



Conf-7-2019.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CONFIRMATION REFERENCE NO.7 OF 2019**

The State of Maharashtra Appellant

vs.

Jitendra @ Pappu Babulal Shinde & Ors. Respondents

WITH

CRIMINAL APPEAL NO.225 OF 2020

Nitin Gopinath Bhailume Appellant

vs.

The State of Maharashtra & Ors. Respondents

WITH

CRIMINAL APPEAL NO.1488 OF 2019

WITH

INTERIM APPLICATION NO.2767 OF 2023

IN

CRIMINAL APPEAL NO.1488 OF 2019

Santosh Gorakh Bhaval Appellant

vs.

The State of Maharashtra & Ors. Respondents

Mr.Trideep Pais, Senior Advocate a/w Ms.Shreya Rastogi, Ms.Nadia Shalin, Ms.Saloni Ambastha, Ms.Sakshi Jain and Mr.Abhinay S. and Mr.Chinmay K. for the Appellant in Appeal/ 1488/2019 and for Respondent No.2 in CONF/7/2019.

Mr.Vijay Hiremath a/w Ms.Aditi Uniyal, Mr.Jay Kholiya, Ms.Shreya Rastogi and Ms. Nadia Shalin, for the Appellant in Appeal/225/2020 and for Respondent No.3 in CONF/7/2019.

Mr.Abhinandan Vagyani a/w Mr.Sumit Shinde, Mr.Nagraj Tarade

and Mr.C.M. Lokesh for Respondent No.2 in both Appeals.

Mr.Ramesh Dube Patil a/w Mr.Ankit Patil and Ms.Lisa Das i/b Jay & Co. for Respondent No.3-Complainant.

Mr.Rajiv Chavan, Senior Advocate a/w Mr.Dushyant Purekar, Ms.Manisha Devkar, Ms.Sonam Pardey, Ms.Asmi Desai, Ms. Siddhi Bhutada, Ms.Anjali Khapre and Ms.Shifa Ansari for Respondent Nos.2 and 3 in CONF/7/2019.

Mr.Shishir Hiray, SPP and CPP a/w Ms.Mahalakshmi Ganpathy, APP, Ms.Sangita Shinde, APP and Mr.Shubham Joshi for the Appellant/State in CONF/7/2019 and for Respondent/State in Appeal/1488/2019 and Appeal/225/2020.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ**

DATE : 22nd SEPTEMBER 2026

ORAL ORDER (PER BHARATI DANGRE, J) :

1 The State of Maharashtra has filed the Confirmation Reference No.7/2019 under Section 366 of the Code of Criminal Procedure as it seek confirmation of the death sentence imposed on three accused persons (One of whom, Accused No.1 being dead), by the Special Court (POCSO Act) at Ahmednagar in Sessions Case No.342/2016, by Judgment dated 18th and 29th November, 2017.

We have commenced the hearing of the Confirmation Reference alongwith the Appeals filed by Accused Nos.2 and 3, who also stand convicted of the charges levelled against them and by the very same Judgment, they are also sentenced to death.

2 Upon hearing the learned Public Prosecutor Mr.Hiray and

while the learned senior counsel Mr.Pais is to commence his arguments in the Appeal filed by Accused No.2(Criminal Appeal No.1488/2019), we could notice that the case of the prosecution as well as the defence of the accused persons will have to be appreciated in light of the evidence brought on record through various prosecution witnesses and the documents relied upon.

In light of the arguments so far advanced before us, we could notice that the spot and circumstances revolving around the spot, with the timelines being the focal point of submissions of the rival Parties, it is necessary to have a clear vision about the spot of the incident as well as the position where the witnesses and in specific PW 15 and 18 on one hand and the other set of witnesses viz. PW 4, 9, 11 were located and they deposed about some circumstances, which has been accepted by the Court to be relevant to the circumstances forming a chain, leading to the guilt of the accused persons.

The spot of the actual incident, therefore, assumed great significance before the trial Judge, who has appreciated the evidence in light of the statement of the witnesses revolving around the periphery of the actual spot where the minor girl was ravished and found dead. It is very necessary to have a clarity about the relative distances from the view point of deposition of the witnesses so as to appreciate their testimony and to ascertain whether they could have noticed the movements of the accused persons.

Since Mr.Hiray has urged before us that the cycle of the victim girl was found at a particular spot, whereas, her clothes were found exactly in the opposite field, it is very much

necessary for us to get a clear idea about the spot and when we put some pertinent queries about the location of point D and the visibility of the road from point D, where PW 18 was seated and observed the Accused persons riding on a motorcycle and taking rounds, we were not given any clarity so that we could have appreciated the evidence of these witnesses.

3 In these circumstances, we intend to invoke the power under Section 310 of the Cr.P.C. which permit visit and inspection of any place where an offence is alleged to have been committed or any other place, which in the opinion of the Court is necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial.

When we expressed our intention to the learned Public Prosecutor as well as learned senior Counsel Mr.Pais and Mr.Hiremath, representing the accused persons, they clearly expressed no objection in adopting such a course of action.

4 It is a well settled position that the Appellate Court is entitled to invoke the power under Section 310 of the Cr.P.C. and the Hon'ble Apex Court in case of *Kushal Rao vs. State of Bombay*¹ 1957 2 SCC 787, while affirming the Judgment of the Nagpur High Court, when the learned Judges had conducted local inspection while hearing the death reference, approved of the same.

¹ (1957) 2 SCC 787

5 In yet another decision in *State of Uttar Pradesh vs. Het Ram & Ors.*², the object underlying the local examination under Section 539B of the Cr.P.C. 1898 (presently 310 of the Cr.P.C.) is highlighted in the following words :

“7. It is not in controversy before us that it is permissible for an appellate court to make a local inspection of the nature contemplated by Section 539B. Sub-section (1) of that section, which bears on the controversy before us, reads as follows:

539B (1) Any Judge or Magistrate may at any stage of the inquiry trial of other proceedings after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

What is therefore permissible is that a Judge may inspect any place "in which an offence is alleged to have been committed", or "any other place" which it is in his opinion necessary to view for the purpose of "properly appreciating the evidence" given at an inquiry, trial or other proceeding. The Judges of the High Court did not, however, inspect any such place in which an offence was alleged to have been committed and, as is obvious, if cannot be said that they inspected any other place which could be said to be necessary to view for the purpose of properly appreciating the evidence in the case. The learned Judges in fact did not go to visit any particular "place" as such, for they went to a place "at a short distance" where there was no artificial light merely for the purpose of ascertaining whether "persons could be identified in a dark night even from a short distance" Theirs was therefore not a local inspection within the meaning of Section 539B Cr.P.C. for what that section contemplates is the local inspection of the topography of the place in which the offence was alleged to have been committed or its local peculiarities for the purpose of properly appreciating the evidence which was already on the record.”

6 The Hon’ble Apex Court in *State of M.P. vs. Mast Ram*³, also reiterated that the provision contained in Section 310 for conduct of the local inspection is for the purpose of properly appreciating the evidence, already recorded during the trial and the memorandum of spot inspection recorded by the trial Judge has

2 (1976) 3 SCC 672

3 (2004) 8 SCC 660

to be appreciated in conjunction with the evidence already recorded, though it was clarified that any omission and/or commission in the Memorandum recorded by the trial Judge itself would not constitute the material illegality which would vitiate the prosecution case.

7 A Division Bench of the Madras High court in *State v/s. Santhoshkumar*⁴ while hearing the death reference on the accused being convicted under Section 302 and 376A of the IPC and the relevant provisions of the Protection of Children from Sexual Offences Act, 2012, and to appreciate the evidence led during the trial, carried out inspection of the spot to find out if the measurement tallied with the measurement shown in the rough sketch and it was recorded that the sketch prepared by the second Investigating Officer depicted a fairly correct topography of the place. The said Memorandum was relied upon by the Madras High Court while confirming the sentence of death.

8 In the light of the aforesaid precedents, depicting recourse to Section 310 of Cr.P.C. and since neither the prosecution nor the counsel for the Accused before us have raised any objection about the said course being adopted by this Court, limited for the purpose of appreciating the evidence that has been led before the Trial court, and so as to give this Court a fair insight into the spot of the incident as well as the surrounding peripheral circumstances, which have emerged before the Trial Court through various prosecution witnesses and documents placed on

⁴ MANU/TN/3319/2021

record, by consent of the respective counsel, we fix the date for local inspection as 02/10/2026 at 11.00 a.m.

The learned Public Prosecutor Mr.Hiray has undertaken to render all necessary assistance.

9 Since the respective counsel for the Accused persons and the Respondents in the Death Confirmation Reference have not raised any objection about the local inspection to be carried out by this Court, we are not required to issue separate notice of this inspection to the accused persons. If the respective counsel intend to remain present for the inspection, it is open for them to participate in the inspection.

Similarly we also expect the prosecution to ensure presence of the Investigating Officer and/or the Deputy Superintendent Land Records, Karjat at the time of local inspection.

10 Upon such inspection being carried out, the prosecution as well as the learned counsel representing the Accused, with the limited purpose for which the report can be put to use, are entitled to advance their submission to strengthen their respective case.

[ASHISH S. CHAVAN, J.]

[BHARATI DANGRE, J.]