HIGH COURT OF TRIPURA
AGARTALA

CRL. APP 31 of 2017

Central Bureau of Investigation
Office of the Head of Branch
Anti-Corruption Branch
Oakland, Shillong

---- Appellant(s)

Versus

1. Sri Anantahari Jamatia,
   (Rifle Man, GD No-00060158 TSR)
   son of Sri Ramani Dayal Jamatia
   Vill: Sankatram Para, PO: Jampuijala,
   PS: Takarjala, Dist: Sepahijala, Tripura

2. Sri Dipak Tripura,
   (Rifle Man, GD No-98060452 TSR)
   son of Sri Bipin Chandra Tripura
   Vill: Taikumba, PO: Kalacharra Bazar
   Dist: South Tripura

3. Sri Narayan Ghosh
   (L/NK, GD No-97040845 TSR)
   Son of late Bipin Chandra Ghosh
   Vill: Noabadi, PO+PS: Jirania
   Dist: West Tripura

---- Respondent(s)

For Appellant (s)	:	Mr. P. Saha, Adv.
For Respondent(s)	:	Mr. S. Kar Bhowmik, Adv. Mr. Raju Datta, Adv. Mr. A. Bhattacharjee, Adv.
Date of hearing	:	01.07.2020
Date of pronouncement	:	22.12.2020
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Judgment & Order

(S. Talapatra, J)

This is an appeal, by leave, under Section 378(2)(b) of the CrPC challenging the order of acquittal dated 05.09.2017 delivered in Case No. ST08(WT/A) of 2013, subsequently renumbered as case No.ST(T-1) 8 of 2013 by the Additional Sessions Judge, Khowai Tripura.

[2] By the said judgment and order dated 05.09.2016, hereinafter referred to as the order of acquittal or the impugned order, the respondents were acquitted from the charge framed against them under Section 302/376/34 of the IPC. To be precise, the charge under section 302/34 of the IPC was framed against all the respondents for committing murder with common intention or for intentionally causing death of the victim (the name withheld for purpose of protecting her identity). The further specific charge was framed against the respondent No. 1 (Anantahari Jamatia) under Section 376 of the IPC for committing rape of the said victim on 15.02.2011, anytime after 2200 hours and before 11.30/1200 hours at Hadraibari under Champahawar Police Station. The charges were denied by the respondents. They claimed innocence and to be tried in accordance with law.

[3] On completion of the trial, the trial court (the court of Additional Sessions Judge) acquitted the respondents on observing *inter alia* as follows:

> **16. On my marshaling the above evidence of the prosecution witnesses from the aforesaid four groups I find that the theory of last seen together is not conclusive and is not proved beyond all reasonable doubt by the evidence of PW-1, PW-3, PW-4, PW-6, PW-14 and PW-23. Now coming to the evidence of group-2 it appears that the Doctors i.e. PWs-10, 11 and 13 gave their opinion in a consensus that the cause of death of Nilima Debbarma was asphyxia following hanging which is suicidal in nature and there was no evidence of violence in and around of the private part of the deceased an no seminal stain or spermatozoa found from labia majora and labia minora. Even Dr. B. K Mohapatra and Dr. T.D. Dogra affirmed it in their evidence that in his opinion this is a case of hanging which could be suicidal in nature. He further affirmed that the opinion as given in the last part of his report that the investigating agency is to be decide the manner of death after considering all other circumstantial evidence, was a mere suggestion and it was not a medico legal opinion. So having my due consideration to the above facts and circumstances I am of the view that prosecution failed to prove it beyond all reasonable doubt that the death of Nilima was homicidal in nature and the present three accused persons were involved in the commission of her death.**
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> **So far the charge under Section 376 IPC against the accused Anantahari Jamaita is concerned the evidence as derived from PW-10 and 13 is relevant because after gone through the SFSL report they opined as victim had vaginal delivery and spermatozoa and seminal stain was found in petticoat of deceased sexual offence cannot be ruled out. The above evidence of PW-10 also affirmed by PW-13. Now, PW-15 Dr. B.K. Mohapatra who conducted the DNA test after collecting blood sample of the accused persons opined in his report that human semen was detected in Exhibit. D which is the petticoat of the deceased. He opined in his report that the DNA profile of Anantahari Jamatia (source of Exhibit. A bloodstain gauge) is consistent with one set of DNA profile generated from the male fraction DNA obtained from source of Exhibit.D (petticoat).**
>
> **17. it is in the evidence that the deceased took drinks with accused Anantahari and others and the deceased was unable to take care of herself. It is not in the evidence that there was any disputes/quarrel in the liquor party rather all were cordial in their party. The**

deceased was a deserted woman from her husband. She was economically not so solvent and she had her childrens. Over and above the deceased was not a minor.

So in such a situation conduct is relevant.

From the report of the medical officers it is clear that there was no forceful rape. Only the evidence on record is that semen was detected in the petticoat and it was matched with DNA profile of Anatahari Jamatia. In my considered view based on this DNA test it cannot be said that the prosecution able to establish their charge against accused Anantahari Jamatia for the offence under Section 376 of IPC."

[4] The said opinion of the trial judge has been challenged by the appellant, Central Bureau of Investigation on the grounds as expressed in the memorandum of appeal viz; the order of acquittal is contrary to the evidence or records inasmuch as the evidence was not properly appreciated by the trial judge. The judgment based on which the order of acquittal has been passed is an outcome of surmise conjuncture and assumptions.

[5] It has been asserted that the judgment is also bad for non-application of the circumstantial evidence which has been succinctly established by the prosecution. Thus, the trial judge has failed to appreciate the last seen evidence of two minor boys namely Shibjoy Debbarma (PW-4), Animesh Debbarma (PW-23), Sri Asangka Debbarma (PW-2) and Shila Rani Debbarma, Asangka's wife (PW-3). PWs 4 and 23 are the sterling witnesses in the prosecution case. PWs 4 and 23 had seen the respondent No.1 taking the fully drunk victim by holding her shoulder at the late hours in the night after the liquor party organised in the house of Asangka (PW2)

toward the paddy filed, instead of taking her by th4e regular pathway for going to the village of the victim. The respondent No.3 (Narayan Ghosh) was seen to have been following them. The night was moonlit and therefore PWs 4 and 23 did not have any difficulty in identifying the respondents No. 1 and 3 and the victim. On the instruction of Asangka Debbarma (PW-2) those witnesses PWs 4 and 23 informed the parents of the victim. On search, which was carried out in the immediate hour, the victim was found hanging from a teak tree in the hillock near the paddy field. For purpose of hanging, pachra (the wearing apparel) was used. The major grounds as raised in the memorandum of appeal are that even though the chain of events in respect of last seen together was proved beyond reasonable doubt, the trial court did not rely on that evidence. Moreover, presence of PWs 4 and 23 has been conclusively proved by PWs 2 and 3 and another witness, namely Atul Debbarma (PW-5).

[6] The evidence of last seen together could not be dented by the defence and as such there cannot be any reasonable ground to disbelieve those two witnesses (PWs 4 and 23). Even PW-3, wife of Asangka Debbarma has corroborated PW2 substantively. PW 2 has categorically stated by corroborating PW 4 and 23 that the respondent No. 3 'catching' the shoulder of the victim who was drunk and could not properly walk was proceeding towards the paddy field. The opinion in this regard, as formed by the trial court, is grossly against the established canons of appreciation to hold that the theory

of last seen together is not conclusive and is not proved beyond all reasonable doubt. It has been further asserted to challenge the opinion in respect of the rape of the victim, inasmuch as the evidence of PWs 10, 11 and 13, the doctors who carried out the postmortem examination gave the further report by specifying that the cause of death of the victim is due to asphyxia as a result of hanging. The nature of death of hanging is suicidal.

[7] In the further report, it was observed by the doctors in the case in hand that it was then in the hand of the agency to decide the nature of death after considering all other circumstantial evidence. It thus implied that the hanging might not be conclusively suicidal, if negated by the other circumstantial evidence. In para 23.1 of the chargesheet, according to the appellant, the opinion of Dr. Dogra has been reported. According to Dr. Dogra's opinion, the head of Department of Forensic Medicine and Toxicology, the death in the case in hand could be due to asphyxia as a result of hanging by ligature. Hanging is usually suicidal in nature, however, it is the prerogative of investigation to decide the actual nature of death after considering all other circumstantial evidence. The grievance of the appellant is that the trial court failed to appreciate both sets of forensic opinions indicating that the final result would depend on the circumstantial evidence to come to a definite conclusion, whether the death is homicidal or suicidal in nature. The said opinion was not read by the trial court along with the evidence led by the prosecution on

the incriminating circumstances, else the trial court would have found the death of the victim by hanging on the teak tree was not suicidal but homicidal and was committed by the respondents.

[8] From the evidence, it has been established that presence of the respondents No 1 and 2 has been established by PWs 4 and 23. Form the recovery of the torch light of the respondent No.2, his involvement in the crime has been established. "*Dupatta*" of the victim was recovered in "badly damaged condition" which shows that the victim offered resistance. Even external injury on the neck, thigh or on back of the deceased has been mentioned in the postmortem examination report. The way the wearing apparel has been used, according to the appellant, could not have been done by a person who was totally drunk and was not capable of walking properly. Some other circumstantial evidence, according to the appellant was overlooked by the trial court. Those elements are (a) the button of the victim's blouse was fond open and her woolen jacket was unzipped, (b) the recovery of the red torch light from the place of crime is indicative of that the offence was committed in desperation and in a hurried manner. The trial court has failed to question how the victim who was in inebriated condition would climb up the tree to fasten the wearing apparel to use the same for hanging. Strangely enough, a plea has been raised that since the respondents denied to undergo the polygraph test, the adverse inference was required to be drawn against the respondents. Even

though, the appellant has admitted that the apex court has held that no individual should be forcibly subjected to any of the technique in question whether in the context of investigation in criminal cases or otherwise. If done without consent of the person to be tested that will amount to an unwarranted intrusion into personal liberty. From the opinion of the expert of Central Forensic Science Laboratory (PWs 16 and 17) it can be gathered that the height of the tree in which the body of the victim was found hanging suggested that there was no possibility for the decease to hang herself from the said tree.

[9] Serious objection has been taken by the appellant for discarding the DNA profiling whereby 'sexual intercourse' between the respondent No. 1 and the victim who was in an inebriated condition has been proved. From the 'material' related to the respondent No. 1 and the victim messed there cannot lead to any other finding other than that the sexual intercourse between the male and the female originators had taken place. Whether the rape was forceful or not that can only be determined by the evidence inclusive of the external or internal injuries suffered by the victim or by proving that the victim was not in a position to resist the perpetrator. Thus, the question of consent by the victim may not be of relevance in certain circumstances. If the sequences in the circumstantial chain which have been proved in the case in hand are crossly examined, it has to be inferred that the sexual intercourse was not consensual inasmuch the victim was in inebriated condition and she did not have the alert

to resist the perpetrators. The finding acquitting the respondent no.1 from the charge under section 376(1) of the IPC is grossly perverse and warrants to be interfered with.

[10] Genesis of the prosecution case is rooted in the complaint filed by one Krishna Debbarma, the father of the victim on 19.02.2011 by disclosing that at about 10 o' clock on 18.02.2011, a boozing party was arranged in the house of Asangka Debbarma (PW-2). Two TSR Jawans of TSR camp of Idengkur. J. B. School had gangraped his daughter. Even though the name has been disclosed in the said complaint dated 19.02.2011, but her name is withheld for protecting her identity. In the ejahar, it was disclosed that her daughter was missing and for that his wife and he had gheraoed the camp. The police brought her daughter dead from a nearby by jungle and left her in a field. It has been also disclosed that "two minor boys is the eye witnesses of the incident. They had seen by their own eyes while these TSR were taking away his daughter by holding her closely. Based on the said complaint dated 19.0.2011, as is evident from the records Champahawar PS Case No.7/2011 under Section 376(2)(g)302/301/34 of the IPC was registered and taken up for investigation. At one point of time, the state government transferred the investigation to the Central Bureau of Investigation (CBI). On completion of the investigation, CBI filed an elaborate final report vide the charge sheet No. 5 dated 27.07.2011 in the court of the of the Sub-Divisional Judicial Magistrate, Khowai, Tripura, under section

302 of the CrPC for commission of offence under section 34 read with sections 376/511/302 of the IPC and sending up the respondents for facing the trial. As the offence of rape or murder is exclusively triable by the court of sessions, the police papers were committed to the jurisdictional sessions court namely the court of the Additional Sessions Judge, Khowai, Tripura, as it then was. (for purpose of convenience, the said court is referred to as the trial court hereinafter).

[11] As already noted the charge was framed separately under section 302/34 of the IPC against all the respondents and the charge under Section 376 was framed only against the respondent No. 1. The respondents denied the respective charges to face the trial. It is apparent from the records that the prosecution, in order to substantiate the charge, adduced 28 witnesses including the complainant (PW-1) Asangka Debbarma (PW-2), Shila Rani Debbarma (PW 3), Shibjoy Debbarma (PW- 4), Sri Atul Debbarma (PW-5), Sri Animesh Debbarma (PW-23). That apart, 21 documentary evidence (Exbts 1 to 21) and some ancillary evidence (Exbts D1 to D2) have been adduced by the prosecution. After the prosecution evidence was recorded, the accused persons were separately examined under section 313(1)(b) of the CrPC for having their response in respect of the incriminating materials that surfaced in the evidence as led by the prosecution. Thereafter, having regard to the arguments of the prosecution and the defence, the said order of

acquittal has been passed. The said order of acquittal has been challenged in the grounds as briefly narrated hereinbefore.

[12] Mr. P. Saha learned special counsel having appeared for the appellant, Central Bureau of Investigation (CBI) has submitted that a short revisit of the evidence would show that the findings of the trial court are grossly perverse as these findings are outcome of non-consideration of relevant evidence placed by prosecution. Having referred the testimony of PW-1(Krishna Debbarma), father of the victim, he has stated that on the same night when his daughter did not return home till late night, two boys namely Shibjoy (PW-4) and Animesh (PW-23) came to his house and informed his wife that "*two TSR jawans took….(name of he victim withheld) towards jungle/paddy field. Shibjoy and Animesh also told that….(the victim) who drinks with Asangka and Shila Debbarma. The two boys further informed that ……..(the victim) was drunken when she was taken by one Jawan followed by another".*

[13] PW1 has also narrated that when they went to have information about his daughter, suddenly one Dipak Debbarma came out and told him that he could his trace out his daughter, provided he should not be implicated with any blame. PW-1 has further testified that while tracing out his daughter he saw Dipak Debbarma held his daughter from behind and two boys helping him to release his daughter from the lasso, hanging down from a tree. His wife informed the matter to the Champahawar police Station.

[14] PW-2 (Asangka Debbarma) had corroborated that the victim took part in the boozing party in his house. He had testified in the trial that he saw his wife Shila Debbarma (PW-3) and the victim drinking Rum with one TSR personnel, Anantahari Jamatia. On request of the victim, Anantahari Jamatia brought drinks from TSR camp. Another TSR jawan during that time followed him. That TSR jawan belonged to Bengali community. He as well took drink. Amongst other people, one Dipak Debbarma (PW-14) was in the party but after some time he left. PW-2 has confirmed the presence of PWs 4 and 23 at that place. He had asked them to find out whether the victim had reached her home safely. If she had not reached, he had asked PWs 4 and 23 to inform her parents.

[15] Mr. Saha, learned counsel has submitted that when his first statement was recorded on 19.02.2011, PW2 did not disclose the name of PWs 4 and 23. But the suggestions during the cross-examination contrary to what he has stated in the examination-in-chief has been squarely denied by him. Mr. Saha learned counsel has contended therefore that this independent witness has substantively proved the episode of the last seen together.

[16] PW-3, wife of PW2, as referred by Mr. Saha has stated that the victim took drinks at her house. But as she fell asleep being drunk she did not notice anything more but presence of the victim, the appellants No. 1 and 3 has been corroborated by this witness. As it has been apparent, according to Mr. Saha, PWs-4 and 23 are the

sterling witnesses of the prosecution. Mr. Saha, learned counsel has extensively referred from the testimonies of those witnesses.

[17] PW-4 has testified that he was playing in the courtyard of Asangka Debbarma. He has stated that on taking drinks Shila (PW-3) became boozed and Anantahari (the respondent no1) catching hold …..(the victim by name) went out. After Anantahari departed with the victim, another TSR came and went along them but PW4 could not give the name of that TSR jawan. Then he went to the house of the victim to inquire whether the victim had reached or not. At that time parents of the victim accompanied him and Animesh who was all along with him to search out the victim. They found the dead body of the victim in hanging. Thereafter, he made the following statement:

> **1. *Dipak Debbarma, cook of TSR jawan* took us to the dead body of …..(the victim by name) was drunk while Anantahair has taken her."**

PW4 identified the respondent No.3. All the suggestions put to him in the cross examination were denied.

[18] PW-6 (Smt. Nandarani Debbarma), mother of the victim has stated in the trial that she came to know from PWs 4 and 23 that Anantahari Jamatia (the respondent no.1) and Narayan Ghosh (the responedent NO. 3) has taken her daughter towards jungle. Then along PWs 4 and 23 they started searching for their daughter. On their way to search, they *"noticed another TSR jawan namely Dipak Debbamra came out from the jungle, then Dipak Debbarma told them he could find out my daughter. Said Dipak Debbarma took us to my daughter where I find her in a hanging position."* She lost her sense

at the sight of her daughter hanging from the tree. Later on when she gathered sense she saw the dead body of her daughter which was brought down by Dipak Debbarma. She has stated that her daughter was estranged and she was living separately from her husband. She has also admitted that she did not mention the name of PWs 4 and 23 when her statement was recorded by the state police. She has also admitted that Dipak Debbarma assured them that he could take them to the dead body of her daughter provided he was not implicated in the said case, but the police did arrest him on the very night. Thereafter, she made the statement on which Mr. Saha learned counsel has submitted that Dipak Debbarma had led them directly to the hillock and climbed up to the top. He did not search for the body in low line areas or paddy fields. On reaching at the top of the hillock, he pointed towards one tree and the body was hanging from that tree. The body was hanged by a red-colour pachra (the wearing clothes) of his daughter. Feet of her daughter were not touching the ground. But in the cross examination, PW-6 has further stated that she had stated to the CBI investigator that she learnt about her daughter being taken away by the respondents No. 1 and 3 from PWs 4 and 23. When she went to the police station may persons accompanied her. According to her, Dipak Debbarma (PW-14) was in uniform with rifle when she was found running. She has admitted that she did not state to the state investigator that on spot one torch was found.

[19] PW-8 (Ajit Debbarma) had testified in the trial. PWs 4 and 23 told him that the victim was accompanied by TSR jawans. He identified the inquest report which was prepared in his presence.

[20] Mr. Saha learned counsel has submitted that PW-10 (Dr. Narendra Kumar Barman) has categorically submitted that there was ligature mark, ante mortem in nature, and the age of injury was fresh at the time of death. PW-10 has testified during his examination, *inter alia* as follows: *"We the team of doctors held the PM examination reached in the consensus that in this case, death of ….(the victim by name) was critical case of death by suicidal hanging.*

We came to conclusion mentioned in injury no. 1 and 2 and that it was death of suicidal hanging."

[21] In this regard, Mr. Saha learned counsel has submitted that the trial court has failed to appreciate this evidence in the context of the inebriated condition of the victim. The trial court had similarly failed to appreciate the statement of PW 13, Dr. Dipankar Kumar Bhowmik in respect of his opinion that there was no violence of in and around private parts and no seminal strain or spermatozoa found in labia majora and labia minora as per SFSL report and sexual offence cannot be ascertained. No juxtaposition with circumstantial has been considered. Mr. Saha learned counsel has submitted that trial court has failed to take note of the statement of PW 13 which reads as under:

> **"As the victim has vaginal delivery, and spermatozoa and seminal stain was found in petticoat of her, sexual offence cannot be ruled out."**

[22] Mr. Saha, learned counsel has, thereafter, referred the testimony of PW-23, Animesh Debbarma who has categorically stated inter alia as follows:

> **"Thereafter Asangka Debbarma also participated in the drinking with them. After finishing of liquor Anatahari Jamatia went to TSR camp and after few minutes he came back in the house of Asangka Debbarma with liquor. After shortwhile Narayan Ghosh also arrived the house of Asangka Debbarma. All of them started drinking in the house of Asnagka Debbarma. Witness identified Anantahari Jamatia and Narayan Ghosh in the dock. At night about 10 p.m. after drinking accused Anantahari Jamatia left the house of Asangka Debbarma also with ……(the victim by name) by holding her and hand and another Narayan Ghosh followed them behind. Thereafter they proceeded towards jungle through the paddy field. On that day it was moonlight and I have seen that they proceeded towards jungle through the paddy and at that time Shibjoy was with me. When they are not visible then we informed about them to Asangka Debbarma. Asangka told to us to inform …..(the victim's) parents. Myself and Shibjoy went to the house of …..(the victim's) Father and informed them about the occurrence. Thereafter myself and Shibjoy and …..(the victim's) parents started for searching and proceeded towards jungle side. During searching we found TSR cook namely Dipak there. Said Dipak also with us for searching …..(the victim by name). During searching found …..(the victim by name) hangng on a tree on the tilla. Then we with the help of Dipak (cook TSR camp) brought down the deadbody of …..(the victim by name) from the tree and brought the deadbody to the field. Thereafter myself and Shibjoy informed about the occurrence to the local person and then came to our house. The witness identified the accused Anantahari Jamatia and Narayan Ghosh.**

[23] PW-23, in the cross-examination carried out for and on behalf of the respondent No. 3, has stated that on the following day of the occurrence he and Shibjoy were brought to the TSR camp. He has stated that he could identify the jawans involved. He has further

stated that he could identify Narayan Ghosh next day in the TSR Camp where they were brought to.

[24] PW-24, Pranesh Kiran Chakma, the Officer-in-Charge, Chamapahawar police station who took charge of the investigation on the very day of occurrence has testified that on the place of occurrence one torch light was recovered from a place five meters away from the dead body by preparing the seizure list (Exbt-60). On the body of the torch light, the word "Dipak Debbarma" was written. But PW 24 being the investigation officer before the CBI took up the investigation has during the cross-examination clarified that Dipak Debbarma (PW14) was initially shown as the accused and forwarded to the Sub-Divisional Judicial Magistrate, Khowai on 21.02.2011 having reported that the said TSR jawan namely Dipak Debbarma was found loitering around the place of the occurrence. He has denied the suggestions that on the body of the torch light the name inscribed was not Dipak Debbarma but Dipak Tripura.

[25] PW-25, the investigating officer from the Central Bureau of Investigation has narrated how the investigation was carried out after the case was transferred to the CBI. Mr. Saha, learned counsel has referred the following part from the cross-examination:

> **"I recorded the statement of Animesh Debbarma as per his version. This witness not stated to me that "I told them (parents) that the accused Narayan Ghosh also followed behind of Anatahari and Nilima)".**
>
> **The witness also not stated that "we have seen Anantahari and Nilima while leaving from the house of Asangka Debbarma on that night accused Narayan Ghosh followed them behind." At this stage the witness**

> **volunteers that name of Narayan Ghosh was not disclosed by this witness.**
>
> **The witness namely Animesh Debbarma (PW.4) did not state to me that "next day of the occurrence myself and Shibjoy were brought to TSR camp and shown the jawans involved. I also told the same to CBI Officer that I could identify accused Narayan Ghosh next day in the TSR camp when we were brought there." It is fact that the entire statement u/s 161 CrPC name of Narayan Ghosh was not disclosed by the witness for a single occasion. Witness volunteers but there are some reference except some reference of Bengali."**

[26] Mr. Saha has thereafter has succinctly referred to the opinion of PW 27 (Dr. T. D Dogra), Head of the Department of Medicine of Toxicology, All Indian Institute of Medical Science, New Delhi. He has clearly opined in the trial on perusal of post mortem report of the victim, SFSL repots and photographs taken in the place of occurrence that death in this case occurred due to *asphyxia* as a result of hanging by ligature. He has further opined as follows:

> **"The hanging is usually is suicidal in nature however it is prerogative of investigating agency to decide the manner of death after considering all the other circumstantial evidence. The viscera report was negative for common poison except ethanol. However, no quantitative estimation has been done.**

There was no effective cross examination on that aspect.

[27] PW28 (N.G Khamramg) took up the later part of the investigation from PW-25. Mr. Saha, learned counsel has relied and referred his assessment and analysis of the evidence which reads as under:

> **"After proper assessment and analysis of the available evidence both oral and documentary, circumstantial evidence and aforesaid scientific evidence, investigation could established beyond reasonable doubt that the accused Anantahari Jamatia, Narayan Ghosh and Dipak Tripura had attempted to rape the**

> **deceased …(the victim by name) and thereafter she was murdered by hanging her body in the teak tree in the hillock nearby the paddy field with her wearing apparels "pachra' to make it look like suicide and accordingly the chargesheet dated 27.07.2011 was filed by me before this learned court against the aforesaid three accused persons for commission of offences punishable under Section 34 read with section 376/511/302 of IPC."**

[28] Mr. Saha has also referred to the post mortem examination report and the DNA profiling report. From the DNA profiling report Exbt-D, it appears that human semen that was detected on the petticoat was helpful in generating DNA profile. In the report of Central Forensic Science Laboratory CBIO New Delhi it has been unambiguously held that DNA prolife indicated Anantahari Jamatia as the profile that was gathered from source as Exbt-1A (bloodstained gauze) is consistent with DNA profile generated from the 'male fraction' DNA obtained for source of Exbt-D (Petticoat), forwarded to the laboratory. When the DNA profile created from the blood stained gauze of Dipak Kumar Tripura (the respondent No. 2) and Dipak Debbama (PW14) and Narayan Ghosh [the respondent No. 3] was inconsistent with the DNA profile generated from the male fraction from the source of Exbt.D. Mr. Saha learned counsel, thereafter, referred to the Forensic Psychological Assessment Report prepared by Dr. Asha Srivastava (PW-16). PW16 has admitted the said report in the evidence (Exbt-7) In the said report, PW 16 had recorded their impression that the tree on which the body of the deceased was hanging suggested that there was no possibility for the deceased to hang herself from that tree.

[29] In the behavioural assessment of the respondent No. 3 (Narayan Ghosh), PW 16 found the respondent No. 3 cooperative and answering the most critical question satisfactorily, he was not avoiding any conversation regarding the incident. He was very quick and comfortable in replying the question which were asked to him. Thereafter, it has been observed by PW 16 as follows:

> **"Narayan Ghosh was maintaining good eye contact throughout the assessment and his facial expression was relaxed on the issues about the death of ….(the victim by name). Many honest non-verbal behaviors were observed during the interview. He was not found threatened by the assessment interview and he was willing to undergo polygraph test. Narayan claimed that he was totally unaware of the crime under reference."**

[30] Finally, PW 16 has on the basis of forensic psychological assessment and behavioral analysis interview inferred that the statement of the respondent No. 3 regarding the death of victim *"appears correct"* but the same opinion was not garnered by PW 16 about the respondents No. 1 and 2. For that reason, the relevant part of the behavioural assessment of the respondent No.1 is reproduced from the Forensic Psychological Report dated 24.11.2012 (Exbt-7)

> **9.2.3 Behavioral Assessment**
>
> **The Behavioral Analysis Interview of Anantahari Jamatia was conducted on 11.04.2012 at Agartala. During the interview it was observed that his answers were not rational and logical and his thought process was not clear. He was talkative and nervous body movement and facial expressions were noticed. Erratic or evasive or rapid posture change was adopted by the subject during the interview.**
>
> **During the Behavioral Analysis Interview Anantahari Jamatia denied his involvement in the death of …..(the victim by name) and any knowledge of the crime under reference. He claimed that he had not intimate relation with the deceased. It was observed**

that Anantahari Jamatia was not cooperative and did not answer satisfactorily to most of the critical questions put to him. He was very nervous and uncomfortable in replying the questions which were asked to him. His attitude towards the interview was negative.

Anantahari Jamatia was not maintaining good eye contact throughout the assessment and he felt agitated on being asked about the death of …..(the victim by name). He gave short answers and refused to elaborate anything in detail. He was found threatened by the assessment interview and declined to undergo any further scientific test.

9.2.4 Conclusion

On the basis of Forensic Psychological Assessment and Behavioral Analysis Interview it has been inferred that the statement of Anantahari Jamaita regarding the death of …..(the victim by name) appears deceptive. Jamatia is hiding the information about his role and knowledge with regard to the death of ……(the victim by name).

[31] Let us also reproduce the assessment in respect of one suspect (Dipak Debbarma) and another accused (Dipak Kumar Tripura).

Inference drawn by PW 16 in respect of the respondent No. 2 (Dipak Kumar Tripura) has been recorded in the following terms:

9.3.3 Behavioral Assessment

The Behavioral Analysis Interview of Dipak Kumar Tripura was conducted on 11.04.2012. During the interview it was observed that his answers were not rational and logical. He was not found to be cooperative during the Forensic Psychological Assessment .

Dipak Kumar Tripura stated the Anantahari Jamatia was taking …(the victim by name) towards jungle. He followed them for a short distance and requested him to return his red torch light but he did not give. He denied his involvement in the death of ..(the victim by name) and any knowledge about the crime under reference. He maintained poor eye contact during the interview. His attitude towards the interview was negative.

> **Some deceptive non-verbal dishonest behaviors were observed during the interview. Frequent swallowing and rapid breathing was observed; and he was repeatedly yawing. Restless foot and frequent leg movements revealed the subject's desire to wind up the interview at the earliest, as he felt threatened by the questioning and interview. He declined to undergo any further scientific test.**
>
> **9.3.4 Conclusion**
>
> **On the basis of Forensic Psychological Assessment and Behavioral Analysis Interview it has been inferred that the statement of Dipak Kumar Tripura regarding the death of….(the victim by name) appears deceptive. He is holding some information related to the death of ….(the victim by name).**

Inference drawn by PW 16 in respect of the suspect (Dipak Debbarma), PW-14 has been recorded in the following terms:

> **9.4.3 Behavioral Assessment**
>
> **The Behavioral Analysis Interview of Dipak Debbarma was conducted on 10.04.2012 at Agartala. During the interview it was observed that his answers were rational and logical. Dipak Debbarma was found to be cooperative and answered satisfactorily to the most critical questions put to him. He was comfortable in replying the questions the most critical questions put to him. He was comfortable in replying the questions which were asked and no nervous body movement was noticed. He has actively participated in the interview and spoke clear enough to make understand version.**
>
> **Dipak Debbarma denied his involvement in the death of …(the victim by name) and any knowledge about the crime under reference. He maintained god eye contact and his facial expression were relaxed throughout the assessment.**
> **Many honest non-verbal behaviors were observed during the interview. He was not found threatened by the assessment interview and was willing to any further test.**
>
> **9.4.4 Conclusion**
> **On the basis of Forensic Psychological Assessment and Behavioral Analysis Interview it has been inferred that the statement of Dipak Debbarma regarding death of …(the victim by name) appears truthful.**

[32] The testimony of PW 15, Dr. Braja Kishore Mahapatra has been emphatically referred to by Mr. Saha, learned counsel appearing

for the appellant. PW 15 a senor scientific officer in the Central Forensic Laboratory (CBL) has admitted the biological report (Exbt-5) in the evidence and stated that human semen that was detected on the Exbt-D was used for creating two different sets of male DNA profiles. The said profiles were preserved for further reference and later on, when from the blood samples of the respondent No. 1, the DNA profile was generated, those profiles were matched with the male DNA profile found on the Exbt-D. Such report (Exbt-6) has been admitted by PW-15. The other profiles as created from the bold sample of the respondent No. 2 did not match. Finally, Mr. Saha, learned counsel having referred to the testimony of PW 14 (Dipak Kumar Debbarma) has contended that PW 14 corroborated presence of PWs 4 and 23. Thereafter, he made the following statement:

> **While I came in the camp at that time, I found one Dipak Tripura talking to Anantahari Jamatia and asking Anantahari whey he has gone far away and now why he has coming by running. Then I went to discharge urine in the side of front gate of the camp and found one old man rushing towards camp and when I asked the reason then the old man stated to me that our TSR people had taken his daughter. Then I also found two boys and one woman were coming. Then as per their request, I accompanied them to search the daughter of that old man then we all found the dad body of a woman in a jungle in a hanging condition in a tree. Then as per request of that lady I lay down the dead body of the hanging lady. Thereafter, I came to the camp and found Anantahari performing sentry duty in the front gate. Then Anantahari told me to change the uniform and wear the civil dress. After reaching the camp, the camp in-charge take roll calls and during that time I stated all these thing relating to pulling down of a woman from a tree and also relating to arrival of others for the quest of the daughter of old man. Afterwards, Narayan Ghosh asked me what actually happened, I narrate him all the happenings. The two boys who came to search along with the lady and I found them playing in the courtyard of Asanka Debbarma when I first went in the house of Asangka**

[not filled up]. Debbarma. Following day morning, police arrested me.

[33] Finally, Mr. Saha learned counsel has drawn attention to the statements made by the respondents No. 1, 2, and 3 during their separate cross-examination carried out under Section 313 (1)(b) of the CrPC. A rigorous attempt has been made to show that none of the respondents has explained when they left the company of the victim or in what circumstances the victim was hanged. For example, the respondent No. 3, Narayan Ghosh has stated he has been falsely implicated in the case and he has been chargesheeted without proper investigation. The similar stand has been taken by the respondent No.2 (Dipak Kumar Tripura). The respondent No.1 (Anantahari Jamatia) had followed the same suit but he has denied his presence in the house of PW-2 (see answer to the question No.20). Even he has denied that he left in the company of the victim towards jungle when he was asked to respond to such statement made by PW23 (see the answer to the question No.86). Finally, he has stated that he did not have any idea how the victim died. Even he has denied his semen on the petticoat of the victim when he was asked to respond to the finding of PW28 (see answer to the question no 98). He has alike other respondents, denied involvement in the death of the victim and reiterated his innocence in the matter.

[34] Mr. Saha, learned counsel, in order to buttress his argument as noted above has relied on a few decisions of the apex court which this court would appreciate having regard to the

relevance and the context of the case. In **Gambhir vs. State of Maharashtra** reported in **1982 CRI. L.J. 1243**, the apex court has observed that the court has to draw its conclusion on the basis of the materials supplied by the expert opinions, but the court cannot take up the functions of an expert. If the probable time of death is established on evidence and the time when the accused was last seen in the company of the victim is not distanced by a long gap, those pieces of evidence would stand to show the involvement of the accused unless such evidence is rebutted by the positive evidence. Ordinarily, it is difficult to hold that the accused is guilty of the crime, if there appears a long gap between the accused seen with the victim and the time of death, if three conditions viz; (1) the circumstances form which an inference of guilt is sought to be drawn must be cogently and firmly established, (2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused (3) circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that human probability the crime was committed by the accused and none else, are satisfied. The circumstantial evidence can be made the basis of conviction. But the suspicion cannot take place of evidence. The relevant part as referred by Mr Saha learned counsel for the appellant from **Gambhir vs. State of Maharashtra** (supra) is reproduced hereunder:

> **"9. It has already been pointed out that there is no direct evidence of eye witness in this case and the**

> **cause is based only on circumstantial evidence. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the light of the legal position about the circumstantial evidence, we have to examine whether the circumstantial evidence in the instant case satisfies the requirements of law. The circumstantial evidence in the instant case may be broadly classified into three parts; (1) oral evidence to prove that in the absence of Namdeo, the accused used to visit the house of Laxmi regularly and he was seen in the evening of 26th of February, 1975 in the company of Laxmi and her children. He was also seen at about 10.00 p.m. the same night in the company of Laxmi under a neem tree in the village. At midnight he was again seen going along the way near the house of Babulal, (2) the Various recoveries most of them at the instance of the accused and (3) medical evidence."**

[35] Mr. Saha, learned counsel has as well placed reliance on decision of the apex court in **State of Punjab vs. Gurmit Singh and Others** reported in **1996 CRI.L.J 1728** for a very limited purpose as it is well known that the said report has exposited the law relating to the evidentiary value, requirement of corroboration and conventional approach in respect of the testimony of the rape victim. In **State of Punjab vs. Gurmit Singh,** the apex court had severely criticized the casual approach of the trial court in appreciating the report of the chemical examiner and forsaking the same. It has been held in the said report as follows:

> **"10. The trial court totally ignored the report of the Chemical Examiner Ex. PM, according to which semen had been found on the slides which had been prepared by the lady doctor from the vaginal secretions from the posterior of the vaginal fornix of the prosecutrix. The presence of semen on the slides lent authentic corroboration to the testimony of the prosecutrix. This vital evidence was foresaken by the trial court and as a result wholly erroneous conclusions were arrived at. Thus, even though no corroboration is necessary to rely upon the testimony of the prosecutrix, yet sufficient corroboration from the medical evidence and the report of the chemical examiner is available on the record. Besides, her statement has been fully supported by the evidence of her father, Tirlok Singh, PW6 and her mother Gurdev Kaur, PW7, to whom she had narrated the occurrence soon after her arrival at her house. Moreover, the unchallenged fact that it was the prosecutrix who had led the investigating officer to the Kotha of the tubewell of Ranjit Singh, where she had been raped, lent a built-in assurance that the charge levied by her was "genuine" rather than "fabricated" because it is no one's case that she knew Ranjit Singh earlier or had ever seen or visited the kotha at his tubewell. The trial court completely overlooked this aspect. The trial court did not disbelieve that the prosecutrix had been subjected to sexual intercourse but without any sound basis, observed that the prosecutrix might have spent the "night" in the company of some "persons" and concocted the story on being asked by her mother as to where she had spent the night after her maternal uncle, Darshan Singh, came to Nangal-Kalan to enquire about the prosecutrix. There is no basis for the finding that the prosecutrix had spent the night in the company of *"some persons"* and had indulged in sexual intercourse with them of her own free will. The observations were made on surmises andconjectures - the prosecutrix was condemned unheard."**

[36] **B.C. Deva alias Dyava vs. State of Karnataka** reported in **2007 AIR SCW 4857** has been relied oon by the counsel for the appellant to get his argument nourished in respect of forceful sexual intercourse vis-à-vis the absence of marks of external injuries. It has been held in the said report that the plea that no marks of injuries were either found on the person of the accused or on the person of the prosecutrix does not lead to any inference that the accused has

not committed forcible sexual intercourse on the prosecutrix. The report of gynecologists pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even, in the absence of any corroboration of any medical evidence, the oral testimony of the prosecutrix which is found to be cogent, reliable, convincing and trustworthy [in the case of the report] has to be accepted. Mr. Saha, learned counsel has not failed to refer that on the petticoat (Exbt-D) as marked by FSL there was seminal strain which was proved to be of the respondent No.1 by DNA profiling. Thus, the said piece of evidence cannot be discarded or forsaken taking a casual approach.

[37] Mr. Saha, learned counsel appearing for the appellant in order to contend that absence of external injury on the person of the victim cannot be inferred as that the incident had taken place with the consent of the victim. He has relied on another decision of the apex court in **State of Madhya Pradesh vs. Preetam** reported in **AIR 2018 SC 4212** where it has been succinctly observed, having restated the law as exposited in **B.C. Deva alias Dyava vs. State of Karnataka** (supra)**.** For purposed of reference, the following passage is reproduced hereunder:

> **"(9) It is fairly well-settled that in the absence of external injury on the person of the prosecutrix, it cannot be concluded that the incident had taken place with the consent of the prosecutrix. It depends upon the facts and circumstances of each case. In B.C. Deva alias Dyava v. State of Karnataka, (2007) 12 SCC 122, this Court has held that absence of injury on the person of the victim of rape does not lead to an inference that the accused did not commit forcible sexual intercourse. It was further held that even in the absence of external**

injury, the oral testimony of the prosecutrix that she was subjected to rape, cannot be ignored."

[38] Mr. R. Datta, learned counsel appearing for the respondent No.1 has in order to repel the submission of Mr. Saha, learned counsel appearing for the appellant has, at the outset, submitted that surmise cannot take place of legal evidence. According to Mr. Datta, presence of PWs 4 and 23 in the house of PW-2 is shrouded by suspicion inasmuch as the evidence in that regard has tinge of improvement in the trial and the statement of the witnesses are incongruous. Thus, their testimony in respect of last seen theory in the prosecution case is unreliable. That apart, Mr. Datta, learned counsel has submitted that when the victim was purportedly being taken towards the paddy field/jungle nobody forbade the respondents No. 1 and 3. According to Mr. Datta, the presence of spermatozoa on petticoat of the victim cannot be used as proof in respect of presence of the respondent No.1 in the place where the handed body of the victim was discovered. Even it is not decisive evidence for coming to finding on rape as defined under Section 375 of the IPC.

[39] According to Mr. Datta, learned counsel the trial court has noted categorically and observed that the prosecution has failed to complete the chain beyond all reasonable doubt in respect of last seen theory. It has been further observed if the evidence of PWs 4 and 23 is believed then it has to be believed that the respondent No. 1 and the victim were proceeding towards jungle. According to him, the dead body of the victim hanging from the tree was discovered by

PWs-1, 6, 4 and 23 as per the evidence as recorded. But while appreciating the evidence holistically, the presence of PW-14 nearby the place of occurrence in such wee hour of night was slighted without any reason even though having noted that PW14 was initially booked in the case.

[40] Mr. Datta, learned counsel has clearly submitted that there is not eye witness and the case of prosecution rest indisputably on circumstantial evidence. Mr. Datta, learned counsel has further submitted on discussing the evidence briefly that the trial court has corrected conclusion that reached in all human probability the crime cannot be held to have committed by the accused or it is not a case where no other hypothesis other than that of the guilt of the accused can be drawn. Mr. Datta, has further submitted that even though the trial court has observed that *there are some omissions which are extremely vital and as such this amounts to contradiction." If these statements are left from the entire statement given by the witnesses in fact there remains no evidence by which the witnesses can be saved to advance the cause of justice. For example from the cross examination, it has been pointed out that PW 2 did not state in his statement recorded by the CBI investigators that he did not state the name of PWs 4 and 23 to them."*

[41] Mr. Datta, learned counsel has referred that the trial court has observed that PW 10 and two others doctors were associated in conducting postmortem of the deceased (PWs 11 and

13). They have made their observation that cause of death was asphyxia following hanging which is suicidal in nature and as there is no evidence of violence in an around the private part and nor seminal stain of spermatozoa found in the biological sample collected from labia majora as per the SFL report, and hence no sexual offence cannot be ascertained. Thus, Mr. Datta, learned counsel has submitted that appreciation of the evidence has been carried out in the appropriate manner. Further, Mr. Datta, learned counsel while defending the judgment of the trial court has submitted that assumption cannot take place of evidence. Mr. Datta, learned counsel has emphatically stated that no adverse inference can be drawn from denial to undergo polygraph test as the Article 20 of the Constitution of India prohibits self incrimination.

[42] To support his contention, Mr. Datta, learned counsel has relied on few decisions of the apex court. In **Abinash Chandra Bose vs. Bimal Krishna Sen and Another** reported in **(1963) 3 SCR 564 : AIR 1963 SC 316** where it has been held that in an appeal from the order of acquittal, the high court is competent to take a different view on the evidence, if the facts and circumstances placed before it would lead to the conclusion that the appreciation of the evidence by the trial court was so thoroughly erroneous that was wholly unacceptable to the appellate court. The high court in similar circumstances can reverse the judgment and order of acquittal and may pass the

judgment of conviction but cannot push the accused "to a second trial on the ground that the prosecution did not adduce all evidence."

[43] Mr. Dattta, learned counsel has further referred to a decision of the apex court rendered in **State of Goa vs. Sanjay Thakran and Another** reported in **(2007) 3 SCC 755** for relying on the passages as reproduced hereunder:

> **14. By a series of decisions, this Court has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal this Court observed in Tota Singh and Another v. State of Punjab, (1987) 2 SCC 529 as under:**
>
> > **"6.....The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."**
>
> **15. Further, this Court has observed in Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225:**
>
> > **"7. ...This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are**

> **palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions."**

and in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180:

> **"7. ……There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re- appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh v.State of M.P., (2002) 4 SCC 85]. The principle to be followed by appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 and Jaswant Singh v. State of Haryana, (2000) 4 SCC 484."**

16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as

> **perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with."**

[44] Reference has been made to **Arulvelu and Another vs. State** reported in **(2009) 10 SCC 206** where the apex court has observed that unless the judgment of the trial court is found perverse, the appellate court would not be justified in substituting its own view and reverse the judgment of acquittal. Even if, two views one favouring the conviction and other favouring the acquittal surfaced the trial court judgment of acquittal should not be intervened for the reason that the appellate courts view is more probable. The appellate court would not be justified in setting aside the appellate court judgment of acquittal unless it is either perverse or wholly unsustainable in law. The apex court in **Arulvelu** (supra) has dwelled on the meaning and contours of perverse finding. It has been observed in **Arulvelu** (supra) as follows:

> **24. The expression `perverse' has been dealt with in number of cases. In Gaya Din (Dead) through LRs. & Others v. Hanuman Prasad : (2001) 1 SCC 501 this Court observed that the expression `perverse' means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.**
>
> **25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. AIR 1966 Cal 31, the Court observed that `perverse finding' means a finding which is not only**

against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE : AIR 1994 SC 1341, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In M. S. Narayanagouda v. Girijamma : AIR 1977 Kant 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order. 30. In Moffett v. Gough: (1878) 1 LR 1r 331 the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey 106 NW 814, the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

> **1. *Oxford Advanced Learner's Dictionary of Current English* 6th Edn "*Perverse*- Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.**
>
> **2. *Longman Dictionary of Contemporary English* - International Edn. *Perverse*: Deliberately departing from what is normal and reasonable.**
>
> **3. *The New Oxford Dictionary of English* - 1998 Edition**
> ***Perverse*: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.**
>
> **4. *New Webster's Dictionary of the English Language* (Deluxe Encyclopedic Edn.)**
> ***Perverse*: Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.**
>
> **5. *Stroud's Judicial Dictionary of Words & Phrases,* 4th Edn.**
> ***Perverse*: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."**

28. In Shailendra Pratap & Another v. State of U.P. (2003) 1 SCC 761, the Court observed thus:

"8...."We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and

the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

29. In Kuldeep Singh v. The Commissioner of Police (1999) 2 SCC 10, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

> **"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.**
>
> **10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."**

30. The meaning of `perverse' has been examined in Excise and Taxation Officer-cum- Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, this Court observed as under:

> **"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of**

> **the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."**
>
> **[Emphasis added]**

[45] Further, it has been observed in **Arulvelu** (supra) that the high court as the appellate court while examining the judgment of acquittal will always give proper weight on consideration to such matters such as (1) the views of the trial judge as the credibility of the witnesses (2) the presumption of innocence in favour of the accused, a presumption will certainly not weaken by the fact that he has been acquitted in the trial (3) the right of the accused to any benefit of any doubt (4) the slowness of trial court in disturbing a finding of fact arrived at by a judge who had advantage of seeing the witnesses.

[46] Reference has also been made to another decision of the apex court in **Nizam and Another vs. State of Rajasthan** reported in **(2016) 1 SCC 550** which report deals with last seen theory as the important link in the chain of circumstances. It has been held in the **Nizam** (supra) as under:

> **"14. The courts below convicted the appellants on the evidence of PWs 1 and 2 that deceased was last seen alive with the appellants on 23.01.2001. Undoubtedly, last seen theory is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The last seen theory holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. <u>It is well-settled by this Court that it is not prudent to base the conviction solely on last seen theory. Last seen theory should be applied taking into consideration the case of the</u>**

prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

15. Elaborating the principle of last seen alive in State of Rajasthan vs. Kashi Ram, (2006) 12 SCC 254, this Court held as under:- 23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., In Re. (AIR 1960 Mad 218) The above judgment was relied upon and reiterated in Kiriti Pal vs. State of West Bengal, (2015) 11 SCC 178."

[Emphasis added]

[47] Mr. S. Kar Bhowmik, learned counsel appearing for the respondents No. 2 and 3 has clearly submitted this appeal against the judgment of acquittal should be thrown out at the threshold inasmuch the appellant has failed to show any ground for interference. The appellant has failed to make out any case to show that appreciation of the evidence is perverse and the acquittal is outcome of such perverse appreciation of evidence. Moreover Mr. Kar Bhowmik, learned counsel has submitted on appreciation of the evidence that it

is apparent that there is no eye witness of the alleged crime nor is there adequate circumstantial evidence forming a chain completely destroying the hypothesis of innocence. The last seen theory, even if is considered relevant but it leads nowhere, as PW-14 was seen loitering around the place of occurrence in suspicious manner. For that reason, he was booked but later on, he was relieved of the criminal liability. But he has been cited and adduced as the prosecution witness to link certain circumstances relating to the alleged occurrence.

[48] Mr. Kar Bhowmik, learned counsel in order to dilate his submission has submitted that inadmissible evidence has been placed by the prosecution in order to make out a probable case against the accused person. Mr. Kar Bhowmik, learned counsel has further contended that identification of the respondent No.3 (Narayan Ghosh) is quite shrouded. Even PW 2 did not disclose his name to the police before 19.02.2011, even he did not identify the respondent No.3 in the trial. He has categorically stated that PWs 2 and 3 cannot be believed for any purpose as the trial court has correctly discarded their testimonies.

[49] According to Mr. Kar Bhowmik, learned counsel, PW 2 did not state any thing against the respondent No. 3 nor had he identified him in the trial. However, PW-23 has stated in the trial that the respondent No. 3 did follow Anantahari and the victim. At the same time he has stated that he saw the respondent No. 1 and the victim

leaving the house of PW2. When the attention of PW 23 was drawn to the statement that he made on 10.09.2013 to the CBI officer, he could not show any such statement, but he has asserted that he had disclosed the name of respondent No.3 to the parents of the victim on that night. PW 25 one of the CBI investigators had confirmed in the trial that PW-23 did not state to him that he told the parents of the victim that the respondent No. 3 did follow the respondent No. 1 and the victim. Even PW 23 did not state to the parents of the victim that he saw the respondent No. 3 following the respondent No.1 and the victim. Even PW 23 did not state to PW 25 that on the next day of the occurrence he and PW 4 were brought to TSR camp and they had shown the jawans involved in the occurrence. Even he did not state to the PW 25 or to the CBI Officers that he could identify the respondent No. 3 on the next day in the TSR Camp when they were brought there.

[50] Mr. Kar Bhowmik, learned counsel has submitted that the opinion-evidence has sprung surprise inasmuch as the opinion of the team of the doctors even though categorical and there is no different opinion in respect of the cause of death of the victim but the appellant has insisted that the opinion of PW 27 has superseded the opinions of PWs 10 (Ranendra Kumar Barman), PW 11 (Dr. Dhananjoy Reang) and PW 13 (Dr. Dipankar Prasad Bhowmik). At this juncture Mr. Kar Bhomik, learned counsel has referred to this

court, the confirmation that has been made by PW 13 by making the following statement:

> **"We had a consensus opinion that the death was a typical cause of death by suicidal hanging"**

[51] Therefore, the charge in general under section 302 of the IPC cannot sustain but the appellant who had sought to override this definite medico legal opinion has taken materials either from the testimony of PW 27, Dr. TD Dogra. But PW 27 did not also differ with the opinion of PWs 10, 11 and 13. According to him, that was case of hanging which could be suicidal in nature. But he had added the following opinion.

> **"However it is the prerogative of the investigating agency to decide the manner of death after considering all other circumstantiary evidences."**

[52] According to Mr. Kar Bhowmik, learned counsel appearing for the respondent No. 2 and 3 that was a mere suggestion and it was not a medico legal opinion. Mr. Kar Bhowmik, learned counsel has further submitted that from the testimony of PW 12 it would be apparent that the respondent No. 3 was all through in the camp. He has further stated that in the Aidankur TSR Camp there were 10-12 Bengali jawans. Bengali can not be any definite pointer to establish that none but respondent No. 3 was involved in commission of the alleged crime. PW 14 did not also state anything against the respondent No. 3. Moreover, he has asserted that he did not state that he did not find Narayan Ghosh or the sentry. Even PW 14 has denied that he had found two boys playing in the courtyard of PW 2.

He has denied the presence of the respondent No. 3 in the wine party in the house of PWs 2 and 3. In respect of the opinions of PW 15 (Dr. Dipti Mahaptara), PW 16 (Dr. Asha Srivastav) and PW 17 (Dr. Amod Kumar Singh) it has been stated that those psychological profilings do not form substantive evidence, inasmuch as the assessment that takes place is deeply impacted by the circumstances when such assessment is made.

[53] Mr. Kar Bhowmik, learned counsel having referred to the forwarding report, content of which has been reflected in the order dated 31.07.2015 in the stage of investigation where it has been recorded that PW 14 was last seen with the victim. Even, Mr. Kar Bhowmik learned counsel did not fail to take this court to the statement of Narayan Ghosh made to PW 16 that he was ready to undergo the polygraph test. Further, Mr. Kar Bhowmik, learned counsel appearing for the respondent No. 2 and 3 has submitted that there is no evidence against the respondent No. 2 at all, even the appellant has failed to focus on any such evidence. Despite that the appeal has been filed against him. When there is no proof againsts the respondent No. 2 and 3, particularly against the respondent No. 2 to the effect that he was last seen with the respondent No. 3. The respondent no. 3 cannot have any onus to provide a reason or explanation as to the cause of death. Since the respondent No. 3 has categorically pleaded that he has no knowledge how the victim died

he has no obligation to explain. Therefore, no adverse inference can be drawn against the respondent No. 3.

[54] In support of his contention, Mr. Kar Bhowmik learned counsel appearing for the respondents No. 2 and 3 has relied on some decisions of the apex court. From **Krishnan vs. State** reported in **(2008) 15 SCC 430** the following passages have been pressed into service by him:

> **15. Before adverting to the above-stated arguments advanced by the learned counsel for the parties, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the commission of the offences and the prosecution case entirely rests on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-**
>
> > **(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**
> >
> > **(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;**
> >
> > **(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and**
> >
> > **(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [See Gambhir v. State of Maharashtra (1982) 2 SCC 351 :**
> >
> > **See also Rama Nand v. State of Himachal Pradesh (1981) 1 SCC 511, Prem Thakur v. State of Punjab, (1982) 3 SCC 462, Earabhadrappa v. State of Karnataka, (1983) 2 SCC 330, Gian Singh v. State of Punjab, 1986 Suppl. SCC 676, Balvinder Singh v. State of Punjab (1987) 1 SCC 1.**

16. As far back as in 1952 in Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 3443], it was observed thus:

> **"10……It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."**

17. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are

> **(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;**
>
> **(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;**
>
> **(iii) the circumstances should be of a conclusive nature and tendency;**
>
> **(iv) they should exclude every possible hypothesis except the one to be proved; and**
>
> **(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.**

18. We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus:

> **"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."**
>
> **In Sashi Jena v. Khadal Swain : (2004) 4 SCC 236], this Court again reiterated the well-settled principle of law on circumstantial evidence."**
>
> **[Emphasis added]**

[55] **Kailash Gour and Others vs. State of Assam** reported in **(2012) 2 SCC 34** has been pressed to contend that one of the fundament principles of criminal jurisprudence is that an accused is presumed to be innocent till he is proved to be guilty. There is a long distance between the inferences that accused may have committed the offence and must have committed the offence. That distance must be traversed by the prosecution by adducing reliable and cogent evidence. The passages which are relied for this purpose are extracted hereunder:

> **"39. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between accused "may have committed the offence" and "must have committed the offence" which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away. See Narendra Singh v. State of M.P. (2004) 10 SCC 699 and Ranjitsingh Brahmajeetsingh Sharma v. State of Mahsrashtra and Ors. (2005) 5 SCC 294.**
>
> **40. To the same effect is the decision of this Court in Ganesan v. Rama Raghuraman : (2011) 2 SCC 83 where this Court observed:**

> **"39. Every accused is presumed to be innocent unless his guilt is proved. The Presumption of innocence is human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India."**
>
> **The above views were reiterated by this Court in State of U.P. v. Naresh (2011) 4 SCC 324.**
>
> *** *** ***
>
> **43. At any rate, the legal proposition formulated by Bedi J. based on the past failures do not appear to us to be the solution to the problem. We say with utmost respect to the erudition of our Brother that we do not share his view that the reports of the Commissions of Enquiry set up in the past can justify a departure from the rules of evidence or the fundamental tenets of the criminal justice system. That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-a-vis cases in which it is not. The rules of evidence and the standards by which the same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice."**

[56] Though a reference has been made to **Sham Singh vs. State of Haryana** reported in **(2018) 18 SCC 34** but this court does not find any relevance of the said report in the context of the present case inasmuch as the said report has laid down the responsibility of the trial courts and the appellate courts to become alive to the social reality and to be sensitive while dealing with cases involving sexual assaults. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression or factors, the court should not overlook. The testimony of the victim in such cases is vital and

unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should not find any difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same as a rule in such cases, amounts to adding insult to injury [see Paras 7 and 8]. However, none can be convicted in absence of legal evidence or merely on conjuncture and surmise. There can be compelling materials which would persuade the court to disbelieve the statement of the victim of the sexual assault.

[57] Finally reliance has been placed on a decision of the apex court in **Rambraksh alias Jalim vs. State of Chhattisgarh** reported in **(2016) 12 SCC 251** to get nourishment for the submission that it will be hazardous to come to a conclusion of the guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together. The following passages appear relevant in the context of this case:

> **"12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. <u>In other words, a conviction cannot be based on the only circumstance of last seen together.</u> Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.**

13. In a similar fact situation this Court in the case of Krishnan v. State of Tamil Nadu [(2014) 12 SCC 279, held as follows:

> **"21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372),this court held as follows:**
>
> > **31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.**
>
> **22. This Court in Bodhraj v. State of J&K (2002) 8 SCC 45) held that:**
>
> > **"31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.**

It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

> **23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.**
>
> **24. In Jaswant Gir v. State of Punjab : (2005) 12 SCC 438), this Court held that in the absence of any other links in the chain of circumstantial**

evidence, the appellant cannot be convicted solely on the basis of last seen together even if version of the prosecution witness in this regard is believed."

[58] It appears essential for purpose of appreciating the rival contentions as noted above with incisive reference to the evidence, a short survey of the evidence having regard to the ground of objection raised in the appeal is required to be made. The prosecution had examined 27 witnesses including the doctors who carried out the post mortem examination (PWs 10, 11 and 13) and the forensic scientist (PW-15) for psychological assessment of four suspects namely, Narayan Ghosh, Anantahari Jamatia, Dipak Tripura and Dipak Debbarma and the expert of forensic medicine in Toxicology who had reviewed the post mortem report after CBI took up the investigation (PW37). As there is no dispute that the entire prosecution case depends on the circumstantial evidence, let us, for purpose of convenience, broadly identify the circumstances. The circumstances which the prosecution has advanced to prove the charge adequately are (1) last seen together (2) the post occurrence episodes and (3) circumstances established by the medico legal and forensic evidence.

[59] Even the appellant did not assert that the prosecution has made out a case from where the motive can be directly gathered. On the contrary, the appellant has indicated that the case falls in the category of rape and murder. For this purpose, the prosecution has relied on the forensic evidence, in particular.

Evidence relating to last seen together

[60] PW-1 Shri Krishna Debbarma has stated in the complaint filed on the very night of the occurrence that his daughter was gangraped by "two TSR jawans of TSR camp Eiddankur J. B. School" and thereafter they had hanged her by using pachra that was in the wearing of the victim. He has also disclosed that the victim had attended a boozing party at around 10 'O clock of night on 18.02.2011 in the house of Asangka Debbarma (PW-2). As his daughter was missing, they went to the TSR Camp. Dead body of his daughter was recovered from the nearby jungle. He had further disclosed that "two minor boys are eye witnesses of the incident." They had seen in their own eyes while these two TSR Jawans were taking away his daughter (the victim) by grabbing her. On the basis of the said complaint dated 19.02.2011, the said police case was registered under Section 376(2)(g)/302/201/34 of the IPC and the investigation ensued.

[61] In the trial, however, PW 1 has disclosed the names of two boys whom he had claimed to have seen the occurrence. He has also stated that his complaint was scribed by one Pijush Debbarma as per his dictation. On the night of occurrence, PW1 was away from home to attend one marriage ceremony. The victim had also attended the said ceremony, but she did not return to the house till late night. He had testified in the trial that "at night two boys namely Shibjoy and Animesh came to my house and informed my wife that two TSR

jawans took….(the victim by name) towards jungle/paddy field. Shibjoy and Animesh also told that ……(the victim by name) took drink with Asangka and Shila Debbarma. Two boys further informed that…….(the victim by name) was drunken when she was taken by one jawan, followed by another. Hearing this, we became worried. I along with two boys went out for searching…….(the victim by name).” Thereafter, PW-1 Krishna Debbarma has testified that while searching said…..(the victim by name), one TSR jawan came out from the TSR camp and I asked him about whereabouts of my daughter said TSR jawaan stated to me that he could trace out of his daughter provided he should not be implicated with any blame. While tracing out my daughter, I saw Dipak Debbarma hold my daughter from behind and two boys helping him to release his daughter hanged in a tree. Then I went in the resident of my daughter …..(the victim by name) to look after the children of ….(the victim by name).” He has further testified that his wife and other people were also there where the dead body of his daughter was laid. The villagers assembled there on getting the news of death of his daughter. After sometimes, the police arrived in the place and searched the area where the dead body was laid. Then, he filed the complaint at the asking of the Officer-in-Charge of Champahwar Police Station. In the cross-examination, he has restated that whatever he learnt about the incident form Shibjoy and Animesh, he had stated to the police officer namely Pranesh Kiran Chakma. After 6/7 months of the first statement, he was again

examined by CBI. At that time also, he had stated whatever he had heard from Shibjoy and Animesh. He denied the suggestion that Shibjoy and Animesh (PWs-4 and 23) did not tell him that the victim was not drunken and taken away by "one TSR jawan followed by another TSR jawan"

[62] PW-2 Asangka Debbarma held in his house a boozing party, but the marriage ceremony was not held in his house. The marriage ceremony was in the house of Dwigendra Debbarma. PW 2 has testified in the trial that on the day of incident, there was marriage ceremony of Dwigendra's son in the nearby house. He had attended the marriage ceremony. At about 8.30 p.m., he came back at his house being called by his wife through his son. On his return, he saw Shibjoy and Animesh, two boys of his village, were playing the courtyard of his house. On entering the interior of the house, he saw his wife Shila Debbarma (PW-3) and the victim were drinking rum with one TSR personnel, namely Anantahari Jamatia (the respondent No. 1). Anantahari was known to him. PW-2 was offered drinks. Thereafter, the victim paid some money to his wife for bringing some more drink. His wife requested the respondent No. 1 to fetch a bottle of drink and Anantahari went to the TSR camp and brought another bottle of Rum. One Bengali TSR jawan came following him, but Anantahari asked all not to entertain the Bengali jawan. There was some discussion between Anantahari and Bengali

TSR. However, later on at the request of Anantahari, the victim handed over a peg of rum to that Bengali TSR jawan.

[63] The Bengali jawan taking the mobile of the victim talked to someone. PW2 has testified that in that boozing party, the TSR jawan namely Dipak Tripura (the respondent No. 2), Dipak Debbarma (PW14) and another bangali jawan who came and left the house without taking any drink. PW-2 has stated that he came to learn that bengali jawan who followed Anantahari was Narayan Ghosh, but he did not disclose from whom he came to know the identity of Narayan Ghosh (the respondent No.3). Anantahari Jamatia (the respondent No. 1) left his house and after sometimes Narayan Ghosh also left house asking him to finish the remaining drink. While Anantahari was leaving his house, PW-2 has testified that, "I saw Anantahari Jamatia catching the shoulder of …..(the victim by name) as she was drunk" and could not properly manage herself. While Anantahari and Narayan Ghosh came out from his house, both boys whom he found playing in his courtyard namely Shibjoy and Animesh were present. Then he testified that "I asked both the boys to enquire whether (the victim by name)…reached her home safely, if not reached, to inform the parents of the victim. Subsequently, I heard the cries the mother of …..(the victim by name). I went out and found a gathering in victim's house and people are talking about ….(the victim by name) in tree was hanging. In the gathering, I told them to file a complaint before the police about hanging of the victim."

[64] Afterwards, he was called in the TSR camp where he was asked to tell the names who took drinks in his house. He told them about Anantahari and the Bengali TSR jawan. When he came out from the TSR camp, he saw Anantahari performing sentry duty in the gate." In the trial, he had only identified Anantahari Jamatia and Dipak Tripura. In the cross examination, he has stated that his house is situated 100 cubits away from the house of PW-1 and the victim. He has, however, claimed that he had identified three persons out of them one was Bengali but in the deposition sheet it has been only recorded that PW 2 identified only Anantahari Jamatia and Dipak Tripura. He has also stated in the cross examination that in the trial he had indentified the Bengali Jawan (Narayan Ghosh). He had denied the suggestion about presence of Narayan Ghosh (the respondent No.3) in the boozing party. In the cross examination, he has further stated that his wife PW 3 was over-drunk and fell asleep. He has categorically stated that "while making statement before the state police on 19.02.11, I did not state the name of Narayan Ghosh." However, he had denied the suggestion that he has falsely implicated Narayan Ghosh. He has also admitted that he did not state to the police that he came to know, later on, that the name of Bengali TSR jawan was Narayan Ghosh. He has also not stated that Anantahari and Narayan Ghosh came to his house asking him to finish the remaining drink. However, he has admitted that he did not state to the police that he has found in his courtyard two boys namely Shibjoy

and Animesh Debbarma. He has denied the suggestion regarding his presence in the TSR camp on the following day being asked to appear there. In the cross examination, he has stated as follows:

> **"Police called me and two boys from the village took us to the camp to identify the person seen on the spot and who were also drinking in my house. Since two boys already identified so they did not ask them however why I was along with them."**

[65] PW-2 has admitted that he even did not identify the Bengali jawan as Narayan Ghosh, even to the villagers. But, he has denied the suggestions that he did not state the name of Narayan Ghosh (the respondent No. 3) to the police. He has also admitted that he did not state to the police that on coming back home, he saw Shibjoy and Animesh, boys of his village, playing in his courtyard. But, he has denied the suggestion he did not find them on his return from the house of Dwigendra Debbarma. Thereafter, he has made the following statement in the course of cross examination.

> **"During recording my statement before the state police on 19.02.2011 I have not stated that during coming out of my house I saw Anantahari catching the shoulder of …..(the victim by name) as she was drunk and could not walk properly and also not stated while Anantahari and Narayan came out from my house both boys whom as I find in the courtyard namely, Shibjoy and Animesh, I asked both the boys to enquire whether ….(the victim by name) reached her house if not reached they should inform the parents of ….(the victim by name) and also not stated to file complaint before the police. Afterwards I was called at the TSR camp where I was asked to tell the names who took drinks in my house. I told them Anantahari and the Bengali TSR jowan.**

He has denied the suggestion contradicting his statement in respect of presence of those boys in his place. In the cross

examination, he did categorically state that he did not utter the name of Dipak Tripura.

[66] PW-3, Shila Rani Debbarma, wife of PW-2 has stated that after evening on the day of occurrence the victim came to his hut. The victim came for attending the marriage where PW-3 had also joined. At that point of time, Anantahari (the respondent No.1) came with a bottle rum and they shared drink with Anantahari Jamatia. She asked her son, Atul to tell her husband to come back from the marriage ceremony. When her husband returned home, he also took some drink. Then, the victim told Anantahari to fetch another bottle of drink and Anantahari fetched another bottle of rum. At that time, another TSR jawan came with Anantahari. He also shared drink with them. PW-3 has stated that she being over-drunk fell asleep. She had identified both Anantahari Jamatia and Narayan Ghosh on the dock. She has admitted in the cross-examination that in the departmental proceeding she did not tell anything about Narayan Ghosh as she has stated in the trial. She has also admitted that she could not identify the Bengali TSR jawan in the departmental proceeding. She has stated in the proceeding that due to intoxication she could not identify the Bengali jawan. She was cross examined, but the submission as noted, she has denied all the suggestions contrary to what she has stated in her examination in chief.

[67] PW-4 Shibjoy Debbarma is one of the two boys who were referred by PW 2. PW 4 has testified in the trial. For purpose of reference, the relevant part of the examination in chief is extracted:

> **"In the date of incident, I was in the house of Asangka Debbarma. At that time, I was plying with Animesh Debbarma in the courtyard of Asangka Debbarma, After that Anantahari, ..(the victim by name) and Asangka Debbarma taking drinks inside the hut. Then Anantahari went to the camp and came back. Then Atul Debbarma son of Asangka went to summon his father from the house of Dwigndra Debbara were there was a marriage ceremony. After arrival of Asangka, Anantahari went again and come back with another bottle of drink. Then Asangka, his wife and ..(the victim by name) and Anantahari took drinks. On taking drinks, Shila became drunked and Anantahari catching hold ...(the victim by name) went out. After departure of Anantahari and ..(the victim by name), another TSR jowan came and he also went along with Anantahari and ...(the victim by name). I do not know the name of that TSR jowan. Anantahari and ...(the victim by name) went towards jungle. Thereafter, we were standing infront of the house of Asangka. Subsequently, on TSR jowan came and asked why we were standing thereon. Then we went to the house of the ....(the victim by name) to inquire whether ...(the victim by name) returned home or not. As answer was negative, the parents of ...(the victim) accompanied myself and Animesh went for search. Subsequently, we found the deadbody of ...(the victim by name) in hanging position. One Dipak Debbarma, we found the deadbody of .....(the victim by name) in hanging position. One Dipak Debbarma, cook of TSR jowan took us to the deadbody of ...(the victim by name). ...(the victim by name) was drunked while Anantahari had taken her. Accused Anantahari Jamatia is present. Identified him in the dock."**

[68] According to PW-4 on the following morning, the deadbody was found. The suggestions contrary to what PW-4 has stated in his examination in chief, have been denied. PW-4 has however stated that another TSR jawan came and went along with Anantahari and the victim, but he did not identify the said jawan, even not in the trial. However, in the trial he had identified Anantahari Jamatia (the respondent No.1)

[69] PW-5, Atul Debbarma did not state beyond that he was asked by his mother PW-3 to summon his father PW-2 from the house of marriage ceremony. On that evening his father, the victim, his mother and Anantahari took drink inside his house. However, he has denied the suggestion that PW-4 did not come to their place.

[70] PW-6, Nanda Rani Debbarma is the unfortunate mother of the victim. According to her, the victim was subjected to rape and she was killed by TSR personnel. At the day of incident at night, she came to learn from Shibjoy and Animesh that Anantahari and Narayan Ghosh took her daughter to jungle. She herself, her husband (PW-1) Shibjoy and Animesh went out for searching her daughter. On the way to search, they noticed one TSR jawan was running towards TSR camp. They had also noticed Dipak Debbarma [PW-14] came out from the jungle. Dipak Debbarma told them he could find out her daughter. PW 14 took them to the place where they found their daughter was hanging from a tree. Seeing her daughter in hanging position, she lost her senses. Later on, she regained senses and saw Dipak Debbarma brought down the deadbody of her daughter to the ground. She had noticed one duppatta (stole) and one torch light was lying close to the deadbody of her daughter. She had informed the occurrence to the police and the police brought them again to the place of occurrence by their vehicle. She has also stated that her daughter was separated from her husband and she was living in a house arranged by them. ..(the victim by name) has two children.

According to her, ….(the victim by name) took drink for the first time on the night of incident. She has admitted at the time of reporting the incident that she did not mention the name of Shibjoy and Animesh to the State police. Shibjoy and Animesh did not come to her place. She has also admitted that Dipak Debbarma took them to the place of occurrence on condition that he would not be implicated in the case. But Dipak Debbarma was arrested on the same night. In the cross-examination she has significantly stated as follows:

> **"Dipak Debbarma led us directly towards hillock and climbed up the top. We all three were following him. he did not search for the body in the low line area or paddy fields. On reaching at the top of the hillock he pointed towards the one tree and I saw the body of my daughter was hanging. On seeing the body of may daughter in hanging condition. I started crying loudly and was accusing the TSR personnels. I saw the body of my daughter was hanged with the red colour pachhara of my daughter. One end of the pachhara was torn from one side and was tied around the neck of my daughter. The other end of the pachhara was tied with the tree at the jointing place with one branch. The feet of my daughter were not touching the ground and were ½ feet above the ground."**

[71] PW-6 has also denied the suggestion that those two boys [PWs 4 and 23] did not come to their house at the night of the incident or they had not stated to her that they had seen Anantahari Jamatia and Narayan Ghosh taking their daughter to the jungle. When she was confronted, she had stated to the state police that Shibjoy and Animesh stated that her daughter was 'dragged' towards jungle by Anantahari Jamatia and Narayan Ghosh but had failed to find out such statement in her previous statement recorded by the state police. She has denied the suggestion contrary to her statement

in the trial, but she has admitted that she did not state to the state police on the next date as well as to the CBI investigators that on the fateful night, she came to learn about the incident from Shibjoy and Animesh that accused namely Narayan Ghosh and Anantahari Jamatia 'dragged' her daughter towards jungle. She had not made such statement to the villagers who had accompanied her when she went to the police station. She also could not identify other TSR jawan whom she claimed to have seen running out of jungle.

[72] PW-7, Pradip Kumar Debbarma who was posted as SI of police at Champahawar Police Station carried out the inquest and he had prepared the inquest report (Exbt-1). He has admitted the said report in the evidence.

[73] PW-8, Ajit Debbarma is the maternal uncle of the deceased. He has testified in the trial that on the night of occurrence at about 11/11.30 hours Shibjoy told him that …(the victim by name) was killed and hanged by two TSR jawans. Shibjoy had further stated to him that two TSR jawans, the victim, Asagnka and his wife took drink in the house of Asangka. Thereafter, two TRS jawans took ….(the victim by name) to the jungle. The deadbody of …(the victim by name) was searched out with the help of one TSR jawan. He was also the witness to the inquest and he had identified the signature on the inquest report (Exbt-1). There was no meaningful cross-examination which requires to be noted.

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[74] PW-12 Sajal Das a TSR jawan has stated that Narayan Ghosh was all along in the TSR camp and hence, he was declared hostile by the prosecution and was cross-examined.

[75] PW-14, Dipak Debbarma who was initially booked in the case was cook in the Eidankur TSR camp on 18.02.2011. He has stated that some of the TSR jawans, inclucding Dipak Tripura (the respondent No.2) went to attend the marriage ceremony in the house of Dwigendra Debbarma. He had accompanied them. As per instruction of the camp incharge namely Kurul Debbarma, he stayed back in the house of the marriage ceremony. At about 8-9 pm, Kurul Debbarma asked him to bring liquor. At that time, the store incharge of drink namely Narayan Ghosh was not on duty. Sentry Joydeb Shil told him that Narayan Ghosh went outside the camp, through the rear sentry post, but Joydeb Shil was not examined by the prosecution. Then, he went to the house of Asangka Debbarma to find out Narayan Ghosh. He found two little boys playing in the yard of Asangka Debbarma. He had found Narayan Ghosh, Anantahari Jamatia and the victim and wife of Asangka Debbarma there. Thereafter, he has testified in the trial as under:

> **"I told Narayan Ghosh relating to the drinks. Narayan Ghosh came with me and delivered the drink. Thereafter, I went to the house of that marriage ceremony. In the marriage ceremony I was again instructed to make arrangement of provision of content of the liquor in two bottles equally."**

[76] PW-14 returned to the camp. Thereafter, what he has testified in the trial has been reproduced while recording the

submission of Mr. P. Saha, learned counsel appearing for the appellant. [see para 32]. In that part, he has stated that when he returned at about 10 pm, he saw Dipak Tripura talking to Anantahari Jamatia. Dipak Tripura was asking Anantahari Jamatia why he had gone far away and why he had been coming back 'by running'. However, he gave a separate narrative that when he went outside from the front gate one old man had rushed towards the comp and stated to him that the TSR people had taken her daughter to the jungle. Two boys and one woman were also along with him and at their request, he accompanied them to search their daughter [This statement is in complete contract to the statements of other witnesses who saw him coming out of the jungle.] and found one woman in a hanging condition in a tree. On his return, he found Anantahari was doing the Sentry duty. He has admitted that he was arrested by the police and interrogated, but subsequently he was discharged from any criminal liability by the investigators. According to him, he did not state that Narayan Ghosh came with him and delivered the drinks. So far the evidence of torch light is concerned, PW 14 has stated as follows:

> **"It is fact that during interrogation <u>I stated that as the lady (mother of ...the victim by name) requested me to provide a torch and accordingly I provided the torch and that time I was talking to the husband of that lady.</u> I have also stated that after a while I reached in a tilla and said lady started shouting and on hearing the shouting I went forward with the male person (father of the ....the victim by name). After De-knoting the deadbody the same was laid down on the ground on a plain land. After laying down the hanging body I immediately rushed to the camp to inform the camp**

incharge as I have no prior approval of the camp incharge."

[77] In the cross examination, PW-14 has however admitted that he did not state to the police that he found Anantahari Jamatia in the house of PW-2. Even he did not state that he saw two little boys in the courtyard of PW 2. He has categorically stated that during interrogation he did not state while he was coming to the camp, at that time, he found one Dipak Tripura asking Anantahari why Anantahari had gone away and why he had been coming by running.

[78] PW-23 Animesh Debbarma is another sterling witness in the prosecution chain of circumstantial evidence. PW 23 has claimed to have known the victim. On the day of death of the victim , PW 23 has testified that Shibjoy (PW 4) and Atul (PW-5) went to the house of Animoy Debbarma as on that day his marriage was being solemnized. He along with Shibjoy and Atul came to the house of PW 2. Asangka Debbarma is the father of Atul Debbarma (PW5). Thereafter, he has stated that he saw wife of Asangka Debbarma (PW3), the victim by name and the respondent No.1 were drinking liquor inside the house of PW 2. Atul was called by his mother and he was asked to call his father back to their house from the house of Animoy Debbarma. Thereafter, PW 23 has elaborately stated what he saw. While recording the submission of Mr. Saha, learned counsel for the appellant, the relevant part of his testimony has been reproduced [see Para 22]. To avoid repetition, the said statement is not further reproduced.

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[79] In short, PW 23 stated that Anantahari Jamatia once went to the TSR camp and came back with liquor. Narayan Ghosh arrived in the house of PW 2. They all took drinks in the house of PW 2. Both the respondents No. 1 and 3 respectively Ananthari Jamaita and Narayan Ghosh have been identified by PW 23 in the trial. As it would be apparent that PW 23 has further testified that the respondents No.1 and 3 thereafter proceeded towards jungle through the paddy field. As the night was moonlit, he had seen them. At that time, Shibjoy (PW4) was with him. When they were not visible, they informed Asangka Debbarma. Then Asangka told them to inform the victim's parents. They went to the house of victim's father and informed the occurrence. PWs 4 and 23 along with parents of the victim started searching for the victim. During search, they met TSR cook namely "Dipak". Dipak also searched with them. During the search, they found the victim, hanging from a tree of a tilla (hillock). Then, with the help of Dipak (cook of TSR camp) they brought down the dead body of the victim and laid the body on the field.

In the cross examination PW 23 has reasserted that he and PW4 informed the parents of the victim that the respondent No. 3 (Narayan Ghosh) followed Annathathai (the resonant no,1) and the victim while they were going towards the jungle though the paddy field. But in the cross examination he has admitted that on arriving in the house of victim's parents he informed them "that two TSR jawans …(the victim by name) with them towards jungle." He has denied the

suggestion made to him questioning the involvement of the respondents No. 1 and 3. He has also denied the suggestion that he had parroted being dictated by the CBI investigator or the police officers of the state. He has stated in the trial that the respondent No. 1, Anantahari Jamatia took the victim by holding her hands towards jungle through the paddy field.

[80] To juxtapose the statement of PWs 4 and 23 is the test that the court should apply to verify what PWs 4 and 23 had stated to the parents and the police officer when they were examined during the investigation.

[81] PW 24 (Pranesh Kiran Chakma) has stated that he took up the investigation and immediately visited the alleged place of occurrence and prepared the site map (Exbts 12 and 13) and the inquest report (Exbt 14). At the time of the inquest procedure, the Executive Magistrate was present. A team of medical officers of Khowai hospital and SFSL scientists from Agartala arrived on the very night at the place of occurrence. Thereafter, the body was sent to the Khowai Hospital to carry out the post mortem examination of the victim. During the post mortem examination all wearing materials were isolated from the dead body of the victim and those were seized by preparing the seizure list (Exbt-15). He has also stated that he had seized two plastic bottles of liquor from the house of PW 2. He had also recovered one torch light from a place within a short distance where the dead body was laid by the seizure list (Exbt 16).

On the said torch light the name "Dipak Debbarma" was inscribed. He has also stated that he did examined PWs 4 and 23 along with other witnesses and recorded their statements under Section 161 of the CrPC. He had also seized GD register of E-Coy 6th Batn. TSR which was opened 05.12.2010 and the General Register of the said E-Coy which was opened on 27.09.2010 and maintained upto 20.02.2011, by preparing the seizure list (Exbt-18) on that night itself. The wearing pant of the respondent No. 3 Narayan Ghosh, one inner pant of rthe espondent No. 1 and PW 14 were seized by the seizure list (Exbt 19). Wearing apparel of PW 3 has been admitted as the material object in the trial having been marked as Exbt-MO-II series. He has also stated that he had collected the post mortem examination report and 26 photographs of the victim taken in the place of occurrence.

[82] During the interrogation, it has been asserted by PW 24 that Dipak Debbarma (PW 14) has not stated that Narayan Ghosh told Kulal Debbarma (Nayak Subedar) to fetch drink from the camp n had stated that Joydeb Shil told him that the store in-charge, Narayan Ghosh (respondent no. 3) went outside the camp or did not state when he reached in the camp or that he did not find Narayan Ghosh. But, PW 14, has stated to him that when he reached the house of Asangka Debbarma (PW2) he found two young boys playing in the courtyard of Asangka. Narayan Ghosh, Anantahari Jamatia, the wife of Asangka Debbarma and ..(the victim by name) were in the

house of Asangka Debbarma (PW2). He has denied a sporadic suggestion that the writing on the torch was interpolated after its seizure.

[83] PW-25, Surinder Singh Gurung, a Deputy SP of CBI has stated verifying the records as regards the investigation of the case and recording of the evidence of witnesses. He had received the case docket from Sashi Mohan Debbarma (PW-22), Officer-in-Charge from Champahawar PS. He had re-recorded the evidence. Even, more witnesses were examined by him for purpose of unveiling the truth. On 11.10.2011, PW 24 handed over the investigation docket to Mr. M. Khamrang (PW28) from CBI.

[84] In the cross examination, while he was asked to confirm Exbts D1 and D2 the statements of Asangka Debbarma (PW2) he had stated that he had recorded the statement of Animesh Debbarma (PW23). He had categorically stated that PW 23 did not state to him that "I told them (the parents) that the accused Narayan Ghosh also followed behind of Anantahari and…(the victim by name)". He has categorically stated that PW 23 did not state to him that he and PW 4 saw Anantahari and the victim while leaving the house of Asangka Debbarma on that night or on that night, he saw Narayan Ghosh (the respondent No. 3) following them. He has also stated that the name of Narayan Ghosh was not disclosed by that witness. Details of this part has been reproduced while recording the submission of Mr. P. Saha, learned counsel appearing for the appellant [see para 25]. He

has also stated that he could not say the contents of eight seizure lists which he had received from the state police.

[85] PW-28, Shi N. G Khamrang, the CBI investigator, who took up the investigation from PW 25. He has asserted in the trial what he gathered perusing the records including the statements of the witnesses recorded by the earlier investigating officers. After that, he had prepared a fresh sketch-map of the place of crime with the help of the PWD engineers. He has also confirmed the process how he had sent the samples for examination by the forensic scientists. Thereafter, the report of the expert, namely Dr. BK Mahapatra was received from CFSL, New Delhi. The reference was made to CFSL, New Delhi to confirm availability of human semen on any of the exhibits and if so, for DNA profiling. On 10.02.2012, the opinion of the forensic expert (Dr. BK Mahapatra) was received from CFSL, New Delhi on confirming the presence of human semen in one of the exhibits i.e. petticoat of the deceased. Thereafter, the blood sample was collected from Anantahari Jamatia (the respondent No. 1), Narayan Ghosh (the respondent No.3) and Dipak Tripura (the respondent No.2) for DNA matching. From the DNA profile of the respondent No. 1 and the DNA profile that was generated from the victim's petticoat found matching. He has also stated that before the scientific officers, CFSL New Delhi, Anantahari Jamatia (the respondent No. 1) and Dipak Tripura (the respondent No. 2) was found to be deceptive. He has also asserted that the scientific officers

of CFSL (PWs -16 and 17) had stated that the tree from which the victim was found hanging, they had assessed that the victim could not have hanged herself as she was unable to control herself after consuming liquor. Thereafter, he has made the statement in respect of the assessment of evidence, which has been reproduced hereinabove [see para 27].

[86] According to him, the circumstantial evidence has been corroborated by the scientific evidence. In his estimate, all the respondents *"had attempted to rape the victim and thereafter she was murdered by hanging her body from a tree."* He has denied the suggestion that he did not intentionally collect or seize the register or papers to show that the respondent No. 3 was the store in-charge in the said TSR camp. But, he has admitted that he did not check any scientific data whether the night of occurrence was moonlit or not. Even the accused persons had been apprehended did not ask to go for any medical examination to ascertain the presence of alcohol in the blood of the respondents.

Forensic and Medical Evidence

[87] PW-10, Dr. Ranendra Kumar Barman along with PWs 11 and 13 [Dr. Dhananjoy Reang and Dr. Dipankar Prasad Bhowmik] had carried out the post mortem examination in the Khowai Hospital in connection with Champahawar PS case 07 of 2011. PW-10 has stated in trial that the post mortem examination took place within 12 to 18 hours from the time of death. The cause of death as recorded by the

team in the post mortem examination report (Exbt-2) is asphyxia following hanging which is suicidal in nature. He has categorically stated that there was no evidence of violence in and around private part. No seminal stain or spermatozoa found in the specimen from labia majora and labia minora. As per the SFL report, sexual offence cannot be ascertained, but the victim had history of vaginal delivery Spermatozoa/seminal stain was found on petticoat of the victim. Hence, sexual offence cannot be ruled out. Thereafter, he has given further details based on the post mortem examination report relating to the injuries or significant marks noticed by the post mortem team. The said description as given by PW 10 in the trial reads as follows:

> **"1. A dark brown colour obliquely placed non continuous, purchmentised ligature mark is present around the neck which is situated 3, 5 cm below the left mastoid, 7 cm below Rt. Mustoid, 6 cm below chin in midline and 8 cm. above the suprasternal notch at midline. Maximum breath of the mark is 2,2 cm. the mark is non continuous in left side of nap of neck. On resection of neck, the are beneath the ligature mark found glistening while along with ecchymosed edged, larynx, trachea, thyroid cartilage, hyoid, bone. Carotid artery are intact. This ligature mark is ante mortem in nature and age of injury was fresh at the time of death.**
>
> **2. On the mid part of upper most area of neck and 4 cm below the chin, sizing 6 cm. x 0.3 cm x skin deep.**
>
> **3. incised injury present almost vertically, is situated on lateral aspect of left thigh, 13 cm. above the knee sizing 6.5 cm. x 0.3 cm . x skin deep.**
>
> **4. three numbers of small abrasion each of which measuring 1 cm x 0.8 cm . are present on the lower back of L four vertebra label along the mid line."**

[88] All the injuries as noted above were ante mortem in nature and injuries no. 2 and 3, according to the PW 10, were caused

by sharp edge object and injury no. 4 was caused by hard blunt rough object.

In the cross examination, PW 10 categorically stated the death of ….(the victim by name) was typical case of death by suicidal hanging. But so far the injuries No. 3 and 4 are concerned it has been observed by PW 10 that if someone takes ingress through a jungle of thorny bushes he or she may be subjected to injuries listed as injures no. 3 and 4.

[89] PW-11, Dr. Dhananjoy Reang corroborated PW-10 and stated that the opinion as reflected in the post mortem report was on consensus. He had also identified his signature on the report.

[90] PW-13, Dr. Dipankar Prasad Bhowmik has replicated what PW 10 has testified during the cross-examination. He has testified that it was their consensus opinion that the death was typical cause of death by suicidal hanging. Their finding in the post mortem report was submitted after receipt of the report of SFSL. He has also asserted that they could not rule out the sexual offence.

[91] PW-15, Dr. BK Mahapatra was officiating as the senior scientific officer (Biology) in the Central Forensic Science Laboratory (CFSL). On 13.0.2012, when CFSL received three parcels forwarded by Ranjan Biswas S.P. and HOB, CBI (Shillong), seals on the parcels were intake. Those parcels contained 5 (five) exhibits including 2 (two) empty glass injection vials, 1 (one) petticoat having cut marks, 1 (one) cloth piece, and 1 (one) dupatta. He examined the samples

and the results of the examination was enumerated in the report (Exbt-5) prepared by him. The report has observed inter alia as under:

> **B.1 Human semen was detected on the exhibit. D;**
>
> **B.2 Semen could not be detected on the exhibits F and G;**
>
> **B.3 two different sets of male DNA profiles could be generated from the exhibit. D(petti coat);**
>
> **B.4 Exhibit F cloth piece) and G (dupatta) did not yield DNA for analysis;**
>
> **B.5 No materials of Forensic important could be found in Exhibits. A.3 and A.4;**
>
> **B.6 The generated DNA profiles were preserved for further reference.**

[92] He has further stated that on 17.04.2012 he had received another parcel from HOB, CBI Shillong. That parcel contained 4 (four) exhibits marked as exhibits 1 (a) 1 (b) 1 (c) and 1 (d). He had described in the trial the contents and the nature of the exhibits in the following manner:

> **"Exhibit 1(a): Redish brown stained gauze cloth piece described as "dried blood sample in gauze piece of Sh. Anantahari Jamatia "kept in a sealed pape envelope. Exhibit. 1 (b): Redish brown stained gauze cloth piece described as "dried blood sample in gauze piece of Sh. Dipak Kumar Tripura. "kept in a sealed paper envelope. Exhibit. 1 (c): Redish brown stained gauze cloth piece described as "dried blood sample in gauze piece of Sh. Dipak Debbarma" kept in a sealed paper envelope. Exhibit. 1 (d): Redish brown stained gauze cloth piece described as "dried blood sample in gauze piece of Shri Narayan Ghosh " kept in a sealed paper envelope."**

In his report on DNA profiling (Exbt-6), he has observed as follows:

> **"8.1 DNA profile of Sh. Anantahari Jamatia (source of exhibit – 1a: blood stained gauze) is consistent with**

> **one set of DNA profile generated from the male fraction DNA obtained from the source of exhibit – D (Petti coat) forwarded to this laboratory vide memo No:3/7/(S)/2011/SHG/749 dated : 10.02.2012 (Ref: CFSL Report No: CFSL- 2012/B-0201 Dated: 09.03.2012).**
> **8.2 The other set of DNA profile generated from the male fraction DNA obtained from the source of exhibit – D (Petti Coat) forwarded to this laboratory vide memo No.3/7/(S)/2011/SHG/749 : 10.02.2012 (Ref: CFSL Report No: CFSL -2012/B-0201 Dated: 09.03.2012 is not consistent with the DNA profile of Sh. Dipak Kumar Tripura (Source of exhibit – 1 b: blood stained gauze), Sh. Dipak Debbarma (Source of Exhibit – 1c: blood stained gauze) & Sh. Narayan Ghosh (Source of exhibit 1d: blood stained gauze).**

[93] In the cross examination, he has stated that he followed the method of DNA profiling as universally accepted for generating DNA profile from the petticoat of the victim (Exbt-D). He has observed further to state how the DNA profiles of other two accused [the respondents No. 2 and 3] were compared and found not matching with the profile generated from the petticoat of the victim [Exbt-D]. He has denied the suggestion that his findings in the report 8(1) were not correct.

[94] PW-16, Dr. Asha Srivastava is a senior scientific officer (Grade-I) and HOD, Forensic Psychology Division, CFSL CBI, Delhi. She has testified in the trial that she had been accompanied by Amod Kumar Singh (PW17) and had carried out forensic psychological assessment of the four suspects namely Narayan Ghosh (the respondent No. 3), Anantahari Jamatia (the respondent No.1), Dipak Kumar Tripura (the respondent No.2) and Dipak Debbarma (PW14). After such psychological assessment, they compiled their report (Exbt7).

[95] In the cross-examination, she has stated that in the modern criminology, forensic psychological assessment is done to detect the section and to prove innocence. She has explained in the report that they have recorded the behavioural assessment of those suspects separately. Their report was on consensus as Dr. Amod Kumar Singh concurred with the finding. She has also admitted that during the forensic psychological assessment, no medical practitioner was consulted to find out their mental and physical state to go through the test. All the assessments were made on the same day. PW 16 has categorically observed in the cross examination:

> **"Forensic psychological assessment is not as conclusive as DNA test. Our report is not absolutely certain."**

[96] PW-17 replicated the statement of PW 16 in respect of the respondent No.3 (Narayan Ghosh). The following observation has been made by PW17: *He told that he was totally unaware of the crime under reference and his statement regarding the death of…(the victim by name) was found to be correct and he was willing to undergo polygraph test. Dr. Asha Srivastava also concurred with my findings.*

[97] PW-18, Sri Darsu Chakma was working as the Senior Scientific Officer-cum-Assistant Chemical Examiner. He had received the samples from Sub-Divisional Judicial Magistrate, Khowai in connection with PS case No.Champahwar07/2011. He had examined the samples and the result of such examination has been noted in

para 11 of the report (Exbt-8 series). The said paras 10 and 11 of the report for purpose of immediate reference is reproduced hereunder:

10. Details of parcel(s) and exhibit(s) received:

Parcel No.	**Description of exhibit(s)**	
1	**Exhibit-A3**	**One sealed glass vial contained a piece of cotton said to be the swab from labia of deceased**
2	**Exhibit-A4**	**One sealed glass vial contained one stick wrapped with cotton said to be the swab from vagina of deceased.**
3	**Exhibit-A5**	**One polythene packed contained four pieces of gauze cloth said to be the dried blood sample of deceased**
4	**Exhibit-A6**	**One sealed glass vial contained some red liquid said to be the blood sample of deceased in Nacl 20% (Salt)**
5	**Exhibit-B**	**One blue colour under wear covered with while paper said to be the wearing apparel of Narayan Ghosh.**
6	**Exhibit-B1**	**One Khaki long pant and one Khaki full shirt covered with paper said to be the wearing apparel of Narayan Ghosh**
7	**Exhibit-C**	**One black colour under wear covered with white paper said to be the wearing apparel of Ananta Hari Jamatia**
8	**Exhibit-C1**	**One Army colour long pant said to be the wearing apparel of Ananta Hari Jamatia**
9	**Exhibit-D**	**One light pink colour petty coat (under garment) covered with paper said to be of deceased.**
10	**Exhibit-E**	**One brown colour under wear covered with white paper said to be the wearing apparel of Dipak Debbarma.**

11. Report No. SFSL No.71/11, BIO/SERO No.26/11 Date 08.03.2011

The exhibits marked A3, A4, B, B1, C, C1, D and E were examined by visual examination under different light sources, Acid phophatase testr and Microscopic examination for detection of seminal stain/spermatozoa of human origin. The exhibit marked D was further examined by absorption inhibition test for determination of blood group from seminal stain.
The exhibits marked A5 and A6 were examined by Tetramethyl Benzidine (TMB) test, Phenolphthalein test and Takayama test for blood. The exhibits marked A5 and A6 were further examined by Gel diffusion test and Absorption elution test for origin and grouping of blood respectively.

Based on the examination, the results obtained are given below:

1. **Seminal stain/spermatozoa of human origin could not be detected in the exhibits marked A3, A4, B, B1, C, C1 and E.**

2. **Seminal stain/spermatozoa of human origin could be detected in the exhibit marked D.**
3. **Grouping of blood from seminal stain could not be determined in the exhibit marked D.**
4. **Blood stain of human origin could be detected in the exhibits marked A5 and A6.**
5. **Blood group of exhibits marked A5 could be determined as 'O' group.**
6. **Blood group of exhibit marked A6 could be determined as 'O' group.**

[98] PW-19, Dr. Shri Biplab Bijoy Datta is the witness to the collection of blood samples of the said four suspects who put their signatures on each sample after their sealing. He has identified those signatures (Exbt-9 series) in the trial. There was no effective cross examination.,

[99] PW20, Shri Suman Kumar Chakraborty, Senior Scientific Officer-cum-Assistant Chemical Examiner in SFSL, Narsingarh. On 28.02.2011, he had received three samples (Exbts A, A/1 and A/2). Those were out of thirteen exhibits sent to SFSL in connection with Champahwar PS case No.07 of 2011. After the examination, he had prepared the report and the report (Exbt-10 series) was sent to the police. There has been no cross examination.From the reading of Exbt 10 series, it appears that SFSL give a categorical report that those samples were negative for presence of common organochloro, organophophorous and carbamates, benjodiazepimes and methanol. Two of the exhts as marked in the report were however found positive for presence of ethanol. The other exhibit, however, was negative for ethanol.

[100] PW-21, Shri Nirmal Roy a technical assistant working under Khowai RD Block had assisted the CBI investigator in preparing the hand sketch map.

[101] PW-22, Shashi Mohan Debbarma was officiating as the officer in charge of Champahwar Police Station. On 04.08.2011, all case-related records of Champahwar PS case NO. 07/2011 was handed over to Shri Surinder Singh Gurung, Deputy S.P., CBI for further investigation. PW-22 in the cross examination has admitted that prior to filing of the formal complaint by PW 1, the police had made a GD entry being No.476 dated 19.02.2011 on 0030 hours. He has stated in the information that two young boys had witnessed the incident when the victim was being taken by two TSR personnel. Before the case docket was handed over, a good number of witnesses were examined and their statements are recorded under Section 161 of the Cr.PC. He has admitted that the suspects were not put to the test for ascertaining alcohol component in their blood.

Post occurrence episode

[102] In respect of the post occurrence episode, PWs-1, 4, 6 and 23 have been cited by the prosecution. However, the testimonies of those witnesses have been noted extensively by this court.

[103] PW-9, Shri Badal Dey who is a professional photographer was summoned by the officer in charge of Champahwar police station (PW22). He was instructed to take photographs showing the face. He took photographs from the different angles of the deceased woman.

He had also taken photographs of surrounding places. He had handed over 26 photographs to PW 22. He has also stated in the trail that CBI investigators also met him in respect of those photographs but he had stated he did not preserve the memory card relating to those photographs. He was not at all cross-examined except putting a few innocuous questions, remotely connected to the case.

[104] Having appreciated the categories of evidence as identified by this court viz evidence relating to last seen together, post-occurrence episodes and circumstances established by the medico legal and forensic evidence. Let us now proceed to appreciate the fundament grounds of objection against the judgment and order of acquittal. The prosecution has broadly raised the objection that the trial judge has failed to appreciate the evidence by the established canons. Even the evidence for purpose of corroboration has been slighted. Last seen evidence has not been established to the hilt. Anantahari Jamatia (the appellant No.1) took away fully-drunk victim by holding her shoulder at late hours after the liquor party in the house of Asanghka Debbarma (PW2) was over. The victim was taken toward the paddy filed instead of regular path-way for going to the village of the victim. The victim and the respondents No.3 was followed by the respondent No.3 (Narayan Ghosh). Two young witnesses saw them and informed Asangka Debbarma. After an hour or so, the victim was found hanging from a teak tree on a hillock near the paddy field. She was found hanging by her pachra.

[105] The prosecution has further asserted that from the evidences of PWs 2, 3, 4 and 5, it has been established that the victim took a large quantity of drink with the appellants No. 1 and 3. The last seen evidence has got corroborated by also PW6, the mother of the victim. When she had stated that two minor boys (PWs 4 and 23) came and informed them about taking away of the victim by the appellants No. 1 and 2, the prosecution has further highlighted the social psychological forensic report submitted by the experts of Central Forensic Science Laboratory (CFSL). That apart, the DNA profile generated from the wearing apparel of the victim got matched with the DNA profile generated from the blood collected from the appellant No.1. According to the appellant, the trial judge has given undue attention to the testimony of PW 14, namely Dipak Debbarma who was found moving out of the place of occurrence confronted with the parents of the victim and PWs 4 and 23. The said suspicious act was initially noticed by the investigating agency (police) and he (PW-14) was arrested, but when the CBI had taken up the investigation, he was taken out of the ring of involvement in the criminal act or killing of the victim. He had made the witnesses to prove the certain parts of the transaction. He was examined in the trial as PW14. Even in this appeal, there is an attempt to show that the sexual offence cannot totally be ruled out for presence of spermatozoa and seminal stain on the petticoat of the victim. It has been asserted that the trial

judge has unreasonably held that the evidence last seen together is not conclusive and not proved beyond reasonable doubt.

[106] Further, it has been asserted that the death from asphyxia, even if is the result of hanging, it may not always be suicidal. Hanging may be forced by others. Hence, how the victim was hanged can only be ascertained by circumstantial evidence. In this regard, the evidence of Dr. T.D. Dogra (PW27) has been given special weightage for his opinion that it is the prerogative of the investigation agency to decide the manner of death after considering all other circumstantial evidence. Similarly, PW 28 has clearly opined, as reproduced before, that after assessment and analysis of the available evidence both oral and documentary, circumstantial and scientific evidence, it may be established by the investigating agency beyond reasonable doubt that the appellants had attempted to rape the victim and thereafter, she was murdered by hanging her body in the teak tree on the hillock, nearby the paddy field, with her wearing apparel pachra to make it look like a suicide, but it is not. The charge-sheet was filed for the trial on the basis of the evidence collected during the investigation.

[107] PW 16 is another forensic expert in the psychological forensics. PW 16 has stated that the behaviour assessment has reflected in their report [in para 9.2.3] in respect of Anantahari Jamatia (Exbt-7) is pertinent. Let us reproduce the para 9.2.3.

9.2.3 Behavioral Assessment

> **The Behavioral Analysis Interview of Anantahari Jamatia was conducted on 11/04/12 at Agartala. During the interview it was observed that his answers were not rational and logical and his thought process was not clear. He was talkative and nervous body movement and facial expressions were noticed. Erratic or evasive or rapid posture change was adopted by the subject during the interview.**
>
> **During the Behavioral Analysis Interview Anantahari Jamatia denied his involvement in the death of ….(the victim by name) and any knowledge of the crime under reference. He claimed that he had no intimate relation with the deceased. It was observed that Anantahari Jamatia was not cooperative and did not answer satisfactorily to most of the critical questions put to him. He was very nervous and uncomfortable in replying the question which were asked to him. His attitude towards the interview was negative.**
>
> **Anantahari Jamatia was not maintaining good eye contact throughout the assessment and he felt agitated on being asked about the death of ….(the victim by name). He gave short answers and refused to elaborate anything n detail. He was found threatened by the assessment interview and declined to undergo any further scientific test."**

The report on the behaviour assessment indicates that the statement of Anantahari Jamaita regarding death of the victim appears deceptive. Anantahari Jamatia [the respondent No.1] had been hiding the information about his role and knowledge with regard to death of the victim. The other accused persons were as well psychologically assessed. It has surfaced that Dipak Debbarma [PW 14] was truthful. Even regarding other tow appellants, it has been stated that likelihood of their involvement as stated is least.

[108] The trial judge for acquitting the accused persons has considered all theses grounds as raised in this appeal. In respect of last seen theory, having referred to the apex court decision in **Nizam and othe vs. State of Rajasthan** reported in **(2015) 1 SCC 550** it has been observed that the last seen theory is an important link in the

chain of circumstances that is pointer towards the guilt of the accused with certainty. The last seen theory might shift the burden on the accused to disprove or to offer reasonable explanation as to cause of death of the deceased. But this court is not oblivious for a moment that it is well settled that it is not prudent to base a conviction solely on the evidence on the last seen together. Last seen theory should be applied taking into consideration, the case of the prosecution in its entirety and keeping in mind the circumstances that precedes and follows the point of being last seen. So far revealing of the special knowledge under section 106 of the Evidence Act is concerned, the prosecution has a duty to prove primarily that such knowledge lies with the persons so accused. If the prosecution had proved that at the time of the occurrence of offence, the accused had knowledge, the accused must furnish explanation which should unfold how and when he had parted the company of the deceased. Such explanation must be probable and satisfactory. If the accused failed to offer an explanation on the basis of fact within his special knowledge, it would be his failure to discharge the burden cast upon him under section 106 of the Evidence Act.

[109] In a case resting upon such circumstantial evidence, if the accused failed to offer reasonable explanation in discharge of the burden based on his knowledge, it be deemed an additional link in the chain of circumstances. The court is inclined to accept the evidence of PWs 4 and 23, so far the last seen with the victim is

concerned for a simple reason that these two witnesses have become the witness of taking away of the victim inasmuch as they communicated their apprehension to Asangka Debbaram (PW12) and PW 4 (the mother of the victim). Thus, their statement appears to be truthful and reliable. Hence, this court is satisfied the way the evidence has been laid by the prosecution. To make the evidence meaningful the evidence of the forensic expert is persuasive.

[110] Further, CFL has confirmed that DNA profile as collected from the petticoat of the victim and DNA profile generated from the penal swab of the appellant No.1 matched to each other. On that basis, the appellant has urged us to return the finding of conviction. From the evidence, it has surfaced that the respondent No. 1 has refused to undergo polygraph test as proposed by the investigating agency. Forensic psychological assessment as carried out by the scientific experts finds him deceptive. CFSL experts have visited the place of occurrence and in the report dated 23.04.2012, it has been mentioned that the tree in which the deceased was found hanging could not be climbed by the victim to hang herself. On proper assessment and analysis of the evidence both oral and documentary alongwith circumstantial and psychological evidence, it has created qa penumbra of suspicion that the respondents had attempted to rape the deceased and thereafter they murdered her by hanging. But there is no medical evidence that the victim was sought to be raped by the respondents. What has surfaced in the evidence is that the victim had

been in the intimate relation with the respondent No. 1 and she had voluntarily gone with him. Even, it has not been established by the prosecution what was the probable time when the victim and the respondents were in the intimate position (see the testimony of PWs 4 and 23). Whether that was attempt or voluntary? In absence of physical evidence or eye witness, the attempt of rape could not be ascertained by the court. Even presence of seminal stain on the petticoat of the victim may indicate to such attempt, but such materials fall in the realm of surmise. In this regard, we are in agreement with the trial judge so far the report of the psychological expert is concerned as such evidence is not assuring like the report of DNA profiling. Even in the cross examination PW 16, Dr. Asha Srivastav has clearly observed thus:

> **"Forensic psychological assessment in not conclusived as DNA test. Our report is not absolutely certain."**

[111] Hence, in our considered view, on the basis of such report it is not prudent to return finding of conviction. Denial to the polygraph test cannot be used against the accused person as the accused has right to deny incrimination by himself. We appreciate the way Mr. Saha, learned counsel appearing for the appellant has argued the appeal but finally the standard that it is the legal evidence either physical or the circumstantial or both determines the decision of the court. There is no doubt that suspicion is strong enough against the appellant No. 1 in particular. The suspicion, however, be strong that cannot be substitute the requirement of the legal

evidence in order to return the finding of conviction . In **Rambraksh Alias Jalim** (supra), the apex court has laid down that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on only on the circumstance of last seen together. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstance to bring home the guilt of the accused.

[112] In **Kailash Gour** (supra), the apex court has observed that there is indeed a long distance between may have committed the offence and must have committed the evidence and that distance must be travelled by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognized as a human right which cannot be whished away. True it is that society at large does question when the prosecution fails, but for that the court of law cannot throw away the standard of proof as required by law. In this case as we have already noted that there is some suspicious elements. There is not proved circumstance to override the finding of the post-mortem doctors. The opinion of the team of the post mortem doctor is so categorical that brushes aside the tentative opinion of the expert of the psychological forensics even their observation in respect of improbability considering the inebriated state of the victim to hang herself from the teak tree is subjective. No material is there to show the degree of drunkenness. PW 14 Dr.

Dipankar Prasad Bhowmik has resonated the same opinion of PWs 10 and 11 in respect of the post mortem outcome by making the following statement:

> **"We had a consensus opinion that the death was typical cause of death by suicidal hanging."**

[113] That apart, in an appeal from the judgment and order of acquittal, even though the appellate court can appraise evidence fully, but if the court arrives at an alternative finding against the possible finding of the trial court, it has been held in several decisions of the apex court [for example **State vs. Tulshiram** reported in **(2007) 14 SCC 627**] that in such circumstances the appellate court should not interfere the judgment of acquittal. In this case, even it is difficult to reach an alternative finding which would support conviction of the appellant. Thus, on cumulative assessment of the evidence including the opinions of the experts, we are of the considered view that the impugned judgment and order of acquittal does not require any interference.

Having observed thus we dismiss the appeal.

Send down the LCRs forthwith.

JUDGE **JUDGE**

HIGH COURT OF TRIPURA
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