence and its intrinsic value on proper assessment.

**CONTENTION 2: WHETHER THE AGE OF DINESH SHOULD BE CONSIDERED AS PER MATRICULATION SCHOOL CERTIFICATE OR MEDICAL CERTIFICATE ISSUED BY THE DOCTOR.**

The respondent humbly submits before the Hon'ble Supreme Court that there is dissimilarity between two certificates of Dinesh which are the proofs to determine his age. In **section 2(k)**[49], a person is a juvenile who has not attained the age of eighteen. So, in the present case there is an issue to determine the age of Dinesh as according to medical certificate given by doctor justifies that he is not a juvenile and attains an age of majority and according to matriculation certificate, he may be a juvenile. So, to get rid of the confusion there is need of identifying the correct age of Dinesh.

## 2.1 PRESUMPTION AND DETERMINATION OF AGE

The respondent humbly submits that in **Section 49 of Juvenile Justice Act, 2000** it was stated that the court shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether

[49] Juvenile Justice Act, 2000

the person is a juvenile or the child or not. In the present case, it is necessary to identify the age as there is confusion due to two different certificates determining age of Dinesh by which we cannot came to the conclusion that whether he is juvenile or not.

### 2.1.1 OSSIFICATION TEST TO DETREMINE AGE

It is humbly submitted before this Hon'ble court that ossification test shall be preferred over matriculation certificate as an appropriate method to determine the age of a juvenile. Sexual assault on females is a global health & human right issue. The problem has legal as well as medical related bearing. The ages of relevance to criminal liability ranges between 14 and 18 years in most countries. In proving those types of crimes, age estimation is most important. In accordance with the updated recommendations from experts worldwide, a physical examination with determination of anthropometric measures, inspection of signs of sexual maturation, dental examination and X- ray examination are carried out to determine the age of a person. It is not advisable to rely upon matriculation certificates and other such documents to determine the age as they are highly subjected to forgery.

The test of Ossification of bones has a greater value in determining the age and the x-ray examination is absolutely necessary[50]. In **Alekh Prasad v State[51],** it was held that ossification test maybe accepted as a surer ground for determination of age. So, with reference to these cases ossification test is valid in all aspects.

Hence, it is humbly submitted before this Hon'ble court that ossification tests as well as other medical examination methods be validated over the matriculation certificates to determine the age of a juvenile offender. The medical evidence must be given the weight-age and the manner and nature of the crime committed by a 'minor' accused must be examined carefully to abort any attempt to take the justice system for a ride by him or his guardian.

### 2.2 NON-CONCLUSIVENESS OF SCHOOL RECORDS

Under **Section 35** of The Indian Evidence Act, entry in birth register made by a public officer in discharge of his official duty is held admissible. But all the material particulars in birth

[50] *Laimayum Tonjou v Maniour Administration*, AIR 1962 Manipur 5; (1962)1 CrLJ 49.
[51] *Alekh Prasad v State,* (1964) 2 CrLJ 102.

register or school records may not be a conclusive proof by itself[52]. So, matriculation certificate in the present case is not conclusive in nature by which it is clear that the age of Dinesh cannot be proved on the basis of said certificate.

The age stated in the School Admission Register as to the age of a student cannot be treated to be correct since the guardians understate the age of their children than the real one at the time of admission in school[53].It is very common to understate the age when entering a school in order that the child may not be too old for Government Service[54]. Moreover, in case of private schools no presumption of authenticity can be raised with regard to the document proving age particularly when it is not maintained in the regular course of business[55]. This shows that school or matriculation certificate is not of much significant as this can be fabricated.

## 2.3 ADMISSIBILITY OF MEDICAL EVIDENCE

Medical evidence relating to age is an expression of opinion based on clinical examination. The doctors will have reasons in support of their conclusion and explain why they came to that conclusion by examination of teeth, height, and weight etc[56].Though it cannot be said that the opinion of medical expert as to age on the basis of medical science is not admissible yet, in the absence of any explanatory statement from the doctor as to what factors individually or cumulatively were significant and why the opinion cannot carry much weight[57]. Hence it is to be understood that medical evidence of ossification test report need not have to be relied up on blindly and is given *reasonable consideration* on the explanatory statements given by the medical experts.

Further in the case of ***Narullah v Emperor[58]***, it was held that the evidence of a medical officer has a greater value than that of an ordinary witness. The case of ***State of Himachal Pradesh v Mango Ram[59]***is an instance where the opinion of doctors as to the age of prosecutrix was upheld over the other faulty and unsupported evidences. In ***Krishna Kant v. State of Uttar Pradesh[60],*** it was held that **the medical reports of various tests conducted for determining**

[52] Paramagonda V. Bangarewwa 2003 AIHC 1184 (1186) (Kant).
[53] *Brij Mohan Singh v. Priya Narain Sinha*, AIR 1965 SC 282; *Ram Murthi v. State of Haryana*, AIR 1970 SC 1020
[54] *Md Hassan v. Safdar*, 14L 473; *Bansi Ram v. Jitaram*, AIR 1964 Pu 231.
[55] *Sahib Singh v. State*, 1991 CrLJ 687, 689 (DEL).
[56] Modi's Medical Jurisprudence
[57] *Somgir alias Mangalpuri Karibharathi V State of Gujarat*, 1996 Guj LR 378
[58] *Narullah v Emperor*, AIR 1934 Oudh 32; 35 CrLJ 498
[59] *State of Himachal Pradesh v Mango Ram*, AIR 2000 SC 2798; (2000) 7 SCC 224
[60] *Krishna Kant v. State of UP*, AIR 1994 CrLJ 148

**the age were accepted by the Court**. These referred cases justifying that medical certificate is much more significant in determining age than the school certificate.

**Section 45** of the Indian Evidence Act deals with relevancy of opinion of experts. Under this provision expert evidence is admissible when the court has to form an opinion upon matters of science and skill. In the present case, medical certificate is issued by the doctor which is justifying that Dinesh has attained the age of majority which clearly stating that Dinesh is not a juvenile and held according to other accused.

## 2.4 CRIMINAL RESPONSIILTY

In India, A child above seven years of age and under 12 years is presumed to be incapable of committing an offence if he has attained ***'sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion'***[61]. In this connection, a minor can be convicted for the offence he has committed as the juvenility will not only depend upon the chronological age of a juvenile who commits horrendous and heinous crimes like murder, rape etc. but also on his/her mental maturity, physical status of juvenile, capacity of the criminal behaviour and the nature of the offence committed by the juvenile.

The punishment should always be proportionating to the gravity of offence[62]. The same has been restate in the case of ***Ram Chandra v. State of Rajasthan***[63] where the court held that it is the nature and gravity of the crime but not the criminal, which are relevant for consideration of appropriate punishment in a criminal trial as stated in **section 15** of the juvenile Act, 2000 that the juvenile board may, if satisfied that having regard to the nature of the offence and the circumstances of the case, they can increase the punishment according to the reasons recorded also **section 16** of the Act states juvenile who has attained 16 years of age and committed serious offence shall be treated separately but it is also clearly stated that the nature of offence committed has a very significant role in deciding the punishment to be provided for juvenile and not only the age.

It was further opinion as also stated above nature of offence, gravity of crime and intention of crime has a significant role more than the chronological age. Also, there is loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls[64] which is the

[61] Indian Penal Code, 1860 ; Section 83
[62] *State of Rajasthan v. Vinod Kumar*, (2012) 6 SCC 770.
[63] *Ram Chandra v. State of Rajasthan*, AIR 1996 SC 787.
[64] *State of Karnataka v. Krishnappa*, 2000(5) SCC 75

case here with the 22-year-old victim Sunita. If a person is old enough to rape then he is old enough to be tried along with adults and that is why the criterion of eighteen (18) years set out in the JJ act should not comprehend cases of grave offences in general and of heinous crimes against women in particular that shakes the root of humanity in general.

## CONTENTION 3: WHETHER THERE IS CRIMINAL CONSPIRACY OR NOT.

It is submitted before the hon'ble court that criminal conspiracy is a substantive offence and was charged under section 120B of IPC for the same as stated in the facts. Before investigating the present facts with reference to Section 120A IPC keeping in mind the end goal to see if the charge of criminal conspiracy is demonstrated in regard of each of the accused, it is applicable to take note of the real nature and imply of Section 120A IPC and unified arrangements. Section 120A IPC as contained in Chapter V-A characterizes the offense of criminal conspiracy. The provision was inserted in the IPC by virtue of Criminal Law (Amendment) Act, 1913. Section 120A IPC reads as under: "120A. Definition of criminal conspiracy: -

When two or more persons agree to do, or cause to be done: -

- an illegal act,
- An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy[65].

**120-B.** ***Punishment of criminal conspiracy***. —

- Whoever is a party to a criminal conspiracy to commit an offence punishable with death[66], imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment offence.
- Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."[67]

The principles relating to the offence of criminal conspiracy and the standard of proof for establishing offence of conspiracy and the joint liability of the conspirators have been

[65] *Mukesh and other v. state (NCT) of Delhi & others,* (2017) 6 SCC 1
[66] Substituted by act 26 of 1955
[67] 1 S.K. Sarvaria RA Nelsons INDIAN PENAL CODE 1002-1003 (10ed 2008)

elaborately laid down in ***Shivnarayan Laxminarayan Joshi and Ors. v. State of Maharashtra***[68]**.**

In ***Saju* v. *State of Kerala***[69] explaining the concept of conspiracy, this Court stated the following:

- To prove the charge of criminal conspiracy the it is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not legal, by illegal means and as stated in the facts there was a common invention and also there was an agreement which was made when they offered them lift and lift was readily accepted as it was late at night. There is no doubt that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available.

***Section 34 of Indian penal code*** clearly states When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone, furthers it clearly states that the act which is done by the accused who were present in the car is a criminal conspiracy and they had a common intention and the motive was discussed before offering the lift.

In a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act is the sine qua non but proving this by direct proof is not possible. Hence, conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. Moreover, it is also relevant to note that conspiracy being a continuing offence continues to subsist till it is executed or rescinded or frustrated by the choice of necessity. In ***K.R. Purushothaman* v. *State of Kerala***[70] the court said *to constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial act. The agreement amongst the conspirators can be inferred by necessary implication.*

As the common object of the conspirators was achieved with the same motive as well. As common intention, according to section 149 of IPC which says every member of unlawful assembly guilty of offence committed in prosecution of common object. The most important aspect

[68] *Shivnarayan Laxminarayan Joshi and Ors. v. State of Maharashtra*, (1980) 2 SCC 465
[69] *Saju v. State of Kerala*, (2001) 1 SCC 378 : 2001 SCC (Cri) 160
[70] *K.R. Purushothaman v. State of Kerala*, (2005) 12 SCC 631: (2006) 1 SCC (Cri) 686.

of the offence of conspiracy is that apart from being a distinct statutory offence, all the parties to the conspiracy are liable for the acts of each other and as an exception to the general law in the case of conspiracy intent i.e. mens rea alone constitutes a crime. As per Section 10 of the Evidence Act, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then, anything done by any one of them in reference to their common intention, is admissible against the others. As held in ***State of Maharashtra v. Damu and Others***[71] the only condition for the application of the rule in Section 10 of the Evidence Act is that there must be reasonable ground to believe that two or more persons have conspired together to commit an offence.

**And following decision was made by the trial judges directed the sentence under: -**

- For the offence under section 365/366 the court awarded the punishment of seven years to each convict and fine of Rs. 5000 to each of them.[72]

***Kidnapping or abducting with intent secretly and wrongfully to confine person (365)***. — Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.[73]

***Kidnapping, abducting or inducing woman to compel her marriage, etc.(366)***.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine[74]; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].[75]

[71] *State of Maharashtra v. Damu and Others*, (2000) 6 SCC 269
[72] Mukesh and other v. state (NCT) of Delhi & others, (2017) 6 SCC 1.
[73] 3 S.K. Sarvaria RA Nelsons INDIAN PENAL CODE 3630 (10ed 2008).
[74] Added by act 20 of 1932s 2.
[75] 3 S.K. Sarvaria RA Nelsons INDIAN PENAL CODE 3636 (10ed 2008).

- For the offence under section 376 D IPC award the punishment of imprisonment to each of the convict person with fine for rehabilitation and medical expenses to each of them.[76]

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine. Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.

- For the offence under section 377 of IPC award the punishment of ten years to each of the convict person and the fine of Rs. 5000 to each of them.

***Unnatural offences (377)***. —whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In ***Rajendra Pralhadrao Wasnik* v. *State of Maharashtra***[77] In the said case, the prosecution had proven that the appellant had lured a three-year old minor girl child on the pretext of buying her biscuits and then raped her and eventually, being apprehensive of being identified, killed her. For he was found guilty of the offences punishable under Sections 376(2) (*f*), 377 and 302 IPC.

- For the offence under section 307 of IPC award the punishment of seven year to each convict person and fine of Rs. 5000 to each of them.[78]

***Attempt to murder* (*307*). —**Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.[79]

[76] As per 2013 amendment of IPC
[77] *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2012) 4 SCC 37: (2012) 2 SCC (Cri) 30
[78] *Mukesh and other v. state (NCT) of Delhi & others* (2017) 6 SCC 1.
[79] *3 S.K. Sarvaria RA Nelsons INDIAN PENAL CODE* 3237 (10ed 2008).

- For the offence under section 201 of IPC award the punishment of seven years to each of the convict person and a fine of Rs. 5000 to each of them.[80]

***201: -Causing disappearance of evidence of offence, or giving false information to screen offender*** as said in the case of ***muskesh v. state (NCT) of Delhi.***[81]

- For the offence under section 395 read with section 397 of IPC award the punishment of ten years to each of the convict person and fine of Rs. 5000 to each of them.

***Punishment for dacoity (395)***. — Whoever commits dacoity shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.[82]

- For the offence under section 412 of IPC award the punishment of two years to each of the convict person and fine of Rs. 5000 to each of them.

***Dishonestly receiving property stolen in the commission of a dacoity(412)***.—Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

## CONTENTON 4: THAT THERE IS ADMISSIBILTY AND ACCEPTABILITY OF THE DYING DECLARATION OF THE PROSECUTRIX WHEN NO NAMES WERE SPELL OUT.

The respondent humbly submits before the court that it would be immensely seemly to appreciate the acceptability and reliability of the dying declaration made by the prosecutrix as merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected[83]. Dying Declaration is the written or verbal statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. In

[80] *Mukesh and other v. state (NCT) of Delhi & others* (2017) 6 SCC 1.
[81] (2017)6 SCC 1
[82] *Oma v. State of T.N.,* (2013) 3 SCC 440: (2013) 3 SCC (Cri) 208
[83] *State of Maharashtra v. Krishnamurthi Laxmipati Naidu,* AIR 1981 SC 617

**section 32(1) of the Evidence Act**, the only statement that is given just before the death and explain the cause of death is dying declaration.

### 4.1 RELEVANCY AND ADMISSIBILITY OF DYING DECLARATION

In Indian Law, there is a principle ***"memo moritutus proesumitur mentiri"*** which means **"Dying man can never lie"** or **"Truth sits upon the lips of a dying man"** which governs the credibility of dying declaration, does require serious examination[84]. Statement about anything which nexus with his death, is admissible as dying declaration as the words 'statements as to any of the circumstances of the transaction which resulted in his death' expands the scope of admissibility[85]. In the present case, victim has given her dying declaration in SMS hospital where she was carried for the treatment. After that she had been taken to IIMS hospital in New Delhi with the hope that her life could be save but due to internal and external injuries she could not be able to survive[86]. Her dying declaration is admissible and relevant as death is caused due to the injuries given by the accused which is stated in her dying declaration.

In order to test the reliability of a dying declaration there is a case of ***Khushal Rao v. state of bombay[87],*** *"the court has to keep in view the circumstances like the opportunity which a person on the point of death had for observation, whether his capacity to remember the facts stated by him, that the statement was made at the earliest opportunity, and was not the result of tutoring by interested parties.* ***The dying declaration stands on the same footing as any other piece of evidence and has to be judged in the light of the surrounding circumstances and with reference to the principles governing the weight to be attached to the evidence****".* In the present case, the deceased and her friend Suneel (PW-1) was offered lift by the accused which were unknown to both of them. Suneel was thrown out of car unconscious and deceased was brutally rape by all of them and left her naked with grievous injuries which justify that both of them were unaware to the name of the assailants and due to this reason in the dying declaration the names of assailants were not mentioned which will not be the ground to set aside the dying declaration. So, dying declaration is reliable and admissible in the court.

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[84] *Vithal Sadashiv GAikwad v. State of Maharashtra,* 1994 CrLJ 2035 (para 16) (Bom).
[85] *Patel Hiralal Joitaram v. State of Gujrat,* AIR 2001 SC 2944 (para 28)
[86] Refer fact sheet, para 1
[87] *Khushal Rao v. state of Bombay,* AIR 1958 SC 22; RadhaKrishna v. State of Karnataka, AIR 2003 SC 2859 (para13)

## 4.2 SOLE BASIS OF CONVICTION

It is settled law that a Court is entitled to convict an accused on the sole basis of dying declaration if in the circumstances of the case it can be regarded truthful[88]. In the case of ***Sunder Lal v. State of Rajasthan[89],*** it was held that once dying declaration is found to be true and voluntary, it can be the sole basis of conviction and needs no corroboration. Such a statement is admissible not only against the person actually causing death but also against other person participating in causing declarant's death.

In the present case, dying declaration made by the victim against the accused has not mentioned their names which is due to circumstances of the case as firstly, the victim is unaware about their names; secondly, if she heard any name of accused, she could not able to remember them because she was in an immense trauma because the victim was brutally rape and her private parts were raptured which made her unconscious[90]. Due to these circumstances in the case the dying declaration would be acceptable and reliable in the court. Merely on the ground of not mentioning names of assailants in the dying declaration, the court cannot deny the important facts that is police seized the innova car of accused with iron rod, whisky bottles and glasses and CCTV footage[91] in which all the incident was recorded which is a substantial proof to identify the assailants. Also, Prosecutorix's and Suneel's mobiles were recovered along with a lady wrist watch, her stained clothes and Rs. 1000/- robbed from PW-1[92] which also proves the identity of the accused.

Further, the court also had to pay attention on these facts and circumstances which are necessary to be noted and important for the deceased case.

## 4.3 CORROBORATION FOR DYING DECLARATION

The respondent humbly submits that there is neither any rule of law nor of prudence that the dying declaration requires to be corroborated by other evidence[93]. Where the

[88] *Gopal Singh v. State of M.P* , AIR 1972 SC 1557; *Bhabanand Kakoti v. State of Meghalaya,* 2008 CrLJ 194 (para 33) (Gau)
[89] *Sunder Lal v. State of Rajasthan,* (2007) 10 SCC 371
[90] Refer fact sheet, para 1
[91] Refer fact sheet, para 3
[92] Refer fact sheet, para 3
[93] *Harbans Singh v. State of Punjab,* AIR 1962 SC 439

dying declaration was true and reliable, corroboration was not necessary[94]. In the present case dying declaration is true as while great solemnity and sanctity is attached to the words of a victim because on the verge of the death is not likely to tell lies or concoct a case so as to implicate an innocent person so corroboration is not necessary.

"The mere fact that the accused person named in the dying declaration is absconding cannot be taken as corroboration. A flaw in the dying declaration cannot be made upon by seeking corroboration from the fact of absconding"[95]. In the case of ***Dalbir Singh v. State of Punjab[96],*** where a person gave a dying declaration a short time before his death while he was lying in a precarious condition shortly after the assault, such a dying declaration could not be discarded merely on the ground that it did not a precise description of all the ingredients of the offence and of the manner in which the injuries were inflicted. In the present case, also court cannot discard the dying declaration merely on the ground that it did not mention the name of the accused.

In the case of ***Kulwant Singh v. State of Punjab[97],*** it was held that where the condition of the deceased was serious and was found fit to make a statement only on the fifth day of the incident. The fact that the deceased died after one week of making the statement is of no consequence. The investigating officer has proved the statement of the deceased which was recorded by him. The deceased was fully conscious when he made the statements which were read over to him. In that view of the matter, the said statements are admissible under **Section 32(1)**[98]. Besides, his statement stood corroborated by the evidence of another witness who was injured in the same incident.

So, in the present case also the deceased was in a serious condition and dying declaration was recorded when it was proved that the deceased was conscious and her statements can be recorded, also her friend Suneel (PW-1) who lodged the FIR against the accused and told about the incident to the police which proves that the statements of PW-1 are corroborated with the statements of the deceased which leads to the admissibility of the dying declaration.

[94] *S.K. Katkar v. State of Maharashtra,* 1995 CrLJ 3579 (para 15); *Gopali Devi v. State (Govt. of N.C.T. of Delhi),* (2001) 89 DLT 9
[95] *Hanumappa v. state of Mysore,* 1966 Cr App R (SC) 381
[96] *Dalbir Singh v. State of Punjab,* AIR 1987 SC 1328
[97] *Kulwant Singh v. State of Punjab,* (2004) 9 SCC 257 (para 36, 37, 41 and 49)
[98] Indian Evidence Act,1872

## CONTENTION 5: WHETHER THERE WAS INSERTION OF IRON ROD IN THE RACTUM AND VAGINA AFTER RAPE BY ALL THE CONVICTS.

The Respondent humbly submits before the Hon'ble Supreme Court that we shall advert to the contentions raised as regards the use of iron rod for causing recto-vaginal injury.

### 5.1 INSERTION OF IRON ROD

This kind of unnatural offences comes under **Section 377 of IPC** which states that the accused had carnal intercourse with man, woman and animal and such intercourse was against the order of nature which leads to penetration. In the present case the accused, in most inhumane and unfeeling manner, inserted iron rod in the rectum and vagina of the prosecutrix. Her private parts were ruptured. Her uterus, vagina and other parts were damaged by iron-rod[99] which is against the order of nature. The iron rod was seized by the police in the Innova car no. RJ-14c-476[100] in which the incident take place.

### 5.2 CCTV FOOTAGE ADMISSIBLITY

In the case of ***Mukesh and Another v. State (NCT OF DELHI) and others[101],*** it was held that the computer generated electronic record in evidence, admissible at a trial is proved in the manner specified in Section 65-B of the Evidence Act. Sub-section (1) of Section 65 of the Evidence Act makes electronic records admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65-B of the Evidence Act. When those conditions are satisfied, the electronic record becomes admissible in any proceeding without further proof or production of the original, as evidence of any of the contents of the original or any fact stated therein of which direct evidence is admissible. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act.

In the present case, **the car had CCTV and unfortunately camera was on where acts of all the 4 accused were duly recorded. In the CCTV footage, it was recorded that after committing rape by all four accused, one iron rod was inserted to damage the private**

[99] Refer fact sheet, para 1
[100] Refer fact sheet, para 3
[101] *Mukesh and Another v. State (NCT OF DELHI) and others,* 2017 SCC ONLINE SC 533

**parts**[102]. Further, it is clear that iron rod was inserted by all the convicts as they all four commits rape.

## 5.3 CONSPIRACY

The principles relating to the offence of criminal conspiracy and the standard of proof for establishing offence of conspiracy and the joint liability of the conspirators have been elaborately laid down in many cases[103]. In the present case, all the convicts while committing the offence of gang rape on the prosecutrix intentionally inflicted bodily injury with iron rod and inserted the iron rod in the vital parts of her body with the common intention to cause her death.

## CONTENTION 6: WHETHER THE PROPER PROCEDURE IS FOLLOWED DURING THE PROCESS OF RECOVERY OR NOT.

It is humbly submitted before the Hon'ble Supreme Court as per the ***Section 27 of Evidence Act***[104] a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused.

> ***Section 27 of the Evidence Act*** **reads as under:**
>
> **"27. How much of information received from accused may be proved**. - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

***Section 27*** has prescribed two limitations for determining how much of the information received from the accused can be proved against him: **(i)** The information must be such as the accused has caused discovery of the fact, i.e. the fact must be the consequence, and the information the cause of its discovery; **(ii)** The information must 'relate distinctly' to the fact discovered.

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[102] Refer clarification by mail
[103] *State Through Superintendent of Police, CBI/SIT v. Nalini and Ors.,* (1999) 5 SCC 253; *Yakub Abdul Razak Menon v. The State of Maharashtra,* (2013) 13 SCC 1.
[104] *The Indian Evidence Act,* 1872

The **Innova Car No. RJ-14c-476** was seized with **iron rod, whisky bottles** and **glasses** and **CCTV footage** on personal search by the police. Prosecutrix and Suneel **mobiles** were recovered along with the lady **wrist watch** make Sonata, her **stained clothes** and **Rs.1000/-** robbed from (PW-1) from the accused on the statement of accused give to the police which need not to be proved under the ***Section 27 of Evidence Act.***[105]

The test laid down in **Pulukuri Kottaya's**[106] case was reiterated in several subsequent judgments of this Court including ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru***[107] (2005) 11 SCC 600.

In the light of above discussion, it is held that recoveries made pursuant to disclosure statement of the accused are duly proved by the prosecution and there is no substantial reason to discard the same. Recovery of articles of PW-1 and also that of victim at the instance of the accused is a strong incriminating evidence against accused, especially when no plausible explanation is forthcoming from the accused. Further, as discussed infra, the scientific examination of the articles recovered completely place them in line with the chain of events described by the prosecution.

It is contended that the disclosure statements which have been recorded by the police do tantamount to confessional statements relating to the involvement and commission of crime. As, the evidence brought on record would show the accused persons were known to each other.

**6.2 Recovery of the CCTV Footage**

It is clearly stated in the fact sheet that the Innova Car No. RJ-14c-476 is fully loaded with all the gadgets and the CCTV installed in it.[108] According to the clarification No.3 CCTV camera is on and where acts of all the four accused were recorded.[109]

In the case of ***Mukesh and Another v. State (NCT OF DELHI) and others***[110]**,** it was held that the computer generated electronic record in evidence, admissible at a trial is proved in the

[105] *Supra* 102
[106] *Pulukuri Kottaya v. King Emperor,* AIR 1947 PC 67; *Mukesh and Another v. State (NCT OF DELHI) and others,* 2017 SCC ONLINE SC 533
[107] (2005) 11 SCC 600
[108] *Fact sheet para 1*
[109] *Clarification No.3*
[110] *Mukesh and Another v. State (NCT OF DELHI) and others,* 2017 SCC ONLINE SC 533

manner specified in Section 65-B of the Evidence Act. Sub-section (1) of Section 65 of the Evidence Act makes electronic records admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65-B of the Evidence Act. When those conditions are satisfied, the electronic record becomes admissible in any proceeding without further proof or production of the original, as evidence of any of the contents of the original or any fact stated therein of which direct evidence is admissible. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act.

From the above case, it is clearly stated the CCTV footage is admissible under ***Section 65B of the Evidence Act, 1872*** which shows that the acts done by all the accused.

## PRAYER

Wherefore, In the light of the fact stated, issues raised, arguments advanced and authorities cited, may this Hon'ble court be pleased to:

**To hold:**

1. To upheld the decision passed by the High court and the Session court.
2. To upheld the validity of Ossification Test over Matriculation Certificate in determining the age of the Juvenile.

**To pass:**

1. To dismiss the appeal filed by the appellant.
2. To give capital punishment to juvenile with all other accused as rarest of the rare case.

**AND /OR**

Any other relief which this Hon'ble Court may be pleased to grant in the interest of *Justice, Equity and Good conscience.* All of which is respectfully submitted.

**COUNSELS FOR THE RESPONDENT**