

IN THE COURT OF SHRI YOGESH KHANNA,
ADDITIONAL SESSIONS JUDGE,
SPECIAL - FAST TRACK COURTS,
SAKET DISTRICT COURT COMPLEX, NEW DELHI.

Unique ID No. 02406R0020522013

SC No. 114/2013

FIR No. 413/2012

P.S. : Vasant Vihar, New Delhi.

**U/s : 120B IPC & U/s 365 / 366 / 376(2)(g) / 377 /
307 / 302 and / or 396 /395 IPC read with
section 397 / 201 / 412 read with section
120B IPC.**

State

(Government of NCT of Delhi)

..... Complainant.

Versus

1. Ram Singh, since deceased.

**S/o Shri Mange Lal
R/o Jhuggi No. J-49,
Ravidass Camp, Sector-3,
R.K Puram, New Delhi.**

**(Proceedings abated against him on
12-03-2013.)**

2. Mukesh

**S/o Shri Mange Lal
Presently R/o Jhuggi No. J-49,
Ravidass Camp, Sector-3,
R.K Puram, New Delhi.**

**Permanent R/o Village Karoli,
District & P.S Karoli,
Rajasthan.**

State vs. Ram Singh and another

SC No. 114/2013

FIR No. 413/2012

P.S. : Vasant Vihar, New Delhi.

/home/reader/Praveen Singhania/304-Spl. FTC/2013/September, 2013/Judgment (Sep., 12)/Ram Singh and another
114-13 Vasant Vihar.odt

**3. Akshay Kumar Singh
S/o Shri Saryu Singh
R/o Village Karmalaungh
P.S Tandwa, District Aurangabad,
Uttar Pradesh.**

**4. Vinay Sharma
S/o Shri Hari Ram Sharma
R/o Jhuggi No. J-105,
Ravidass Camp, Sector-3,
R.K Puram, New Delhi.**

**5. Pawan Kumar @ Kaalu
S/o Shri Heera
R/o Jhuggi No. J-64,
Ravidass Camp, Sector-3,
R.K Puram, New Delhi.**

..... Accused person.

Date of Institution : 21-01-2013.

Date of arguments concluded : 03-09-2013

Date of judgment : 10-09-2013

J U D G M E N T

FACTS

1. The incident is of dated 16-12-2012. As per **allegations**, the complainant and his friend, the prosecutrix, had gone to PVR, Saket, New Delhi, for watching a movie. They came out of the said place at about 8:30 PM

and reached Munirka Bus Stand at 9 PM in an auto, where they were lured to board a white coloured chartered bus by its conductor. Both of them boarded the bus. They saw **four** boys in the driver's cabin and **two** boys sitting behind the driver's cabin i.e one on the left and another on the right side. The complainant and the prosecutrix both sat on the left side - second seat in the bus and paid fare of Rs.20/-.

As the bus reached near Airport Flyover, three boys came out of the driver's cabin. Two of them started abusing the complainant, asking him as to where he was taking the prosecutrix in the night. One of them hit the complainant. As the complainant resisted, two other boys joined the assailant in beating the complainant with iron rods lying in the bus. As the prosecutrix came forward to save the complainant, two of the assailants pushed her to the back seat. While the complainant was caught and being beaten ; the other assailants took their turn to have sexual intercourse with the prosecutrix. They brutally ravished her by raping her ; doing unnatural sex and also damaged her internal organs and genitals by inserting iron **rods** ; hands

into it and causing injuries **dangerous** to her life.

The assailants even robbed the complainant of his mobile phone, his purse containing Rs.1000/- ; his bank cards ; made him naked by taking away his clothes and even his black hush puppy shoes. Similarly the mobile phone of the prosecutrix, her ATM card, was **all** robbed.

The assailants then tried to throw both the complainant and the prosecutrix out of the moving bus from its rear door but since it could not open, so they brought them at the front door and threw them out of the moving bus at National Highway No. 8 near Mahipal Pur flyover by the side of the road.

They both were noticed by the passerbys. Police was informed and they were brought to Safdarjung Hospital, New Delhi for their medical examination. The statement of the complainant was recorded.

On the basis of above statement of the complainant, as also considering their MLC(s) ; FIR No. **413/2012** under section **365/366/376(2)(g)/377/394/34** IPC at P.S Vasant Vihar, New Delhi was registered.

2. The crime team lifted the exhibits from the spot near Mahipalpur flyover, where the complainant and prosecutrix were found lying naked.

3. The description of the bus was given by the complainant, as having a separate cabin for its driver ; red colour seat covers, yellow curtains on its windows and it was a **3 X 2** sitter. The CCTV camera footage, installed at Hotel Delhi Airport, Mahipal Pur, New Delhi, just opposite to this spot, near the time of incident, was obtained and it showed the bus of similar description passing twice in front of said hotel, firstly at **9:34 PM** and secondly at **9:53 PM** i.e. close to the time when one Raj Kumar first noticed the victims, lying naked by the side of Mahipal Pur Flyover. The complainant **identified** the bus in the footage.

4. The search operations were conducted and bus bearing no. DL-1PC-0149 was found parked near Ravi Dass Camp, R.K.Puram, New Delhi. Accused Ram Singh, since

deceased, was found sitting in it and he was interrogated and arrested. He led to recovery of his bloodstained clothes, iron rods and the documents concerning the bus and also disclosed that he threw the SIM card of complainant's mobile in the morning of 17/12/2012 in the area of Noida, which was later seized from one Jishan, who found it in Sector-37, Noida, UP.

The bus was inspected by CFSL Team and exhibits were seized. Accused Ram Singh, since deceased, refused to participate in TIP. He led to the arrest of other accused person namely accused Vinay Sharma and accused Pawan @ Kalu.

5. Accused Vinay Sharma got recovered his bloodstained clothes, hush puppy leather shoes of the complainant, the mobile phone make Nokia Model 3110 of Black grey colour belonging to the prosecutrix. Similarly accused Pawan Kumar got recovered from his jhuggi his bloodstained clothes, shoes and also a wrist watch make Sonata and Rs. 1000/- robbed from the complainant. Both of

these accused refused to participate in the TIP.

On 18-12-2012, accused Mukesh was apprehended from his native village Karoli , Rajasthan and a Samsung Galaxy Trend DUOS Blue Black mobile belonging to the complainant was recovered from him. He was brought to Delhi and was arrested after interrogation. Later on 23.12.12, he got prepared the route chart of the route where he drove the bus at the time of incident. Besides that, he got recovered his bloodstained clothes from the garrage of his brother at Anupam Apartment, Saidulajab, Saket, New Delhi. He was **identified** by the complainant in the Test Identification Parade .

On 21.12.2012, the juvenile was apprehended from ISBT and an ATM debit card of the prosecutrix and a mobile phone, besides his SIM were seized.

On 21.11.2012, accused Akshay was also arrested from Aurangabad, Bihar. He led to his brother's house in village, Naharpur, Gurgaon, Haryana and got recovered his bloodstained clothes. He was **identified** by the complainant in the TIP proceedings. He also got recovered a ring

belonging to the complainant, two metro cards and a Nokia phone with SIM of Vodafone company.

6. The mobile phones of the accused person, as also of the complainant and the prosecutrix were all seized and call details records with requisite certificates u/s 65-B of Indian Evidence Act were obtained by the police.

7. The prosecutrix on 16.12.12 gave a brief history of the incident to the doctor in her MLC. On 21.12.12, on being declared fit, she gave her statement under section 164 Cr.P.C to the SDM. Even on 25.12.12, her statement under section 164 Cr.P.C was recorded by Shri Pawan Kumar, Ld. MM by putting her multiple choice questions and through gestures. On 27.12.12, she was shifted to Mt. Elizabeth Hospital, Singapore for her further treatment. Unfortunately, on 29.12.12, she expired **due to sepsis with multiple organ failure with multiple injuries.**

8. Hence sections 307 / 201 / 396/302 IPC were all

added. The MLCs were collected and medical opinion were obtained from the doctor as also their opinion on the weapons used. The DNA profiles were made of all the accused, of the victims and its reports were obtained and accordingly, on 03.01.2013 charge sheet was filed by the prosecution under section 365/376(2)(g)/ 377/ 307/ 395/ 397/ 302/ 396/ 412/ 201/ 120/34 IPC.

9. Since it was a Session's triable case, so on 17-1-2013 it was committed to this court.

CHARGE

10. On 2.2.2013, the accused person were directed to be charged for the offences u/s **120-B IPC** and under section **365 / 366 / 307 / 376 (2)(g) IPC / 377 IPC** read with section **120-B** IPC. Further the accused persons were charged for the offences u/s. **396 IPC** read with section **120-B IPC and / or u/s. 302 IPC** read with section **120-B IPC** ; further u/s. **395 IPC** read with section **397 IPC** read with **120-B IPC** and also u/s. **201 IPC** read with section **120**

IPC and lastly for the offence u/s. **412 IPC**.

EVIDENCE

11. The prosecution thereafter led its evidence. Before proceeding further, it would be appropriate to discuss the nature of evidence given by the witnesses.

12. Prosecution examined as many as **85** witnesses. The witnesses involved in **rescue** of victims and lodging of FIR are :

- (i)** PW57 ASI Kapil Singh
- (ii)** PW65 Ct. Kripal Singh
- (iii)** PW70 Shri Ram Pal Singh.
- (iv)** PW72 Shri Raj Kumar
- (v)** PW73 HC Ram Chander
- (vi)** PW74 SI Subhash Chand

The doctors involved in preparation of **MLCs** are :

- (i)** PW2 Dr. Akhilesh Raj
- (ii)** PW3 Dr. Chetan Kumar

(iii) PW6 Dr. Kulbhusan Prasad

(iv) PW7 Dr. Shashank Pooniya

(v) PW10 Dr. Mohit Gupta

(vi) PW15 Dr. Kamran Faisal

(vii) PW51 Dr. Sachin Bajaj

(viii) PW59 Inspector Raj Kumari

(ix) PW62 SI Mahesh Bhargava.

The Ld. MMs who recorded the **statements**
under section 164 Cr.P.C of the victims are :

(i) PW27 Smt Usha Chaturved.

(ii) PW30 Shri Pawan Kumar

(iii) PW69 Shri Prashant Sharma.

The doctors who accorded the **fitness** qua the
prosecutrix for recording of her statement under section 164
Cr.P.C or otherwise, are :

(i) PW28 Dr. Rajesh Rastogi

(ii) PW29 Dr. Ranju Gandhi

(iii) PW52 Dr. P.K Verma

(iv) PW64 Dr. B.D Athani.

The police officials associated with the **arrest** of accused person and **recoveries** consequent thereupon are :

- (i)** PW53 SI Upender
- (ii)** PW58 SI Arvind Kumar
- (iii)** PW60 HC Mahabir
- (iv)** PW61 SI Jeet Singh
- (v)** PW68 SI Mandeep
- (vi)** PW74 SI Subhash Chand
- (vii)** PW80 SI Pratibha Sharma.

The doctors who **treated** the prosecutrix and who did her **postmortem** are :

- (i)** PW49 Dr. Rashmi Ahuja
- (ii)** PW50 Dr. Raj Kumar Chejara
- (iii)** PW52 Dr. P.K Verma
- (iv)** PW34 Dr. Paul Chui
- (v)** PW35 Dr. Anjula Thomas

The witnesses involved in collection of **evidence(s) / exhibits** are :

- (i)** PW11 Dr. Pintu Kumar Singh
- (ii)** PW16 Shri Rajeev Jakhmola
- (iii)** PW18 SI Vishal Choudhary
- (iv)** PW36 Ct. Sandeep
- (v)** PW37 Ct. Sanjeev
- (vi)** PW39 Ct. Murari
- (vii)** PW40 ASI Surender Kumar
- (viii)** PW42 Ct Suresh Kumar
- (ix)** PW48 HC Giri Raj
- (x)** PW54 SI Sushil Sawariya
- (xi)** PW55 SI Gajender Singh
- (xii)** PW67 Shri Pramod Kumar Jha
- (xiii)** PW81 Shri Ram Adhar.

The **forensic experts** who gave various **reports** on the exhibits lifted in this case from time to time are :

- (i)** PW45 Dr. B.K Mohapatra
- (ii)** PW46 Shri A.D Shah

- (iii)** PW47 Dr. Rajender Singh
- (iv)** PW66 Shri Asghar Hussain
- (v)** PW71 Dr. Ashith B Acharya
- (vi)** PW76 Shri Gautam Roy
- (vii)** PW79 Shri P.K Gotam.

The **Nodal Officer(s)** are :

- (i)** PW19 Shri Vishal Gaurav
- (ii)** PW20 Col. A.K Sachdeva
- (iii)** PW21 Shri Amar Nath Singh
- (iv)** PW22 Shri Shishir Malhotra
- (v)** PW23 Shri Deepak, and
- (vi)** PW24 Shri Rakesh Soni.

The **MHC(M)** was examined as **PW77**.

The witnesses from **Select City Mall staff** are :

- (i)** PW25 Shri Rajender Singh Bisht, and
- (ii)** PW26 Shri Sandeep Singh ;

The **Crime Team** comprised of :

- (i) PW41 Inspector Naresh Kumar
- (ii) PW43 Ct Jaiveer / Photographer.

The witnesses who countered the plea of alibi are :

- (i) PW83 Shri Angad Singh
- (ii) PW84 Father George Manimala
- (iii) PW85 Brother R. P. Samuel

The complainant **PW1** and Shri Ram Adhar **PW2** deposed on the aspect of conspiracy as also the incident.

13. After examination of the above said witnesses, the statement under section **313** Cr.P.C of all the accused except accused Ram Singh, since deceased, was recorded wherein they all denied their involvement and even their presence at the time of the incident, except of accused Mukesh who admitted of being driving the bus **Ex.P1** at the relevant time.

It is pertinent to mention that during the course of trial accused Ram Singh committed suicide in Tihar Jail and hence proceedings against him, stood abated.

14. Accused person examined the following witnesses in their defence :-

Accused Pawan Gupta @ Kaalu examined :

- i.** DW1 Shri Lal Chand
- ii.** DW2 Shri Heera Lal
- iii.** DW3 Shri Ram Charan
- iv.** DW4 Shri Gyan Chand
- v.** DW16 Shri Hari Kishan Sharma

Accused Vinay Sharma had examined :

- i.** DW5 Smt Champa Devi
- ii.** DW6 Shri Hari Ram Sharma
- iii.** DW7 Shri Kishore Kumar Bhat
- iv.** DW8 Shri Sri Kant
- v.** DW9 Shri Manu Sharma
- vi.** DW10 Shri Ram Babu

vii.DW17 Shri Dinesh

Accused Akshay Kumar Singh @ Thakur had examined :

- i.** DW11 Shri Chavinder
- ii.** DW12 Shri Sarju Singh
- iii.**DW13 Raj Mohan Singh
- iv.**DW14 Smt. Punita Devi
- v.** DW15 Smt Sarita Devi

15. Before coming to the contentions raised as also the law cited, it would be appropriate to find the crux of the evidence so recorded ;

16. VICTIMS, RESCUE and FIR

The entire incident is enumerated in the deposition made by the complainant as **PW1** who stated, inter alia, that he is an engineer by profession and that on 16-12-2012 at about 3:30 PM he took the prosecutrix from bus stand of Sector-1, Dwarka, New Delhi and went in an

auto to Select City Mall, Saket, New Delhi. There they watched movie "Life of Pi". After watching the movie, at about 8.30PM, they left Select City Mall, Saket, New Delhi. As they could not get an auto for Dwarka so they hired an auto for Munirka bus stand from where they could get a bus of route no. 764 for Dwarka. At about 9 PM they reached at Munirka bus stand and found a white colour chartered bus on which Yadav was written. The bus had yellow and green lines / strips on it. He also noticed the entry gate of the bus being ahead of its front left tyre, as is there in the luxury buses and that its front tyre was without a wheel cover. A boy, in the bus was calling for commuters for Dwarka / Palam Mod.

Both the victims boarded the bus and saw that besides the boy who was calling the passengers, two other person were sitting in driver's cabin along with the driver of the bus. PW1 noticed that it was a 3 x 2 seater bus i.e., three seat's row behind the driver's seat and the two seat's row on its other side. He also noticed a person sitting on the left side i.e. on the row of two seats and the another on the

right side i.e. on the row of three seats, just behind the driver's seat. Both PW1 and the prosecutrix sat behind the person sitting on the left side i.e. in the row of two seats. PW1 noticed the seats covers of the bus of red colour and its curtains of yellow colour and that it had a black colour film on its windows. The windows were at quite a height as in luxury buses. PW1 also noticed the person(s) sitting in the driver's cabin were coming and returning to the driver's cabin. PW1 paid Rs. 20/- to the conductor as fare. PW1 identified accused Mukesh to be the driver of the bus **Ex.P1** and accused Ram Singh and accused Akshay to be the person sitting in the driver's cabin and accused Pawan Kumar was sitting in front of him in two seat's row of the bus and whereas accused Vinay was sitting on three seat's row, just behind the driver's seat. The conductor was the JCL.

After boarding the bus, **PW1** had a **feeling** that accused person did not allow anyone else to board the bus and they moved the bus and left Munirka Bus Stand. Accused person put off the lights inside the bus. Then accused Ram Singh, accused Akshay Thakur and the JCL

came towards the complainant and started abusing him asking as to where he was taking the girl in the night. They started giving fist blows on his face. As the complainant tried to resist them, they called their associates viz., accused Vinay and accused Pawan by calling their names and asked them to bring iron rods. Thereafter all these accused started giving beatings to the complainant by iron rods, thus injuring him on his head, both legs and on other parts of his body. The prosecutrix was shouting and calling for help. As she tried to call police by her mobile, the accused person snatched away their mobiles. PW1 was carrying two mobiles having sim nos.9540034561 and 7827917720 whereas the prosecutrix was carrying only one mobile. Both the mobiles of the complainant were of dual SIMs facility but at that time he had only one SIM in each mobile.

Because of the beatings, PW1 fell on the floor of the bus and that accused Pawan and accused Vinay pinned him down. The accused person robbed the victims of their mobiles besides robbing him of his purse carrying a City Bank credit card, ICICI Bank debit card ; his identity card

issued by his company, a metro card ; Rs. 1000/- in cash ; his watch of Titan, a golden ring studded with jewels and a silver ring studded with pearl ; black colour Hush Puppy's shoes ; black colour numero -uno jeans, a grey colour pullover ; a brown (khaki) blazer.

As the complainant was pinned down by accused Vinay and accused Pawan Kumar, the others viz., accused Ram Singh, accused Akshay and the JCL (not being tried by this court) took the prosecutrix to the rear side of the bus.

PW1 heard the cries of the prosecutrix like "chor do, bachao" as if she was being beaten up. The complainant was also given leg and fist blows. The prosecutrix was crying and shouting in a loud voice and her voice was oscillating. Accused Ram Singh, since deceased, accused Akshay and the JCL (not being tried by this court) then committed rape upon the prosecutrix one by one. After committing rape, those accused came towards the complainant and pinned him down and whereas accused Vinay and accused Pawan then went to the rear side of the bus and raped the prosecutrix. PW1 noticed that earlier the

bus was moving in a fast speed but after some time he felt that the speed of the bus was reduced and he saw that accused Mukesh who was driving the bus came near him and hit him with the rod and he also went to the rear side of the bus and raped his friend. He also heard one of the accused saying "*mar gayee, mar gayee*".

The prosecutrix was carrying a grey colour purse having an Axis Bank ATM card and other belongings. The accused person robbed her of her belongings and took away her clothes and also of the complainant while beating him with iron rods. The accused were exhorting that both the victims be not left alive. They then pulled PW1 near the rear door and put him on his friend, the prosecutrix. The rear door was closed and it could not open despite being tried by the accused. The accused person then pulled him and his friend, the prosecutrix, by their hairs and brought both of them at the front gate and then threw them out of the moving bus, opposite to Hotel Delhi 37, Mahipalpur, New Delhi. After throwing the victims out of the moving bus, the accused turned the bus in a manner to crush both of them

under its wheels but PW1 pulled the prosecutrix and himself out of the reach of the wheels of the bus and saved themselves. He found his friend, the prosecutrix, naked and bleeding from all parts of her body.

PW72 Shri Raj Kumar, an employee of EGIS Infra Management India (P) Limited, K.M 24, Toll Plaza, Dundahera, Gurgaon, with Shri Surender Singh was on patrolling duty in the said area from 9:30 PM to 7 AM. At about 10:02 PM he heard the voice of “**bachao bachao**” from the left side of the road near a milestone, opposite to Hotel 37. He saw the complainant and the prosecutrix sitting naked, having blood all around. Immediately thereafter, at about 10:04 PM he informed **PW70** Ram Pal Singh, sitting in the control room, requesting him to call PCR.

PW70 Ram Phal of EGIS Infra Management India (P) Limited, then telephoned at no. 100 and even asked his other patrolling staff to reach the spot.

At about 10:24 PM **PW73** HC Ram Chander, Incharge, PCR Van Zebra 54, received an information about the incident and of lying of victims in naked condition near

the foot of Mahipal Pur flyover towards Dhaula Kuan, opposite GMR gate. He reached the spot and found the victims. He dispersed the crowd and brought a bottle of water and a bed sheet and tore it in two parts and gave it to both the victims to cover themselves. At about 11 PM, he brought the victim, to Safdarjung Hospital, New Delhi. While leaving the complainant in the casualty, **PW73** took the prosecutrix to the gynae building and got her admitted there. On the way to the hospital the victims informed him about the incident.

PW57 ASI Kapil Singh, the Duty Officer at P.S Vasant Vihar, New Delhi, in the intervening night of 16/17-12-2012, received an information about the incident and he lodged DD No. 6-A **Ex.PW57/A** and passed on the said DD to **PW74** SI Subhash Chand, on emergency duty on that night at P.S Vasant Vihar. Immediately, thereafter **PW57** ASI Kapil Singh received yet another information qua admission of the prosecutrix and of the complainant in Safdarjung Hospital and he lodged DD No. 7-A **Ex.PW57/B** and also passed on the said DD to SI Subhash Chand,

PW74 SI Subhash Chand then left for Safdarjung Hospital, where he met **PW59** Women-Inspector Raj Kumari and **PW62** SI Mahesh Bhargava. **PW59** Women-Inspector Raj Kumari handed over to him the MLC and the exhibits concerning the prosecutrix, as given to her by the treating doctor and whereas **PW62** SI Mahesh Bhargava handed over to him the MLC of the complainant.

PW74 SI Subhash Chand, then recorded the statement **Ex.PW1/A** of the complainant and made his endorsement **Ex.PW74/A** on it and gave the rukka to **PW65** Ct. Kripal for being taken to P.S Vasant Vihar, New Delhi and to get the FIR registered.

PW65 Ct. Kripal, then went to P.S Vasant Vihar, New Delhi and at 5:40 AM gave the rukka to **PW57** ASI Kapil Singh, the Duty Officer, who recorded FIR **Ex.PW57/D** and made endorsement **Ex.PW57/E** on the rukka and returned it to **PW65** Ct Kripal, who then gave it to **PW80** SI Pratibha Sharma at P.S Vasant Vihar, to whom the investigation was entrusted. **PW74** also handed over the blood stained bed sheet, used by the complainant to cover himself, to **PW80**,

the Investigating Officer ; seized vide memo **Ex.PW74/B**.

PW80 SI Pratibha Sharma then collected the MLC of the prosecutrix from **PW59** W/Inspector Raj Kumari and also the exhibits viz., one card board box, two yellow envelopes, a white envelope along with sample seal seized vide memo **Ex.PW59/A**.

17. TREATMENT

PW57 Dr. Sachin Bajaj along with Dr Dheeraj examined the complainant vide MLC **Ex.PW51/A** and observed the following injuries on his person :

- (a)** 1 X 1 cm size clean lacerated wound over the vertex of scalp (head injury) ;
- (b)** 0.5 X 1cm size clean lacerated wound over left upper leg ;
- (c)** 1 X 0.2 cm size abrasion over right knee.

The complainant was given initial treatment by the doctors.

PW49 Dr. Rashmi Ahuja on the other hand, on 16-12-2012 at about 11:15 PM, had examined the prosecutrix and prepared casualty / GRR paper **Ex.PW-49/A**

and also her MLC **Ex.PW49/B**.

As per history told by the prosecutrix to her, it was a case of **gang rape** in a moving bus by 4-5 person when the prosecutrix was returning after watching a movie with her boyfriend. She was slapped on her face, kicked on her abdomen and bitten over lips, cheek, breast and vulval region. She remembers intercourse two time and rectal penetration also. She was also forced to suck their penis but she refused. All this continued for half an hour and then she was thrown off from the moving bus with her boy friend. The following injuries were noted by Dr. Rashmi Ahuja in

Ex.PW49/A :

- i.** Bruise over left eye covering whole of the eye.
- ii.** Injury mark (abrasion) at right angle of eye.
- iii.** Bruise over left nostril involving upper lip.
- iv.** Both lips edematous.
- v.** Bleeding from upper lip present.
- vi.** Bite mark over right cheek.
- vii.** Left angle of mouth injured (small laceration).
- viii.** Bite mark over left cheek.
- ix.** Right breast bite marks below areola present.
- x.** Left breast bruise over right lower quadrant, bite mark in inferior left quadrant.

Per abdomen :

- i. Guarding & rigidity present

Local examination :

- i. cut mark (sharp) over right labia present.
- ii. A tag of vagina (6cm in length) hanging outside the introitus.
- iii. There was profuse bleeding from vagina.

Per vaginal examination :

- i. A posterior vaginal wall tear of about 7 to 8 cm.

Per rectal examination :

- i. Rectal tear of about 4 to 5 cm., communicating with the vaginal tear.

The prosecutrix was prepared for complete perineal tear repair.

PW50 Dr. Raj Kumar Chijjara, Surgical Specialist, Department of Surgery, Safdarjung Hospital, New Delhi with a surgery team comprising of himself, Dr. Gaurav and Dr. Piyush operated the prosecutrix in the intervening night of 16/17-12-2012 and his operative findings are as under :

- a. Collection of around 500 ml of blood in peritoneal cavity
- b. stomach pale,

c. Duodenum contused

d. Jejunum contused & bruised at whole of the length and lacerated & transected at many places. First transection was 5cm away from D J junction. Second was 2 feet from the D J, after that there was transection and laceration at many places. Jejunal loop was of doubtful viability. Distal ileum was completely detached from the mesentry till ICJ (ileocaecal junction). It was completely devascularized.

e. Large bowel was also contused bruised and of doubtful viability. Descending colon was lacerated vertically downward in such a manner that it was completely open.

f. Sigmoid colon & rectum was lacerated at many places linearly , mucosa was detached completely at places, a portion of it around 10cm was prolapsing through perineal wound.

g. Liver and spleen was normal.

h. both sides retro peritoneal (posterior wall of the abdomen)

haematoma present .

i. Mesentry & omentum was totally contused and bruised.

j. Vaginal tear present, recto vaginal septum was completely torn.

Gut was totally bruised and contused in such a manner that it could not be repaired so proximal Jejunostomy was made

Laparostomy (abdomen was left open) was made.

PW50 proved the OT notes as **Ex.PW50/A**, bearing signature of Dr. Gaurav and his own note in this regard is **Ex.PW-50/B**. As per his opinion, the condition of the small and large bowels were **extremely bad for any definitive repair**. After performing the operation, the patient was shifted to ICU. The 1st surgery was damage control surgery and it was expected that unhealthy bowel would be there.

The second surgery was performed on 19.12.2012 by him along with his operating team consisting of Prof. Sunil Kumar, Dr. Pintu and Dr. Siddharth. From the

gynecological side Dr. Aruna Batra and Dr. Rekha Bharti were present along with anaesthetic team. The findings were as under :

Abdominal findings :

- i. Rectum was longitudinally torn on anterior aspect in continuation with perineal tear. This tear was continuing upward involving sigmoid colon, descending colon which was splayed open. The margin were edematous. There were multiple longitudinal tear in the mucosa of recto sigmoid area. Transverse colon was also torn and gangrenous. Hepatic flexure, ascending colon & caecum were gangrenous with multiple perforations at many places. Terminal ileum approximately one and a half feet loosely hanging in the abdominal cavity, it was avulsed from its mesentry and was non viable. Rest of the small bowel was non existent with only

patches of mucosa at places and borders of the mesentery was contused. The contused mesentery borders initially appeared (during 1st surgery) as contused small bowel.

- ii. Jejunostomy stoma was gangrenous for approximately 2cm.
- iii. Stomach and duodenum was distended but healthy.

The clinical notes **Ex.PW-50/C** and notes prepared by the gynaecology team were proved as **Ex.PW50/D**. The gynecological notes were prepared on actual examination of the patient on the operation table during the surgery. **PW50** further operated the prosecutrix on 23-12-2012 for peritoneal lavage & placement of drain under general anaesthesia and his notes are **Ex.PW50/E**.

On 26-12-2012 the condition of the prosecutrix was examined and it was decided to shift her abroad for further management. Notes in this regard are **Ex.PW50/F** bearing signatures of Dr. Raj Kumar, Dr. Sunil Kumar, Dr.

Aruna Batra and Dr. P.K.Verma.

18. FITNESS AND STATEMENTS U/s 164 Cr.P.C

From time to time, the applications were moved by the Investigating Officer for determining the fitness of the prosecutrix for the purpose of recording of her statement(s).

On 21-12-2012 an application **Ex.PW27/D-B** was moved by **PW80** SI Pratibha Sharma for seeking an opinion regarding fitness of the prosecutrix. **PW52** Dr. P.K Verma examined the prosecutrix and found her to be fit, conscious, oriented and meaningfully communicative for making statement vide his endorsement at point **A** on application **Ex.PW27/DB**.

PW27 Smt. Usha Chaturvedi, SDM, Vivek Vihar, Delhi, before recording of statement satisfied herself that the prosecutrix was fit and then she recorded statement **Ex.PW27/A** of the prosecutrix bearing the signatures of the prosecutrix on all pages. The prosecutrix even wrote the date and time. **PW27** then sent the said statement to ACP, Vasant Vihar alongwith her forwarding letter **Ex.PW27/B**.

In her statement **Ex.PW27/A**, the prosecutrix narrated the entire incident, specifying the role of each of accused person ; the gang rape / unnatural offence committed upon her, the injuries suffered by her and her friend in the incident including thrusting of iron rods and hands in her private parts ; the description of the bus and ultimately throwing them naked of the moving bus at the footfall of Mahipal Pur Flyover.

On **25-12-2012**, the Investigating Officer **PW80** SI Pratibha Sharma, moved yet another application **Ex.PW28/A** to seek an opinion qua the fitness of the prosecutrix for recording of her another statement. The prosecutrix was having endotracheal tube in place i.e in larynx and trachea and was on ventilator and she could not speak.

In the opinion of **PW52** Dr. P.K Verma the prosecutrix was though unable to speak, but per **PW28** Dr. Rajesh Rastogi, at **12:40 PM**, the prosecutrix was conscious, oriented, co-operative, comfortable, meaningfully communicative to make a statement through non-verbal

gestures. After seeking opinion of the doctors, another statement **Ex.PW30/D-1** (u/s 164 Cr.P.C.) of the prosecutrix was recorded by **PW30** Shri Pawan Kumar, the Ld. MM, by way of gestures and multiple choice questions.

Even in her statement **Ex.PW30/D-1** the prosecutrix described the entire incident, through multiple choice questions and her gestures, as also the role of each of the accused person. Prosecutrix even wrote the names of accused person on a sheet **Ex.PW30/E**. The Ld. MM also gave a correctness certificate **Ex.PW30/F** of the proceedings.

Even the complainant **PW1** on 19-12-12 had made a statement **Ex.PW1/B** under section 164 Cr.P.C before Shri Prashant Sharma, the Ld. MM, Saket, New Delhi. The correctness certificate is **Ex.PW69/B**. The queries put by the Ld. MM to satisfy himself qua voluntariliness of the complainant to gave his statement are **Ex.PW69/D**.

The statements of the complainant viz., **Ex.PW1/A** and **Ex.PW1/B** as also dying declarations **Ex.PW27/A** and **Ex.PW30/D-1** of the prosecutrix

corroborate each other in all material aspects and narrate the incident dated 16-12-2012 exhaustively.

19. ARREST AND RECOVERIES

As stated above, **PW53, PW58, PW60, PW61, PW68, PW74** and **PW80** were all involved in the arrest of accused and recoveries made therefrom. Let me find how accused were arrested and what was recovered at their instance.

ACCUSED RAM SINGH (SINCE DECEASED)

As various teams were working in the case, **PW80** SI Pratibha Sharma, the Investigating Officer received a secret information that a bus of similar description was seen in the area of Ravi Dass Camp, R.K Puram, New Delhi. She then went there and found the bus parked at Ravi Dass jhuggi Camp. She summoned other police staff. The person, inside the bus, on seeing the police party got down and started running but was overpowered and his identity was revealed as Ram Singh, since deceased. He was arrested on 17-12-2012 at 4:15 PM vide memo **Ex.PW74/D** ; his

personal search was conducted vide memo **Ex.PW74/E** and his disclosure **Ex.PW74/F** was recorded. The Investigating Officer seized the bus **Ex.P1** vide memo **Ex.PW74/K**. She seized the seat covers of the bus of red colour and its curtains of yellow colour. On the bus "Yadav" was found written on its body with green and yellow stripes on it. The cap on the front wheel of the bus was found missing and that the front entry gate of the bus was ahead of its front tyre. The entry gate of the bus opened in the driver's cabin. The Investigating Officer seized the key **Ex.P-74/2** of the bus vide memo **Ex.PW74/J**.

Accused Ram Singh then led the police party inside the bus and took out some documents **Ex.P-74/4** from a shelf in its cabin, seized vide memo **Ex.PW74/I**. He also got recovered two iron rods-blood stained **Ex.P-49/1** and **Ex.P-49/2**, seized vide memo **Ex.PW74/G**. Accused Ram Singh also produced a debit card **Ex.P-74/3** of Indian Bank, in the name of Asha Devi, the mother of the prosecutrix, seized vide memo **Ex.PW74/H**. The T-Shirt **Ex.P-74/6** and the brown colour chappal **Ex.P-74/7**, having

bloodstains, belonging to accused Ram Singh were seized vide memo **Ex.PW-74/L**. He also got recovered the ashes and partly unburnt clothes, lying near the bus ; seized vide memo **Ex.PW74/M** ; and UNIX mobile phone with MTNL Sim **Ex.P74/5** from his personal search, seized vide memo **Ex.P-74/E**. Accused Ram Singh was put in muffled face.

The Investigating Officer prepared the site plans of the places where the bus was found parked and from where the ashes were found.

ACCUSED MUKESH

Accused Mukesh was apprehended on 18-12-2012 from village Karoli, Rajasthan by a team headed by **PW58** SI Arvind. He produced accused Mukesh before **PW80** SI Pratibha Sharma, the Investigating Officer at Safdarjung Hospital in muffled face, alongwith a mobile make Samsung Galaxy Duos **Ex.P-6** ; seized by her vide memo **Ex.PW58/A**. Accused was arrested at 6:30 PM of 18-12-2012 by her vide memo **Ex.PW58/B** ; his personal search was conducted vide memo **Ex.PW58/C**. Accused pointed the Munirka bus stand

vide memo **Ex.PW68/K** and the dumping spot vide memo **Ex.PW68/L**.

On 23-12-2012 accused Mukesh led the police to Anupam Apartment, garage no. 2, Saidulajab, Saket, New Delhi and got recovered a green colour t-shirt **Ex.P-48/1** on which the word "play boy" was printed ; a grey colour pant **Ex.P-48/2** and a jacket **Ex.P-48/3** of bluish grey colour, all seized vide memo **Ex.PW48/B**. The Investigating Officer also prepared the site plan **Ex.PW80/I** of the place of recovery. On 24-12-2012 accused Mukesh also got prepared a route chart **Ex.PW80/H**.

ACCUSED PAWAN GUPTA @ KAALU

On 18-12-2012 accused Ram Singh led the Investigating Officer to Ravi Dass Camp and pointed towards his associates namely, accused Vinay and accused Pawan. Accused Pawan was apprehended and arrested at about 1:15 PM vide memo **Ex.PW60/A** ; his disclosure **Ex.PW60/G** was recorded and his personal search was conducted vide memo **Ex.PW60/C**.

Accused Pawan Gupta pointed Munirka bus stand and a pointing out memo **Ex.PW68/I** was prepared. He also pointed the dumping spot and memo **Ex.PW68/J** was prepared in this regard.

On 19-12-2012, accused Mukesh got effected the following recoveries :

- (a) complainant's wrist watch **Ex.P3** seized vide memo **Ex.PW68/G ;**
- (b) two currency notes of denomination of Rs.500/- **Ex.P-7** colly were seized vide memo **Ex.PW68/G ;**
- (c) clothes worn by the accused at the time of incident,seized vide memo **Ex.PW68/F ;**
- (b) black coloured sweater having grey stripes with label Abercrombie and Fitch **Ex.P-68/6** and a pair of coca-cola colour pants **Ex.P-68/7** colly ; under wear having elastic labeled Redzone **Ex.P-68/8** and a pair of sports shoes with columbus inscribed on them as **Ex.P-68/9.**

ACCUSED VINAY SHARMA

On 18-12-2012 at about 1:30 PM accused **Vinay Sharma** was arrested from in front of Ravi Dass Mandir, main Road, Sector-3, R.K Puram, New Delhi vide arrest

memo **Ex.PW60/B** ; his disclosure **Ex.PW60/H** was also recorded. He pointed out the Murnirka bus stand from where the victims were picked up vide memo **Ex.PW68/I** and he also pointed out Mahipalpur Flyover, the place where the victims were thrown out of the moving bus vide pointing out memo **Ex.PW68/J**.

On 19-12-2012 he had got effected the following recoveries :

- (a) Complainant's shoes **Ex.P-2** seized vide memo **Ex.PW68/C** ;
- (b) Nokia mobile phone **Ex.P-68/5** of the prosecutrix seized vide memo **Ex.PW68/D** ;

On 19-12-2012 in pursuant to his supplementary disclosure statement **Ex.PW68/A**, the following recoveries were made vide seizure memo **Ex.PW68/B** :

- (a) One blue coloured jeans having monogram of Expert **Ex.P-68/1** ;
- (b) a black coloured sports jacket with white stripes and a monogram of moments as **Ex.P-68/3** and a pair of rubber slippers as **Ex.P-68/4**.

During his personal search following articles were

recovered :

- (a)** Nokia mobile phone with IMEI No. 35413805830821418 belonging to the accused, which was returned to him on superdari vide order dated 4-4-2013

AKSHAY KUMAR SINGH @ THAKUR

On 21-12-2012 at about 9:15 PM accused **Akshay Kumar Singh @ Thakur** was arrested from Village Kamalang, P.S Tandwa, Aurangabad, vide memo **Ex.PW53/A** ; on 21-12-2012 and 22-12-2012 his disclosures **Ex.PW53/I** and **Ex.PW53/D** respectively were recorded.

On 22-12-2012 he had got effected the following recoveries from the residence of his brother Abhay from the rented house of one Tara Chand, Village Naharpur, Gurgaon viz;

- i.** Blood stained jeans (**Ex.P-53/3**) worn by the accused at the time of the incident, recovered from a black bag (**Ex.P-53/2**)
- ii.** A blue black coloured Nokia mobile phone (**Ex. P-53/1**)

On 27-12-2012 he got recovered the complainant's Metro card **Ex.P-5** and complainant's silver

ring **Ex.P-4** from House no. 1943, 3rd floor, Gali No. 3, Rajiv Nagar, Sector 14, Gurgaon, Haryana.

20. MEDICAL(S) OF ACCUSED AND EXHIBITS :

All the accused were got medically examined after they were arrested. The MLCs of all the accused person show various injuries on their person ; viz., in the MLC **Ex.PW2/A** of accused Ram Singh, **PW2** Dr. Akhilesh Raj had opined that the injuries mentioned at point **Q to P1** could be possible in a **struggle**. Similarly the opinion of **PW7** Dr. Shashank Pooniya proved that the injuries present on the body of accused Akshay were a week old and were suggestive of **struggle**, per MLC **Ex.PW7/A**. Similarly the MLC **Ex.PW7/B** of accused Pawan show that he suffered **injuries** on his body which were simple in nature, though claimed to be self inflicted by accused Pawan. The MLC **Ex.PW7/C** of accused Vinay Sharma proved that he too suffered injuries, simple in nature, 2 to 3 days old, though injury no. 8 was claimed to be self inflicted by accused himself.

21. COLLECTION OF EXHIBITS

PW49 Dr. Rashmi Ahuja examined the prosecutrix vide MLC **Ex.PW49/B** and had even collected the following exhibits during her examination viz., outer clothes i.e sweater torned; inner clothes i.e. Sameej torned ; dust, grass present in hairs, dust in clothes ; debries from in between fingers ; debries from nails ; nail clippings ; nail scrappings ; breast swab ; body fluid collection (swab from saliva) ; combing, matted clipping of pubic hair ; cervical mucus collection ; vaginal secretions ; vaginal culture ; washing from vaginal ; rectal swab ; Oral Swab ; Urine and Oxalate blood vial ; blood samples, etc.

Further, **PW11** Dr. Pintu, on 24-12-2012 gave a sample of gangrenous bowel of the prosecutrix, to SI Gajender Singh PW55 with sample seal, seized vide memo **Ex.PW11/A**.

PW16 Shri Rajeev Jakhmola, Manager, Birla Vidya Niketan, produced the documents of bus **Ex.P1** including the copy of the agreement of the school with the owner of the

bus, copy of the RC, copy of the fitness certificate, certificate of third party technical inspection, pollution certificate, two copies of certificate-cum-policy schedule (Insurance), copy of driving license of Ram Singh, copy of certificate of training undergone by accused Ram Singh, copy of permit and list of the transporters, collectively **Ex.PW16/A**.

PW18 SI Vishal Chaudhary on 1-1-2013 went to Safdarjung Hospital and collected from Dr. Sarvesh Tandon 20 photographs of bite marks and had also collected eight letters / documents ; seized by Inspector Anil Sharma, vide memo **Ex.PW18/A**.

On 2-1-2012 he collected an envelope with three boxes sealed with the seal of department of Forensic SJH and went to deposit it at Department of Forensic Odontology , SDM College of Dental Science, Dharwad, Karnataka. He brought the report along with exhibits and handed it over to Inspector Anil Sharma. He deposited the exhibits with the MHC(M).

PW36 Ct. Sandeep, on 18-12-2012 took two sealed parcels from the doctor qua accused Vinay, sealed

with the seal of hospital ; seized by the Investigating Officer, vide memo **Ex.PW36/A**.

Similarly, **PW37** Ct. Sanjeev, on 18-12-2012, brought two sample parcels qua accused Mukesh with the seal of hospital ; seized by the Investigating Officer, vide memo **Ex.PW37/A**.

PW39 Ct. Murari, on 18-12-2012, brought six sealed parcels qua accused Ram Singh sealed with the seal of hospital alongwith sample seal and handed it over to the Investigating Officer vide memo **Ex.PW39/A**.

PW40 ASI Surender Kumar, on 22-12-2012, brought 11 sealed parcels qua accused Akshay, sealed with the seal of AIIMS along with sample seal and handed it over to the Investigating Officer, seized vide memo **Ex.PW40/A**.

PW42 Ct. Suresh Kumar, likewise, on 25-12-2012 brought blood samples of the complainant from the doctors of Safdarjung Hospital in sealed condition with sample seal and gave it to Investigating Officer, seized vide memo **Ex.PW15/A**.

PW48 HC Giri Raj, on 18-12-2012, brought one

sealed parcel qua accused Pawan along with the seal of hospital, seized by Investigating Officer, vide memo **Ex.PW48/A**. On 24-12-2012 hard-disk and CDs were seized from different hotels vide memos **Ex.PW48/C, Ex.PW48/D** and **Ex.PW48/E**.

PW54 SI Sushil Sawariya was also associated with the seizure of CDs and hard-disks from the hotels.

On 29-12-2012 **PW55** SI Gajender Singh went to Department of Forensic, AIIMS, where Dr. O.P Murthy handed over to him a CD and a certificate, seized vide memo **Ex.PW55/A**. The said CD contain 25 photographs taken at the time of medical examination of accused Akshay Kumar Singh @ Thakur.

PW67 Shri Pramod Kumar Jha, on 17-12-2012, handed over a pen drive and a CD of the CCTV footage at Hotel Delhi Airport ; seized vide memo **Ex.PW67/A**. He also gave a requisite certificate u/s 65-B of Indian Evidence Act **Ex.PW67/B**.

PW29 Dr. Ranju Gandhi, on 24-12-2012, had taken the specimen of scalp hairs of the prosecutrix and

gave it to the Investigating Officer vide memo **Ex.PW29/A** on the application **Ex.PW80/G** moved by the Investigating Officer.

PW80 SI Pratibha Sharma on the instructions of the crime team had collected the exhibits from the spot near Mahipalpur viz., bloodstained leaves of mulberry (shahtut) tree, the bloodstained grass, the tree leaves and grass without blood vide memo **Ex.PW74/C** ; she also seized the exhibits from the bus **Ex.P1** parked at Tyagraj Stadium vide memo **Ex.PW74/B**. She also seized the lower and upper seat covers from the 8th row behind the driver's seat of the bus Ex.P1 vide memo **Ex.PW60/F**. She also moved an application **Ex.PW80/D** to get the swab bite marks of the prosecutrix. She also seized two CDs and 7 photographs of the victim from the Manager, Select City Mall, taken by CCTV camera, of the relevant time when the victims had visited the mall for watching the movie "Life of Pi".

Further **PW78** Inspector Anil Sharma on 31-12-2012, took permission for taking finger / palm prints of accused person through CFSL, CBI experts. He also sent

dental models of accused along with photographs of the bite marks suffered by the prosecutrix ; to the SDM College of Dental Science, Dharwad, Karnataka, for its opinion. He also sent the pen drive and CDs for examination.

Various exhibits were thus collected from the spot ; from the bus ; from the doctors after medical examination of the accused person and of the victims and that the Investigating Officer also seized the recoveries effected at the instance of the accused from time to time viz., their blood stained clothes, shoes/chappals and the robbed articles.

The exhibits **in sealed condition(s)** were all sent to CFSL for examination and comparison purposes. The MHC(M), when examined as **PW77** proved the relevant entries of the Malkhana Register, the relevant Road Certificates and receipts of CFSL in this regard.

This aspect I would deal yet again, in detail, later while discussing the chain of custody.

22. SCIENTIFIC REPORTS

PW46 Shri A.D Shah on 17-12-2012 and on 18-12-2012 had visited Tyagraj Stadium and inspected the bus **Ex.P1** and prepared his report **Ex.PW46/A**. On 26-12-2012 the finger prints of the complainant, of prosecutrix, of accused Vinay, of accused Pawan, of accused Mukesh and of accused Ram Singh, as developed, were received by him vide memo **Ex.PW46/B**. On 28-12-2012 on the request **Ex.PW46/C** of the SHO, P.S Vasant Vihar, he went to Tihar Jail and took the specimen finger / palm / foot prints of accused Ram Singh, accused Mukesh, accused Vinay, accused Pawan and accused Akshay and after comparing the chance prints lifted from the bus **Ex.P1** with the finger / palm / foot prints of the accused he prepared the report **Ex.PW46/D**. The entire documents **Ex.PW46/E** also helped him to prepare the report.

PW79 Dr. P.K Gautam, on 17-12-2012, carried out the inspection of the bus **Ex.P1** along with the team and took photographs. On 18-12-2012 he again went to take photographs from different angles from inside and outside

the bus. He developed these photographs and handed over its hard copy in DVD to Biology division and Finger Print Division. The photographs are **Ex.P-76/B, Ex.P-76/C** and **Ex.P-77/D**.

On 20-12-2012 **PW66** Asgar Hussain, a photographer, working under the name and style of M/s. Ankit Photo Studio, took 10 photographs of different parts of the body of the prosecutrix by his digital camera make Nikon and then developed these photographs and gave it to the Investigating Officer. Small seized photographs (10 in number) are **Ex.P-66/B**(colly) and large sized photographs (10 in number) are **Ex.PW-66/C** colly. He also gave a certificate **Ex.PW66/A** under section 65-B of the Indian Evidence Act.

PW45 Shri B.K. Mahapatra, on 17-12-2012, along with his team examined the bus **Ex.P-1** parked at Tyagraj Stadium and four exhibits were lifted and were given to SI Pratibha Sharma who seized such exhibits. Another team on the next day visited the bus and 10 exhibits were lifted. He proved the report **Ex.PW-45/G** describing the exhibits being

lifted from bus.

PW45 Shri B.K. Mahapatra on 21-12-2012 received four sealed parcels ; on 24.12.12 received 61 sealed parcels and on 26.12.12 received four sealed parcels relating to this case and after examining such exhibits, he gave his reports **Ex.PW-45/A, Ex.PW-45/B** and **Ex.PW-45/C**. The remnants of sample were forwarded by him to the SHO by forwarding letters **Ex.PW-45/D, Ex.PW-45/E** and **Ex.PW-45/F**.

PW47 Dr. Rajender Singh, on 28-12-2012, received two sealed parcels from the Biology division of CFSL, sealed with the seal of BKM SSO-1(BIO) CFSL, CBI, New Delhi. The said parcels were marked as **Ex.1a** and **Ex.18e**, containing earth sample and vide his report **Ex.PW47/A**, he found that both the samples were similar in respect of colour, density, gradient distribution and other general physical characteristic.

On 2-1-2012 **PW76** Shri Gautam Roy, SSO, Grade-1, CFSL, CBI, Delhi, received two parcels sealed with the seal of **PS**, one containing the blue colour pen drive and

another containing CD of moserbear along with questionair **Ex.PW-76/A**. The pen drive and CD was played on the computer and he found that bus **Ex.P1** was seen twice at **9.34 PM** and **9.54 PM** in the footage. The word **“Yadav”** was written on the said bus and its front wheel cover was **missing** and it had a **dent** on its rear side. He made the comparison chart containing questioned photographs on one side and the specimen photographs on the other and the said chart is **Ex.PW-76/B, Ex.PW-76/C** and **Ex.PW-76/D**. He gave his detail report **Ex.PW-76/E** and also proved his draft report **Ex.PW-76/F** where he had given actual timings when the bus was seen in the footage. He identified the pen drive as **Ex.P-67/1** and CD as **Ex.P-67/2**.

On 3-1-2013 **PW71** Dr. Asith B. Acharya of Department of Forensic Odontology , SDM College of Dental Science, Dharwad, Karnataka, received the case property of this case, per list **Ex.PW-71/B** viz., 10 enlarged photographs, 10 small photographs and a box containing dental models of five accused person. He compared the injuries depicted in the photographs with the dental models

and prepared his report **Ex.PW-71/C** and then sent it to the Investigating Officer vide forwarding letter **Ex.PW-71/B**. He proved the dental models of all the accused persons (colly) as **Ex.PW-71/C**.

23. Death of the prosecutrix

The prosecutrix died on 29-12-2012 at Mount Elizabeth Hospital, Singapore. **PW34** Dr. Paul Chui, Forensic Pathologist, Health Sciences Authority, Singapore, deposed that the exact time of her death was 4.45 PM of 29.12.12. The death occurred at Mt. Elizabeth Hospital and the cause of death was **Sepsis with multiple organ failure following multiple injuries**. He proved the original postmortem report **Ex.PW-34/A** ; its scanned copy **Ex.PW-34/B** ; Toxicology report dated 4-1-2013 as **Ex.PW-34/C**.

In the postmortem report Ex. **PW34/A**, besides other serious injuries, various bite marks have been observed on her face, lips, jaw, near ear, on the right and left breasts, left upper arm, right lower limb, right upper

inner thigh (groin) , right lower thigh, left thigh lateral, left lower anterior , genital ; further abrasions and bruise on all parts of the body.

PW35 Dr. Anjula Thomas, Medical Director & Consultant (Pathologist), Par Way Laboratory Services Ltd., Singapore, proved the scanned copy of Histopathology report of prosecutrix as Ex. **PW35/A**.

There was no serious challenge to both these reports Ex. **PW34/A** and Ex. **PW35/A**.

Eighteen witnesses were examined on behalf of accused Pawan, accused Akshay and accused Vinay sharma. In rebuttal, three more witnesses were examined by the prosecution.

CONCLUSIONS

After having a broad view on the facts and evidence so recorded and on hearing either side. I now proceed further to decide the real controversies in this case vis-a-vis the contentions raised by the defence.

INCIDENT

The incident has been fairly described in the deposition of **PW1**, an eye witness. I need not repeat his entire testimony but suffice is to say that while he was inside the bus **Ex.P1** ; he was beaten and was pinned down by accused Pawan Gupta and accused Vinay Sharma while others, namely, Ram Singh, since deceased, accused Akshay Kumar Singh @ Thakur and JCL (not being tried by this court) took the prosecutrix to the rear side of the bus **Ex.P1** and committed unnatural sex and raped her repeatedly. **PW1** heard the cries of the prosecutrix like ***Chhor do, Chhor do***, as if she was being beaten. **PW1** was also given leg and fist blows. The prosecutrix was crying and shouting in loud voice and her voice was oscillating. Accused Ram Singh, since deceased, the JCL (not being tried by this court) and accused Akshay Kumar Singh @ Thakur then came towards the complainant, pinned him down while other accused Vinay Sharma and accused Pawan Gupta went to the rear side and had raped her.

PW1 also noticed accused Mukesh, the driver,

came near him ; hit him with an iron rod ; then went to rear side of the bus and had raped the prosecutrix. **PW1** heard one of the accused saying “**mar gayee, mar gayee**”. Thereafter the accused exhorted that both the victims **be not left alive** and they pulled the complainant to the rear door and put him on the prosecutrix to throw them out, but the rear door could not open. The accused person then pulled the complainant and the prosecutrix by their hairs and brought both of them at the front gate and threw them out of the moving bus, opposite to Hotel Delhi 37. After throwing the victims, the accused turned the bus in a manner to **crush** both of them under its wheel but **PW1** pulled the prosecutrix out of the reach of the wheel and saved themselves. He found the prosecutrix naked and bleeding from all parts of her body. The prosecutrix and the complainant were robbed and the prosecutrix was raped / ravished / beaten / injured inside the moving bus **Ex.P1**.

The complainant **PW1** in his deposition had corroborated his complaint **Ex.PW1/A** ; his statement **Ex.PW80/D-1** recorded under section 161 Cr.P.C ; his

supplementary statement **Ex.PW80/D-3** and his statement **Ex.PW1/B** recorded under section 164 CrPC; qua his visit to Select City Mall, Saket ; then moving to Munirka in an auto; boarding the bus **Ex.P1** ; the incident ; throwing them out of the moving bus and attempt of accused to overrun the victims by their bus.

It was **argued** by the Ld. Defence counsel that during his cross examination **PW1** was confronted with his statement **Ex. PW1/A** qua the factum of not disclosing in it the user of iron rods ; the description of bus, the name of the assailants either in MLC **Ex. PW51/A** or in his complaint **Ex.PW1/A**. However, I do not consider such omissions as fatal as it is a settled law that FIR is not an encyclopedia of facts. The victim is not precluded from explaining the facts in his subsequent statements. It is not expected of a victim to disclose all the finer aspects of the incident in the FIR or in the brief history given to the doctor; as doctor(s) are more concerned with treatment of the victims. Moreso the victim who suffers from an incident, obviously, is in a state of shock and it is only when we moves in his comfort zone,

he starts recollecting the events one by one and thus to stop the victim from elaborating the facts to describe the finer details, if left out earlier, would be too much.

Thus if **PW1** had failed to give the description of the bus or of iron rods to the doctor in his MLC **Ex. PW51/A** or in his complaint **Ex. PW1/A** it shall not have any fatal effect on the prosecution case. What is fatal is the material omissions, if any.

In “**Pudhu Raja v. State**”, (2012) 11 SCC 196, the Hon'ble Supreme Court held that :

*“While appreciating the evidence, the court has to take into consideration whether the contradictions / omissions were of such **magnitude** so as to **materially** affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which **do not affect the core** of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would*

not be justified in reviewing the same again without providing justifiable reasons for the same.

Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witness also makes material improvements before the court, in order to make the evidence acceptable, it would not be safe to rely upon such evidence.”

In **“Jaswant Singh v. State of Rajasthan (2000) 4 SCC 484**, it was held by the Hon'ble Supreme Court that :

“Now the explanation to Section 162(2) provides that an omission to state a fact in the statement may amount to a contradiction. However, the explanation makes it clear that the omission must be a significant one and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

“Reading Section 161(2) of the Criminal Procedure Code with the explanation to Section 162, an omission in order to be significant must depend upon whether the specific question,

the answer to which is omitted, was asked of the witness. In this case the investigating officer, PW13 was not asked whether he had put questions to Gurdeep Kaur asking for details of the injuries inflicted or of the person who had caused the injuries.”

Thus, the law discussed above amply makes it clear that the contradictions which do not effect the core of the prosecution case or the omissions which are not put to the Investigating Officer in his evidence are not material and need be ignored.

Here, I would also like to refer to **“Akhtar v. State of Uttaranchal”, (2009) 13 SCC 722**, wherein it was held that :

“if the prosecution case is supported by two injured eyewitnesses and if their (injured eyewitnesses) testimony is consistent before the police and the court and corroborated by the medical evidence, their testimony cannot be discarded.

*Similarly, in **Surender Singh v. State of Haryana** this court has opined that :*

“the testimony of an

injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes."

The incident has been aptly described by the **PW1**, the injured. The injuries on his person do show that he was present in the bus at the time of incident. His presence is further confirmed by the DNA analysis which I shall discuss in the later part of my judgment.

The contradictions to his statement Ex.PW1/A are not material enough to destroy the substratum of the prosecution case

DYING DECLARATION

After analysing the statement of PW1 who had aptly described the incident I move on to the dying declarations made by prosecutrix. During the course of arguments it was argued by the Id counsel for accused that

(a) the dying declarations of the prosecutrix, since deceased, should not be relied upon since she was never in a position to make such dying declarations and that such dying declarations, even otherwise, are tutored as the prosecutrix did not name any of the accused in her MLC **Ex.PW49/A**, prepared immediately after the incident and that **(b)** the dying declaration made by gestures, in itself, is illegal.

The first dying declaration by the prosecutrix was made to PW49 Dr. Rashmi Ahuja recorded in Ex.**PW49/A** and in MLC Ex.**PW49/B**. It was at 11:30 PM of 16-12-2012. The prosecutrix due to her medical condition though broadly described the incident of gang rape / injuries caused to her & her friend but could not give the graphic details of the incident. Her statement made to Dr. Rashmi Ahuja, as elaborated in the medical documents Ex.**PW49/A** and Ex.**PW49/B**, duly describe the **circumstances of the transaction**, hence is **relevant** for the purposes of section **32(1)** of the Indian Evidence Act.

I have also gone through her other dying

declarations **Ex.PW27/A** and **Ex.PW30/D-1** made by the prosecutrix, firstly, on 21-1-2012 at about 9:10 PM before the Id. SDM and secondly, on 25-12-2012 before the Ld. MM.

It has already come on record that while recording both the dying declarations, the Id. SDM and the Ld. MM had taken precautions to find if the prosecutrix was **fit** to make such statements. While recording of her first dying declaration **Ex.PW27/A**, Dr. P.K Verma **PW52** had found her **conscious, oriented** and **meaningfully communicative** vide his endorsement at point **A** on the application **Ex.PW27/DB**. It was only thereafter **PW27** Smt Usha Chaturvedi, the Id. SDM recorded the statement **Ex.PW27/A** of the prosecutrix. The prosecutrix not only **signed** it but even **wrote** the date and time in this statement. She narrated the entire incident specifying the role of each accused ; gang rape / unnatural sex committed upon her; the injuries caused in her vagina & rectum by use of iron rods & by inserting of hands by the accused; description of the bus, robbery and lastly throwing of both the victims out of the moving bus **Ex.P1** in naked condition

at the footfall of Mahipalpur flyover.

Yet again on 25-12-2012 on an application **Ex.PW28/A**, though Dr. P.K Verma **PW52** opined that prosecutrix was unable to speak as was having endotracheal tube i.e in larynx and trachea and was on ventilator, but **PW28** Dr. Rajesh Rastogi declared her to be **conscious, oriented** and **meaningfully communicative** to make statement through **non-verbal gestures**.

Shri Pawan Kumar, **PW30**, Ld. MM also satisfied himself qua **fitness and ability** of the prosecutrix to give rational answers by gesture to his multiple choice questions.

The opinion of the doctors obtained prior to recording of the statements **Ex.PW27/A** and **Ex.PW30/D-1** as also the observations made by the Ld. SDM and Ld. MM qua her rationality, goes on to prove that the prosecutrix was **mentally alert** to give her statements on both the occasions. The said statements relate to the **circumstances of the transaction** which **resulted in her death** and hence are **most relevant** in this case as the **cause of her death** is in question.

In "**Pakala Narayana Swami vs. King Emperor**", 1939 AIR Privy Council 47, the Hon'ble Court held the following :

*“Circumstances of the transaction” is a phrase no doubt that conveys some limitation. It is not as broad as the analogous use in “circumstantial evidence” which includes evidence of all relevant facts. It is on the other hand narrower than “res gestae.” Circumstances must have some **proximate relation** to the actual occurrence and must be of the **transaction which resulted in the death** of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused for the condition of the admissibility of the evidence is that “the cause of declarant's death comes into question.”*

Further, in "**Amar Singh vs. State of Rajasthan**", (2010) 9 SCC 64, it was held that :

*"Clause (1) of Section 32 of the Evidence Act provides that statements made by a person as to the **cause of his death**, or as to any of the **circumstances of the transaction** which resulted in his death, in cases in which the cause of that person's **death comes into question**, are themselves relevant facts.*

*Section 32 of the Evidence Act is an **exception** to the **rule of hearsay** evidence and in view of the peculiar conditions in the Indian society has widened the sphere to avoid injustice."*

Coming to the contentions :

(i) that as the prosecutrix failed to disclose the names of any of the accused person in the brief history given by her to the doctor in MLC **Ex.PW49/A**, so her dying declarations **Ex.PW27/A** and **Ex.PW30/D-1** be looked with suspicion as may be a result of tutoring ; seems to be wholly untenable. The facts show that the prosecutrix was certainly in a state of shock when she was brought to the

hospital immediately after the incident. In her MLC **Ex.PW49/B**, her condition is described as **drowsy** responding only to verbal commands, hence not completely alert due to the shock & excessive loss of blood, hence she gave brief account of the incident. In the hospital she was given first aid and then was operated thrice and when she found herself stable she gave statements **Ex.PW27/A** and **Ex.PW30/D-1** and hence it cannot be said such statements are a result of tutoring. Her dying declarations **Ex.PW27/A** and **Ex.PW30/D-1** rather **corroborate** the deposition of **PW1**. Hence the contention **(i)** stands rejected.

Even otherwise, where there are more than one dying declarations, the court has to follow the law laid down in **“Sudhakar v. State of M.P, (2012) 7 SCC 569**, wherein it has been held that :

*“the case involving the multiple dying declarations, which are contradictory or are at variance with each other to a large extent, the test of common prudence would be to first examine which of the dying declarations is **corroborated** by other prosecution evidence. Further, the **attendant***

circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.”

The Hon'ble Supreme Court in this case rather relied upon the second and third dying declarations to be authentic, voluntary and **duly corroborated** by other prosecution witnesses **including the medical evidence.**

Per the settled position of law the declarations Ex. **PW27/A** and Ex **PW30/DA** do corroborate the deposition of **PW1** qua the incident; the number of the assailants ; the manner in which the incident occurred ; the user of hands and iron rods to cause injuries to her private parts ; throwing the victims out of the moving bus etc. Further the dying declarations also get corroboration from the **medical evidence viz., her medical history, treatment paper etc., and**

hence there is no reason to hold the dying declarations **ExPW27/A** and **Ex PW30/D-1** being tutored or false. On the other hand I find them most reliable and truthful.

I would even go to the extent to say that even the brief history recorded in MLC **Ex. PW49/B** do corroborate the incident and the manner in which the offence was committed. The names of accused at that stage were even not relevant as firstly the assailants were not known to the victims; secondly for the shock she has suffered due to incident and lastly the presence of accused, even otherwise, need to be, established by the prosecution.

Now coming to the contention **(ii)** that the dying declaration made by gestures cannot be relied upon, is duly answered in **“Meesala Ramakrishna v. State of Andhra Pradesh, (1994) 4 SCC 182**, wherein it is observed that :

*“the dying declaration recorded on the basis of nods and gestures is not only admissible but possesses evidentiary value, the extent of which shall depend upon **who recorded the statement** ; what is his **educational attainment** ; what gestures and nods were made, ; what were the questions asked – whether they*

were simple or complicated – and how effective or understandable the nods and gestures were.

and, in **“B. Shashikala v. State of A.P, (2004)**

13 SCC 249, it was observed that :

“the court may take into consideration the circumstances prevailing at the time of recording of the statement of the deceased.

In this case, the evidence of the deceased was recorded after taking all precaution and care and the person who recorded it had opportunity to analyse the gestures of deceased.

and in **“Nallapati Sivaiah v. Sub-Divisional**

Officer, Guntur, Andhra Pradesh, (2007) 15 SCC 465, it

was observed that :

“the court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to the court, which on assessment of the circumstances and the evidence and material on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures.”

Hence, it stands settled that the dying

declarations can be by **signs, gestures** or by **nods**. The only caution the court ought to take is the person recording the dying declaration is able to **notice correctly** as to what the declarant means by answering by gestures or nods. Here the person who recorded her dying declarations were SDM or the Ld. MM and that they both had satisfied themselves qua her mental alertness and only thereafter had recorded such declarations. Thus contention **(b)** also fails.

I may also refer to the statement of **PW73** HC Ram Chander, in-charge, PCR Van Zebra 54, who took the victims to Safdarjung hospital from the dumping spot and to whom the victims first informed & described the incident. The factum of **spontaneity** and **immediacy** of narration of facts by the victims to **PW73** would make such narration **admissible** even under section **6** of the Indian Evidence Act, as res-gestae, per **“Gentela Vijayavardhan Rao v. State of A.P”, (1996) 6 SCC 241.**

Thus, there is no reason to doubt the dying declarations of the prosecutrix qua the **cause** of her death ;

the **circumstances** leading to her death and the **person** behind her death.

(c) It was also **argued** by the Ld. defence counsels that the declarations made by the prosecutrix be not treated as dying declarations as the prosecutrix died on 29-12-2012, i.e., much later than such statements were made, hence such statements were not made in **anticipation** of death. The said contention is also useless as the Indian law being slightly different from the English law do not contemplate the making of such statement in anticipation of death, per section **32(1)** of the Indian Evidence Act, which too clarifies this position.

(d) The **contention** that the prosecutrix was never administered oath is also wholly irrelevant in view of **“Laxman v. State of Maharashtra,” (2002) 6 SCC 710**, wherein it was held that :

“A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are

made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, **no oath is necessary** nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a **rule of caution**

and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

The aforesaid judgment rather clarifies that no oath is required to be administered to the person making the dying declaration and that no form or particular person is prescribed to record dying declarations. Even the certification by the doctor is a **rule of caution** to determine voluntariness and truthful nature of the dying declaration, though, it can be established even otherwise. Suffice is to say that Dr. Ranju Gandhi was present when **PW30** Shri Pawan Kumar recorded the dying declaration **Ex.PW30/D-1** and that Dr. P.K.Verma (**PW52**) was present when **Ex.PW27/A** was being recorded.

(e) Even the **contention** that the prosecutrix was administered Morphine and was not in a condition to make dying declaration dated 21.12.2012 has no force as **PW52** Dr. P.K Verma, in his cross examination has deposed that Injection Morphine was not given to the prosecutrix on 21-12-2012 when her dying declaration was recorded and that such injection was given at 6 PM of 20-12-2012 and its

effect would have lasted only for 3 to 4 hours. He denied that the prosecutrix was in drowsiness and had difficulty in breathing at the time of making statement.

Thus, I hold all the three dying declarations being consistent, corroborative of the material aspects of the case qua the visiting of the victims to Select City Mall ; boarding of an auto for Munirka ; boarding a white colour bus **Ex.P1** from Munirka Bus Stand ; the incident that occurred in bus **Ex.P1** ; the injuries suffered by both the victims ; robbing them of their valuables ; dumping them in a cold winter night at the dumping spot ; the number of accused involved in the incident and their attempt to crush the victims under the wheels of the bus **Ex.P1**.

(f) The Ld. defence Counsels further **argued** that the Delhi High Court Rules, qua recording of the dying declaration, as enumerated in Chapter **13** were violated by the SDM as also by the Ld. MM. The said rules envisage recording of the dying declarations by a Judicial Magistrate, if possible and secondly it is required to be recorded at once ; whereas in the present case the first dying

declaration was never recorded by the Judicial Magistrate and secondly, it was recorded on 21-12-2012 much after the prosecutrix was admitted in the hospital.

I had given considerable thought on the matter. It is to be noted that the Delhi High Court Rules, of course, are to be followed in letter and spirit but one can not ignore the law laid down in **Laxman's case** (supra) wherein it has been held by the Hon'ble Supreme Court that there is no person / form prescribed for recording dying declarations. Thus, if the dying declaration was recorded by the Ld. SDM it would hardly make it illegal or inadmissible.

On delay I may say that the efforts were made by the Investigating Officer from time to time to record the dying declaration of the prosecutrix as is evident from her application **Ex.PW80/D** dated 17-12-2012 wherein the prosecutrix was declared unfit for statement. Similarly on 19-12-2012, the Investigating Officer moved another application **Ex.PW80/C** but yet again the prosecutrix was declared unfit for recording of her statement. It was only on 21-12-2012 when the prosecutrix was declared fit, her

statement was recorded. Hence, there is no delay in recording her statement.

(g) It was also contended that the Ld. MM failed to record the mental fitness of the deceased in the dying declaration.

In this regard I may refer to **“Goverdhan Raoji Ghyare v. State of Maharashtra,” 1993 Sup (4) Supreme Court Cases 316**, wherein it was held that :

“it will be wholly unjustified to hold that simply because the Magistrate did not put a direct question to the deceased as to whether she was in a fit state of mind to make the statement, the dying declaration was required to be discarded.”

Thus, the factual matrix of this case reveal that the doctors had certified the mental alertness of the prosecutrix on both the occasions and rather they were present with the prosecutrix during the recording of dying declarations and thus it can not be said that the prosecutrix was not in a fit state of mind at the time of recording of her dying declarations or that the Ld. MM had not taken such

caution.

(h) Yet another argument was raised by the Id defence counsels that the prosecutrix died prior to her transportation to Singapore. The document **Ex.PW60/D** was referred to wherein her date of death is mentioned as 21-12-2012. I have examined the said document. It appears to be an inadvertent mistake as the connecting documents rather show the date of death of the prosecutrix as 29-12-2012. Moreso if the deceased died on 21-12-2012 then how on 25-12-2012 the Ld. MM recorded her dying declaration **Ex.PW30/D-1**. Hence, an incorrect recording of the date of death would never benefit the accused in any manner, as also some unimportant / inadvertent cuttings or overwriting of date(s) on some documents.

I may here refer to the following judgment cited by accused viz.,

- (i)** K. Ramachandran Reddy and another vs. Public Prosecutor, (1976) 3 SCC 618 ;
- (ii)** Uka Ram v. State of Rajasthan, (2001) SCC 254 ;
- (iii)** Lella Srinivasa Rao v. State of Andhra Pradesh, AIR 2004 SC 1720 ;

(iv) Ram Nath Madhoprasad and other v. State of Madhya Pradesh, AIR 1953 SC 420 ;

(v) Arumuga Thevan and other v. State, 32 Cr.L.J 1931 ; besides other judgments.

None of the judgments cited by accused were similar on facts or discuss any connecting scientific evidence viz., DNA etc., as in this case ; hence are not applicable.

COROBORATION WITH OTHER FACTS.

There is yet another angle to look at the truthfulness of dying declaration(s). The prosecutrix and the complainant, in their statements have spoken about incident being inside the moving **bus**; a particular **route** it followed; use of **iron rods**; the **dumping spot** where victims were finally thrown by the accused person and lastly the **presence** of accused in the bus Ex.P1 at the relevant time. I would take these aspects one by one to co-relate it with the deposition of **PW1** and with the dying declarations **Ex.PW27/A** and **ExPW30/D1** to find the truthfulness of the claim of victims.

BUS

The bus **Ex.P1** bearing registration no. DL-1PC-0149 is alleged to be involved in the incident. It has been **identified** by PW1, the complainant.

Further **PW67** Shri Pramod Jha had provided a pen drive **Ex.P67/1** and a CD **Ex.P67/2** and deposed that the CCTV footage recording is automatic and the data is fed on regular basis in the hard disk of CCTV installation at his hotel in due course of business transaction. He also proved the requisite certificate u/s **65-B** of Indian Evidence Act, as **Ex.PW67/B**, to prove the authenticity of such electronic evidence.

The said pen drive **Ex.P-67/1**, at the instance of Ld. Defence counsel, was used in a Laptop and a white colour bus was seen moving in front of Hotel Delhi Airport at **9:34 PM** and **9:53 PM**. The front wheel cap of the bus was found missing and the word "Yadav" was found written on the side of the bus **Ex.P1**. The registration number of the bus could not be located in the said CCTV coverage. The CD **Ex.P-67/2** was also run on the laptop.

PW76 Shri Gautam Roy, Senior Scientific Officer, Grade-I, Head of Department, had examined scientifically the pen drive as also the CD of Moserbear, seized from **PW67** Shri Pramod Jha. He gave his detailed report **Ex.PW76/E** and also a draft report along with worksheet as **Ex.PW76/F**. He explained that there is a typographical mistake in his report **Ex.PW76/E** where only one timing is written as **21:34**, but in his observation and draft report **Ex.PW76/F** the bus is seen twice at **21:34** and **21:54** and the same timings are depicted in the photographs **Ex.PW76/B**, **Ex.PW76/C** and **Ex.PW76/D**. If one looks at the photograph **Ex.PW76/B**, the word “**Yadav**” is written on the bus **Ex.P1**. On back left side, a **dent** on the bus is seen in the photograph **Ex.PW76/C** and the photograph **Ex.PW76/D** confirms the front left side wheel of the bus had no cover and also that the front door of the bus was ahead of its front wheel. No serious challenge was made to these reports by the defence.

The bus is shown to be connected to the crime not only by the depositions of **PW1** ; of **PW67** and of **PW76**

but also by the electronic evidence viz., pen drive **Ex.P-76/1** ; CD **Ex.P-76/2** and the photographs **Ex.PW76/B-1 to Ex.PW76/B-7**.

The bus is also proved to be connected with the crime by **DNA reports** as the blood stains found on the curtains, seat covers, roof near the back gate, as also hairs found on the floor of the bus below the 6th row seat, all matched with the DNA profile prepared from the blood of the prosecutrix and that of PW1, the complainant.

Though, the Id defence counsels have **challenged** the authenticity of the DNA reports saying that if the bus was washed, as alleged by **PW13** and **PW14**, then how DNA was lifted; cannot be a basis to reject the DNA reports since such reports are duly proved and no serious challenge to the process of lifting of exhibits was made.

Even otherwise, the following research articles clarifies such contention.

According to a research article **“Enhancement of Bloodstains on washed clothing using Luminol and LC Reagents”** by Thomas W. Adair and Rebecca L. Shaw :

“Investigators may be presented with washed clothing that is believed to contain bloodstains from violent acts such as homicide, assault, or sexual assault. Suspects, their associates, or victims may wash clothing following bloodshed, thereby destroying blood evidence and complicate the reconstruction process. Diluted bloodstains resulting from machine washing may not be visible on dark colored clothing. our research indicates that phenolphthalein will yield presumptively positive results on washed clothing, even after application of these two chemical reagents. Analysis are encouraged to report similar testing results to aid in defining the sensitivity and proper usage parameters of LCV and luminol on cleaned porous and non-porous surfaces.”

Further in another article **“Detecting Evidence After Bleaching”** it is said by Ian Murnaghan that :

“Chlorine bleaches can remove a Bloodstain to the naked eye but fortunately, forensics experts can use the application of substances such as luminol or phenolphthalein to show that haemoglobin is present. In fact,

even if the shady criminal washed a bloodstained item of clothing times, these chemicals could still reveal blood.

Though one may object to the use of such articles, but since these articles help to find solution to a scientific query, may be used in the absence of other literature.

The **contention** that the bus **ExP1** was taken to Tyagraj Stadium only to plant blood of victims is nothing but a blame strategy as no enmity has been allegedly proved between the police and the accused which could have motivated the Delhi Police to do such an act.

The question as to how the police got secret information and how it reached the bus **Ex.P1** is beyond the realm of trial and is an unnecessary attempt to peep into the investigative tools.

Thus the user of bus **Ex.P1** by accused during the incident stands established beyond doubt.

ROUTE MAP

On 24-12-2012 the route map **Ex.PW80/H** was

prepared at the instance of accused Mukesh. Accused Mukesh had admitted in his statement u/s 313 Cr.P.C that he drove the bus only **once** on the said route. This route map is admissible u/s **8** and **27** of the Indian Evidence Act per "**State of Delhi v. Navjot Sandhu, (2005) 11 SCC 600**", as it was a new fact, disclosed by accused Mukesh. The said route map is in consonance with the deposition of **PW1** as also with the electronic evidence which corroborate the location of accused and the victims.

PW25 Shri Rajender Bisht and **PW26** Shri Sandeep Singh, both of Select City Mall, Saket, New Delhi had proved the CCTV footage from 6:15 PM to 8:57 PM of the Select City Mall, Saket, New Delhi, showing the presence of the victims in the Mall.

Now, the mobile no. 9818358144, used by the prosecutrix, received SMS at 9:04 PM at Lado Sarai while victims were moving towards Munirka. **PW19** Shri Vishal Gaurav, Nodal Officer of Airtel Company has proved this fact. Even **PW75** Smt Asha Devi, the mother of the prosecutrix had also deposed that this phone was being used by her

daughter, the prosecutrix on the fateful night.

PW24 Shri Rakesh Soni of Dolphin had proved that the mobile phone no. 9868612958, registered in the name of Ram Singh (since deceased) was used at **9:16 PM** of 16-12-2012 when a call was received at this mobile for **13** seconds at Hauz Khas.

PW23 Shri Deepak from Vodaphone company proved that the mobile phone no. 9711927157 registered in the name of accused Pawan Gupta @ Kaalu was used for **54** seconds at **9:32 PM** of 16-12-2012 at Naval Officer's Mess, ahead of the bus stop at Munirka. **PW12** Shri Santosh corroborates the factum of making this call to accused Pawan Gupta @ Kaalu on that day.

PW20 Col. A.K Sachdeva, GSM, Reliance deposed that the mobile phone 7827917720, registered in the name of the complainant PW1, was used for **2** seconds at 9:34 PM of 16-12-2012 at Mahipal Pur Extension; probably the call was received when the mobile set was in the hands of accused and it was disconnected.

PW67 Shri Pramod Jha of Hotel Delhi Airport had

provided the CCTV footage showing the white colour bus with word "Yadav" written on it had passed in front of his Hotel at **9:34 PM** and **9:53 PM** of 16-12-2012.

PW22 Shri Shishir Malhotra of Aircel company deposed that the mobile phone bearing no. 8285947545, registered in the name of Smt Champa Devi and **admittedly** with accused Vinay Sharma was used for **58** seconds at **9:55 PM** of 16-12-2012 at NH-8 near IGI Airport, Mahipalpur, just after the incident.

Similarly **PW24** Shri Rakesh Soni of Dolphin had deposed that mobile phone bearing no. 9868612958, registered in the name of Ram Singh was used twice for **51** seconds at 10:04 PM and for **25** seconds at 10:06 PM of 16-12-2012 at Vasant Gaon, Munirka where they went after the crime.

The above said electronic evidence, duly supported with the certificates under section **65-B** of Indian Evidence Act do confirm the authenticity of the route map **Ex.PW80/H.**

Though a vain attempt was made by the Id

defence counsels referring to the deposition of PW19 Vishal, alleging interalia, that the route chart of mobile no. 9818358144 show the presence of prosecutrix at Firozshah Kotla at the relevant time, but it stood clarified by PW19 himself when she said that it was only a human error due due to non feeding of data in time and that her correct location was at Lado Sarai.

IRON RODS

The rods **Ex.P-49/1** and **Ex.P-49/2** were recovered at the instance of accused Ram Singh, since deceased. **PW80** SI Pratibha Sharma, the Investigating Officer of this case had deposed that accused Ram Singh had led her inside the bus **EXP1** and had taken out two iron rods from the shelf of the driver's cabin. The rods were having blood stains. The said rods were sealed with the seal of **PS** and after being deposited in the Malkhana were sent for forensic examination and that vide the DNA report prepared by Dr. B.K Mahapatra **PW45**, the DNA profile developed from the bloodstains from both the iron rods was

found consistent with the DNA profile of the prosecutrix. These rods are also mentioned in the dying declarations of the prosecutrix. Further per medical opinion **Ex.PW49/G** the doctors also opined that the recto-vaginal injury of the prosecutrix could be caused by the rods **Ex.P-49/1** and **Ex.P-49/2**. Hence, the user of rods in the crime stands established.

The **contention** that victims do not refer to the use of iron rods in their MLC is irrelevant even scientifically as if one looks at the MLC **Ex.PW49/B** of the prosecutrix one may find that when the prosecutrix was brought to the hospital she was cold and clammy i.e. whitish (due to vasoconstriction) meaning thereby there was heavy loss of blood due to blunt trauma. It was the result of insertion of iron rods in the private parts of the prosecutrix.

Thus, the factum of user of rods is even otherwise, corroborated by the medical evidence.

DUMPING SPOT

PW1 the complainant had deposed that they

both were dumped in naked condition opposite Hotel 37, Mahipalpur, New Delhi. **PW72** Shri Raj Kumar and **PW73** HC Ram Chander confirm this fact. **PW47** Dr. Rajender Singh examined the sample collected by the Investigating Officer with the Sexual Assault Kit from the body of the prosecutrix had found that it matched the debries collected from the dumping spot by the Crime Team and had reached the conclusion that the debries found on the body of the prosecutrix and the debries collected by the crime team from the dumping spot had the **consistency** in respect of its colour, ingredient, density and other general physical characteristics. Even the DNA profile developed from the blood stained dry leaves collected by the crime team from the dumping spot had matched with the DNA profile of the complainant.

A query was raised as to how the sample **1(a)** was sealed by the seal of **BKM** when it reached to Dr. Rajender Singh **PW47** was replied by the Ld. Special Prosecutor that the said debries / samples were collected and were first sent to the FSL to be examined by Shri B.K

Mahapatra (PW45) and then said samples were re-sealed with the seal of **BKM** and sent to **PW47** Dr. Rajender Singh, hence were found sealed with this seal.

IDENTIFICATION / PRESENCE

Yet another aspect of the case, seriously challenged by the defence, except accused Mukesh, is their presence inside the bus **Ex. P1** at the time of incident. Hence it needs to be established beyond doubt.

Identity of an accused can be established by **(a)** the traditional method of identifying them in the dock as also by test identification parade and **(b)** scientific method viz., DNA, finger printing, bite mark analysis.

Now **PW1** and **PW82** Ram Adhar both had identified **all** the accused to be the assailants moving in the bus **ExP1** at different times. Further accused Akshay Kumar Singh @ Thakur and accused Mukesh had been identified in Test Identification Parades and whereas accused Ram Singh, since deceased, accused Vinay Sharma and accused Pawan Gupta @ Kaalu refused to participate in Test Identification

Parade, hence leading to an adverse inference against them. Rather accused Vinay Sharma and accused Pawan had refused the Test Identification Parades on the plea that they had committed horrible crime.

Now let me come to the scientific method of identification. First I would take the **DNA analysis**. However, before looking to this aspect, let me examine the legal position to rely upon this scientific piece of evidence.

In “**Santosh Kumar Singh v. State**”, (2010) 9 **SCC 747**, it has been held by the Hon'ble Supreme Court that :

“71. We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Kamti Devi v. Poshi Ram [(2001) 5 SCC 311 : 2001 SCC (Cri) 892 : AIR 2001 SC 2226]. In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept

in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on circumstance.”

In **“Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh”, (2009) 14 SCC 607**, the Hon'ble Supreme Court held that :

*“Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings is the **blueprint** of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting, identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred per cent precise, experts opine.*

There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high molecular weight DNA, complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to

obtain distinct bands with appropriate control (See article of Lalji Singh, centre for Cellular and Molecular Biology, Hyderabad in DNA profiling and its applications) But in this case there is nothing to show that such precautions were not taken.

Indisputably, the evidence of the experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. In cross-examination, PW46 had stated as under :

“If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two person except identical twins having the same DNA fingerprint is around 1 to 30 billion world population.”

In “Vinay Kumar v. State”, 2012 (4) JCC

2857, the Hon'ble court has held that :

“In cases involving biological evidence the concept of “chain of custody” needs to be established. “Chain of custody” means the complete record of biological evidence from the place of its extraction and up to its presentation in the court and

its complete documentation at every stage. The possession, time and date of transfer, and location of evidence from the time it is obtained to the time it is presented in the court is called the "chain of custody".

Thus, to rely upon the DNA analysis one need to establish **(a)** the purity of the sample, **(b)** the chain of custody, and **(c)** that there is no tampering of the exhibits by anyone.

Hence there is an obligation upon the court to find if the investigating team had ensured purity of the samples and for this we may examine the chain of custody of the samples.

The DNA samples were collected from the person of the victims ; the accused ; their clothes / articles ; the dumping spot ; from the iron rods ; the ashes of burnt clothes ; from the offending bus. Let me examine if such exhibits were preserved and how and by whom were sent to the forensic experts for analysis.

(i) On 25.12.2012 the blood sample of the complainant was collected by Dr. Kamran Faisal (**PW-15**), Safdarjung

Hospital, was sealed and then handed over to SI Pratibha (**PW-80**) vide seizure memo **Ex.PW-15/A** by Constable Suresh Kumar (PW-42). It was deposited by PW80 S.I. Pratibha Sharma on 25.12.2012 with the MHC(M) along with the seizure memo, reflected in Register No.19 at serial No. 2151 dated 25.12.2012, proved as **Ex.PW-77/L**.

On 26.12.2012, the said exhibits, with sample seal, were sent to CFSL, CBI for examination through S.I. Nand Kishore (**PW-31**) vide RC No.180/21/12, a copy of which is **Ex.PW-77/U**. S.I. Nand Kishore (PW-31) handed over to the MHC(M), the receipt given by the CFSL and the same is **Ex.PW-77/U-1**.

(ii) Likewise Dr. Rashmi Ahuja had collected the following samples from the person of the **prosecutrix** at the time of initial check-up :-

Debris collection (dust, grass present in hairs, dust in clothes), Debris from in between fingers, Debris from nails, Nail clippings, Nail scrapings, Breast swab, Body fluid collection (swab from Saliva), Combing of pubic hair, Matted pubic hair, Clipping of pubic hair, Cervical mucus swab,

Vaginal secretion, Vaginal culture, Washing from vagina, Rectal swab, Oral swab, Urine and oxalate blood, Blood samples, Outer clothing/sweater, Inner clothes of prosecutrix, Bed sheet of prosecutrix.

The details of these samples are mentioned in **Ex.PW-49/A** from point B to B. These samples, duly sealed with the seal of the hospital, along with sample seal, were handed over to Inspector Raj Kumari (PW-59).

Inspector Raj Kumari (PW-59) deposed that she collected the exhibits and sample seal, seized vide seizure memo **Ex.PW-59/A** and handed it over to PW80 SI Pratibha Sharma at Safdarjung Hospital itself in the morning of 17.12.2012.

PW80 SI Pratibha Sharma on 17.12.2012 had deposited the said samples, along with the seizure memo (**Ex.PW-59/A**), with the MHC(M), reflected in Register No.19 at serial No. 2104 dated 17.12.2012, proved as **Ex.PW-77/A** (Colly.).

On 21.12.2012, four such parcels sealed with the seal of Safdarjung Hospital along with sample seal were sent

from the MHC(M) to CFSL, CBI for examination through SI Vishal Choudhary (**PW-18**) vide RC. No. 177/21/12 **Ex.PW-77/P**. After depositing the parcels at CFSL, CBI, SI Vishal Choudhary (PW-18) handed the receipt given by CFSL to him, proved as **Ex.PW-77/Q**.

S.I. Vishal Choudhary (PW-18) corroborates the testimony of HC Rajender Prasad Meena (PW-77) in this respect and testifies that on 21.12.2012, on the instructions of PW80 SI Pratibha Sharma, he had taken four sealed parcels from MHC(M), P.S. Vasant Vihar to CFSL, CBI and deposited them there vide Road Certificate No. 177/21/12. He further testifies that the acknowledgement obtained with regard to the receipt of said exhibits from CFSL was then deposited with the MHC(M) and that the said exhibits were **not tampered with** in any manner till they were in his custody during transit.

On 24.12.2012 samples of **gangrenous bowels** of the prosecutrix were taken and sealed in a jar. The sealed jar, along with a sample seal, was handed over to SI Gajender Singh (**PW-55**), who seized the same vide seizure

memo **Ex.PW-11/A**. SI Gajender Singh (**PW-55**) corroborates the testimony of Dr. Pintu Kumar Singh (**PW-11**) in this respect.

On 24.12.2012 itself SI Gajender Singh (PW-55) deposited the said samples, along with the seizure memo with the MHC(M), reflected in Register No.19 at serial No. 2145 dated 24.12.2012, proved as **Ex.PW-77/K**.

On 26.12.2012, the same samples were taken to CFSL, CBI by SI Nand Kishore (**PW-31**) vide RC No. 180/21/12, for examination. He proves the said RC, as **Ex.PW-77/U**. The MHC(M) testified that SI Nand Kishore (PW-31) after depositing the parcels with CFSL, gave the receipt of the same to the MHC(M), proved as **Ex.PW-77/U-1**.

SI Nand Kishore (**PW-31**) corroborates the testimony of the MHC(M) (PW-77) in this respect and testifies that the parcels were taken from MHC(M) to CFSL vide RC No. 180/21 and were **not tampered with** by anyone as long as they were in his custody.

On 24.12.2012, Dr. Ranju Gandhi (PW-29), at the

request of PW80 SI Pratibha Sharma, took a specimen of **scalp hair** of the prosecutrix, sealed it with the seal of Safdarjung Hospital and handed it over to PW80 SI Pratibha Sharma along with a sample seal vide seizure memo **Ex.PW29/A**.

On 24.12.2012, PW80 SI Pratibha Sharma deposited the said sample along with seizure memo with MHC(M), reflected in Register No.19 at serial No. 2144 dated 24.12.2012, proved as **Ex.PW-77/J**.

On 26.12.2012, the said sample was sent to CFSL through SI Nand Kishore (PW-31) vide RC No.180/21/12, for examination. The witness proves the said RC, as **Ex.PW-77/U**. The receipt given by the CFSL was deposited with him by SI Nand Kishore (PW-31) is proved as **Ex.PW-77/U-1**.

(iii) A number of biological samples were collected from the person of accused **Ram Singh** after his examination by Dr. Akhilesh Raj (**PW-2**) at AIIMS Hospital on 18.12.2012, namely, a penile swab, blood in gauze, underwear, saliva in gauze and nail clipping were, preserved and handed over, in

sealed condition with the seal of the Department of Forensic Medicines and Toxicology, AIIMS, along with sample seal, to duty officer, Constable Murari (**PW-39**).

Constable Murari (PW-39) corroborates the testimony of Dr. Akhilesh Raj (**PW-2**) in this respect. He testifies in Court that on 18.12.2012, accused Ram Singh was medically examined and after his examination, the concerned doctor gave him **six** sealed parcels along with a sample seal, which he handed over to PW80 SI Pratibha Sharma, who seized the said items vide seizure memo **Ex.PW-39/A**.

On 18.12.2012 PW80 SI Pratibha Sharma deposited the said samples with MHC(M), along with the seizure memo, reflected in Register No.19 at serial No.2106 dated 18.12.2012 proved as **Ex.PW-77/B** (Colly.).

On 24.12.2012, the biological samples collected from accused Ram Singh were sent to CFSL, CBI through SI Subhash (**PW-74**) vide RC No.178/21/12, for examination. The witness proves the said RC, as **Ex.PW-77/R**. He further testifies that after depositing the parcels at CFSL, SI Subhash

(PW-74) handed over the receipt to him, proved as **Ex.PW-77/S**.

The Biological evidence was also collected from the blood stained T-Shirt **Ex.P-74/6** and slippers **Ex.P-74/7** worn by accused Ram Singh at the time of the incident, seized vide seizure memo **Ex.PW74/L**.

The said exhibits were deposed by PW80 SI Pratibha Sharma on 17-12-2012, along with the seizure memo, reflected in Register no. 19 at Serial No. 2104 dated 17-12-2012, proved as **Ex.PW77/A** colly.

On 24-12-2012, the exhibits, with the sample seal, were sent to CFSL, CBI through SI Subhash **PW74** vide RC No. 178/21/12, for examination. After depositing the parcels at CFSL, CBI, SI Subhash handed over the receipt given by CFSL to him, proved as **Ex.PW77/S**.

(iv) On 18.12.2012, Dr. Mohit Gupta (PW-10) conducted the medical examination of **accused Pawan Gupta @ Kaalu** at Safdarjung Hospital. The following biological samples were collected for DNA analysis : viz., blood sample in gauze piece, saliva on whatmans filter paper, nail clippings of right

and left hands preserved separately, pubic hair, swab glans of penis and urethra and single stray hair found on the body of the accused. The exhibits were sealed with the seal of Department of Forensic Medicine, Safdarjung Hospital.

The examining doctor handed over to HC Giri Raj (**PW-48**) one sealed parcel with the seal of the Department of Forensic Medicines, Safdarjung Hospital, containing exhibits belonging to the accused with one sample seal.

The same were handed over to PW80 SI Pratibha Sharma, and taken into possession by her vide seizure memo **Ex.PW-48/A**.

On 18.12.2012, PW80 SI Pratibha Sharma deposited the said samples with the seizure memo, with the MHC(M), reflected in Register No.19 at serial No. 2106 dated 18.12.2012, proved as **Ex.PW-77/B** (Colly.).

On 24.12.2012, the said samples were taken to CFSL by S.I. Subhash (**PW-74**) vide RC No.178/21/12, for examination. He proves the said RC **Ex.PW-77/R**. The MHC(M) testified that SI Subhash (PW-74) deposited the receipt obtained from the CFSL with him, proved as **Ex.PW-77/S**.

SI Subhash (PW-74) testifies in Court that on 24.12.2012, on the instructions of PW80 SI Pratibha Sharma, he deposited the said samples with CFSL, CBI vide RC No. 178/21/12 and deposited the receipt obtained from CFSL with MHC(M). He further testifies that the samples were **not tampered with** as long as they remained in his custody.

Further, pursuant to the disclosure dated 18.12.2012 (**Ex.PW-60/G**) of accused Pawan Gupta @ Kaalu, a sweater (**Ex.P-68/6**), pant (**Ex.P-68/7**), underwear (**Ex.P-68/8**) and shoes (**Ex.P-68/9**) were seized at the instance of accused Pawan vide seizure memo **Ex.PW-68/F**.

On 19.12.2012, PW80 SI Pratibha Sharma deposited the said sample, along with the seizure memo, with the MHC(M), reflected in Register No.19 at serial No. 2109 dated 19.12.2012, proved as **Ex.PW-77/C** (Colly.).

On 24.12.2012, the biological samples collected from accused Pawan were sent to CFSL, CBI through SI Subhash (**PW-74**) vide RC No.178/21/12, for examination. The witness proves the said RC, a copy of which is **Ex.PW-77/R**. After depositing the parcels at CFSL, SI

Subhash (PW-74) handed over the receipt to MHC(M), a copy of which is marked **Ex.PW-77/S**.

SI Subhash (PW-74) corroborates the testimony of the MHC(M) (PW-77) in this respect. He testifies that on 24.12.2012, on the instructions of PW80 SI Pratibha Sharma, he deposited the said samples with CFSL, CBI and gave the receipt so obtained to the MHC(M). He further testifies that the samples were **not tampered with** as long as they remained in his custody.

(v) After the medical examination of accused **Vinay Sharma** on 18.12.2012 at Safdarjung Hospital, two sealed parcels sealed with the seal of the Department of Forensic Medicines, Safdarjung Hospital, along with the sample seal, were handed over to Constable Sandeep (PW-36), which in turn were taken into possession by PW80 SI Pratibha Sharma vide seizure memo Ex. PW-36/A.

On 19.12.2012, PW80 SI Pratibha Sharma deposited the said samples, along with seizure memo, with MHC(M), reflected in Register No.19 at serial No. 2109 dated 19.12.2012, proved as **Ex.PW-77/C** (Colly.).

On 24.12.2012, the biological samples collected from accused Vinay were sent to CFSL, CBI through SI Subhash (PW-74) vide RC No.178/21/12, for examination. The witness proves the said RC, a copy of which is **Ex.PW-77/R**. The MHC(M) testified that after depositing the parcels at CFSL, SI Subhash (PW-74) handed over the receipt to him, proved as **Ex.PW-77/S**.

SI Subhash (PW-74) corroborates the testimony of the MHC(M) (PW-77) in this respect. He testifies that on 24.12.2012, on the instructions of PW80 SI Pratibha Sharma, he deposited the said samples with CFSL, CBI and gave the receipt so obtained to the MHC(M). He further testifies that the samples were **not tampered with** as long as they remained in his custody.

Further, pursuant to the disclosure made by accused Vinay, one blue jeans (**Ex.P-68/1**), jacket (**Ex.P-68/2**), T-shirt (**Ex.P-68/3**) and slippers (**Ex.P-68/4**) were seized vide seizure memo **Ex.PW-68/B**.

PW80 SI Pratibha Sharma on 19.12.2012 deposited the said samples along with their respective

seizure memos, reflected in Register No.19 at serial No. 2109, proved as **Ex.PW-77/C** (Colly.).

On 24.12.2012, the said samples were sent to CFSL, CBI through SI Subhash (PW-74) vide RC No. 178/21/12 **Ex.PW-77/R**. The MHC(M) testified that the receipt so obtained from CFSL was deposited by SI Subhash (PW-74) with him, proved as **Ex.PW-77/S**.

SI Subhash (PW-74) further corroborates the testimony of the MHC(M) (PW-77) in this respect. He testifies that, on the instructions of PW80 SI Pratibha Sharma, he deposited the said samples with the CFSL, CBI and deposited the receipt collected from CFSL with MHC(M). He further testifies that the samples were **not tampered with** as long as they were in his custody.

(vi) After arrest of accused **Mukesh**, his MLC was conducted in the evening of 18.12.2012 at Safdarjung Hospital by Dr. Chetan Kumar (PW-3). It is submitted that Dr. Chetan Kumar (PW-3) after examining accused, he collected his blood sample in gauze piece, saliva on whatmans filter paper, nail clippings of right and left hands, pubic hair, swab

of glans penis and urethra, underwear, and single stray hair found on the body. These biological samples were preserved and handed over, in sealed condition, sealed with the seal of Department of Forensic Medicine, Safdarjung Hospital, along with a sample seal. This fact is testified by Dr. Chetan Kumar (PW-3) and is also recorded in the MLC of accused Mukesh, **Ex.PW-3/A**.

Constable Sanjeev (PW-37) testifies that on 18.12.2012 accused Mukesh was taken for medical examination in his custody and the concerned doctor handed over two sealed parcels along with a sample seal to him. He further testifies that he handed over these items to PW80 SI Pratibha Sharma, seized vide seizure memo **Ex.PW-37/A**. The witness further testifies that the parcels were **not tampered with** in any manner as long as they were in his custody.

On 18.12.2012, I.O. S.I. Pratibha Sharma deposited the said sample with the MHC(M), reflected in Register No.19 at serial No. 2106 dated 18.12.2012, proved as **Ex.PW-77/B** (Colly.).

The testimony of the MHC(M) (**PW-77**) is corroborated by SI Subhash (PW-74) in this respect. SI Subhash (PW-74) has testified that on 24.12.2012, on instructions of PW80 SI Pratibha Sharma, he took the said samples from the MHC(M) vide RC No. 178/21/12 and deposited them with CFSL, CBI. The receipt so obtained from CFSL was given to the MHC(M). The witness further testifies that the samples were **not tampered with** as long as they were in his custody.

Pursuant to the disclosure made by accused Mukesh on 18.12.2012, the accused got recovered the clothes worn by him at the time of the incident, i.e. a T-shirt (**Ex.PW-48/1**), pants (**Ex.PW-48/2**) and jacket (**Ex.PW-48/3**), which were seized vide seizure memo **Ex.PW-48/B**.

On 23.12.2012, I.O. SI Pratibha Sharma deposited the said sample, which is reflected in Register No.19 at serial No. 2134 dated 23.12.2012, a copy of which is marked as **Ex.PW-77/H** (Colly.).

On 24.12.2012, these exhibits, with sample seal,

were sent to CFSL, CBI through SI Subhash (PW-74) vide RC No.178/21/12, for examination, a copy of which is marked as **Ex.PW-77/R**. After depositing the parcels at CFSL, the receipt obtained from CFSL was deposited by SI Subhash (PW-74), proved as **Ex.PW-77/S**.

SI Subhash (PW-74) corroborates the testimony of the MHC(M) (PW-77) in this respect. SI Subhash (PW-74) testifies that on 24.12.2012, on the instructions of PW80 SI Pratibha Sharma, he took the parcels from the MHC(M) vide RC No. 178/21/12 and deposited them with CFSL, CBI. The receipt so obtained from CFSL was deposited with the MHC(M). He further testifies that the samples were **not tampered with** as long as they remained in his custody.

(vii) After the arrest of **accused Akshay Kumar Singh @ Thakur**, his medical examination was conducted on 22.12.2012 at AIIMS by Dr. Shashank Poonia (PW-7) vide MLC No.5424 of 2012, marked as **Ex.PW-7/A**, The following biological samples were collected: blood in gauze piece, saliva in gauze, control gauze, penile swab, control swab, nail scrapings and clippings, carbon teeth impression, red

coloured Sandoz banyan, dark brown coloured underwear, scalp hair, and pubic hair. The same were preserved and handed over in sealed condition, sealed with the seal of the department, along with the sample seal.

ASI Surinder Kumar (**PW-40**) testifies that on 22.12.2012, on the instructions of PW80 SI Pratibha Sharma, accused Akshay was taken in his custody to AIIMS and his medical examination was got done. He further testifies that after his examination, the concerned doctor handed over 11 sealed parcels, sealed with the seal of Department of Forensic Medicine, AIIMS, along with a sample seal. The witness has further testified that he then handed over these items to PW80 SI Pratibha Sharma, which were seized by her vide seizure memo **Ex.PW-40/A**. SI Surinder Kumar (PW-40) has also testified that the parcels were **not tampered with** in any manner as long as they remained in his custody.

On 22.12.2012, PW80 SI Pratibha Sharma deposited the said sample with MHC(M), reflected in Register No.19 at serial No. 2127 dated 22.12.2012, proved as **Ex.PW-77/G** (Colly).

On 24.12.2012, the said samples were sent to CFSL, CBI through SI Subhash (PW-74) vide RC No.178/21/12, for examination, a copy of which is marked as **Ex.PW-77/R**. The receipt obtained from CFSL was deposited by SI Subhash (PW-74), proved as **Ex.PW-77/S**.

Pursuant to the disclosure made by accused Akshay, a blood stained jeans (**Ex.P-53/3**), which was worn by him at the time of the incident, was seized from village Naharpur, Gurgaon, vide seizure memo **Ex.PW-53/G**.

SI Upender Singh (PW-53) deposited the said sample with the seizure memo on 22.12.2012, reflected in Register No.19 at serial No. 2126 dated 22.12.2012, proved as **Ex.PW-77/F** (Colly.).

On 24.12.2012, the said samples were sent to CFSL, CBI through SI Subhash (PW-74) vide RC No. 178/21/12 for examination, a copy of which is marked as Ex. PW-77/R. The receipt obtained from CFSL was deposited by SI Subhash (PW-74), proved as **Ex.PW-77/S**.

The testimony of MHC(M) in this respect has been corroborated by the evidence of SI Subhash (PW-74), who

has testified that on 24.12.2012, on the instructions of PW80 SI Pratibha, he took the said samples from the MHC(M) vide RC No. 179/21/12 and deposited them with CFSL, CBI. The receipt so obtained from CFSL was deposited by SI Subhash (PW-74) with the MHC(M). The witness has further testified that the samples were **not tampered with** as long as they remained in his custody.

(viii) A number of samples were collected from the dumping spot i.e., the place where the prosecutrix and PW1, the complainant were thrown off the moving bus near Mahipalpur flyover for DNA examination. The samples, i.e., blood stained leaves, blood stained grass blades, leaves without blood, blades of grass without blood, blood stained dust along with leaves and grass were lifted from the said spot. The deposition of Dr. B.K. Mohapatra, (PW-45), extracted above, shows that the blood matched with the DNA profile of the complainant.

On 17.12.2012, on inspecting the said spot, Inspector Naresh Kumar (**PW-41**) found blood lying on the leaves, grass and on the ground. On his instructions, PW80

SI Pratibha lifted the exhibits, which he described in his report (**Ex.PW-41/A**). The spot was secured with the tape of Delhi Police and was guarded by a police constable.

SI Subhash (PW-74) has testified in Court that the crime team, headed by Inspector Naresh (PW-41), inspected the spot where blood was lying. He further testifies that as per instructions of the crime team, PW80 SI Pratibha Sharma lifted the exhibits from the spot including blood stained leaves of Mulberry and blood stained grass. He has further testified that leaves and grass without blood, and leaves and grass stained with mud/earth were also lifted. He further testifies that PW80 SI Pratibha kept the exhibits separately in small plastic container, which was then sealed with the seal and seized vide seizure memo **Ex.PW-74/C**.

SI Subhash (PW-74) on 17.12.2012 deposited the said samples with the MHC(M), reflected in Register No.19 at serial No. 2104, a copy of which is marked as PW-77/A (Colly.). On 24.12.2012, the said samples were sent to CFSL, CBI, with sample seal, through SI Subhash (PW-74) vide RC No.178/21/12, for examination, proved as **Ex.PW-77/R**. The

witness has further testified that the receipt obtained from CFSL was deposited by SI Subhash (PW-74) on the same day, proved as **Ex.PW-77/S**.

(ix) The iron rods **Ex.PW-49/1** and **Ex.PW-49/2** were seized at the instance of accused **Ram Singh** and seized vide memo **Ex.PW-74/G**.

The iron rods recovered at the instance of accused Ram Singh were deposited with MHC(M) on 17.12.2012 by PW80 SI Pratibha, reflected in Register No.19 at serial No. 2104 dated 17.12.2012, proved as **Ex.PW-77/A** (Colly.).

On 24.12.2012, the two iron rods, along with the sample seal, were sent to CFSL, CBI for examination through SI Subhash (PW-74) vide RC No. 178/21/12, proved as **Ex.PW-77/R**. The receipt so obtained from CFSL was deposited by SI Subhash (PW-74), proved as **Ex.PW-77/S**.

(x) After his arrest, accused Ram Singh got recovered ashes of burnt clothes and **unburnt pieces of clothes** from Ravidass Mandir Road, Sector-3, R.K. Puram. The said exhibits were seized by SI Subhash (PW-74) vide seizure

memo **Ex.PW-74/M**.

The said samples were deposited by PW80 SI Pratibha Sharma with the MHC(M) on 17.12.2012, along with the seizure memo, which is reflected in Register No.19 at serial No. 2104 dated 17.12.2012, proved as **Ex.PW-77/A** (Colly.).

On 24.12.2012, the said samples were sent to CFSL, CBI through SI Subhash (PW-74) for examination vide RC No.178/21/12, proved as **Ex.PW-77/R**. He further deposed that after depositing the parcels with CFSL, the receipt so obtained from CFSL was deposited by SI Subhash (PW-74), which is marked as **Ex.PW-77/S**.

(xi) On 17.12.2012, a team of experts from CFSL, CBI inspected the **bus Ex.P1** and lifted the following samples seized vide seizure memo **Ex.PW-74/P**:

- a.** hair recovered from the third row of the bus on the left side ;
- b.** hair recovered from the floor of the bus near the back seat ;
- c.** one golden yellow coloured curtain hanging over the back seat of the bus ;

- d.** one golden yellow coloured curtain lying on the ninth row seat on the right site of the bus.

Dr. B. K. Mohapatra (**PW-45**) has testified in Court in respect to the inspection of the bus (**Ex. P-1**) and lifting of samples by the CFSL team on 17.12.2012.

SI Subhash (**PW-74**) has testified in Court that on 17.12.2012, the CFSL team reached Thyagraj Stadium for inspection of the bus and after inspection lifted some samples, handed over to PW80 SI Pratibha Sharma, who then sealed the said exhibits separately with the seal of the **PS** and seized them vide seizure memo **Ex.PW-74/P**.

The bus was constantly guarded by officers of the Delhi Police from the time of its being parked there on the evening of 17.12.2012 till the lifting of the exhibits on the evening of 18.12.2012, and therefore, there was no possibility of any contamination.

On 17.12.2012, PW80 SI Pratibha Sharma deposited the said samples with the MHC(M) along with the seizure memos, reflected in Register No.19 at serial No. 2104 dated 17.12.2012, proved as **Ex.PW-77/A**.

The samples collected on 17.12.2012 and 18.12.2012 from the bus were sent to CFSL for analysis on 24.12.2012 through SI Subhash (PW-74) vide RC No. 178/21/12 **Ex.PW-77/R**. The receipt obtained after depositing the said sample at CFSL was deposited by SI Subhash (PW-74), proved as **Ex.PW-77/S**.

The CFSL team on 18.12.2012 also collected the following samples from the **bus** No. DL-1P-0149 (**Ex.P-1**) parked at Thyagraj Stadium :

- (a) hair recovered from the floor of the bus second row left side ;
- (b) hair recovered from lower steps of back gate ;
- (c) bunch of hair recovered from the floor of the bus found below the sixth row seats on the right side of the bus ;
- (d) material recovered from the floor of lower steps of back gate of the bus ;
- (e) a small paper piece recovered from the floor of the bus near the bonnet ;
- (f) a stain prepared from the roof of the bus near the back gate ;
- (g) a stain prepared from the side of the back stairs of the bus near the back gate ;
- (h) a stain prepared from the floor near the back gate of the bus ;

- (i) a stain prepared from the inner side of the back door of the bus ;
- (j) seven pieces of aluminium strips of difference sizes cut out from the floor of the back gate stairs and from the floor adjacent to the eighth row seats on the right side of the bus
- (k) three lower seat covers and three upper seat covers from the eighth row on the right side of the bus were also seized vide seizure memo Ex.PW-60/F by PW80 SI Pratibha Sharma.

HC Mahabir (PW-60) has testified in Court that he, along with PW80 SI Pratibha Sharma, went to Tyagraj Stadium on 18.12.2012 where the CFSL team lifted several exhibits and handed them over in containers and envelopes. He further testified that the exhibits were sealed with the seal of the **PS** and seized vide seizure memo **Ex.PW-60/E**. The witness has also testified that the CFSL team also broke some parts of the flooring of the bus into strips and took samples of flooring of the bus. The witness has further testified that on instructions of the CFSL team, PW80 SI

Pratibha Sharma seized three sets of upper and lower seat covers vide seizure memo **Ex.PW-60/F** and sealed them with the seal of the **PS**. All the samples were in the custody of PW80 SI Pratibha Sharma.

On 18.12.2012, I.O. SI Pratibha Sharma deposited the said samples, along with the seizure memos, reflected in Register No.19 at serial No. 2106 dated 18.12.2012, proved as **Ex.PW-77/B** (Colly.).

On 17.12.2012 and 18.12.2012 the samples were taken to CFSL, CBI by SI Subhash (PW-74) vide RC No. 178/21/12 for examination, a copy of which is **Ex.PW-77/R**. He has further testified that the receipt obtained from the CFSL was deposited by SI Subhash (PW-74), **Ex.PW-77/S**. The above evidence is also corroborated by the testimony of PW80 S.I. Pratibha (DW-80).

Thus the above facts not only established the **chain of custody** but also the **purity of samples**, being maintained during investigation..

In the above background now I come to **DNA profiling**.

(i).The DNA profile of the **prosecutrix** developed from blood sample of the prosecutrix matched with the DNA profile generated from her hair, debris, swab between fingers, nail clippings, saliva, combing of pubic hair, matted pubic hair, clipping of pubic hair, cervical mucus swab, vaginal secretion, vaginal wash, rectal swab, oral swab, urine and oxalate blood, wrist watch of prosecutrix, bed sheet of prosecutrix, sweater and pieces of inner clothes of prosecutrix provided to the CFSL vide memo no. 3573/SHO/Vasant Vihar/New Delhi dated 21.12.2012

(ii).The DNA of the **complainant** was generated from the blood sample of complainant provided to the CFSL vide memo no. 3614/SHO/Vasant Vihar/New Delhi dated 26.12.2012.

(iii).The DNA profile developed from the blood of **Ram Singh** matched with the DNA profile developed from penile swab, saliva, nail clippings, and semen stains appearing on his underwear, provided to the CFSL vide memo no. 3602/SHO/Vasant Vihar/New Delhi dated 24.12.2012.

(iv).The DNA profile developed from blood sample of accused **Pawan Gupta @ Kaalu** matched with his DNA developed from saliva, nail clippings, urethral

swab, glans swab and pubic hair provided to the CFSL vide memo no. 3602/SHO/Vasant Vihar/New Delhi dated 24.12.2012.

(v).The DNA profile developed from the blood sample of accused **Vinay** matched with his DNA developed from saliva, nail clippings, urethral swab, glans swab, semen on the underwear and pubic hair provided to the CFSL vide memo no. 3602/SHO/Vasant Vihar/New Delhi dated 24.12.2012.

(vi).The DNA profile developed from the blood sample of accused **Mukesh** matched with his DNA developed from saliva, nail clippings, urethral swab, glans swab, semen on the underwear and pubic hair provided to the CFSL vide memo no. 3602/SHO/Vasant Vihar/New Delhi dated 24.12.2012.

(vii).The DNA profile developed from the blood sample of accused **Akshay Kumar Singh @ Thakur** matched with the DNA developed from saliva, penile swab, nail clippings and pubic hair provided to the CFSL vide memo no. 3602/SHO/Vasant Vihar/New Delhi dated 24.12.2012.

ANALYSIS

After profiling, now I come to the DNA analysis which duly establish the identity of the victims and of the

accused person beyond doubt to be the person inside the bus **Ex.P-1** at the relevant time.

Accused Ram Singh (since deceased)

- (a).** Rectal swab from the prosecutrix contained DNA of male origin, which matched the DNA developed from blood sample of accused Ram Singh.
- (b)** The DNA profile developed from the blood stains from the underwear of accused Ram Singh matched with the DNA of the prosecutrix.
- (c)** The DNA profile developed from the blood stains found on the T-shirt and slippers of accused Ram Singh matched the DNA profile of the prosecutrix.

Accused Vinay Sharma

- (a)** The DNA profile developed from the sample of the blood of the prosecutrix matched the DNA profile developed from stains from under garments of Vinay.
- (b)** The DNA profile developed from blood stains from jacket of Vinay matched the DNA profile developed from the sample of the blood of the prosecutrix.
- (c)** A separate DNA profile developed from blood stains from jacket of Vinay matched the DNA profile developed from the sample of the blood of the complainant.

- (d)** The DNA profile developed from the sample of the blood of the prosecutrix matched the DNA profile developed from the pair of slippers of Vinay.

Accused Pawan Gupta @ Kaalu

- (a)** The DNA profile developed from the sweater of Pawan matched the DNA profile developed from the sample of the blood of the prosecutrix.
- (b)** A separate DNA profile developed from the sweater of Pawan matched the DNA profile developed from the sample of the blood of the complainant.
- (c)** The DNA profile developed from the sample of the blood of the prosecutrix matched the DNA profile developed from pair of shoes of Pawan.

Accused Mukesh

The DNA profile developed from the sample of the blood of the prosecutrix matched the DNA profile developed from blood stains from the pants, T-shirt and jacket recovered from accused Mukesh.

Accused Akshay Kumar Singh @ Thakur

- (a)** Breast swab from the prosecutrix contained DNA of male origin which matched the DNA of Akshay.
- (b)** The DNA profile developed from the sample of the blood of the prosecutrix matched the DNA profile developed from blood stains from T-shirt and pair of

slippers of Akshay.

- (c)** The first DNA profile developed from the jeans of Akshay matched the DNA profile developed from the sample of the blood of the prosecutrix.
- (d)** The second DNA profile developed from the jeans of Akshay matched the DNA profile developed from the sample of the blood of the complainant.

BUS ; IRON RODS ; ASH ; UNBURNT CLOTHES

Further the DNA profiles found on biological samples lifted from the material objects such as the bus, the iron rods and the ash and unburnt pieces of clothes matched with the following :

Complainant :

- (a)** The DNA profile developed from burnt clothes pieces was found to be of male origin and was consistent with the DNA profile of complainant.
- (b)** The DNA profile developed from hair and blood stained pieces of paper recovered from the bus matched with the DNA profile of complainant.
- (c)** The DNA profile developed from blood stained dried leaves collected from the place where both the victims were thrown matched with the DNA profile of complainant.

The prosecutrix:

- (a)** The DNA profile developed from blood stains from both the iron rods recovered at the instance of accused Ram Singh from bus is of female origin and was consistent with the DNA profile of prosecutrix.
- (b)** The DNA profile developed from blood stains from curtains matched with the DNA profile of prosecutrix.
- (c)** The DNA profile developed from blood stains from seat covers matched with the DNA profile of prosecutrix.
- (d)** DNA profile developed from blood stains from the bunch of the hair recovered from floor of the bus below sixth row seat, blood stains prepared from the roof of the bus near back gate, blood stains prepared from the floor of the bus near back gate, blood stains taken from side of back stairs of the bus, blood stains taken from the inner side of the back door of the bus matched with the DNA profile of prosecutrix.

FINGER PRINT REPORT

Now I come to the finger print report **Ex.PW46/D**.

A bare perusal of the report would show the chance print marked as Q1 lifted from inside the bus **Ex P1** was found **identical** with left finger print specimen of accused **Vinay**

Sharma. Further the chance print marked as Q4 lifted from inside the bus **Ex.P1** was found **identical** with right thumb impression of the accused **Vinay Sharma..**

The admissibility of finger print report was not seriously challenged except the factum of washing of the bus **ExP1**, already dealt by me above. Hence the presence of accused Vinay inside the bus **ExP1** at the time of incident stood established by the report **Ex PW46/D.**

ODONTOLOGY REPORT

Before analysing this report, let me see if the bite marks analysis can be used as a method of identification. For this, I may refer to **“Medical Jurisprudence and Toxicology”, by K.S Naryana Reddy** wherein he has mentioned that :

*“They are useful in identification because the alignment of teeth is **peculiar to the individual.** Bite marks may be found in materials left at the place of crime, e.g., foodstuffs, such as cheese, bread, butter, fruit, or **in humans involved in assaults,** when either the*

victim or the accused may show the marks, usually on the hands, fingers, forearms, nose and ears.

Several methods are suggested to analyse the bite marks.

“(1) Photographic Method :

The bite mark is fully photographed with two scales at right angle to one another in the horizontal plane. Photographs of the teeth are taken by using special mirrors which allow the inclusion of all the teeth in the upper or lower jaws in one photograph. The photographs of the teeth are matched with photographs or tracings of the teeth. Tracings can be made from positive casts of a bite impression , inking the cutting edges of the front teeth. These are transferred to transparent sheets, and superimposed over the photographs, or a negative photograph of the teeth is superimposed over the positive photograph of the bite Exclusive is easier than positive matching.

(2) CASTS : A plastic substance, such as a rubber or silicone based medium containing catalytic hardener is laid over the bite mark, which produces a permanent negative

cast. Plaster of Paris also can be used.

(3) CHARTING OF TEETH :

There are more than 150 different methods of identifying numbering and charting of teeth.

Coming to facts : In the present case **PW66** Shri Asgar had taken **10** photographs of different parts of the body of the prosecutrix and prepared two sets of photographs one of small size of 8 cm X 12 cm and another of the size of 8 cm X 7 cm. The small size photographs were proved as **Ex.PW66/B** and the large size photographs as **Ex.PW66/C** collectively. He also proved certificate **Ex.PW66/A** under section **65-B** of the Indian Evidence Act.

PW18 SI Vishl Chaudhary then had carried the pullanda to SDM Educational Society's, Shri Dharamsthala Manjunatheshwara College of Dental Sciences and Hospital, Sattur, Dharwad – 580009, Karnataka, for its examination and brought it back and deposed that there was **no tampering** in the samples; thus ensuring the **purity** of samples.

PW71 Dr. Asith B. Acharya identified all the five

dental models in the court stating, interalia, that these were shown to him at the time of examination. As per his report

Ex.PW71/C Dr. Asith B. Acharya had opined as under :

*“Overall, there is a concordance of sufficient distinctive, individual characteristics to confer (virtual) uniqueness within the population under consideration. **There is absence of any unexplainable discrepancies between the bite marks on Photograph No. 4 and the biting surfaces of one of the accused person's teeth, namely Ram Singh.** Therefore, there is reasonable medical certainty that the teeth on the dental models of the accused person named **Ram Singh caused the bite marks visible on Photograph No. 4 ; also, the bite marks on Photograph Nos. 1 and 2 show some degree of specificity to this accused person's teeth by virtue of a sufficient number of concordant points, including some corresponding unconventional / individual characteristics.** Therefore, the teeth on the dental models of the accused person with the name of Ram Singh probably also caused the bite marks visible on Photograph Nos. 1 and 2.*

The comparison of exhibits nos. 1 and 2 excludes the biting surfaces on the dental models of four of the accused persons, namely Ram Singh, Pawan, Vinay Sharma and Mukesh, from having caused the bite mark on Photograph no. 5 owing to a lack of fit in the 1:1 comparison, as well as unexplainable discordant points in relation to tooth arrangement.

The comparison also show that there is a concordance in terms of general alignment and angulation of the biting surfaces of the teeth of the lower jaw on the dental models of the accused person with the name Akshay and the corresponding bite marks visible on the Photograph No. 5. In particular, the comparison revealed concordance between the biting surface of the teeth on the lower jaw of the dental models of the accused person with the name of Akshay and the bite mark visible on Photograph No. 5 in relation to the rotated left first incisor whose mesial surface pointed towards the tongue. Overall, the **bite mark shows some degree of specificity to the accused person's teeth by virtue of a number of concordant points,**

*including one corresponding unconventional / individual characteristic. There is an absence of any unexplainable discrepancies between the bite mark and the biting surfaces of this accused person's teeth. Therefore, the **teeth on the dental models of the accused person with the name of Akshay probably caused the bite marks visible on Photograph No. 5.***"

So, the report **Ex.PW71/C** also established the bite marks of accused Ram Singh and accused Akshay on the person of the prosecutrix, since deceased.

It was **argued** by the Id counsel for accused Akshay Kumar @ Thakur that the reports itself says that accused Akshay Kumar @ Thakur **probably** caused the bite marks visible in photograph no. 5 and hence, the scientific report is not certain. I am not inclined to accept the contentions since the doctor himself when examined as **PW71** had answered to a query viz. :

Q: You had used the words "**probably** and **most likely**" in your report Ex.PW71/C so I suggest you that your report is not reliable, concrete and can

not be acted upon?

Ans: We derived the conclusions based on a number of degrees of certainty linking the suspects teeth to the bite marks. The first of these degrees is referred to as “reasonable medical certainty”, which denotes the highest order of certainty that the suspect caused the bite marks and there is no reasonable or practical possibility that someone else could have caused the bite marks.

The second of these degrees is referred to as “probably the biter” and denotes **some degree of specificity** based on a number of concordant individual characteristics between the suspect’s dentition and the bite marks.

Thus, the expert had himself stated that the word probably denotes **some degree of specificity** and this has to be read in consonance with the positive evidence against the accused proved on record and hence is a circumstance against accused Akshay Kumar Singh @ Thakur.

Thus, besides the identity of accused being established by the traditional method; the identity &

presence of accused is, even otherwise, confirmed by the scientific reports viz., DNA ; finger printing and odontology report. Rather with the aid of the evidence so recorded the following stood established ;-

- (a)** the incident of sexual assault in the bus **Ex.P1** ;
- (b)** the fact that victims and accused person were together in the bus **Ex.P1** when the incident took place ;
- (c)** the seized rods **Ex.P-49/1** and **Ex.P-49/2** were used in the crime ;
- (d)** the prosecutrix was gang raped by accused and was subjected to unnatural sex;
- (e)** the prosecutrix and the complainant received various injuries at the hands of accused, per medical evidence on record.
- (f)** the victims were dumped in front of Delhi Airport after the crime, and
- (g)** the prosecutrix died due to injuries inflicted by accused ;
- (h)** the DNA profile from the burnt cloth pieces found near the bus Ex.P1 were found to be of male original consistent with the DNA profile of the complainant, also established the destruction of evidence.
- (i)** The injuries to all the accused person found per

MLC(s) **Ex.PW2/A** of accused Ram Singh, since deceased ; MLC **Ex.PW7/A** of accused Akshay Kumar Singh @ Thakur ; MLC **Ex.PW7/B** of accused Pawan Gupta @ Kaalu and MLC **Ex.PW7/C** of accused Vinay Sharma all are **suggestive** of **struggle** by the victims during the incident.

Thus the contents of the deposition of PW1 and the dying declarations find **support** from the facts proved from the exhibits lifted from the bus, iron rods, route map as also by the electronic evidence. The identity of accused, even otherwise, stood established by scientific evidence. Hence in addition to the testimony of an eye witness PW1, the **chain of circumstance** also stood established against all the accused.

MISC. CONTENTIONS

A. The manner of arrest of the accused person and the recoveries effected therefrom has been discussed by me in the evidence part of my judgment and I need not repeat the same. However qua their arrest & recoveries the following contentions were raised by accused : **a)** illegality

in arrest, as not been shown arrested at the places where they were apprehended ; **b)** the recoveries being tainted as not effected in presence of public witnesses.

Regarding **(a)** I need to say that the evidence of the police officials associated in the arrest of the accused person is found as trustworthy. Despite some contradictions here and there, the accused person have not been able to create a dent in the story of the prosecution qua the manner of their arrest. Even otherwise, I may go to the extent to say that illegality in arrest, if any, has no bearing on the trial of a case.

In **“Prabu v. Emperor”, AIR 1944 PC 73**, it was held that illegality in the arrest of accused do not vitiate the trial.

Further, in **“Mobarik Ali Ahmed v. State of Bombay”, AIR 1957 SC 857**, the Hon'ble Supreme Court laid the same preposition of law.

Thus, I need not dwell on the aspect of alleged vitiating of trial on account of any alleged illegality in the arrest of any of the accused person. Even otherwise the

accused person has not proved the factum of they being arrested from somewhere else than the places proved by the prosecution.

Though , accused Akshay Kumar Singh @ Thakur raised an issue that he was not arrested from his house but he surrendered at Police Station Tandwa, District Aurangabad and hence the version of the police that he was brought from his house by the police is patently false and do not appeal to me since Arrest Memo **Ex.PW53/A** of accused Akshay Kumar Singh @ Thakur show that he was arrested at his native village Karmalang, P.S Tandwa, District Aurangabad, Bihar, which infact is also admitted by the defence witnesses, he had produced.

Now, I may even refer to the arrest of accused Pawan Gupta @ Kaalu . It is claimed by defence witnesses that this accused was lifted by 4-5 persons in the evening of 17.12.2012 but is shown to have been arrested on 18-12-2012 at 1:15 PM. It is also alleged on behalf of accused Vinay Sharma that he was taken to police station by his father and was never arrested at the instance of accused

Ram Singh, as alleged on 18-12-2012 at 1:30 PM. The defence witnesses on their behalf depose that they raised hue and cry with police qua lifting of accused but failed to produce anything on record except a document **Mark DW7/1**, not even bearing stamp of any office / authorised person or a postal receipt. On the other hand the prosecution had proved the chain of events, including arrest of all accused, one after the other, the recoveries effected at their instance and hence the version of the accused that they were not arrested in the manner as described by police is not acceptable.

It is settled law that as the discovery of fact / articles recovered at the instance of accused are admissible in evidence under section 27 of Indian Evidence Act. Let me now see if there was any necessity of joining of public witnesses at the time of recoveries effected at the instance of accused or if in their absence the recoveries could be treated as tainted as contended.

To answer this contention **(b)** let me refer to section 100 Cr.P.C wherein only the requirement of public

witnesses is stressed. Suffice is to say that section 100 Cr.P.C is not related to recoveries effected at the instance of the accused person before it is made admissible under section 27 Indian Evidence Act.

I would like to refer to **“State v. Sunil, (2001) 1 SCC 652**, wherein the difference between search conducted under section 100 Cr.P.C and the recovery effected at the instance of accused has been elaborately discussed. It has been observed that :

*“It must be remembered that a search is made to find out a thing or document about which the searching officer has **no prior idea** as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.”*

The Hon'ble Supreme Court also deliberated on this issue in **“Transport Commissioner ., A.P. Hyderabad vs. S. Sardar Ali, 1983 SCC (Criminal) 827**, wherein it was held that :

“it is a fallacious impression that when any recovery is effected pursuant to any statement made by the accused the document prepared by the investigating Officer contemporaneous with such recovery, must necessarily be attested by any independent witnesses.

*It was also been held that when a police official gives the evidence in the court that the some articles were recovered by him on the strength of the statement made by the accused it is always open to the court to believe the version to be **correct** if it is not otherwise shown to be unreliable.*

In **“Dr. Sunil Clifford Daniel v. State of Punjab”, (2012) 11 SCC 205**,

*the Hon'ble Supreme Court in the absence of examination of public witnesses had **relied***

upon the testimony of two police officials on the recovery of Panchnama and it was not declared to be illegal from the evidence otherwise referred inadmissible.

In **“Ashok Kumar Choudhary vs. State of Bihar, (2008) 12 SCC 173**, it was observed that :

*“One cannot lose sight of the ground realities that the members of the **public** are generally **insensitive and reluctant to come forward** to report and depose about the crime even though it is committed in their presence. In our opinion, even otherwise it will be erroneous to lay down as a rule of universal application that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise creditworthy, cannot be relied upon unless corroborated by public witnesses.”*

Thus, the law discussed above do make out a case for the prosecution that no illegality can be seen in the arrest or recoveries effected at the instance of accused by

the police officials, without joining any public person and that non-examination of public person would not lead to any adverse inference against the prosecution & such recoveries cannot be termed as tainted.

I have meticulously examined the depositions, especially the cross examination of such police officials associated with the recoveries of the case properties. Nothing material has come in their cross examination which may destroy the substratum of the case of the prosecution on the alleged plea that the recoveries either were not made at the instance of the accused person or the said police officials were never associated in such recoveries. The minor contractions qua timing etc. or otherwise, if any, do not destroy the fabric of the case and hence need be ignored.

Thus the defence of accused being not plausible stands rejected.

(B) Yet another **contention** raised was the postmortem was done without the request of the SHO / Investigating Officer. The Id. Special Prosecutors argued that

as the prosecutrix died an unnatural death in Singapore, the postmortem was conducted per sections 11 and 18 of **The Coroners Act, 2010**, of Singapore. It runs as under :

“Police Officer to report to Coroner

(1) After a police officer has started investigations into a death, he shall, as soon as reasonably practicable, inform a Coroner of the death and any particulars concerning the cause of death which have come to his knowledge.

(2) The police officer investigating into the cause of death shall -

(a) from time to time, furnish the Coroner with such further particulars concerning the death as may subsequently come to his knowledge, together with the name of any person who has been arrested and charged in connection with the death ; and

(b) comply with such directions as the Coroner may give concerning the investigation.

“When post-mortem examination necessary

Section 18.

(1) In a case of a death

reported to a Coroner under section 11, the Coroner may, after consulting a pathologist, order a post-mortem examination to be conducted if the Coroner is of the opinion that a post-mortem examination is necessary in the circumstances to establish the manner and cause of death.

(2) Notwithstanding sub-section (1), a Coroner shall order a post-mortem examination to be conducted if he is directed to do so by the Public Prosecutor in any particular case.”

Since the body was in Singapore so the postmortem was conducted at the directions of the Coroner. The postmortem report **Ex.PW34/A** do show the reporting of the police officer to the Coroner. Hence, this contention do not has force too.

(C) PLEA OF ALIBI

The defence has raised the plea of alibi, stating, interalia, that accused Akshay Kumar Singh @ Thakur had left Delhi on 15-12-2012 and hence it was not possible for him to be in the bus **Ex.P1** on 16-12-2012 at the time of commission of the offence. Similarly accused Vinay Sharma

and accused Pawan Gupta @ Kaalu had argued that they had attended a musical event in the evening of 16-12-2012 and had entered the DDA District Park, Hauz Khas at around **8:30 PM / 9:00 PM** and left late in the night at about 11 PM with their relatives, parents who were also in the said District Park with them enjoying the event organized by a Church, hence there was no possibility that they could have gone on a joy ride in the bus **Ex.P1** or could have committed serious offences as alleged.

Before analysing their plea of alibi, it would be appropriate to find the law relating to it.

In **“Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283**, it has been held by the Hon'ble Supreme Court that :

“An alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant.

The Latin word alibi means “elsewhere” and that word is used for convenience

when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it was extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with **absolute certainty** so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere

*when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that **strict proof** is required for establishing the plea of alibi.*

In **“Jitender Kumar v. State of Haryana, (2012) 6 SCC 204**, the Hon'ble Supreme Court has held that :

*“Once PW10 and PW11 are believed and their statements are found to be **trustworthy**, as rightly dealt with by the courts below, then the **plea of alibi raised by the accused loses its significance**. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability,*

*establish their plea of alibi. The plea of alibi in fact is required to be proved with **certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence** and in the house which was the home of their relatives.”*

In “**Shahabuddin v. State of Assam, (2012)**

6 SCALE 241, the Hon'ble Supreme Court has held that :

*“Once, the court **disbelieves the plea of alibi** and the accused does not give any explanation in his statement under **Section 313 Cr.P.C**, the court is entitled to draw **adverse inference** against the accused.*

In “**Babudas vs. State of M.P, (2003) 9 SCC**

86, it was held by the Hon'ble Supreme Court that :

“the false plea of alibi is an additional circumstance in the chain of circumstances against the accused.”

The crux of the judgments cited above is once the prosecution succeeds in discharging its burden, it is then incumbent upon the accused, to prove it with **absolute**

certainty the circumstances which excludes the possibility of his presence at the place of occurrence at the relevant time. The court normally should be **slow** to believe any counter-evidence if the presence of accused has been established satisfactorily by the prosecution. The burden on the accused is rather heavy and it would not be an exaggeration to say that **strict proof** is required.

The judgments even go to the extent of saying that once the prosecution witnesses are believed and their statements are found trustworthy then the plea of alibi raised by the accused loses its significance and in that event the false plea may be treated as an **additional circumstance** to nail the accused.

Now, in the light of above I come to the defence taken by each accused.

Accused Pawan Gupta @ Kaalu

He has taken the plea of alibi stating, inter alia, that throughout the evening of 16-12-2012 till late night he was in the DDA District Park, Hauz Khas, Opposite IIT Gate,

New Delhi, enjoying a musical event and that he was never in the bus **Ex.P1** and had not committed any offence with the prosecutrix or with the complainant.

Before coming to the defence evidence led by him , let me refer to the answers given by him to the questions put to him in his statement u/s. 313 CrPC, wherein he has admitted that mobile no. 9711927157 belongs to him. He had further stated that he has taken liquor in the evening of 16.12.2012 and had accompanied accused Vinay Sharma to the musical event at DDA District Park, where he took more liquor and fell unconscious and later was brought to his house by his father & uncle. He stated that he went out in the evening of 16.12.2012 and saw a quarrel between accused Vinay Sharma and accused Ram Singh, since deceased. Then he returned to his juggi. After sometime, he came out of his jhuggi and saw accused Vinay Sharma, his sister, mother and others were going to a musical party so he also went with them and took more liquor in the party and even lost his mobile phone. Strangely enough, in his supplementary statement recorded on 16-8-2013 under

section **313 Cr.P.C** he said that he was present in the said party with his family members and friends and that a video clip was prepared by one Ram Babu (DW-13) & that he **do not** remember if he had accompanied accused Vinay Sharma to the said park in that evening. It is in contradiction to the stand taken by him in his earlier statement recorded u/s 313 Cr.P.C.

Accused Pawan examined his father **DW-2** Shri Hira Lal Ram who deposed that on 16-12-2012 at about 7:15 PM when he came to his house he was informed by his daughter that accused Pawan had gone to DDA District Park, Hauz Khas. It is in **contradiction** to the deposition made by other defence witnesses who said that accused Vinay Sharma and his family members had left Ravi Dass Camp, Sector-3, R.K. Puram, New Delhi, at about **8/8:30 PM** and that accused Pawan accompanied them. Accused Pawan also said so in his initial statement u/s. 313 CrPC.

DW4 Shri Gyan Chand, the maternal uncle of accused Pawan, deposed that he brought accused Pawan Gupta @ Kaalu to the jhuggi from the DDA District Park and

saw one Ram Charan warming his hands on a bonfire just **outside** his jhuggi, who came and asked him about the well being of accused Pawan.

Shri Ram Charan **DW3**, however deposed that at about **8:30/9:00 PM** he was sitting inside his jhuggi with its door open and he saw accused Pawan being brought by his uncle in drunken state. This is yet again in **contradiction** to what has been deposed by other defence witnesses who say that accused Pawan Gupta and accused Vinay Sharma had rather left Ravi Dass Camp, Sector-3, R.K. Puram, New Delhi at about **8 / 8:30 PM** for the DDA district park.

DW16 a shopkeeper of the locality had deposed that he had seen vehicle of Shri Gyan Chand at about **9 / 9:30 PM** of 16-12-2012 when accused Pawan Gupta was brought in drunken condition and was taken to his jhuggi. Initially he failed to mention if Shri Hira Ram was accompanying Shri Gyan Chand.

Though the witnesses have also deposed about the taking away of accused Pawan by 3 / 4 person on

17-12-2012 but that plea too is in contradiction to the arrest memo **Ex.PW60/A** wherein the accused is stated to have been arrested on 18-12-2012 at about 1:15 PM at the pointing out of accused Ram Singh, since deceased.

Hence, there exist contradictions in the statements of defence witnesses produced on behalf of accused Pawan Gupta **(a)** qua the timings the accused had left his jhuggi at Ravi Dass Camp on the fateful night of 16-12-2012 as some of witnesses say that accused Pawan left for DDA District Park at **8/8:30 PM** but whereas some say that they saw him being brought to his jhuggi at about **8:30 PM / 9 PM** and **(b)** qua the fact if DW-2 had gone with DW-1 to the park to fetch his son and **(c)** qua the fact if accused Pawan went to park with accused Vinay Sharma or not.

Accused Vinay Sharma

In response to the questions put to him in his statement u/s 313 Cr.P.C, accused Vinay had admitted that mobile no. 8285947545 **Ex.DW10/1** belongs to his mother

and its sim was lost prior to 16-12-2012 and that on 16-12-2012 at 9:30 PM his friend Vipin had taken his phone in the said park and had returned it in the next morning without SIM card and memory card. The intention of accused appears to wriggle himself out of explaining the receipt of call on his mobile at 9:55 PM of 16-12-2012.

In response to question no. 221 he stated that at about 8 / 8:30 PM he went to see accused Ram Singh and he had a scuffle / exchange of fist blow and then he returned to his jhuggi. Thereafter he left for musical party with his sister, mother and others. He did not say if his father ever accompanied them. He also told that at about 11:30PM he had returned to his jhuggi.

However, the prosecution had proved the Call Detail Record **Ex.PW22/B** of phone of accused Vinay Sharma, having sim no. 8285947545, admittedly in the name of his mother, Smt Champa Devi, but in the possession of accused Vinay Sharma in the evening of 16-12-2012, allegedly snatched by one Vipin in the said music party and returned to him in the morning of

17-12-2012. The Call Detail Record **Ex.PW22/B** do show that the accused has been making calls to one particular number viz., 8601274533 from 15-12-20212 till 20:19:37 AM of 17-12-2012. The authenticity of the CDR is proved under section **65-B** of the Indian Evidence Act.

Now if the accused was not having a sim card in his phone no. 8285947545 then how could he called from this SIM on 15-12-2012, then on 16-12-2012 and in the morning of 17-12-2012 till about 8:23:42PM.

Accused rather said that his SIM and memory card were not in his phone when it was returned by his friend Vipin and that the phone was not with him at 9:55:21 when it registered a call for 58 seconds and when his location was found near IGI Airport i.e the road covered by the Route Map **Ex.PW80/H** where the bus Ex.P1 was moving on that night. Further if as per accused Vinay Sharma he had no memory card and sim card in his mobile phone then the question of making of a video clip from his mobile phone by his friend DW10 Shri Ram Babu do not arise. Even his personal search memo **Ex.PW60/D** do not

show the said mobile phone, when seized, had any memory card in it. The question is how such memory card was being produced later on behalf of accused. It rather shows that the memory card was inserted in the said phone only after the phone was taken on Superdari.

Lastly it appears to be strange that both accused Vinay and accused Pawan went to a party where one lost his mobile and the other's was snatched. It all show that it was lost or snatched probably for a reason to save them from the calls registered on their mobiles on that evening between 9 PM to 10 PM.

VIDEO CLIP

Before coming to the alleged video clip taken by his mobile **Ex.DW10/1**, it would be appropriate, at this stage, to refer to **Col. Ram Singh vs. Ram Singh, 1985 Supplementary SCC 611**, wherein the Hon'ble Supreme Court has laid down the law as to how one should look at such electronic evidence :

“Thus , so far as this Court is

concerned the conditions for admissibility of a tape-recorded statement may be stated as follows :

- (i)** The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was reality the voice of the speaker.
- (ii)** The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence – direct or circumstantial.
- (iii)** Every possibility of **tampering** with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
- (iv)** The statement must be relevant according to the rules of Evidence Act.
- (v)** The recorded cassette

must be **carefully sealed** and kept in safe or official custody.

(vi) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance.

It was further observed that :

“In American Jurisprudence 2d (vol. 29) the learned author on a conspectus of the authorities referred to in the foot-note in regard to the admissibility of tape-recorded statements at page 494 observes thus :

The cases are in general agreement as to what constitutes a proper foundation for the admission of a sound recording, and indicate a reasonable strict adherence to the rules prescribed for testing the admissibility of recordings, which have been outlined as follows :

(1) a showing that the recording device was capable of taking testimony ;

(2) a showing that the operator of the device was **competent** ;

(3) establishment of the **authenticity** and correctness of the recording ;

(4) a showing that **changes,**

- additions, or deletions**
have not been made ;
- (5)** a showing of the manner
of the **preservation** of
the recording ;
- (6)** identification of the
speakers ; and
- (7)** a showing that the
testimony elicited was
voluntarily made without
any kind of inducement.”

It was further observed :

“We would , therefore, have to test the admissibility of the tape-recorded statements of the respondent, given in the High Court as also in this Court, in the light of the various tests and safeguards laid down by this Courts and other courts, referred to above. We shall give a detailed survey of the nature and the character of the statement of the respondent in a separate paragraph which we intend to devote to this part of the case, which is really an important feature and, if accepted, may clinch the issue and the controversy between the parties on the point of corrupt practice.

Considering the rules settled above . I may say that accused Vinay miserably failed to prove the **authenticity** of video clip in terms of the above judgment. The accused had failed to show if DW Ram Babu, aged 15 years, was ever competent to record the clip and how such device was preserved. Admittedly by him the memory card was not in the phone when returned to him by his friend Vipin. It is also not shown in seizure memo **Ex.PW60/D** that mobile **Ex.DW10/1** was seized along with memory card. Thus, it raises a doubt as to how and by whom this memory card was later inserted in his phone **Ex.DW10/1** or how and when the video clip was taken or whether there was no tampering etc ; thus the compliance of section **65-B** of the Indian Evidence Act was mandatory in these circumstances to ensure the purity of the evidence and in its absence it shall be difficult to rely upon such evidence.

Even otherwise, in the alternative the properties of mobile **Ex.DW10/1** show the timings of video clip as 8:16 PM of 16-12-2012 which patently is false because as per the

defence witnesses, accused Vinay Sharma with his family had left Ravi Dass Camp at **8:00 PM / 8:30 PM** and per Smt Champa Devi, DW5, it takes about **one hour** on foot to reach the said park, thus even if we believe their theory then also accused Vinay Sharma and accused Pawan Gupta @ Kaalu were not in the park at **8:16 PM** of 16-12-2012.

Now let me analyse the evidence produced in his defence by accused Vinay Sharma. His mother Smt Champa Devi **DW5** deposed that her son accused Vinay Sharma had gone to meet accused Ram Singh, since deceased, at about **8 PM** of 16-12-2012 and he had a quarrel with Ram Singh, he was beaten and then accused returned to his jhuggi. Thereafter accused Vinay Sharma accompanied her to DDA District Park, Hauz Khas, Opposite IIT Gate, New Delhi, and stayed in the park till late in the night. His mother do not speak if her husband had also accompanied her to the said DDA District Park but whereas **DW6** deposed that his son had returned at about **8 PM** after the quarrel and then they had gone to said DDA District Park. **DW7** Shri Kishore Kumar Bhat also deposed that at about **8 / 8:30 PM** he was in his

jhuggi, when the father of accused Vinay Sharma with his children came to his jhuggi and they all went to DDA District Park. He also stated that a musical programme was organized by St. Thomas Church, Sector-2, R.K. Puram, New Delhi in the said DDA District Park, Hauz Khas on that night.

DW9 Shri Manu Sharma deposed that he went with accused Vinay Sharma to reason with accused Ram Singh, since deceased but whereas accused Vinay Sharma had stated that his brother had accompanied him to meet accused Ram Singh, since deceased. Further, **DW9** Manu Sharma says that he had accompanied accused Vinay Sharma to the musical event but accused Vinay Sharma did not say so.

Hence, per statements of accused Vinay Sharma (under section 313 Cr.P.C) and per statements of defence witnesses ; accused Vinay Sharma and his family with accused Pawan Gupta @ Kaalu had left Ravi Dass Camp at about 8:15 PM to 8:30 PM and per DW5 Smt Champa Devi, it takes about **one hour** to reach the DDA District Park, Hauz Khas, on foot, so even according to them they allegedly

reached the park at about 9:15 PM or 9:30 PM. Thus even from this angle too the video clip showing the accused in the park on 16-12-2012 at about 8:16 PM appears to be tempered.

The defence further got a jolt from the depositions of **PW83**, **PW84** and **PW85**.

PW83 Shri Angad Singh, the Deputy Director (Horticulture), DDA had deposed that no such permission was ever granted by any authority to organize any such like function in the evening of 16.12.2012 in the said DDA District Park, Hauz Khas, New Delhi and that no function was ever organized in the park on 16-12-2012 by anyone.

PW84 Father George Manimala of St. Thomas Church as also **PW85** Brother R.P.Samual, Secretary, Ebenezer Assembly Church, do depose that their Church(es) never organize any musical programme / event in the DDA District Park, Hauz Khas, in the evening of Sunday i.e. on 16-12-2012. Rather they depose that on Sundays there is always a mass prayer in the church and there is no question of organizing any program outside the Church premises and that even

otherwise they have their own space / lawn within the church premises where they can hold such type of programmes / functions. Though Shri A.P. Singh, Advocate tried to press upon a document **Ex.PW84/B** a programme pamphlet of St. Thomas Church, wherein it was mentioned that the Church was holding programmes of 'Carol Singing" from 10-12-2012 to 23-12-2012 at 7 PM at public places but in view of the categorical denial by **PW84** that any such program was organized by the Church on 16-12-2012 in the DDA District Park, opposite IIT Gate, Hauz Khas, New Delhi, the plea has no meaning.

Thus, the plea of alibi that accused Vinay Sharma and accused Pawan Gupta @ Kaalu had attended any alleged musical programme in the evening of 16.12.2012 in DDA District Park, Hauz Khas opposite IIT Gate, New Delhi, appear to be sham and has to be ignored.

Akshahy Kumar Singh @ Thakur

Accused Akshahy Kumar Singh @ Thakur in his statement u/s 313 Cr.P.C stated that he was not in Delhi on

the fateful night and on 15-12-2012 had left Delhi for his village, in Mahabodhi Express, on the ticket of his brother Abhay, along with his brother's wife and nephew. He produced the following witnesses in his defence :

DW11 Shri Chavinder, an auto driver from his village, deposed that he had brought accused Akshay Kumar Singh @ Thakur and his family members from Anugrah Narayan Railway Station, Aurangabad to his native village Kamarlang, P.S Tandwa in his own auto on 16-12-2012 at 10 AM. However, he do not remember about any other passenger / native who shared his auto on that day.

DW13 Sh. Raj Mohan Singh, the father-in-law, of accused deposed that when he reached accused Akshay's house he found his son-in-law being **implicated** in a rape case committed on 16-12-2012. It probably shows that **DW-13** had gone to meet Akshay Kumar Singh @ Thakur only when he had come to know about his implication in the rape case and when accused Akshay Kumar Singh @ Thakur was on the run. It is an admitted fact that the Chowkidar of

P.S Tandwa had met the father of accused on 20-12-2012 and had informed him about implication of accused Akshay for the first time. If it was so then DW13 Shri Raj Mohan must have visited the house of accused Akshay Kumar Singh @ Thakur on 20-12-2012 or on 21-12-2012.

DW12, DW14 and **DW15**, all relatives of accused Akshay Kumar Singh @ Thakur tried to wriggle him out of the messy situation, as is the natural instinct of the family members. However, it is to be seen that during the evidence of **PW14**, wife of accused Akshay Kumar Singh @ Thakur, she was interrupted from answering by accused Akshay from behind on more than one occasion. Similarly, **DW15**, the sister in law of accused, who had allegedly accompanied accused to her native village, interestingly, was not aware as to why her husband Abhay who was to accompany her on 15-12-2012 to the native village did not accompany her. She was not aware of the reason which made her husband stay behind in Delhi. Being the wife she was expected to know all this, at least.

Even otherwise, a suggestion was put to PW61 SI

Jeet Singh, who went to village Kamarlang, P.S Tandwa to arrest accused Akshay Kumar Singh @ Thakur : that the brother of accused Akshay Kumar Singh @ Thakur was made to sit in the police station and it was because of this reason accused Akshay had surrendered, though later the Id. defence counsel pleaded that the suggestion relate to police at Delhi and not to the police at P.S Tandwa as his brother Abhay did not visit his village during that time. However, regard must be had to the fact that despite being given an opportunity to produce witnesses, Abhay, the brother of accused, did not come forward to save his brother but rather he produced his wife, who strangely was not even aware of the reason of her husband staying back at Delhi. If her husband was held by Delhi Police she ought to have deposed this fact in the court. Hence, the plea of alibi appears to be afterthought.

While **weighing** the plea of alibi I am also to remind myself that it has to be weighed against the positive evidence led by the prosecution i.e., not only substantive evidence of PW1 ; of PW83 Shri Ram Adhar ; the

dying declarations **Ex.PW27/A** and **Ex.PW30/D-1** but also against the scientific evidence viz the DNA analysis, Finger print analysis and bite marks analysis, the accuracy of which is scientifically acclaimed.

Considering the inconsistent and contradictory nature of the evidence of alibi led by the accused against the positive evidence of the prosecution, including the scientific one, I hold that accused have miserably **failed** to discharge their burden of absolute certainty qua their plea of alibi.

The plea taken by them appears to be afterthought and rather may be read as an **additional circumstance** against them.

OFFENCES

Now, coming to the offences committed by the accused ; the first and foremost issue involved in the present case is if the accused acted in conspiracy or if everyone acted on his own.

Conspiracy has been defined in section **120-A** IPC

which runs as under :

“120A. *Definition of criminal conspiracy.-- When two or more persons agree to do, or cause to be done,-*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

It is a settled law that conspiracy is always hatched in privacy or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually both, the existence of the conspiracy and its objects have to be **inferred** from the circumstances and the **conduct** of the accused.

In ***Regina v. Murphy (1873) 173 ER 502,***

while summoning up for the jury it was held that :

State vs. Ram Singh and another

SC No. 114/2013

FIR No. 413/2012

P.S. : Vasant Vihar, New Delhi.

/home/reader/Praveen Singhania/304-Spl. FTC/2013/September, 2013/Judgment (Sep., 12)/Ram Singh and another 114-13 Vasant Vihar.odt

*“...I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, ‘Had they this **common design**, and did they pursue it by these **common means** — the design being **unlawful**?’ it is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it. If a conspiracy be already formed, and a person **joins it***

afterwards, he is equally guilty. You are to say whether, from the acts that have been proved, you are satisfied that these defendants were acting in concert in this matter.

In “**State of Himachal Pradesh vs. Krishan Lal Pardhan, (1987) 2 SCC 17**”, it was held that

“If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences **even if some of them had not actively participated** in the commission of offences.”

In **Nalini's** case the Hon'ble Supreme Court explained that conspiracy result in a **joint responsibility** and everything said, written or done in furtherance of common purpose is deemed to have been done by each of them.

In “**Yakub Abdul Razak Memon vs. State of Maharashtra, 2012 (3) SCALE 565**”, it was observed that :

“A charge of conspiracy may prejudice the accused because

*it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has **knowledge** of the **object** of conspiracy but also of the **agreement**. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".*

8. As stated above it is the **unlawful agreement** and **not its accomplishment**, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished.”

It was further observed that :

“Regarding admissibility of evidence, **loosened standards** prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator.”

It was further observed that :

“78. Section **10** of the Evidence Act further provides a unique and special rule of evidence to be followed in cases of conspiracy. **Section 10** reads as under :

“10. Things said or done by conspirator in reference to common design – Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable

wrong, anything said, done or written by any one of such person in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the person believed to so conspiring, as well for the purpose of proving the existence of conspiracy as for the purpose of showing that any such person was a party to it”

It is to be seen that there are three conditions in the Section. One is, before utilizing the section for admitting certain statements of co-accused from a confession, there should be a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong. According to this Section, only when this condition is satisfied in a given case, then only the question of utilizing the statement of an accused against the co-accused can be taken into consideration. Thus, as per Section 10, the following principles are agreed upon unanimously :-

- 1. There shall be prima facie evidence affording a reasonable ground for the Court to believe that two or more persons were part*

- of a conspiracy to commit a wrongful act or offence ;*
- 2.** *Once this condition was fulfilled, anything said, done or written by any of its members, in reference to their common intention, will be considered as evidence against other co-conspirators ;*
 - 3.** *This fact would be evidence for the purpose of existence of a conspiracy and that the person were a part of such conspiracy."*

The Id defence counsels also referred to :

- i.** Saju v. State of Kerala, (2001) 1 SCC 378 ;
- ii.** State of Kerala v. P. Sugathan and others, (2000) 8 SCC 203 ;
- iii.** Baliya vs. State, (2012) 9 SCC 696 ;
- iv.** Param Hans Yadav v. State of Bihar, (1987) 2 SCC 197 ;
- v.** V.C Shukla v. State (Delhi Administration), (1980) 2 SCC 665 ;
- vi.** Ram Narayan Popli v. CBI, (2003) 3 SCC 641 ;
- vii.** State of Uttar Pradesh v. Sukhbasi, AIR 1985 SCC 1224.
- viii.** Jethusarang Bhai v. State of Gujrat, AIR 1984 SC 151.

All these judgments, propounded, broadly the law

discussed above.

Applying the tests laid down by aforesaid judgments, we need to find if in the present case the prosecution proved : **(a)** common object ; **(b)** knowledge of the object ; **(c)** knowledge of an unlawful agreement. It is only when the above three are proved, the words spoken or conduct of accused can be used as evidence u/s **10** of the Indian Evidence Act.

The prosecution has also tried to prove the above three ingredients with the help of deposition of **PW1** ; **PW82** as also by dying declarations **Ex.PW27/A** and **Ex.PW30/D-1** to show that conspiracy existed between the accused person.

As is held in judgments cited above, the prosecution if proves the conspiracy then it need not prove the active participation of each accused.

The conspiracy can be proved by taking **inferences** from the circumstances and by the **conduct** of accused person during the incident.

Now, **PW82**, Shri Ram Adhar, had deposed that at

about **8:30 PM** he had boarded bus **Ex.P1** from Munirka Bus Stand, New Delhi. The conductor of the bus was calling the commuters for Khanpur. However, once he boarded the bus, he was told by one of the accused that it was not going to Khanpur and rather he would be dropped at Nehru Place. **PW82** pleaded to get down but was forcibly pulled inside the bus, beaten and was robbed of his belongings viz., Rs. 1500/- in cash and a mobile phone, for which a separate FIR bearing no. **414/2012** was registered at P.S. Vasant Vihar, New Delhi under sections 365, 397,342 IPC. This incident continued for few minutes and then **PW82** was thrown out of the running bus at the foot of the flyover of IIT and he could hardly save his life.

PW82 Shri Ram Adhar **identified** all the four accused, namely, Akshay Kumar Singh @ Thakur, accused Pawan Gupta, accused Vinay Sharma and accused Mukesh besides two others to be present inside the bus ; whereas accused Mukesh was driving it and others took him inside the bus and committed the crime.

It appears that after throwing **PW82** out of the

moving bus, the accused yet again brought their bus **Ex.P1** at Munirka Bus Stand from where they enticed the complainant **PW1** and the prosecutrix to board their private bus by making them believe that it was a **public** carriage.

The complainant in his deposition as **PW1** had deposed that as he entered the bus he had a **feeling** that accused person did not allow anyone else to enter the bus and started running it. He saw three person in the driver's cabin and they were moving in and out of the driver's cabin. Immediately after entering inside the bus, the accused person **put of the lights** and within minutes, two of them, namely, Ram Singh, since deceased and accused Askshay Kumar Singh @ Thakur came near him and asked him where he was taking the girl in such time of the evening. On his objection they started **beating** him and while **some** pinned him down, the **others** committed rape / unnatural sex with the prosecutrix by taking her at the rear side of the bus **Ex.P1**. Later they changed their positions to commit sexual offences. They all inflicted numerous injuries on the body of the prosecutrix including biting her on all parts of her body

and inserting iron rods in her vagina and rectum. They even exhorted that the victims **be not left alive** and spoke the words "*mar gayee – mar gayee*". They tried to throw the victims out of the moving bus from its rear door but since it could not open they all pulled the victims by their hairs to the front door and threw them out of the moving bus in naked condition in a cold winter night and even tried to overrun / crush them under the wheels of the bus **Ex.P1**.

Now the act of the accused in making **PW82** and victims of this case believe the bus was a **public** carriage and then robbing them and committing various crimes with the victims, including the prosecutrix, goes on to show that the accused had an **object** of merry making on that fateful night **by** not only robbing the passengers but doing sex with female passenger, if she happen to board their bus. The conduct of accused person in **not allowing** anyone else to enter the bus after **PW82** or the victims of this case had boarded it and to **move** the bus immediately **away** from the bus stop do speak of their unlawful object and their **prior meeting of minds**. Then once inside the bus **Ex.P1**, the

accused took **PW82** and then the victims of this case to the rear side of the bus and committed various crimes. The conduct of accused Mukesh who kept on driving the bus Ex.P1 on both these occasions rather **facilitated** others to commit the crime, do speak of his knowledge and his consent to unlawful agreement.

Further, the act of the accused of switching of the lights ; **pinning** the complainant **PW1** down by some while **others** commit rape / unnatural sex with the prosecutrix at the rear side of the bus, do show that they all not only have the **knowledge of the object** but **agreed** to do the said illegal acts ; viz., robbing rape, unnatural sex, beatings, causing grievous injuries and attempting to kill the passengers, distribution of booty, destroying evidence viz., washing, burning etc with their other associates viz., Ram Singh, since deceased and JCL (not being tried by this court).

Hence, the **conduct** of all the accused person lead to only **inference** that they have conspired together to commit various offences in the night of 16-12-2012 with passenger(s) who would board their bus **Ex.P1**. Their act of

allowing only a **single** person / **unit** to board the bus **Ex.P1** on each occasion speaks volumes of their common object. Hence, once the conspiracy is established then the **words** spoken by the accused viz., “the victims be not left alive” and “*mar gayee – mar gayee*” and then their **act** of throwing them out of the running bus believing both of them dead and trying to overrun the bus, do cover under section **10** of the Indian Evidence Act.

Here, accused Mukesh **argued** that he was merely driving the bus **Ex.P1** and had nothing to do with the act of others and hence be acquitted is of no consequence.

It is the **unlawful agreement** which the prosecution need to prove and not its accomplishment, which is the gist or essence of the crime of conspiracy. It is a settled law that criminal responsibility for conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is of course guilty. The one who **tacitly consents** to the object of a conspiracy and **goes along** with other conspirators, actually **standing by** while

the others put the conspiracy into effect, is also guilty though he intends to take no active part in the crime. Even per settled law, if any person **joins** the conspiracy **later**, is equally responsible. Thus offence can be proved largely from the **inferences** drawn from the **acts** and also from **illegal omissions** of the conspirators in pursuance of a common design.

Thus, the arguments of the accused Mukesh that he was merely driving the bus on both the occasions do not help him and rather makes him equally responsible. He can not escape his guilt by merely saying that he was only driving the bus while others were brutally beating the victims, committing unnatural sex, gang rape with the prosecutrix, one after the other, causing injuries dangerous to her life, committing dacoity and other offences. Rather, the **DNA** reports go against the claim of accused Mukesh as the blood of the prosecutrix was also found on his pant, T-shirt and jacket, which he wore at the time of incident and recovered at his instance. It rather **corroborate** the version of **PW1** when he says that even accused Mukesh had hit him

with a rod and had gone to the rear side of the bus **Ex.P1** to commit rape with the prosecutrix. Further, in his statement under section **313 Cr.P.C**, accused Mukesh said that out of the two rounds, he drove the bus for one round. It obviously lead to an inference that in another round, he went to the rear side and raped the prosecutrix. Rather his plea supports the deposition of PW1 on this aspect.

Thus the act(s) of abducting the victims by deceit, robbing, causing injuries and the act of some of accused in pinning the complainant **PW1** down while others took their turn in committing rape / unnatural sex and while one of them continued driving the bus **Ex.P1** ; and lastly throwing them out of moving bus, sharing booty, destroying evidence thoroughly show an **illegal agreement** between them to commit such illegal act(s) and they had knowledge of the same. Hence the offence of conspiracy stands established against the accused and they are liable to be convicted under section **120-B IPC** for committing the aforesaid offences. Thus convicted.

GANG RAPE

The accused, in view of the discussions above, also are liable for gang rape / committed with the prosecutrix in pursuance of the aforesaid conspiracy. The **plea** that accused Mukesh be taken out from the purview of this offence as he merely drove bus Ex.P1 is even otherwise answered by the following judgments viz.,

In **“Bhupinder Sharma v. State of Himachal Pradesh, (2003) 8 SCC 551**, the Hon'ble Supreme Court held as under :

“In cases of gang rape the proof of complete act of rape by each accused on the victim is not required. The statutory intention in introducing Explanation 1 in relation to Section 376(2)(g) appears to have been done with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC.”

In **“Pramod Mahto and others vs. State of Bihar”, 1989 Sup (2) SCC 672**, it was held that :

“This Explanation has been introduced by the legislature with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC.”

In **“Ankush Maruti Shinder v. State of Maharashtra”, (2009) 6 SCC 667**, wherein the Hon'ble Supreme Court held that :

“in a case of gang rape and murder the liability of all the accused is equal.”

Hence, if the accused person had participated in the incident then the question as to who committed rape or who could not complete the act of rape becomes irrelevant for conviction of gang rape.

Hence, all the accused in pursuance of the conspiracy committed gang rape with the prosecutrix and thus are convicted under section **376(2)(g) IPC** with the aid of section **120-B IPC**.

SECTION 377 IPC

Section **377** IPC runs as under :

“Unnatural offences. -
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.”

The MLC **Ex.PW49/A** shows the brief history of intercourse through vagina and anus. It rather shows rectal tear. Further in her dying declaration **Ex.PW27/A** the prosecutrix stated before the SDM that the accused person not only raped her but also committed unnatural sex with her through her anus. This fact is further proved by the DNA report of accused Ram Singh where the anal swab taken

from the person of the prosecutrix was found to contain the DNA of accused Ram Singh. Hence, all the accused person are also convicted for the offence under section **377** IPC read with section **120-B** IPC.

ABDUCTION

Abduction has been defined under section **362**

IPC as under :-

“whoever by force compels, or by any deceitful means induced, any person to go from any place, is said to abduct that person.”

In **Mallesh v. State of Karnataka (2004) 8**

Supreme Court Cases 95, it has been held that

“to “induce” means “to lead into”. Deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is a matter of intention and even if promise held out by the accused was fulfilled by him, the question is : whether he was acting in a bonafide manner.

Thus, the act of making the victims i.e., the complainant PW1 and the prosecutrix **believe** that the white colour bus **Ex.P-1** was a **public** carrier bus proceeding to Dwarka and that the act of accused person in **moving** the bus away from the bus stand and **not allowing** any other person to enter the bus immediately after they had boarded the bus and then taking the victims for a ride do cover the case against the accused under section 365 IPC as also under section 366 IPC as they in pursuance of their conspiracy not only kidnapped the victims with an intention to cause them to be secretly and wrongfully confined but also with an intention that the prosecutrix may be compelled to have forced / illicit intercourse. Hence, the accused person stands convicted for the offences punishable under section **365/366 IPC** read with section **120 IPC**.

DACOITY

Now the question is if the act of the accused is covered under section 395 IPC. Section 395 IPC provides punishment for dacoity. The dacoity is defined under section

391 IPC as under :-

“391. Dacoity.-- *When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.*”

It has been proved above that the accused persons were more than five including Ram Singh, since deceased and JCL (not being tried by this court) and that they conspired to commit various offences with the victims who were deceitfully made to board the bus ; not only had beaten them but had robbed them all of their belongings while inflicting various injuries upon them and throwing them naked out of moving bus in a cold winter night. The robbed property was recovered at the instance of the each of the accused persons and they all accused have been identified in the court by **PW-1**, the complainant. Their identity even stood established by the scientific evidence.

Hence, it stands proved beyond doubt that the accused person **conjointly** committed the robbery in pursuance of their conspiracy and hence the offence under section **395 IPC** with the aid of section **120-B IPC** stands proved against all the accused. Thus convicted.

Section 397 IPC

Section **397** IPC runs as under :

“Robbery, or dacoity, with attempt to cause death or grievous hurt – If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished not be less than seven years.”

It was argued by the Id defence counsels that section 397 IPC is not made out as the prosecution has failed to prove the use of deadly weapons and further this offence is the offence of individual liability. I disagree with the arguments as firstly the iron rods with such size(s), having curve at one end and abrasions on the other, were inserted

into the private parts of the prosecutrix would not be considered less than a deadly weapon for the manner in which such rods were used.

Nevertheless, the rigors of section 397 IPC does not end only on a condition that the offender must use a deadly weapon. It has other ingredients too. If at the time of committing robbery or dacoity the offender attempts to cause **death** to any person, rigors of section 397 IPC shall still be applicable. Since in this case the conspiracy among the accused stands proved so the question as to who caused the injury or who used the weapon has no significance. Even otherwise an attempt was made to cause death of PW1, the complainant and hence the act of all the accused come within the ambit of section **397** IPC with the aid of section **120-B** IPC. Thus convicted.

MURDER

It stands proved that the prosecutrix died due to injuries inflicted by the accused while committing various offences with the victims inside the moving bus Ex.P1, on

the fateful night of 16-12-2012. Such injuries have been described by the doctor as dangerous ; extremely bad for definite repair ; sufficient in the ordinary course to cause death. Now, the moot question of vital importance is as to under which clause of Sec. 299 or 300 IPC, these acts will fall.

In both these Sections i.e. in 299 and 300 IPC, the “intention” is a basic ingredient. Such intention may be for causing death or for causing bodily injury as described in Section 299(b) or Section 300(2) or (3) of the IPC. since the injuries were caused in such a brutal manner which leaves no scope for discussing the case from the point of view of knowledge. The death was also not an accidental death. So the issue which is to be adjudicated is as to whether these acts were done with the “intention of causing death” or with “the intention to cause bodily injuries” which are covered under Section 299(b) and 300(2)/(3) of IPC. Sections read as under :-

Section 299 – Whoever causes death by doing an act
(a) with the intention of causing death

or **(b)** with the intention of causing such bodily injury as is likely to cause death or **(c)** with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 300 – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done **(1)** with the intention of causing death or **(2)** with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused or **(3)** with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death or **(4)** if the person committing the act knows that it is so

imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

By the language of Sec. 300 of IPC, it is much clear that "Culpable Homicide" is the genus and "Murder" is one of its species. Since clause (a) of Sec. 299 is identical to clause (1) of sec. 300, the acts resulted in death if done with the intention of causing death will always be murder. This act will fall within the ambit of sec. 299 r/w sec. 304 IPC if it falls in any of exception mentioned in sec. 300 of IPC.

The State has argued that the present case does not fall in any of the exceptions mention in Sec. 300 nor has any such exception been proved by any of the accused during the trial, so these exceptions are not applicable. The State argued that the acts of all these accused are squarely falling in the first category of Section 300 as these acts were done with the intention of causing death.

It is matter on record that the incidence occurred during intervening night of 16/17-12-2012 in between 9:24 PM to 9:57 PM. The victim died on 29.12.2012 in Singapore at Mt. Elizabeth Hospital due to the injuries suffered by her on the night of the incident. The victim was shifted to Mt. Elizabeth Hospital, Singapore on 26-12-2012 where she later died and her post-mortem was conducted. Hence, the following documents are prima facie capable of showing the complete set of acts done by the accused persons with the prosecutrix: –

- (i) MLC of prosecutrix ;
- (ii) her treatment papers from 16.12.12 till 26.12.12 prepared at Safdarjung Hospital.
- (iii) Post Mortem report of Mt. Elizabeth Hospital and
- (iv) Dying declarations dated 21/12/12 Ex.PW27/A and dated 25-12-2012 ex.PW30/D-1.

The MLC dated 16-12-12 **Ex.PW49/B** shows profuse bleeding from vagina and anal opening. The tag of vaginal wall 6 cm in length was hanging out of interiolus and posterior of vagina was having tear of 7-8 cm. The tear of

rectum of size about 4 cm was found communicating with tear of vagina. The bleeding from vagina & anus was so enormous that the bed sheet wrapping the body was soaked with blood coming out only from vagina. The other injuries on body were not found bleeding so there was no question of oozing of blood from any other part of the body. There was fall in blood pressure and it was recorded as 60/100 mmHg. The Doctor who prepared MLC was of the opinion that in this case high risk consent is required for operation.

Immediately after preparation of MLC, urgent USG was done and patient was shifted to OT for surgery. On 17-12-12 at about 12:55 AM, the treating Doctors made the clinical note which explains the magnitude of injury. By that time, surgery was not performed yet by the report of USG etc., the doctors were of the opinion that it was case of sexual assault with complete perennial tear with anterior rectal wall injury with blunt abdominal trauma. On 17-12-12 at about 3:30 AM, it was explained to the father of victim by Doctors that they are going to do laparotomy, colostomy and Illiostomy because of rupture of intestine. The risk of

development of severe anemia and requirement of putting the patient on ventilator were explained.

Now, after the USG, the victim was examined by Senior Resident Surgery at 12:30 AM. He has observed that there was mucosal injury in lower rectum, anus was absent and there was complete perineal tear. He suspected the abdominal collection of blood and hemorrhage. The victim was put on the operation table at about 2:30 AM. The exterior anal sphincter injury with deficient anterior anal sphincter and anal was observed. From outside, the upper extent of rectal tear could not visualize. The actual magnitude of damage caused to internal organs of victim by the acts of accused persons was visualized when laparotomy, was performed at Safdarjung Hospital on 19-12-12.

As per O.T. Notes **Ex.PW50/B**, following observations were made : –

- (a)** Blunt trauma abdomen with sexual assault ;
- (b)** Complete perineal tear ;
- (c)** Hemoperitonium with small & large bowel injury ;
- (d)** There was collection of 500 ml. of blood

in peritoneal cavity ;

- (e)** Stomach – pale ;
- (f)** Deudonum was contused ;
- (g)** Jejunum – contused bruised at whole of the length and lacerated and transacted at many places. 1st transaction was 5 cm away from DJ Junction (Duodenum – Jejunum Junction) ;
- (h)** 2nd transaction was 2 ft. from the DJ junction after that there was laceration and transact- ion at many places.
- (i)** Jejunum loop was of doubtful viability ;
- (j)** Whole of Ileum (small intestine) was totally contused and it was of doubtful viability ;
- (k)** Distal ileum was completely detached from the mesentry (the tight membrane which holds the loops of small intestine) till ICJ (ileum – colon junction). It was completely devascularized (with no supply of blood) ;
- (l)** Large bowel was also contused, bruised and of doubtful viability. Descending colon was lacerated vertically downward in such a manner that it was completely opened.
- (m)** Sigmoid colon & rectum was lacerated at many places linearly. Mucosa was detached completely a portion of it around 10 cm was prolapsing through perineal wound.

- (n) Both side Retroperitoneal hematoma was present.
- (o) Mesentery and omentum was totally contused and bruised
- (p) Vaginal tear was present. Rectovaginal septum was completely torn.
- (q) Gut injury was totally bruised and contused in such manner that it could not be repaired. Hence, proximal Jejunostomy was made.

Because of intra abdominal injuries, PW50 Dr. Raj Kumar Chijjara Doctor opined that the condition of small and large bowl was **extremely bad for any definite repair**.

The prosecutrix was subjected to a second operation on 19-12-12 because of her deteriorating condition. The OT findings **Ex.PW50/C** are as follows –

- (a) A gap is present in the posterior vaginal wall of perineum involving lower 2/3rd of vaginal and rectovaginal septum. The wall of vagina was edematous and adherent to the rectovaginal septum in the upper part and lateral edge of rectal wall ;
- (b) Perineum completely torn and deficient ;
- (c) External and internal anal sphincter (ring shaped muscle whose function is to constrict or close the body opening or passage which it surrounds) completely torn

along the anterior wall of the anal canal ;

- (d)** The anterior wall of the anal canal and rectum is deficient and the upper limits of the tear could not be reached from below ;
- (e)** Rectum is longitudinally torn on anterior aspect in continuation with perineal tear. This tear is continuing upward involving sigmoid colon, descending colon which is explored open ;
- (f)** The margins are edematous ;
- (g)** There are multiple longitudinal tear in the mucosa of rectosigmoid area ;
- (h)** Transverse colon was torn and gangrenous ;
- (i)** Hepatic plexus ascending colon and caecum whole gangrenous with multiple perforation at many places ;
- (j)** Terminal ileum approximately 1½ ft. loosely hanging in the abdominal cavity it was avulsed from its mesentery and was non viable ;
- (k)** The rest of small bowel was non-existent with only patches of mucosa at places and borders of mesentery was contused. The contused mesentery borders initially appeared during 1st surgery as contused small bowl ;
- (l)** The jejunostomy stoma was gangrenous for approx. 2 cm ;
- (m)** Resection of gangrenous terminal ileum, caecum appendix, ascending colon, hepatic flexures and transverse colon was done.

The prosecutrix was shifted to Mt. Elizabeth Hospital on 26/12/12 and she expired there on 29/12/12. The post mortem was conducted on 29/12/12. Besides the findings about other internal organs, the findings about the alimentary canal as shown in post mortem report **Ex.PW34/A** are as follows-

- (a)** Only the tongue, epiglottis and Esophagus were normal.
- (b)** The stomach was having signs of gastrostomy near greater curve (it is the part near duodenum).
- (c)** Great omentum was absent.
- (d)** Only duodenum was present.

- (e)** The jejunum, ileum and most of the large intestine were completely absent from ligament of Treitz (Suspensory muscle of duodenum) all the way to the anorectal canal.
- (f)** Margins of the residual mesentery showed signs of healing.
- (g)** Large intestine completely absent except anal stump.
- (h)** Anal canal stump remnant measuring between 4.5 to 6 cm long from anal verge was present.
- (i)** Urinary bladder showed mucosal haemorrhages present 2.5 cm diameter and the posterior wall.

Other injuries to external genitals and vagina are mentioned in respective columns of P.M. Report.

Thus by combined reading of MLC **Ex.PW49/B**, OT notes **Ex.PW50/A** and **Ex.PW50/C** dated 17/12/12 & 19/12/12 and P.M. report **Ex.PW34/A**, it is much clear that by the acts of accused persons, the most vital organ of the body i.e. alimentary canal was badly damaged. Multiple severe injuries to alimentary canal can by no stretch of imagination be the outcome of commission of offence of gang rape by six persons. The dying declaration of the prosecutrix recorded by SDM Ms. Usha Chaturvedi is capable of explaining the acts done by these accused persons for causing these internal injuries. The exact statement given by victim is reproduced as under:--

“ इन लोगो ने लोहे की रोड से मुझे मेरे पेट पर मारा”

“इन लोगो ने लोहे की रोड को मेरे शरीर के अन्दर वैजाइनल/गुप्तांग और गुदा (पीछे से through rectum) डाला और फिर बाहर भी निकाला और गुप्तांगो हाथ और लोहे की रोड डालकर मेरे शरीर के अंदरूनी हिस्सों को बाहर निकाला और चोट पहुंचाई”

After committing the gang rape and doing the acts of insertion of hand and iron rods through anal opening and vagina and after pulling out internal organs both the victims in naked condition were thrown out of the bus. The prosecutrix was bleeding profusely from the vagina. The presence of victim near Mahipalpur flyover was noticed by chance by PW Rajkumar who informed PCR and medical help was provided to victim.

During the investigation, two iron rods **Ex.P-49/1** and **Ex.P-49/2** were recovered at the instance of accused Ram Singh. The DNA examination on the basis of blood present on both these rods has confirmed that these rods were used by accused and were inserted inside the body of the prosecutrix. The complainant PW1 who is the sole eye witness has also identified these rods.

The rods were also produced before the Board of Doctors treating the prosecutrix and the complainant. One rod **Ex.P-49/1** was of about 59 cm (about 2 ft) in length, flat at one end and **curved like hook** on other end. The rod was having **multiple serrations**. The circumference of this rod

was about 6 cm. The serrations were present on both sides upto 7 cm from edge. One edge of the rod was chiselled and the rod was slight curved in it length.

The other rod **Ex.P-49/2** was about 70 cm in length. One end upto 2.2 cm was constricted having circumferences of 3.5 cm ; the other end was having **irregular margin**. The circumference of whole rod except one end of 2.2 cm was 6.5 cm.

The opinion given by Board of Doctors after examining both the rods in light of medical record of the victim is as follows –

- (i).**The injury on the body of the patient could be caused by the weapons examined.
- (ii).**The perineal injury was severe and complete tear involving lower 2/3rd of posterior vaginal wall, rectovaginal septum anus and anal canal, anterior rectal wall extending upward into adjoining large intestine. The injury could have been caused by thrusting of blunt rod like object forcibly through vagina and/or anus. During the struggle and

withdrawal of rod like structure from the abdomen, intestine prolapsed/ herniated which led to irreparable damage and loss and severe injury to large and small intestine.

It is matter on record that complete alimentary canal from the level of duodenum upto 5 cm from anal sphincter was completely damaged. It was beyond repair. Causing of damage to jejunum is indicative of the fact that the rods were inserted through vagina and/or anus upto the level of jejunum. The length of both these rods is about 2 feet and is sufficient to travel from vaginal or anal opening through rectum, large intestine and loops of small intestine upto level of jejunum. This process of forcible insertion cut the intestine at several places vertically and then damaged the mesentry beyond repair. The damage to rectum, rectovaginal septum, mesenteries, small intestine, jejunum and duodenum clearly indicate that the act of insertion and pulling out was committed **repeatedly**. The irregular margin of one rod and hook like structure of other rod alongwith serrations on it aggravated this damage to these internal

organs. The blood of victim as confirmed by CFSL by DNA finger printing was found on both these rods. This aspect is able to establish that both these rods were used for insertion and pulling out.

As per human anatomy, the alimentary canal starts from buccal cavity and through esophagus reaches stomach. After the stomach, it has two major parts which are small intestine (ileum) and large intestine (colon). The colon terminates in rectum which is connected with anal sphincter. In between stomach and ileum, there lies two important parts of this canal. The part of this canal soon after the stomach is the duodenum and this duodenum is linked with ileum through Jejunum. The total length of small intestine in human being is approx. 7.1 m (approx. 22-25 feet). Though the digestion starts from buccal cavity, but major part of this process takes place in the stomach where the complex nutrients are converted into simpler forms by the action of enzymes secreted through the stomach walls. The pancreas and gall bladder also secrete enzymes which accelerate the digestion of fat and glyceroids. The enzymes secreted from

pancreas and gall bladder come to the alimentary canal at the level of duodenum and jejunum. The whole of the digestive process is maintained by contraction and retraction of the muscles of the alimentary canal. Each part of the canal is separated from other through the openings having one sided walls. The walls of small intestine contain a dense web of blood capillaries because upto reaching the small intestine the complex food particles have already converted into simpler forms. In the small intestine the maximum absorption of these digested simpler food of nutrients into blood takes place. The weighty and large loops of small intestine remain tied within abdominal cavity tightly with the help of mesentery. Any damage in mesentery will result spreading of all the loops of small intestine having length of 7.1m. The duodenum and jejunum are at proximal end of small intestine just near its start part after stomach whereas rectum is at distal end of this canal. The whole of the alimentary canal is a vital part of body because it provides all the nutrients responsible for metabolism, repair of tissues and growth of the body.

In absence of this alimentary canal, all these vital organs of the body will become functionless. In absence of functioning of these organs, the heart will only be in a position to supply blood to the cells of the body including the brain cells having the oxygen but no nutrient responsible for metabolism of these cells. including brain cells. In absence of supply of these metabolites each and every cells of the body will become functionless. So, the remaining organs of body will not gain any energy for their voluntary or involuntary activities. All these factors will ultimately result in certain death of the person. The damage to internal organs as mentioned in OT notes **Ex.PW50/C** of 19-12-12, clearly indicates that anal spinster, rectum, colon ileum and mesenteries were completely damaged and beyond any repair. The canal could be repaired only at the level of proximal end of jejunum i.e. the part just near the duodenum. Even the duodenum was also found contused and the stomach was also having the injuries. The **large magnitude** of the **force** while inserting these rods is evident from the fact that the colon and rectum were found

vertically torn at places. After the operation, the victim was kept on ventilator. The symptoms of failure of other organs including the lungs are evident from the fact that after the first operation, the victim permanently remained on ventilator.

The important aspect of this trial is the manner in which both these **rods** and **hands** were used for damaging the alimentary canal and **pulling it out** from the body.

Now it stands proved that the prosecutrix was taken to rear seat of the bus. The accused persons tried to commit rape and unnatural acts with her. When she resisted she was beaten by these rods on her abdomen. They all committed rape one by one in brutal manner and robbed her valuables. The beatings were given to both complainant & the prosecutrix.

The accused persons may had the reason of giving beating and causing external injuries to complainant for robbing him or for preventing him from rescuing the prosecutrix. Similarly for giving blows by these rods on abdomen of the prosecutrix, there was a reason that

prosecutrix was putting up stiff resistance in commission of offence of rape. If it had been the case that while committing rape these accused persons inflicted injuries on head or other external vital parts of body, the topic of discussion would certainly be as to whether the accused was intending to inflict such bodily injury which they knew sufficient to cause death or they were intending to inflict such bodily injury which in ordinary course of nature was sufficient to cause death but it is not the case here. In this case whole of alimentary canal was damaged by multiple insertions of these rods and hands through vagina and anus and a major part of this alimentary canal was taken out while **pulling out** these rods and hands. This act of **complete destruction** of the most vital parts of the body in the manner described above can never be termed as intending to cause bodily injury and rather it will be acts done with the **intention** of causing death.

It is a matter of common prudence that removal of these major parts of the alimentary canal was not only capable of stopping the metabolism but also retarding the

process of blood circulation to the remaining organs. These rods were inside the bus. It is established during the trial that these rods were provided by the accused who were present in cabin of the bus on the demand of remaining accused who took the prosecutrix to the rear seat of the bus. This fact tends to show that all the accused were aware of the specific design and dimensions of the rods.

Now coming to legal aspect, I may reiterate that in the scheme of Indian Penal Code, all murders are culpable homicide but not vice versa. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degree of culpable homicide. The first is what may be called culpable homicide of first degree. This is gravest form of culpable homicide which is defined in the Sec. 300 "Murder". The offence made punishable under first part of Sec. 304 falls in second category whereas offence of second part of Sec. 304 are the third category of culpable homicide.

The acts done with the intention of causing death will always be murder as defined in 300(1) of IPC and it will

be culpable homicide only if the act falls in any of exception of Sec. 300 IPC. It is pertinent to note that words “intention to cause death” is not an essential requirement of clause (2) or clause (3) of Sec. 300 IPC. For clause (2) the intention of causing the bodily injury coupled with the offender’s knowledge of the likelihood of such injury causing the death of the particular victim is sufficient to bring the killing within the ambit of this clause. Clause (3) of Sec. 300 deals with those cases where act is done with the intention of causing such bodily injury which are sufficient in ordinary course of nature to cause death. So, by this interpretation it can safely be said that the intention to cause death” is the essential ingredient of only clause (1) of 300 IPC whereas for clauses (2) and (3) the intention is not for causing death and rather it is limited to the intention to inflict bodily injuries. Thus for the cases falling in clause (1) the main emphasis is upon the acts done with the intention of causing death.

For all 4 clauses of Sec 300 one proper illustration is given in IPC. For clause (1) the illustration (a) is given which simply says that A shoots Z with the intention to kill

him, Z dies in consequence A commits murder. Similarly illustration (b) (c) & (d) are given for the remaining clauses i.e. Clauses (2), (3) and (4) of Sec. 300 IPC.

According to the rule laid down in **Virsa Singh vs. State of Punjab (AIR 1958 SC 465)** even if the intention of accused was limited to the infliction of bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be of murder.

To judge as to whether act was done with the intention of causing death, all the acts, utterances and circumstances will be counted together otherwise there will be no difference in cases falling in clause (1) and clause (3) of Sec 300. To clarify the position the discussion held in the House of Lords in **R V. Moloney** (All England Law Reports 1025 HL 1985) will be significant wherein the point of consideration was whether the accused was having the necessary intent either to kill or to cause really serious bodily harm. The following passage quoted from this judgment clarifies the position:

“In deciding the question of the accused man’s intent, you will decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances. Members of the jury, it is a question of fact for you to decide. As I said I think when I was directing you originally you cannot take the top of a man’s head off and look into his mind and actually see what his intent was at any given moment. You have to decide it by reference to what he did, what he said and all the circumstances of the case. An intent may be an impulsive intent or it may be premeditated. Nobody has suggested in this case that there was that element of premeditation. What the prosecution have said is that when he pulled the trigger of that gun it must have been pointing at the deceased and that the accused knew that it was pointing at him, knew it was loaded and when he by a deliberate act pulled the trigger and fired the live barrel of that gun at his stepfather then, say the Crown, he must have intended at the very least to have caused him some really serious bodily injury.

To constitute murder what

had now to be proved was either an intention to kill (**express malice**) or an intention to do grievous bodily harm (**implied malice**). The admirably clear and simple directions to the jury given by Hinchdiffe J., the trial judge, were expressly approved as 'impeccable'. Those directions several times indicated that to support a conviction for murder an intention to kill or do grievous bodily harm must be proved.

The next case I must consider is **DPP Vs Smith (1960) All ER 161, (1961) AC 290**. The case is important for three reasons. The first is that the House, reversing the court of criminal appeal, approved a direction by the trial judge, Donovan J, in a capital murder case, in the following terms:

"The intention with which a man did something can usually be determined by a jury only by inference from the surrounding circumstances including the presumption of law that a man intends the natural and probable consequences of his acts."

We respectfully accept [the counsel for the appellant's] submission, based on the dictum of Lawton LJ. in the R v. Beer (1976 Cr) 1976 R 222 at 225, that in most cases there is no need, indeed it is undesirable to give a jury any definition of intent or intention in a murder case. It is usually sufficient to direct them, as indeed the learned judge after the passage to which I have already referred, that intent or intention is a question of fact for them to determine, taking into account all the circumstances of the case."

If the above mentioned principles are applied in this case the following important aspects emerge for establishing that the accused persons did the acts only with the **intention** of causing death.

- (a)** That the girl was lean and thin from her physique and all these accused knew this physique of the victim from the very beginning ;
- (b)** immediately after boarding of the bus by the prosecutrix and the complainant, all these accused did not allow any other persons to board the bus, uttered

filthy and indecent language towards the girl and put off the lights. Thereafter they pulled the victim to the rear seat and started beating the complainant. All these acts were done in a very short span of time and were capable of creating a **fear** factor in the mind of the prosecutrix because the prosecutrix boarded the bus under the impression that it was a public transport vehicle and such types of acts were not in the foresight of the victim. All these acts were capable of developing a fear factor which was able to render the prosecutrix defenseless ;

- (c)** in that state of mind of the prosecutrix, she was pulled to the rear seat of the bus atleast by more than 2 persons of good built. The place where she was kept was of a seat measuring approximately 2 feet. Just ahead of this seat was the back of the seat in front and within this compact area, it was not possible for the victim to make any sort of defense ;
- (d)** first of all, she was humiliated, her clothes were torn and pulled away from her body. She was hit by iron

rods on the abdomen. Thereafter she was gang raped by 6 persons one by one and when her body became devoid of any resistance due to these factors, the **iron rods** of the description above and **hands** were inserted into the abdominal cavity through vagina and anus repeatedly in a forceful manner which completely damaged the alimentary canal and during the process of pulling out of these rods and hand, the major part of her intestines was pulled out from the body. This aspect shows the severity of the injuries caused to the victim

- (e)** all these acts were done in a **premeditated** manner. The nature of these acts suggests that none of the acts were an impulsive act and rather the manner in which these acts were done clearly establishes the acts as being premeditated acts. The manner in which these rods were used and the injury on the body of the victim rules out the possibility that these accused brought these rods only to overpower the prosecutrix. The act of insertion of rods and pulling the internal organs after

committing the gang rape can in no manner be seen as acts done only to facilitate the commission of gang rape. Rather this aspect makes the act of **pulling out the internal organs** of the prosecutrix to kill her an **intentional act ;**

(f) these acts were done by the accused in a planned manner which is evident from the fact that even before reaching Munirka and committing the said offences, these accused persons had similarly picked up **PW83** Ramadhar, beat him, robbed him and thrown him out of the bus after removing his clothes. By this robbery, Rs. 1500/1600 came in the hands of these accused persons. After committing this offence, these accused came to Munirka. In the same manner they lured the passengers to board the bus and when the victim and complainant boarded the bus, they did not allow any other passenger to board the bus. While committing robbery with Ramadhar in a similar manner also, no one else was allowed to board the bus. This clearly establishes that the accused persons started plying the

bus on the road not for earning through dropping passengers to their destination but the **purpose** was to commit crimes. When the victim and the complainant boarded the bus they used filthy and abusive language and put off the lights inside the bus. The complainant was kept in the middle of the bus while the prosecutrix was taken to the rear seat. All these acts clearly establish that they **conspired** to commit the offence of gang rape. After commission of gang rape, they inserted the rods and in a profusely bleeding and unconscious condition threw the girl and complainant near Mahipalpur flyover naked in cold winter night. It is pertinent to mention that while committing the offence either with PW82 Ramadhar or with the prosecutrix and complainant, the accused persons did not stop the bus to allow any other persons to board the bus ;

- (g)** the commission of the acts of damaging and removing the internal organs of the prosecutrix in the manner and the circumstances described above and the fact

that they were thrown out of the bus into the bushes at a considerable distance from the road so that their presence could not be easily noticed by passers-by and the act of moving the bus in a manner so that the victim comes under the wheels of the bus makes the acts of these accused as done with the **intention of certainty** resulting in **death** ;

- (h)** the shape of the rods used for causing as many as **18** internal injuries to several organs makes these acts done with certainty of causing the death of the prosecutrix. The fact that there was no mitigating circumstance for commission of this inhuman and brutal attack on the victim also brings the case within the purview of Section 300(1) IPC ;
- (i)** these rods were first used for hitting the prosecutrix in her abdomen during the process of commission of gang rape. After committing the gang rape, these rods and hands were inserted in the body which resulted in the above mentioned injuries. This aspect makes the act a planned act as well as an act done with the

intention of causing death.

- (j)** The cause of death in this case was the direct consequence of the multiple injuries sustained by her. The septicemia was the direct result of internal multiple injuries and was not an independent or unconnected with the serious injuries sustained by her. The post mortem doctor described the reason of this septicemia as multiple organ failure due to multiple injuries to the internal parts of the body. Hence the death was a direct consequence of the acts of the accused persons ;
- (k)** accused persons adopted a unique modus operandi to do the acts. They besides causing external bodily harm inserted the **rods** in abdomen of victim through vagina and anus. They did this act repeatedly and pulled out internal vital organs even by their **hands**. All these circumstances made the act of accused an **intended act** done with sole intention of causing death.
- (l)** after committing these acts, with an intention to destroy any evidence of their acts, they cleaned the

bus and burnt all the connected items and then washed the bus and after washing the bus, parked the same at the place where it was usually parked ;

(m) the evidence of PW1 is of vital importance for deciding the act of all the accused fall within clause (1) of section 300 of IPC. PW1 who is sole eye witness has stated that he heard the prosecutrix shouting "**chhor do - chhor do**". She was observed crying in loud voice but the sound was oscillating. PW1 also heard accused saying "**Mar gayee, Mar gayee**". PW1 also heard accused exhortating that victims should **not be left alive**. This piece of evidence by way of utterances made by victims and by the accused is part of same transaction and admissible under section **6** of Evidence Act.

Thus, it stood established that the accused in pursuance of their conspiracy with accused Ram Singh, since deceased (proceedings abated) and JCL (not being tried by this court), committed murder of the prosecutrix with an intention to cause her death. Hence, all the accused person

namely, accused Akshay Kumar Singh @ Thakur, accused Vinay Sharma, accused Pawan Gupta @ Kaalu and accused Mukesh stands convicted for the offence under section 302 IPC read with section 102-B IPC.

Though, the Ld. Counsel for the accused **argued** that the deceased did not die due to the injuries suffered by her in the incident and rather it is a case of **medical negligence** in two ways **(a)** the delay in providing her the treatment i.e. the victim was though found at 10:21 PM at the dumping spot and was brought to the hospital at about 11:30 PM per MLC **Ex.PW49/B** but despite that her actual treatment started at 12:55 AM i.e more than after 1½ hour, hence, the delay in bringing the prosecutrix to the hospital and starting her treatment all led to considerable loss of blood and her condition deteriorated and ultimately she died ; and **(b)** the deceased died due to septicemia due to infection she got while she was being admitted in the hospital.

I disagree with both the submissions as the MLC **Ex.PW49/B** do show that immediately after her admission in

the hospital at 11:30 PM, she was attended upon by PW49 Dr. Rashmi Ahuja. It was required by the doctor to clinically examine her and prepare notes prior to preparing her for operation. In fact there has been absolutely no delay on the part of the doctors as the first operation, admittedly, was performed by **PW50** Dr. Raj Kumar Chijjara, the same night.

Regarding **(b)** I may refer to the cross examination of **PW50** Dr. Raj Kumar Chijjara wherein he has stated that the condition of the prosecutrix was bad when she was firstly operated upon. She was likely having sepsis as her blood pressure was being maintained by medication. He further **added** that in our surgical practice the common causes of septicemia are perforation peritonitis, necrotising soft tissue infection, acute necrotising pancreatitis. He **denied** the suggestion that the prosecutrix suffered from septicemia due to presence of bacteria in the environment of hospital or due to any mishandling. Rather he voluntarily **stated** that the likely cause could

be injury to the rectum where faeces is there which contain billion of pathogenic organisms, injury to the colon which also contain similar kind of organisms plus the weapon which was used to cause injury might have had lot of disease producing organisms then why environment / negligence is being blamed when the cause of disease was nearby.

The bare perusal of the statement of **PW50** defies the claim of the Id defence counsel that the deceased died due to medical negligence and not otherwise.

Hence, the facts do make all the accused liable for the cold blooded murder of the defenceless prosecutrix and thus the offence under section **302** IPC read with section **120-B** IPC stands proved and the accused person are thus convicted.

It was though argued that the case is also covered under section 396 IPC but the said section has been defined as under :

“396. Dacoity with murder.-- *If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or 1[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”*

A bare reading of this section would show us that the following is required to be proved to bring an offence under the ambit of section 396 IPC ;-

- a)** five or more person ;
- b)** conjointly committing the dacoity ;
- c)** any one of those commits murder **in so committing dacoity ;**
- d)** everyone of such person shall be punished.

The requirement under section 396 IPC is that in addition to committing dacoity, if anyone of five or more persons conjointly committing dacoity, commits murder **in so committing dacoity**, then each one of the said person who are conjointly committing dacoity, shall be liable under section **396 IPC**.

To bring the case against the accused within the ambit of section 396 IPC, the prosecution was required to prove the murder being committed in so committing dacoity but whereas in the present case the facts suggest that it was after the accused person had robbed of the belongings of the victims, they had then taken the prosecutrix to the rear side of the bus and while committing gang rape / unnatural sex with her had committed her murder in the manner stated above. The murder of the prosecutrix was thus in so committing the offence of gang rape / unnatural sex. Hence, the case would be rather covered under section 302 IPC read with section 120-B IPC.

Section 307 IPC

Qua charge under section 307 IPC read with section 120-B IPC, it is to be noted that in pursuance to the said conspiracy accused person also brutally beaten the complainant, PW1 with the iron rods Ex.P-49/1 and Ex.P-49/2 on his head and other parts of his body. Further, in order to kill the complainant and prosecutrix, they firstly attempted

to throw them out of the moving bus from its back door but when they found it to be jammed, they dragged both the victims in an injured, unconscious and naked condition by pulling their hairs to the front door of the bus presuming them to be dead and threw them out of the moving bus in a severe/chilled winter night that too at a very dangerous place on the main Jaipur Highway.

An attempt in order to be criminal need not to be penultimate act. It is sufficient if there is an intent coupled with an overt act in execution of such intent.

It has to be seen whether the act irrespective of its result was done with the intention or knowledge and under the circumstances mentioned under section 307 IPC.

An attempt to commit murder is complete though desired and intended consequence of death does not ensue. Offence under section 307 IPC can be committed even without intention, if there is a **knowledge** that the act is so imminently dangerous that it must in all probabilities cause death. Such knowledge can be gathered from the circumstances, conduct and overacts of the accused person.

Determinative question is intention or knowledge and not the nature of injury. Reliance is placed on **State of M.P. Vs Kashi Ram & Ors. 2009 Cr.L. J. (SC) 1530.**

Circumstances, conduct and overacts of the accused person narrated / described hereinabove clearly and unequivocally establish that accused persons also attempted to kill complainant PW1 pursuant to the said conspiracy and hence they are also liable to be held guilty under section **307** IPC read with section **120-B** IPC.

Section 412 IPC

Let me move further to the charge under section
412 IPC.

Section 412 IPC has been defined as under :

“412. Dishonestly receiving property stolen in the commission of a dacoity. -- 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 to 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 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years , and shall also be liable to fine.”

It has already come on record that accused persons had robbed victims of their valuables by committing dacoity and had retained such robbed articles, proved by recoveries effected at their instances in the course of investigation, do make out a case u/s. 412 IPC against each

of them.

The **contention** that section 395 IPC and section 412 IPC cannot go together is replied by “**Lachman Ram v. State Of Orissa**” (1985) 2 Supreme Court Cases 533, wherein the conviction was recorded under both the sections viz., 395 IPC as also u/s. 412 IPC. I may refer to paragraph 11 of the judgment :--

“factum of recovery of articles at the instance of the accused persons in the presence of police officers and panch witnesses who have deposed to the same, is itself sufficient to bring the case not under the provisions of Section 412 IPC but also under Section 395 IPC with the aid of Section 114 of the Evidence Act because the recoveries were made very soon after the occurrence.”

Thus accused Pawan Gupta @ Kaalu is convicted under section 412 IPC for being found in possession of the complainant's robbed wrist watch **Ex.P-3** and two currency notes of denomination of Rs.500/- each **Ex.P-7**.

Accused Vinay Sharma is convicted under section

412 IPC for being found in possession of the complainant's robbed shoes **Ex.P-2** and robbed mobile phone make Nokia **Ex.P-68/5** of the prosecutrix.

Accused Mukesh is also convicted under section 412 IPC for being found in possession of complainant's robbed Samsung mobile phone **Ex.P-6**.

Accused Akshay Kumar Singh @ Thakur is also convicted under section 412 IPC for being in possession of the complainant's robbed metro card **Ex.P-5** and complainant's silver ring **Ex.P-4**.

Section 201 IPC

Lastly, the prosecution has aptly proved through the deposition of **PW-13** Shri Brijesh Gupta and **PW-14** Shri Jiwat Shah that in the intervening night of 16th and 17th of December 2012, accused Mukesh was seen **washing** the bus Ex. P-1 and that there were some other person inside the bus washing it. Further, the accused had **burnt** the clothes of the victims in pursuance of their conspiracy. The ashes and pieces of unburnt clothes of the complainant PW1

were recovered and sent for DNA analysis. Per DNA reports, the said unburnt clothes had the **DNA** of **PW1**, the complainant. Thus a case under section 201 IPC read with section 120-B IPC stands proved against all the accused persons as they tried to do away with the evidence to screen themselves of the offences, hence, convicted under section **201** IPC read with section **120-B** IPC.

FINDINGS

Thus, in the result I convict all the accused persons namely, Akshay Kumar Singh @ Thakur, accused Vinay Sharma, accused Mukesh and accused Pawan Gupta @ Kaalu under section **120-B** IPC for the offence of criminal conspiracy ; under section **365 / 366** IPC read with section **120-B** IPC for abducting the victims, with an intention to force the prosecutrix to illicit intercourse ; under section **307** IPC read with section **120-B** IPC for attempting to kill PW1, the complainant ; under section **376(2)(g) IPC** for committing gang rape with the prosecutrix in pursuance of their conspiracy ; under section **377 IPC** read with section

120-B IPC for committing unnatural offence with the prosecutrix ; under section **302 IPC** read with section **120-B IPC** for committing murder of the helpless prosecutrix ; under section **395 IPC** for conjointly committing dacoity in pursuance of the aforesaid conspiracy ; under section **397 IPC** read with section **120-B IPC** for the use of iron rods and for attempting to kill PW1 at the time of committing robbery ; under section **201 IPC** read with section **120-B IPC** for destroying of evidence and under section **412 IPC** for the offence of being individually found in possession (retention) of the stolen property which they all knew was a stolen booty of dacoity committed by them. The proceedings against accused Ram Singh, since deceased, has already been abated and the JCL has not been tried by this court.

Before parting I must express my appreciation for the dedication and the manner, the team of Ld. Public Prosecutors, namely, Shri Dayan Krishnan, Ld. Special Public Prosecutor assisted by Shri Madhav Khurana, Advocate and Shri A.T Ansari and Shri Rajeev Mohan, Ld. Additional Public Prosecutors who have displayed the highest degree of

professional standards and competence and efficaciously assisted the court in the trial. I am also grateful to Shri Rajeev Jain, Amicus Curie who was present throughout the trial. Similarly I also appreciate the assistance rendered by the Ld. Defence Counsels viz., Shri A.P. Singh, Shri Vivek Sharma and Shri V.K Anand.

Lastly I also feel it necessary to mention the professional acumen with which the Delhi Police investigated the case especially the way they made use of the scientific tools. I hope this would be replicated in all other cases.

**Announced in the open
court today i.e. 10-09-2013. (Yogesh Khanna)
Additional Sessions Judge
Special – Fast Track Court
Saket District Courts Complex
New Delhi.**