HIGH COURT OF TRIPURA
AGARTALA

CRL.A.(J)No.80 of 2017

Sri Hrit Kamal Sarkar,
son of late Bhanu Ranjan Sarkar
of Laddu Chowmuhani, P.S. N.C.C.,
District : West Tripura

----Appellant(s)

Versus

The State of Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. A. Bhowmik, Adv.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing	:	20.05.2020
Date of delivery of Judgment & Order	:	23.09.2020
Whether fit for reporting	:	YES

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

Judgment & Order

[S. Talapatra. J]

This appeal under Section 374(2) of the Cr.P.C. questions the judgment of conviction and sentence dated 05.08.2017 delivered in Case No.ST(T-1)85/2014. By the said judgment the appellant has been convicted for committing offence punishable under Section 376(1) and 302 of the IPC.

2. Pursuant to the said conviction, the appellant has been sentenced to suffer rigorous imprisonment for life and to pay fine of

Rs.5000/- with default stipulation for commission of offence punishable under Section 376(1) of the IPC. The appellant has been further sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- with default stipulation for committing offence punishable under Section 302 of the IPC. However, the sentences are directed to run concurrently.

3. The genesis of the prosecution is rooted in the complaint filed by one Shymal Shom Banik [PW-19] revealing that in the paddy land of one Swapan Ray(Shil) dead body of one unknown woman aged about 20 years was seen and recovered on 3.30-4 p.m. on 27.04.2014. It has been noted in the said information [Exbt.17] that a piece of cloth was tied around her neck. After killing her, the dead body was left naked. Based on the said information, East Agartala Women P.S. Case No.28/2014 under Section 302 of the IPC was registered. After the forensic report, the offence of rape had been added for investigation. It appears that in the course of investigation, the trail led to involvement of the appellant. From DNA extracted from the biological material collected from the appellant him has matched with DNA extracted from the seminal stain retrieved from the vaginal swab of the victim upon the same person. Thus, the appellant was sent up for trial by filing the final report. After taking cognizance, the Chief Judicial Magistrate, West Agartala committed the case to the court of the Session Judge. It has surfaced from the final police report that the investigating officer [PW-25] visited the place of occurrence

on 28.04.2014 second time as she had first visited when the dead body was recovered on 27.04.2014. PW-25 prepared the hand sketch map with relevant index. Nobody had come forward to identify the dead body and for that reason the dead body was preserved in the Department of Forensic Medicine and Toxicology, AGMC and GBP Hospital, Agartala. PW-25 had arranged publication of a notice inviting attention of the people at large for establishing the identity of the recovered dead body in the local newspaper and she had circulated the said information in the electronic media. At her request some biological materials were asked to be preserved. On 30.04.2014 the postmortem examination was carried out and the corpus deficit was disposed of as unidentified but the photographs of the dead body were taken for further action. On 03.05.2014 one N.G. Bhowmik [PW-2] came to the police station with his relatives. When the photographs of the deceased were shown to him, he identified the deceased as his daughter. Birth certificate of the deceased was seized by PW-25. From the said birth certificate it appeared to PW-25 that the date of birth of the deceased was 27.03.1996. The statement of father and sisters of the deceased were recorded. From those statement, it revealed that the deceased [the victim] used to stay with her parents at Teliamura. She was in search of a secured job. Often times, she used to stay in the house of her younger sister at Madhupur. The victim had one mobile phone having No.8730979003. During investigation, CDR and SDR of the said mobile number were collected. It appeared that

several times, she had conversation on another mobile No.9774086847 on 26.04.2014, the day before the dead body was recovered. The last call was recorded on 07.17 p.m. for 10 second. During investigation it further revealed that the said SIM No. 9774086847 was registered in the name of one Biswaswar Debbarma of Advisor Chowmuhani, Agartala. On examination, Biswaswar Debbarma disclosed that he had that SIM, but he lost it about 2 years ago. The investigating officer rang up on that SIM No.9774086847 and from the other end the call receiver disclosed his identity as Hrit Kamal Sarkar. On secret information, PW-25 located one Khokan Sarkar of R.K. Nagar, Lalmatia who used to run a jewellary shop and the appellant [Hrit Kamal Sarkar] worked in that shop as an employee. On 09.05.2014, the appellant was arrested and his mobile was seized. PW-25 has observed that prior to his arrest, the appellant had destroyed SIM No.9774086847. From CDR of SIM No. 9774086847 it was detected that mobile phone bearing IMEI No.355718020139980 was the same mobile phone which had been seized from the appellant. The appellant had used SIM No.9774086847 for communication with the victim before her death. It was revealed during the investigation that two months before the death of the victim, she came in contact with the appellant. The prosecution has asserted that on 25.04.2014, the appellant called her over her mobile and accordingly on 26.04.2014 she arrived at Agartala from Teliamura and met the appellant near Old Motor Stand.

Subsequently both proceeded and reached near Meghmura Chara, there the appellant committed rape upon the victim and killed her by pressing her throat. To ensure death, the accused [the appellant] further fastened the wearing pant of the deceased [mentioned in the complaint as piece of cloth around her neck]. After committing the crime, the appellant threw away the shoes, belt, money bag and mobile phones of the victim to a nearby paddy-land. During the investigation the appellant disclosed how he had committed the crime and where he threw the articles of the deceased. As indicated, in the disclosure statement, as recorded in presence of the Executive Magistrate and the independent witness, the appellant was taken to the place of occurrence on 12.05.2014, but he could not find out the articles of the deceased from the place where he had stated to have thrown the articles. His disclosure statement was video-graphed in presence of the independent witnesses and recorded in East Agartala Women P.S. G.D. Entry No.317 dated 14.06.2014. From the postmortem examination report [Exbt.9], the opinion of the forensic expert is available. The cause of death was, according to that opinion, asphyxia as a result of strangulation by ligature. During the investigation the forensic report collected from the State Forensic Science Laboratory(SFSL) and that brought into light that the contributor of the seminal stain in the vaginal swab of the deceased, originated from single source i.e. the appellant. Thus, the chargesheet was filed against the appellant, as stated. In the course of the time,

the said Sessions Trial was transferred to the Court of Additional Sessions Judge, Court No.5, West Tripura, Agartala who on 01.08.2015 framed the charges under Section 376(1)/302 of the IPC against the appellant separately to which he pleaded not guilty and claimed to be tried.

4. In order substantiate, the charge as many as 25 witnesses including the investigating officer were examined and 19 documentary evidence was introduced. After the appellant was examined under Section 313 of the Cr.P.C. at his instance two witnesses were examined in order to rebut the prosecution evidence. During the examination under Section 313, the appellant reiterated his plea of innocence by stating that the evidence against him is manipulated and as such he is entitled to acquittal.

5. After appreciation of the prosecution and the defence evidence and on taking note of the submission made by the counsel for the parties, the Additional Sessions Judge has observed that even if, there is some discrepancy in the evidence of the prosecution witnesses, but those are not of material significance. It has been inferred by the trial Judge that from the fact and circumstances of the case there cannot be any other conclusion except that the appellant committed rape upon the victim just before her death and ultimately strangulated her by ligature which was found wrapping her neck at the time of recovery of her dead body. The victim was raped before her death and when it is proved that the appellant has committed the rape

upon her there cannot and should not be any other conclusion except that the appellant had committed the murder of the victim by strangulation. The trial Judge did not believe DWs-1 and 2 for the reason that those DWs were speaking contrary to what had been stated by the independent witnesses. The trial Judge has also observed that DNA profiling is of 100% precision according to the authoriative text book, Modi's Medical Jurisprudence and Toxicology, 24th edition, Page 418. That apart the forensic expert [PW-23] has categorically stated that the contributor of seminal stain found in the vaginal swab of the unknown deceased was originated from single source [Hrit Kamal Sarkar].

6. Mr. A. Bhowmik, learned counsel appearing for the appellant has robustly submitted that the evidence based on which the finding of conviction has been returned those are not legally acceptable. Mr. Bhowmik, learned counsel has quite strenuously submitted that even though the disclosure statement was recorded but no material relating to the offence was discovered or recovered at the instance of the appellant and as such, the said statement cannot be used against the appellant in any manner inasmuch as the said statement was extracted when the appellant was in the police custody. In this regard, Mr. Bhowmik, learned counsel has relied on a decision of the Privy Council in **Pulukuri Kottaya and Others versus Emperor** reported in **AIR 1947 PC 67** where it has been observed that it is fallacious to treat the fact as covered within the section as

equivalent to the object produced. The fact discovered embraces the place from where the object is produced and the knowledge of the accused as to this, and the information given, must relate distinctly to this fact. Information as to the past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed to the roof of my house, does not lead to discovery of a knife, Knives were discovered many years ago it leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. It has been further observed in **Pulukuri Kottaya**(supra) that in a case where an evidence has been admitted which ought not to have been admitted, it is the duty of the court to apply its mind to question whether after discarding the evidence improperly admitted, there is left sufficient evidence to justify the conviction. According to Mr. Bhowmik, learned counsel that the postmortem examination report cannot be related to the victim as the name of the deceased is not provided in the postmortem examination report. [The reason is obvious as when the post-mortem examination was carried out, the identity of the deceased was not established.]

7. Mr. Bhowmik, learned counsel has contended that every episode in the chain of circumstances has to be proved independently. In this regard, he has relied on a decision of the apex court in

Ramreddy Rajesh Khanna Reddy versus State of A.P. and Another reported in **(2006) 10 SCC 172** where the apex court has observed that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence. The circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It has been also observed that suspicion however grave it may be, cannot a substitute for a legal proof and the court shall take utmost precaution in finding the accused guilty on the basis of circumstantial evidence.

8. In this regard, another decision of the apex court in **Brajendra Singh versus State of Madhya Pradesh** reported in **(2012) 4 SCC 289** has been pressed in the service by Mr. Bhowmik, learned counsel. It has been restated in that report that circumstances forming the chain of events should be proved and they should cumulatively point toward the guilt of the accused alone. The inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with innocence of the accused or the guilt of any other person.

9. In order to dislodge the hypothesis that the appellant was with the victim immediately before her rape and death, Mr. Bhowmik, learned counsel has submitted that it is well established that even if the accused is last seen with the deceased specially in the

circumstances when there is nothing on record to show that the deceased parted from the company of the accused and no activity of the victim [the deceased] can be stretched and the dead body of the victim was recovered later on, the liability would only shift on the accused, if it is well established that the victim was last seen with the accused, to explain the whereabouts of the victim.

10. In **Navaneeth Krishnan versus State by Inspector of Police** reported in **(2018) 16 SCC 161**, the apex court has observed that the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. However this evidence alone cannot discharge the burden of establishing the guilt of the accused beyond reasonable doubt and it requires corroboration.

11. On the evidence of DNA matching, Mr. Bhowmik, learned counsel has made a robust submission to contend that the matching of DNA is not an independent indicator inasmuch as first and foremost, the forensic opinion based on DNA profiling is not accurate on the scale of precision and moreover, the process that is followed is much to do with the outcome of the result. Thus, the evidence of DNA matching cannot be relied as a substantive piece of evidence.

12. In support of his contention, Mr. Bhowmik, learned counsel has relied on a series of decisions of the apex court including **Pattu Rajan versus State of Tamil Nadu** reported in **(2019) 4 SCC 771**. The apex court had occasion to observe there on the

submission that a DNA test should have been conducted in order to identify the dead body. An identification, merely on the basis of a super imposition test, is not a tangible piece of evidence. It has been observed in **Pattu Rajan**(supra) as under :

> **"49. One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Indian Evidence Act. Undoubtedly, an expert giving evidence before the Court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the Court in forming its opinion on questions concerning foreign law, science, art, etc., on which the Court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting 37 comparison, and even DNA testing or superimposition techniques, as seen in the instant case.**
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> **50. The role of an expert witness rendering opinion evidence before the Court may be explained by referring to the following observations of this Court in Ramesh Chandra Agrawal v. Regency Hospital Limited & Ors., :(2009) 9 SCC 709 :**
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> > **"16. <u>The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. *Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of an expert cannot be disputed*</u>."**

13. Further, reliance has also been placed on **Ramesh Chandra Agrawal versus Regency Hospital Limited and Others** reported in **(2009) 9 SCC 709** where the apex court has observed that while relying on an expert opinion, the emphasis has to be given

on the data on the basis of which opinion is formed. The relevant passage from the said report may gainfully be reproduced :

> **"22. In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference:**
>
> **"Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."**
>
> **[Emphasis added]**

14. Mr. Bhowmik, learned counsel has taken this court to a decision of the apex court in **Ravi versus State of Maharashtra** reported in **(2019) 9 SCC 622** to contend that the method of DNA analysis, "Y-STR" may even sometimes become unreliable. It has been observed in **Ravi**(supra) as follows :

> **"...in cases of sexual assault, DNA of the victim and the perpetrator are often mixed. Traditional DNA analysis techniques like "autosomal- STR" are not possible in such cases. Y-STR method provides a unique way of isolating only the male DNA by comparing the Y- Chromosome which is found only in males. It is no longer a matter of scientific debate that Y-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence and is extensively relied upon in various jurisdictions throughout the world. 1&2. Science and Researches have emphatically established that chances of degradation of the `Loci' in samples are lesser by this method and it can be more effective than other traditional**

> **methods of DNA analysis. Although Y-STR does not distinguish between the males of same lineage, it can, nevertheless, may be used as a strong circumstantial evidence to support the prosecution case. Y-STR techniques of DNA analysis are both regularly used in various jurisdictions for identification of offender in cases of sexual assault and also as a method to identify suspects in unsolved cases. Considering the perfect match of the samples and there being nothing to discredit the 1"Y-STR analysis for detection and objective confirmation of child sexual abuse", authored by Frederick C. Delfin – Bernadette J. Madrid – Merle P. Tan – Maria Corazon A. De Ungria. 2"Forensic DNA Evidence: Science and the Law", authored by Justice Ming W. Chin, Michael Chamberlain, A,y Roja, Lance Gima DNA analysis process, the probative value of the forensic report as well as the statement of P.W.11 are very high. Still further, it is not the case of the appellant that crime was committed by some other close relative of him. Importantly, no other person was found present in the house except the appellant."**
>
> **[Emphasis added]**

15. Mr. Bhowmik, learned counsel has referred to **Anil alias Anthony Arikswamy Joseph versus State of Maharashtra** reported in **(2014) 4 SCC 69** which according to the considered opinion of this court does not support the defence case in any manner. According to Mr. Bhowmik, learned counsel, any evidence generated of DNA profiling can at best be used as the corroborative evidence. He has relied on a decision of the apex court in **Piara Singh and Others versus State of Punjab** reported in **(1977) 4 SCC 452** where the apex court, in the context of that case has observed that the evidence of a medical man or an expert is merely an opinion which lends corroboration to the direct evidence in the case. Where there is a glaring inconsistency between direct evidence and the medical evidence in respect of the entire prosecution story, that is

undoubtedly a manifest effect in the prosecution case. It has been further observed in **Piara Singh**(supra) that where there is a conflict between the opinion of two experts, the court should normally accept the evidence of the expert whose evidence is, corroborated by direct evidence of the case and which according to the court is reliable. In the present context, this report does not have any relevance.

16. Reliance has been placed on **Ram Narain versus State of Rajasthan** reported in **(1973) 3 SCC 805**, but the report does not have any relevance as well.

Finally, Mr. Bhowmik, learned counsel has urged this court that there is no physical evidence of last seen together. Even the call details report [CDR] has not been admitted in the evidence to show that the appellant talked to the victim on 26.04.2014. Entire prosecution case is based on the mobile phone as seized from the appellant and the report of DNA matching. In absence of any substantive evidence and on the basis of the evidence as sought to be generated by PW-25 and the DNA matching report, the conviction should not have been returned by the trial Court. It may also be noted that the trial Judge has also in a fix whether to believe the evidence relating to the use of mobile phones. The trial Judge has observed as follows :

> **"As I already mentioned using benami mobile number in our country is not uncommon now a days. Mobile sim are being distributed without taking proper care and caution by the service providers. So, merely on the fact that mobile numbers used by the accused as well as deceased were issued in the name**

> **of another persons cannot be the ground for thrown away the prosecution case <u>as a whole where the forensic report categorically shows that contributor of seminal stain in the vaginal swab of unknown deceased was originated from single source Hrit Kamal Sarkar i.e. the present accused</u>. So, in the proved circumstances it completes the chain cumulatively and there is no escape from the conclusion that within all human probabilities the rape was committed by the accused and none else as the proved circumstances unerringly point towards the guilt of the accused."**
>
> **[Emphasis added]**

17. In order to repel the submissions of Mr. Bhowmik, learned counsel appearing for the appellant, Mr. S. Debnath, learned Addl. P.P. appearing for the state at the outset submitted that there had been no cross-examination in respect of the process of DNA profiling including the collection of sample and their chain of custody. As such, no challenge can be projected by the appellant in this respect. Mr. Debnath, learned Addl. P.P. has further submitted that the last call that was made from the mobile of the victim on the mobile in possession of the appellant was around 07.17 p.m. for 10 second and the death occurred around that time. Hence, Mr. Debnath, learned Addl. P.P. has placed his reliance on a decision of the apex court in **Mahavir Singh versus State of Haryana** reported in **(2014) 6 SCC 716** where it has been observed as follows :

> **"10. Undoubtedly, it is a settled legal proposition that last seen theory comes into play only in a case where the time gap between the point of time when the accused and the deceased were seen alive and when the deceased was found dead. <u>Since the gap is very small there may not be any possibility that any person other than the accused may be the author of the crime. In the instant case, if we examine the medical report minutely, it becomes evident that the deceased Suraj Mal had been murdered one week prior to the post mortem</u>. Thus, it becomes evident**

> **that he had been killed in a very proximity of time when the deceased was seen alive with the appellant and Jagbir Singh, co-accused."**

18. In respect of accurateness of the DNA test, Mr. Debnath, learned Addl. P.P. has relied on a decision of the apex court in **Kamti Devi(Smt) and Another versus Poshi Ram** reported in **(2001) 5 SCC 311** where it has been stated as follows :

> **"We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with Dioxy Nucleic Acid (DNA) as well as Ribonucleic Acid (RNA) tests were not even in contemplation of the legislature. <u>The result of a genuine DNA test is said to be scientifically accurate</u>. "**

19. In **Santosh Kumar Singh versus State** reported in **(2010) 9 SCC 747** the apex court has dealt with the consequence of not contesting the process of sampling and genuineness of the samples. It has been observed that no adverse inference against the prosecution can be drawn with regard to retention and custody of the samples as no suggestion was put either to the doctors or to the DSP or to the Sub-inspector that the seal of the aforesaid articles had been tempered with. It has been further observed as follows :

> **"71. We feel that the trial court was not justified in rejecting the DNA Report, as nothing adverse could be pointed out against the two experts who had submitted it. <u>We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Smt. Kamti Devi v. Poshi Ram AIR 2001 SC 2226</u>. In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with, Crl. Appeal No.87 of as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on circumstance No.9."**
>
> **[Emphasis added]**

20. It has been further observed in **Santosh Kumar Singh** (supra) as follows :

> **"67. The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of Crl. Appeal No.87 of comparison and that there was no possibility of the samples having been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents that the DNA of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the appellant was from a single source and that source was the appellant.**
>
> **68. <u>It is significant that not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for the DNA profiling. The trial court has referred to a large number of text books and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court Crl. Appeal No.87 of had not been put to the expert witnesses.</u> In Bhagwan Das & Anr. vs. State of Rajasthan: AIR 1957 SC 589 it has been held that it would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert."**
>
> **[Emphasis added]**

21. On the basis of that kind of evidence, the finding of the trial Court was interfered with and the accused was convicted after the test as laid in **Kashmira Singh versus State of M.P.** reported in **AIR 1952 SC 159**. It has been stated in **Kashmira Singh**(supra) that when the murder was particularly cruel and revolting one, it will be necessary to examine the evidence with more than ordinary care,

less the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law.

22. A few other decisions even though has been referred by Mr. Debnath, learned Addl. P.P. but having examined the context of those cases being set up in respect of the DNA evidence vis-a-vis the presumption under Section 112 of the Indian Evidence Act, this court has discarded references for sake of brevity.

23. Mr. Debnath, learned Addl. P.P. has categorically submitted that PWs-12 [Md. Ramzan Miah] and PW-13 [Md. Kangal Miah] are two important witnesses inasmuch as they have stated that they saw Hrith Kamal Sarkar [the appellant] was searching something on the paddy field and he found out one pair shoe, one belt and one money bag from the paddy field and he had handed over those to the police. Those articles [Exbt.MO-2, Exbt.MO-3 and Exbt.MO-4] were identified in the trial by PW-12. Even the seizure list of those article by the police [Exbt.7] was admitted in the evidence. PW-12 has further stated that within a short distance from the place where the dead body of the woman was found those articles were recovered. The statement of PW-12 could not be dented during the cross-examination.

24. PW-13 has followed the same suit as has been done by PW-12 by stating that the police asked him to observe, if the said body [Hrith Kamal Sarkar] found out any articles from that place. PW-13 has stated in the trial that the said boy found out one pair white

shoes, one belt and one money bag from the paddy field. Those were admitted in the trial as Exbt.M.O.2, Exbt.M.O.3 and Exbt.M.O.4. He put his thumb impression on the memorandum of recovery. In the cross-examination, he stood by his statement.

25. PW-14 [Sri Gautam Shil] and PW-15 [Sri Tapan Das] corroborated the recovery of those articles by the appellant.

Then, Mr. Debnath, learned Addl. P.P. has submitted that this recovery on the basis of the disclosure statement brings the fact on evidence that the appellant had knowledge of the articles recovered as those were concealed by him after killing the victim.

26. Mr. Debnath, learned Addl. P.P. has submitted that the testimonies of PW-18 [Dr. Jhutika Debbarma] and PW-23 [Dr. Subhankar Nath] are of immense value, inasmuch as their testimony and the opinion has supported the prosecution case. Mr. Debnath, learned Addl. P.P. has, therefore, submitted that the finding of conviction as returned by the trial Court does not called for any interference.

27. For appreciation of the submission of the counsel for the parties and evaluation of the evidence in a meaningful manner, a short survey of the evidence as recorded appears apposite.

28. Having the very nature of initiation of the prosecution, based on the information by a person who had no knowledge about the transaction of crime but had noticed a dead body in the paddy field of his locality, the testimony of the investigating officer, Smt.

Babita Bhattacharjee [PW-25] is required to be noted before the others' testimony. PW-25 has stated that she entered a telephonic information in the station diary vide G.D. Entry No.621 dated 27.04.2014. She got the information from one unknown person that one unidentified dead body of a woman was lying at Meghlimura Cherra, Noagoan, Krishnanagar. The dead body was in half naked condition and having a knot around her neck by a long pant. From the place of occurrence, PW-25 informed the occurrence and she had also summoned the forensic experts from the State Forensic Science Laboratory, SFSL in short. Even the dog squad was requisitioned. On the spot, one Shyamal Shom Bhowmik [PW-19] lodged the written information to PW-25. PW-25 started investigation and arranged to take photograph of the dead body with surroundings. The dog squad failed to detect any clue. PW-25 prepared the inquest report [Exbt.1] of the unknown woman. PW-25 seized sample of swab from the breast of the deceased, swab from the body of the deceased having blood stain, hair from the wearing apparels, from the deceased, blood stain as collected by the SFSL expert on preparing a seizure list [Exbt.10] in presence of witnesses. PW-25 also seized one small comb, a pair of socks, one plastic watch, one charger, head phone and gadgets found with the deceased by preparing the seizure list [Exbt.3]. Thereafter the dead body was sent for postmortem examination. On the spot itself, PW-25 examined Kanu Das [PW-1], Shyamal Shom Bhowmik [PW-19], Tapan Das [PW-15] and Rabindra Debnath [PW-20] under

Section 161 of the Cr.P.C. Before she returned to the police station, the specific FIR was registered by one Woman Sub-inspector, Mamata Hassina, whose hand writing and signature has been identified by PW-25 in the trial. Formally, the case was endorsed to PW-25. In the trial, PW-25 indentified G.D No.621 dated 27.04.2014. He made newspaper publication to ascertain the identity of the deceased woman. On the following day, she had visited the PO again and prepared the site map. At her instance, Department of Forensic Medicine and Toxicology collected the vaginal swab, oral swab and anal swab of the victim girl. She seized those samples by the seizure list dated 28.04.2014 [Exbt.11]. The seizure witness Gopal Bhowmik [PW-21] was also examined by her. Thereafter, she requested the Sub-Divisional Magistrate Sadar for postmortem examination of the unknown dead body and disposal of the same. Following the procedure, postmortem examination was carried out. PW-25 seized the body parts and wearing apparels of the deceased by preparing the seizure list dated 30.04.2014 [Exbt.12]. Thereafter, dead body was disposed of, by cremation. On 02.05.2014 she had collected the P.M. report and sent the seized biological materials and physical materials for forensic examination to SFSL. On 03.05.2014, the relatives got information through Teliamura P.S. and came to East Agartala Women's P.S. for identification. By that time, the dead body was disposed of. They identified the victim by seeing the photographs as taken and by seeing her wearing apparels. From them, the name of the deceased was

known. Father of the deceased, Nani Gopal Bhowmik [PW-2] produced the ADHAR Card and the birth certificate of the victim in presence of witnesses and those were seized on 03.05.2014 by preparing the seizure list [Exbt.4]. PW-25 also examined Nani Gopal Bhowmik [PW-2], Rajib Debnath [PW-3], Susma Bhowmik [but not examined in the trial] on 03.05.2014. From those witnesses, PW-25 came to know that the victim was using a mobile phone No.8730979003. At that juncture, she took the facility of the SP (DIB) for having the particulars of the above mobile numbers and collected the call details for the said mobile phone for the period from 13.04.2014 to 26.04.2014. On the basis of the call details, PW-25 examined one Mousumi Das [PW-5] with whom the victim talked for long time prior to her death. PW-25 recorded her statement under Section 161 of the Cr.P.C. She had also examined the appellant as he had talked to the victim for a long time within the period as noted before. Thereafter, she has stated in the trial that the appellant talked to the deceased from his mobile No.9774086847. On 06.05.2014 she had collected the particulars of mobile No.9774086847. It was found that the Sim was issued in the name of one Biseswar Debbarma [not examined in the trial]. Biseswar Debbarma told her that he had lost the said Sim. It was found during the examination that the appellant was using that sim. PW-25 also examined mother of the deceased, Bon Kumari Bhowmik [PW-4] on 09.05.2014. On that day she had also examined one Khokan Sarkar [PW-9], Subhash Debbarma [PW-8] and Kwsrang

Debbarma [PW-7]. From their statement, she could ascertained that the said mobile was used by the appellant from the statement of Subhash Debbarma it was also ascertained that the appellant had broken the Sim. Thus, the involvement of the appellant was apparent to PW-25 and she had arrested him. PW-25 by preparing a seizure list [Exbt.5] seized one mobile set from possession of the appellant on 09.05.2014 at 20.55 hrs. She collected the particulars about the appellant. On 12.05.2014 she examined witnesses namely Pradipta Kumar Nayak [not examined in the trial]. Prabir Debbarma [PW-10] and Bhaskar Das [not examined in the trial]. On 30.05.2014, the appellant was taken to the GBP Hospital for examination potency and collection of his blood sample. PW-25 seized from that hospital samples of scalp hair, public hair, sample of blood for DNA profiling by preparing the seizure list [Exbt.6] on 13.05.2014 at 17/15 hrs. She examined Swapna Debbarma, the seizure witness [PW-11]. On 14.05.2014, she seized a pair of shoes, one black colour belt and one black colour money bag being shown by the appellant by preparing the seizure list [Exbt.7] on 14.05.2014 at 07.50 hrs. those seized articles were identified by the relative of the deceased. Thereafter she examined the witnesses namely Tapan Das, Md. Kangal Miah, Ramzan Miah and Goutam Shil respectively PW-15, PW-13, PW-12 and PW-14. The statement of Bidhan Sarkar and Susma Sarkar were also recorded but they were not examined in the trial. One mobile phone as produced by Paritosh Das [PW-17] who found the same in the place of

occurrence was seized by PW-25 by preparing the seizure list [Exbt.4]. Statements of Beauti Rani Shil and Paritosh Das were also recorded under Section 161 of the Cr.P.C. Medical examination report of the appellant was collected. After collection of the SFSL report relating to the biological materials of the victim as well as of the appellant, PW-25 was satisfied that the appellant has raped and murdered the victim. She also examined the service provider namely Ajoy Kumar Das and Rajat Pal, however, they were not examined in the trial. In the cross-examination, her statement could not be dented. The suggestion made contrary to what she had stated in the cross-examination has been squarely denied.

29. Another key witness is Dr. Subhankar Nath [PW-23] to whom 16 Exbts., sealed biological and other materials, were forwarded for examination and opinion. He received those exhibits on 05.05.2014 and 03.07.2014 [only Exbt.B] in the DNA typing division. He has stated in the trial, on the basis of his report [Exbt.15], as follows :

> **"<u>The details of exhibits</u>:**
>
> **1. Exbt.E one gauze cloth bearing brownish stain said to be the dry blood sample of deceased.**
> **2. Exbt.F Oral swab of deceased.**
> **3. Exbt.G Vaginal swab of deceased.**
> **4. Exbt.H Anal swab of deceased.**
> **5. Exbt.I Public hair of deceased.**
> **6. Exbt.J Public hair of deceased.**
> **7. Exbt.K Scalp hair of deceased.**
> **8. Exbt.L One full sleeve shirt said to be the wearing apparels of deceased.**
> **9. Exbt.M One long pant said to be the wearing apparels of deceased.**
> **10. Exbt.N One inner said to be the wearing apparels of deceased.**

11. Exbt.P Swab from breast of deceased.
12. Exbt.Q Swab collected from the body of deceased.
13. Exbt.R Hair collected from the wearing apparels of deceased.
14. Exbt.S Blood stain collected from the body of the deceased.
15. Exbt.B One sealed brown paper envelope contained two white paper packets one labeled with scalp hair and another leveled with public hair and subsequently marked in the laboratory as B1 and B2 respectively.

<u>On Biological and Serological examination</u> it is opined that :-
1. Blood stain of human origin was detected in the exhibits marked F, G, L, N, Q and S.
2. Blood group of exhibit marked F, L, Q and S was detected as group A.
3. Blood group of exhibit marked N could not be established.
4. Blood stain was not detected in the exhibit marked as H and M.
5. Blood group of the exhibit Mark E was under A group.
6. Seminal stain and blood stain of human origin was detected in the exhibit G.
7. No seminal stain/spermatozoa of human origin was detected in the exhibit marked as F, H, L, M and N.
8. Saliva was not detected in the exhibit marked as P.
9. Public hair and scalp hair of human origin was detected in exhibits as I and R respectively. But no opinion could be drawn regarding the presence of any foreign hair in the exhibits marked as I and R.

The examination and report was prepared and signed by Dr. Sabyasachi Nath, Scientific officer cum examining officer of Biology/Serology Division and also countersigned by me the same report on 31.07.2014.

<u>INTER-DIVISIONAL REPORT</u>
On 21.5.14 and 24.6.14 I was posted as deputy director, DNA typing division of SFSL, Tripura. On those date the DNA typing division received four (4) packets containing exhibits and one sealed paper envelope from Biology/Serology Division in connection with the East Agartala Women PS case No.28/14 dated 27.04.14 under section 302 IPC. The period of examination was 28.5.14 to 22.7.14.

The exhibits received from Biology/Serology Division are as follows :

1. Exbt.D: 50 gram of quadriceps muscles of unknown deceased
2. Exbt.E: Blood stained gauze of unknown deceased.
3. Exbt.G: vaginal swab of unknown deceased.
4. Exbt.O: One violet colour comb collected from PO.

Another sealed paper envelope having 05 seals of SDPO, SADAR, AGT, TPA are contained the following exhibits :

1. Exbt.A one sealed brown paper envelope having three seals of AGMC-FMT contained blood stain gauze of Hritkamal Sarkar.
2. Exbt.B one sealed brown paper envelope having four seals of AGMC-FMT contained sample scalp hair and public hair of Hritkamal Sarkar. These exhibits referred to Biology/Serology Division for examination and opinion.

The exhibit G (vaginal swab) of unknown deceased was examined by visual examination under different light sources, Acid phosphate and Microscopic examination for detection of seminal stain/spermatozoa of human origin.

Seminal stain/spermatozoa of human origin was detected in the exhibit marked as G.
A portion of blood stain gauze of exhibit.A (source blood stain gauze of Hritkamal Sarkar) and a portion of vaginal swab contains seminal stain of exhibit G (source vaginal swab of unknown deceased) were subjected for DNA isolation by organic extraction method.
DNA recovered from the above mentioned exhibits were subjected to multiplex PCR reaction for co-amplication of the 15 STR loci and Amelogenin using AmpF/STAR identifier + PCR amplification kit. The amplified products along with controls were run on the automatic DNA sequencer. The sizing of the fragments was carried out Gene Mapper ID software version 3.2 with respect to Gene Scan 500 LIZ size standard. The resultant allelic distribution for the studied loci in different exhibits shown in the table of Annexure-A.

Observation:

a) A male genetic profile was generated from exhibit G (source : vaginal swab of unknown deceased).
b) The allele of the amplified loci of DNA profile of exhibit A (source blood stain gauze of Hritkamal Sarkar) matches with the allele in the DNA profile of exhibit G (source: vaginal swab of unknown deceased).
Conclusion :
On the basis of the above observation it can be concluded that the contributer of seminal stain in the

<u>exhibit mark G (source vaginal swab of unknown deceased was originated from single source Hritkamal Sarkar(Exbt.A)</u>.
The report was prepared and signed by me on 22.7.14.
Both the Biology/Serology and DNA report was forwarded to the forwarding authority by me on 31.07.14.
This is the report No.SFSL/278/14/BIO/SERO/131/14/401 dated 31.7.14 signed by Dr. Sabyasachi Nath and countersigned by me. The report is accordingly marked as Exbt.14. The signature of witness is marked as Exbt.14/1. I worked with Dr. Sabyasachi Nath for the time being and I am acquainted with his handwriting and signature. This is his signature. On identification the same is marked as Exbt.14/2.

This is my report dated 22.07.14 on DNA typing. Report consists of four pages (4) including Annexure-A which bears my signatures on each page of report. On identification the report is marked as Exbt.15 and the signatures of witness are marked as Exbt.15/1, 15/2, 15/3, 15/4 respectively.

All the materials objects for DNA typing are produced today before the court. These are the said exhibits. These are marked as Exbt.MO.7 series.

These are the articles received for Biology/Serology examination. These are marked as Exbt.MO.8 series."

[Emphasis in the report has been supplied]

In the cross-examination, one suggestion was given to PW-23 that the procedure of examination was not proper and as such the report is not correct. Even a suggestion was extended that blood stain of human origin was detected in Exhibits F, G, L, N, Q and S. Even it was suggested that blood group of Exhibit E was not determined. Both the suggestions were squarely denied by PW-23. Even it was suggested that no seminal stain or blood stain of human origin was detected in Exbt.G. The said suggestion was also denied by PW-23. The suggestion, as to the correctness of the observation of the report under para(a) and para(b), has also been denied. The general

suggestion as made about the single source of contribution of seminal stain in vaginal swab of the unknown deceased was not related to Hrith Kamal Sarkar, has been categorically denied by PW-23. No other suggestion was projected in the cross-examination.

30. The another important witness is PW-18, Dr. Jhutika Debbarma who conducted the postmortem examination on the body of the unknown deceased [unknown as till then the identity of the deceased was not established]. PW-18 was assisted by Dr. Pranab Chowdhury, Dr. Pradipta Narayan Chakraborty and Dr. Antara Debbarma. The body was identified by PW-25. The following ante mortem injuries were found during the postmortem examination and those were described by PW-18 in the following manner :

> **"Injuries No.1 : Dark Brown colour abraded, dry, hard parchment like ligature mark was present incompletely and almost horizontally around the neck. The neck circumference 30 centimeter. On the front of the neck the mark was 3 cm below the chin and 7 cm above the supra sterna notch in the midline. On the right side the mark was 2 cm below the tip of right mastoid process. Thereafter, the mark went backwards and downwards and ends on the upper part of shoulder on right side and ends 5 cm from midline. On the left side of the neck the mark was 1.5 cm below the tip of left mastoid process. Thereafter the mark was absent on the back of neck for a distance of 11 cm. Maximum width of ligature mark was 5 cm just below the left angle of mandible. On dissection, bruising was present in the soft tissue and muscle on the neck on the lateral aspect. Epiglottis was congested Hyoid bone and thyroid cartilage were intact. Bruising was present in the layers of the muscle and soft tissue around the Hyoid bone and thyroid cartilage on right side.**
>
> **Injury No.2: Contusion measuring 3 cm x 2.5 cm was present on the right side of face, 6.5 cm from the midline and just below the outer angle of right eye.**
>
> **Injury No.3: Reddish colour abrasion measuring 7 cm x 2 cm was present obliquely on the back of right leg, 6 cm below the popliteal-fossa.**

Age of injury were fresh at the time of death.
External genitalia.
Public hairs-Black in colour and adult type. Public hairs were loose and could be easily pulled out.
Hymen – Multiple old healed tears were present in the 3, 5, 7 and 9 o clock positions and vaginal rugosities could be seen through the orifice. Rugosties were reduced. No fresh injuries were seen.
Uterus – Measured 7 cm x 5 cm x 2 cm . Cavity was empty. Wall-NAD. Cervical opening appeared as transverse slit.
Ovaries-Multiple cyst were present."

[Emphasis added]

PW-18 has collected samples of oral swab, vaginal swab and anal swab. She has also collected combed public hairs, pulled out public hairs and scalp hair samples on 28.04.2014. This has corroborated the statement of PW-25. The tentative time of death has been ascertained to occur 3 to 5 days before the day of postmortem examination. On 26.08.2014, after having the toxicological analysis and swab analysis report through PW-25 the final opinion was noted. The cause of death as ascertained is asphyxia as a result of strangulation by a ligature. There was no associated poisoning. There was evidence of "recent sexual intercourse". The postmortem report was prepared by PW-18 and in the trial, she had identified her hand writing, signature along with signatures of Dr. Pranab Chowdhury, Dr. Pradipta Narayan Chakraborty and Dr. Antara Debbarma. She admitted the postmortem examination report [Exbt.9] in the evidence. In the cross-examination, PW-18 has admitted that when they conducted postmortem examination there was sign of starting [the team which conducted the post-mortem examination] decomposition. Decomposition starts in the internal organs of the body in about 12/18

hrs., if not preserved. But she has denied the suggestion that the final opinion as to the cause of death was not correct. She has denied the suggestion that the death was due to consumption of poison.

31. PW-24, Dr. Jayanta Sankar Chakraborty, was an Assistant Professor of AGMC and GBP Hospital at Agartala. On 13.05.2014 PW-24 was posted in the Department of Forensic Medicine and Toxicology of the said Medical College. On requisition, in connection with East Agartala Women's P.S. Case No.28/2014, he had collected the blood sample of the appellant [Hrit Kamal Sarkar]. After collection, he dried up the blood sample on a sterile gauze and kept it inside the sealed envelope. After that that sample was handed over to a constable of police namely Krishna Das posted at East Agartala Women's P.S. He had identified his signature [Exbt.13(ii)] on the sample and also the signature of the witness [Exbt.13(iii)]. PW-24 had carried out the potency test of the appellant to ascertain his sexual capability. He has opined in his report [Exbt.16] that there was nothing to suggest that the appellant was incapable of performing the sexual intercourse in normal circumstances. He had also collected the samples of the scalp hair and the public hair of the appellant. The sample was sealed in envelopes as per requisition of PW-25. He had denied the suggestion in the cross-examination that he did not collect the blood sample of the appellant or his findings that has been reflected in his report was not correct.

32. PW-1, Kanu Das, has proved the seizure of one comb, one pair of socks, one wrist watch with read colour belt, one wrist watch with still colour belt, one charger, one head phone and one electronic gadget by identifying his signature on the seizure list [Exbt.3]. Barring the comb, other seized articles have been marked separately as Exbts.M.O.1, M.O.2, M.O.3, M.O.4, M.O.5 and M.O.6.

33. PW-2, Nanigopal Bhowmik, the unfortunate father of the victim has submitted that the victim left the home to stay at her sister's home at Madhupur at Agartala for 4/5 days. She had one mobile phone with last four digit of 9003. After about 11/12 days of her coming to Madhupur, the police contacted them and accordingly, he came to East Agartala Women's P.S. to take information about his daughter. In the P.S., he came to know that his daughter was raped and murdered. He had identified the dead body of his daughter by seeing the photographs. He had further stated that the police seized his daughter's birth certificate and ADHAR card by preparing a seizure list where he had put his signature. He identified his signature on the seizure list [Exbt.4]. He had denied the suggestion made to him during the cross-examination.

34. PW-3, Rajiv Debnath is the husband of the sister of the victim. He had replicated the same narrative as stated by PW-2. He has stated that he had tried to contact with the victim on her mobile phone, but the mobile phone was found switched off. He had also

signed the seizure list [Exbt.4] and identified the same. He had denied the suggestions made by the defence during the cross-examination.

35. PW-4, the mother of the victim has stated in the trial that her daughter went to the house of her another daughter, Susma Bhowmik. She had tried to talk to the victim over her mobile, but the mobile phone was found switched off. When she had contacted with her younger daughter, Susma she told her that the victim had left their house after seven days of her coming. She has claimed that she had identified the photographs, published in the newspaper. Then, her husband [PW-2] contacted with the Teliamura P.S. and thereafter, the story of her rape and murder was known to the family members. In her presence and on her indentification, the mobile phone [Exbt.M.O.1] was seized by the police officer by the seizure list dated 28.05.2014. Her testimony could not be dented by the cross-examination.

36. PW-5, Mousami Das has stated that she came to know the victim through their common friend namely Puja Das. One day she called me and told that she would come to Agartala to face an interview for the post of security guard in a private organization. At that time, she was at Agartala. At 8.30 p.m., she told her that she was going to her uncle's house at 79 Tilla. She wanted to talk to her uncle but she had refused to handover the mobile to her uncle. On the following day, when she had tried to contact with her, she found her

mobile switched off. In the cross-examination, she has stated that the victim even did not disclose the name of her uncle.

37. PW-6, Laxmi Debnath, is the elder sister of the victim. She did not disclose anything material.

38. PW-7, Kwsrang Debbarma is the owner of a phto copying shop at Supari Bagan, Agartala. The appellant was an employee in the jwellery shop nearby his shop. He has categorically stated he had talked with the appellant on his mobile bearing No.9774086847. In his presence, the mobile of the appellant was seized by the police officer. On checking the mobile, the police officer did not find the sim card on the mobile. On being asked, Hrit Kamal told the police officer that he broke the sim of the mobile and threw the same in the drain. He has identified the appellant in the trial. In the cross-examination, he has admitted he did not know in whose name the said sim was purchased, but he has denied the suggestion that he never talked to the appellant on the mobile bearing No.9774086847.

39. PW-8, Subhash Debbarma has also stated that the appellant used to work in the jewelry shop of Khokan Sarkar. But he was declared hostile. But during the cross-examination, he has admitted his signature in the seizure list dated 09.05.2014 regarding seizure of a black coloured NOKIA [Exbt.5]. But he has refused to identify the said mobile in the trial. In the cross examination, he has stated that he has put his signature on the seizure list as per direction of the police officer.

40. PW-9, Khokan Sarkar has stated that one day one lady police officer came to his shop and asked whether Hrit Kamal Sarkar was working in his shop. He had answered in the positive. Then, the police officer asked his mobile number but he could not give the mobile number. After a short while, the police took away the appellant from his shop. He did not identify the seized mobile, but identified his signature on the seizure list [Exbt.5]. This witness was a little bit evasive but in the cross examination he has denied that the investigating officer did not show him the black coloured mobile when the mobile was seized from the accused, Hrit Kamal.

41. PW-10, Prabir Debbarma is a videographer. According to him the appellant gave the demonstration how he had committed the rape and murder and he had recorded the said demonstration. The appellant led the police officer at Meglichera but on that day i.e. 12.05.2014 nothing was recovered. On 14.05.2014, the appellant [Hrit Kamal Sarkar] again took the police to the place of occurrence and he brought out one pair of shoe, one pair sock, one belt and one wallet from the paddy land. PW-10 videographed the entire recovery. He had transferred the video image to a Compact Disc (CD). He did not give in to any of the suggestions.

42. PW-11, Smt. Swapna Debbama, a woman S.I. of Police, was posted at East Agartala Women's P.S. on 13.05.2014. On that day, one constable namely Krishna Das handed over one envelope to PW-25. The materials were told to be the blood samples and hair

samples of the appellant. She had signed on the seizure list [Exbt.6] as the witness of that seizure. She has denied the suggestion in respect of the seizure.

43. PW-12, Md. Ramzan Miah was a witness of the recovery by the appellant. Being attracted by the crowd, he appeared near the paddy field and saw the appellant bringing out one pair shoes, one belt and one moneybag from the paddy field and he had handed over those things to the police. He has identified those articles as Exbt.M.O.2, M.O.3 and M.O.4. in the trial. He had also identified his signature on the seizure list [Exbt.7]. But he has failed to give the date of the recovery. In the cross examination, he has also stated that the seizure list was prepared after handing of the articles to the police.

44. PW-13, Md. Kangal Miah had witnessed the recovery of Exbt.M.O.2, M.O.3 and M.O.4. He has identified the thumb impression on the recovery memo.

45. PW-14, Gautam Shil was also the witness to the recovery of Exbt.M.O.2, M.O.3 and M.O.4.

46. PW-15, Tapan Das is the witness to the inquest procedure and he had put his signature on the inquest report [Exbt.1]. He has admitted the said report in the trial. He was also the witness to the recovery of the articles by the appellant and put his signature on the seizure list [Exbt.7]. He has also identified Exbt.M.O.2, M.O.3 and M.O.4. He has denied the suggestion contrary to what he had stated

in the examination in chief. Further, he has stated that the appellant was not known to him previously.

47. PW-16, Suman Kumar Chakraborty is the Deputy Director cum Assistant Chemical Examiner in SFSL. He had received sealed packets from SDPO, Sadar containing plastic containers with viscera samples. He had examined those viscera and found negative for Organo Chloro, Organo Phosphorous, Carbanate group of pesticides, Benzodiazepines group of drugs and ethyl alcohol and Exbt. C had been exhausted during examination. He has identified his report [Exbt.8]. There was no effective cross-examination but he has admitted that those were viscera materials of an unknown female dead body. He has denied the suggestions that the materials were not negative for poison.

48. PW-17, Paritosh Das, from whom the mobile phone of the deceased was seized by the investigating officer by preparing the seizure list [Exbt.4B] has identified the mobile phone as Exbt. M.O.1.

49. PW-19, Sri Shyamal Shom Bhowmik, had lodged the information about his locating a dead body of a girl lying in half naked condition in Meglimura cherra on 27.04.2014. He has identified the complaint [Exbt.2(i)]. As he stood witness to the inquest, in acknowledgment, he put his signature on the inquest report [Exbt.1(ii)]. In the cross-examination, he did not give in to the suggestions, contrary to what he had stated in the examination-in-chief.

50. PW-20, Rabindra Debnath is the witness to the seizure of one small comb, a pair of socks, one plastic watch, one charger, one head phone, one electronic gadget. He has identified the seizure list [Exbt.3(i)]. PW-20 was also witness to the seizure of collection and seizure of hair sample, blood sample etc. He has identified those articles Exbt.M.O.1, M.O.2, M.O.3, M.O.4, M.O.5 and M.O.6. He has categorically stated in the cross examination that he did not know to whom those articles belonged.

51. PW-21, Gopal Bhowmik was the witness to sampling of oral swab, vaginal swab etc. and he has identified the seizure list [Exbt.11]. PW-21 is also the witness to the seizure of wearing apparels of the victim and he has identified the seizure list [Exbt.12]. In the cross examination he had reasserted that he had been the witness of that seizure.

52. PW-22, Krishna Das was the witness to the blood sample of the appellant and he had signed on the sample. He identified his signature on the sample as Exbt.13. According to him, Dr. Jayanta Chakraborty collected the blood sample from the appellant. He has identified the signature of another witness as Mahitosh Paul as Exbt.13. In the cross examination, he has stated that he was not examined by the investigating officer but he had denied all other suggestions.

53. We have scrutinized the statement of the appellant during his examination under Section 313 of the Cr.P.C. He has either

denied his knowledge of the incidence or denied his involvement in the alleged crime. Even he has specifically denied the fact that he had even used any mobile phone. He has even denied collection of blood sample from him and other biological material from him. He has also denied the DNA matching of the male genetic profile generated from Exhibit-G and allele of the amplified loci of DNA profile of Exbt.A. [blood sample of the appellant]. He has denied all those without any explanation. Even he has denied that he is the contributor of seminal stain in Exhibit-G, the vaginal swab of the unknown deceased [identified later on as the daughter of PW-2]. He has even denied that he was put to the potency test. To establish his innocence, two witnesses namely Pratima Rani Das (Sarkar) (DW-1) and Arati Sarkar (DW-2) were examined. DW-1 is the wife of the appellant. She has stated that every day her husband [the appellant] used to come back at 7 p.m. and he was never involved in any antisocial activities and the same statement has been replicated by DW-2.

From the DNA typing division, it has come to the fore that allele of the amplified loci of the DNA profile of Exhibit-A[source: blood stain gauze of Hrit Kamal Sarkar] matched with allele in DNA profile of Exhibit-G [source:vaginal swab of unknown deceased]. The specific conclusion that has been drawn is as follows :

> **"the contributor of seminal stain in the vaginal swab of unknown deceased [Exbt.G] originated from single source Hrit Kamal Sarkar [Exbt.A]."**

HIGH COURT OF TRIPURA
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54. Having scrutinized the evidence as such, we are of the view that the prosecution has failed to prove that they had recovered or seized materials from the paddy field belonged to the deceased, as in the trial those were not shown to PWs-2,3,4 and 6, who are the close relatives of the deceased, though PW-25 had claimed that those were identified by them. The prosecution has failed to prove that the appellant had made any disclosure statement leading to the recovery of those materials from the paddy field as witnessed by PWs-12, 13 and 14. For absence of evidence relating to the disclosure statement, the recovery cannot be brought within the purview of Section 27 of the Indian Evidence Act. Moreover, two days before such recovery by the appellant, he was taken to that place but he did not bring out even any of those materials.

55. We are constrained to observe that even though, the mobile set was recovered from the appellant was recovered but use of the sim card No.9774086847 has not proved by the electronic evidence. However, the statement of PW-25 that the appellant had broken the sim card has not corroborated by Subhash Debbarma [PW-8] who told PW-25 that the appellant had broken the sim. There is no direct evidence of last seen together. As such, the biological evidence surfaced through DNA test is the only evidence of the appellant's involvement in the rape and murder of the victim, inasmuch as the appellant has denied his medical examination and collection of sample

of blood from him by PW-24 whom cannot be disbelieved being a responsible medical officer of the government.

56. What Mr. Debnath, learned Addl. P.P. has stated is quite logical that unless the process is robustly challenged by cross examining the expert within the ambit of Section 51 of the Indian Evidence Act, such process cannot be allowed to be challenged in the appeal. Now the only question that remains whether on the basis of the evidence generated by the DNA test, the appellant can be convicted or not.

57. We have noted the decision of the apex court as placed before us by Mr. A. Bhowmik, learned counsel appearing for the appellant. From reading of those reports, it would be evident that the precision of the DNA test cannot be questioned, unless it is shown that the process was not pursued as per the protocol. Such question was never raised by the defence. For this purpose, a relevant passage from a scientific paper titled "**The future of Forensic DNA analysis"** by John M Butler, National Institute of Standards and Technology, Gaitherburg, MD, USA [http://dx.doi.org/10.1098/rstb.2014.0252] is reproduced :

> **"Since its introduction in the mid-1980s [1], forensic DNA testing has played an important role in the criminal justice community through aiding conviction of the guilty and exoneration of the innocent. Remains from missing persons and victims of mass disasters have been re-associated and identified through linking reference samples to recovered remains [2]. New technologies are regularly introduced and validated to expand the capabilities of laboratories working to recover DNA results with**

> **improved sensitivity and informativeness. Forensic laboratories have embraced automation for sample preparation and date interpretation in order to meet increasing through put demands. Short tandem repeat (STR) typing continues to be the primary workhorse in forensic DNA analysis although other genetic markers are used for specific applications."**

58. In this regard we would like to place our reliance on a decision of the apex court in **Mukesh and Another versus State (NCT of Delhi) and Others** reported in **(2017) 6 SCC 1** where the apex court has made an elaborate discussion on the nature of evidence generated by DNA test and its substantive or probative value in the following passages :

> **"DNA analysis**
> **453. In order to establish a clear link between the accused persons and the incident at hand, the prosecution has also adduced scientific evidence in the form of DNA analysis. For the purpose of DNA profiling, various samples were taken from the person of the prosecutrix; the complainant; the accused, their clothes/articles; the dumping spot; the iron rods; the ashes of burnt clothes; as well as from the offending bus. PW-45 Dr. B.K. Mohapatra analysed the said DNA profiles and submitted his report thereof. In his report, he concluded that the samples were authentic and capable of establishing the identities of the persons concerned beyond reasonable doubt. Prosecution relies upon the biological examination of various articles including the samples collected from the accused and the DNA profiles generated from the blood-stained clothes of the accused. The DNA profile generated from the samples collected, when compared with the DNA profile generated from the blood samples of the victim and PW-1 Awninder Pratab Pandey, were found consistent."**
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> *** *** *** *** ***
>
> **455. Before considering the above findings of DNA analysis contained in tabular form, let me first refer to what is DNA, the infallibility of identification by DNA profiling and its accuracy with certainty. DNA – De- oxy-ribonucleic acid, which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. <u>DNA is the genetic blue print for life and is virtually contained in every cell. No two persons, except identical twins have ever had</u>**

identical DNA. DNA profiling is an extremely accurate way to compare a suspect's DNA with crime scene specimens, victim's DNA on the blood-stained clothes of the accused or other articles recovered, DNA testing can make a virtually positive identification when the two samples match. A DNA finger print is identical for every part of the body, whether it is the blood, saliva, brain, kidney or foot on any part of the body. It cannot be changed; it will be identical no matter what is done to a body. Even relatively minute quantities of blood, saliva or semen at a crime scene or on clothes can yield sufficient material for analysis. The Experts opine that the identification is almost hundred per cent precise. Using this i.e. chemical structure of genetic information by generating DNA profile of the individual, identification of an individual is done like in the traditional method of identifying finger prints of offenders. Finger prints are only on the fingers and at times may be altered. Burning or cutting a finger can change the make of the finger print. But DNA cannot be changed for an individual no matter whatever happens to a body.

[Emphasis added]

457. DNA evidence is now a predominant forensic technique for identifying criminals when biological tissues are left at the scene of crime or for identifying the source of blood found on any articles or clothes etc. recovered from the accused or from witnesses. DNA testing on samples such as saliva, skin, blood, hair or semen not only helps to convict the accused but also serves to exonerate. The sophisticated technology of DNA finger printing makes it possible to obtain conclusive results. Section 53A Cr.P.C. is added by the Code of Criminal Procedure (Amendment) Act, 2005. It provides for a detailed medical examination of accused for an offence of rape or attempt to commit rape by the registered medical practitioners employed in a hospital run by the Government or by a local authority or in the absence of such a practitioner within the radius of 16 kms. from the place where the offence has been committed by any other registered medical practitioner.

458. Observing that DNA is scientifically accurate and exact science and that the trial court was not justified in rejecting DNA report, in Santosh Kumar Singh v. State through CBI (2010) 9 SCC 747, the Court held as under:-

> **"65. We now come to the circumstance with regard to the comparison of the semen stains with the blood taken from the appellant. The trial court had found against the prosecution on this**

aspect. In this connection, *we must emphasise that the court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development.*

66. Dr. Lalji Singh in his examination-in-chief deposed that he had been involved with the DNA technology ever since the year 1974 and he had returned to India from the UK in 1987 and joined CCMB, Hyderabad and had developed indigenous methods and techniques for DNA finger printing which were now being used in this country. We also see that the expertise and experience of Dr. Lalji Singh in his field has been recognised by this Court in Kamalanantha v. State of T.N. (2005) 5 SCC 194 We further notice that CW 1 Dr. G.V. Rao was a scientist of equal repute and he had in fact conducted the tests under the supervision of Dr. Lalji Singh. It was not even disputed before us during the course of arguments that these two scientists were persons of eminence and that the laboratory in question was also held in the highest esteem in India.

67. The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents that DNA of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the appellant was from a single source and that source was the appellant.

68. It is significant that not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for the DNA profiling. The trial court has referred to a large number of textbooks and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court had not been put to the expert witnesses. In Bhagwan Das v. State of Rajasthan AIR 1957 SC 589 it has been held that it would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some

text on that subject without such text being put to the expert.

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71. ***We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Kamti Devi v. Poshi Ram (2001) 5 SCC 311*****. In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on Circumstance ."**

[Emphasis added].

459. From the evidence of PW-45 and the details given in the above tabular form, it is seen that the DNA profile generated from blood-stained clothes of the accused namely, A-1 Ram Singh (dead); A-2 Mukesh; A-3 Akshay; A-4 Vinay; and A-5 Pawan Gupta @ Kalu are found consistent with the DNA profile of the prosecutrix. Also as noted above, two sets of DNA profile were generated from the black colour sweater of the accused Pawan. One set of DNA profile found to be female in origin, consistent with the DNA profile of the prosecutrix; other set found to be male in origin, consistent with the DNA profile of PW-1. Likewise, two sets of DNA profile were generated from the black colour sports jacket of accused Vinay, one of which matched the DNA profile of the prosecutrix and another one matched the DNA profile of PW-1. Likewise, two sets of DNA profile were generated from the jeans pant of accused Akshay, one of which matched the DNA profile of the prosecutrix and another one matched the DNA profile of PW-1. The result of DNA analysis and that of the DNA profile generated from blood-stained clothes of the accused found consistent with that of the victim is a strong piece of evidence incriminating the accused in the offence.

460. <u>DNA profile generated from the blood samples of accused Ram Singh matched with the DNA profile generated from the rectal swab of the victim. Blood as well as human spermatozoa was detected in the underwear of the accused Ram Singh (dead) and DNA profile generated therefrom was found to be female in origin, consistent with that of the victim. Likewise, the DNA profile generated from the breast swab of the victim was found consistent with the DNA profile of the accused Akshay</u>.

> **461. <u>As discussed earlier, identification by DNA genetic finger print is almost hundred per cent precise and accurate. The DNA profile generated from the blood-stained clothes of the accused and other articles are found consistent with the DNA profile of the victim and DNA profile of PW-1; this is a strong piece of evidence against the accused. In his evidence, PW-45 Dr. B.K. Mohapatra has stated that once DNA profile is generated and found consistent with another DNA profile, the accuracy is hundred per cent and we find no reason to doubt his evidence. As pointed out by the Courts below, the counsel for the defence did not raise any substantive ground to rebut the findings of DNA analysis and the findings through the examination of PW-45. The DNA report and the findings thereon, being scientifically accurate clearly establish the link involving the accused persons in the incident.</u>"**
>
> **[Emphasis added]**

59. In the present case also the defence did not raise any substantive ground to rebut the finding of DNA analysis. Thus, there cannot be any difficulty to hold that the seminal stain found in the vaginal swab/spermatozoa of human origin as detected and marked as Exhibit-G of the victim as referred as the unknown woman as has been matched with the allele of the amplified loci of the DNA profile of Exhibit-A [source: blood stain and gauze of the appellant], that the appellant had sexual intercourse with the victim. From the ante-mortem injuries as recorded in the postmortem examination report [Exbt.9], it is clear that the victim was subjected to brutal violence and she was raped. Thereafter, she was strangulated by a ligature, a full pant which was recovered from the dead body of the victim raping around her neck. Death has been caused for asphyxia. Bruising was present in the layers of muscle and soft tissue around the hyoid bone and thyroid cartilage on the right side. On dissection bruising was

found in the soft tissues and muscles on the neck on the lateral aspect. The postmortem doctors has categorically observed that there was evidence of recent sexual intercourse.

60. It is apparent on the face of the record that the appellant was desperately telling lie before the court, even he has denied his examination by PW-24 for ascertaining his potency to commit sexual intercourse and for collection of biological materials from him. Those have been proved by the prosecution that the appellant had given such material voluntarily without any reservation. That apart, the blood sample authentication form had been signed by the appellant on 13.05.2014 in presence of the witnesses, Krishna Das [PW-22], Mahitosh Paul whose signature has been identified by PW-22 and Dr. Joyanta Sankar Chakraborty [PW-24]. The said authentication form is affixed with a photograph of the appellant which has been duly attested by Dr. Joyanta Sankar Chakraborty [PW-24]. Thus, the adverse inference is liable to be drawn against the appellant.

Having regard to the specific opinion given by the DNA expert, Dr. Subhankar Nath [PW-23], as stated above we do not have any hesitation to hold that it is the appellant and none else who committed rape and murder of the victim [the name is withheld to protect her identity].

In view of the above observation, we affirm the finding of conviction as returned by the impugned judgment dated 05.08.2017.

Having considered the reasons given by the trial Judge, we affirm and uphold the order of sentence.

In the result, the appeal stands dismissed.

Send down the LCRs forthwith.

JUDGE **JUDGE**

HIGH COURT OF TRIPURA
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