

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.452 OF 2016

Mahesh s/o Vasant Chilwante,
Age : 31 years, Occupation : Labour,
R/o Ratnapur, Taluka Kallam
District Osmanabad.

...APPELLANT
(Orig. Accused)

-VERSUS-

The State of Maharashtra.

...RESPONDENT

...
Shri N.R. Shaikh, Advocate for the appellant (appointed).
Shri S.D. Ghayal, APP for the respondent/ State.
...

**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 25th February, 2021

JUDGMENT (Per Ravindra V. Ghuge, J.):

1. The appellant, by this appeal, seeks to challenge the judgment and order dated 12.02.2016, delivered by the learned Additional Sessions Judge-3, Osmanabad, in Sessions Case No.21/2015, vide which, the appellant was convicted for having committed an offence punishable under Section 302 r/w Section 201 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life.

2. On 01.11.2018, this Court had passed the following order in

Criminal Application No.4056/2016 and had suspended the sentence and enlarged the appellant on bail :-

- “1. *Present application has been filed by the original accused for suspension of sentence awarded to him in Sessions Case No. 21 of 2015, for the offences punishable under Section 302, 201 of Indian Penal Code by learned Additional Sessions Judge – 3, Osmanabad.*
2. *The prosecution had come with a case that, an information was received from one Kiran Mahadeo Lagdive of village Shekapur Tq. Dist. Osmanabad that, he being the Vice President of Tanta Mukti Abhiyaan received message from one Prashant Bhairunath Shingare at about 08.00 to 08.30 a.m. on 20-12-2013 that a dead body of an unknown male person is lying under Babul tree near the bandh of his field. The dead body was covered with a bedspread. Upon this information, he transmitted the said information to police. API Vitthal Chandu Kale of Rural Police Station, Osmanabad went to the said place. Spot panchanama was carried out, thereafter inquest panchanama was carried out and then the dead body was sent for post mortem. After receipt of the post mortem report, the FIR was lodged. At the time of drawing spot panchanama, API Vithal Kale had seized a butt of cigarette, blood stains over the stone, residue of stone, simple earth and the bed-sheet having blood stains as well as footwear. After the post mortem was over, the clothes on the dead body of a male person namely pant, shirt, sweater, baniyan, handkerchief as well as chit was seized by drawing panchanama. It was stated in the chit that the it is written by Ganesh Keshav Shelke Tq. Faltan Dist. Satara that, one Shivaji Mohan Vidhate, Anand Mohan Vidhate and Hanuman Nagnath Vidhate attempted to kill him. Further from the wallet a ticket from Miraj to Tasgaon dated 19-12-2013 was seized. Further investigation was taken up and basically the offence was registered against unknown accused. Thereafter, after the wallet containing the name of the accused was found, accused was arrested, his house was searched. The handwriting in the chit is stated to be of the accused and it has been identified by PW.5 the brother-in-law and PW.8 Seema ex-wife of accused. Thereafter, the sample of saliva of the accused was taken, the seized articles were sent for*

chemical analysis, the chit as well as specimen handwriting of the accused were sent for the opinion of the handwriting expert. After conclusion of the investigation, when it was transpired that, even from the DNA report the profile matched with the accused, charge-sheet was filed.

3. *Accused had pleaded not guilty, trial has been conducted. Taking into consideration the evidence on record and hearing both the sides, the learned trial Court has held the accused guilty of committing murder and thereby sentenced the accused to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for one year, for the offence punishable under Section 302 of Indian Penal Code. Further for committing offence punishable under Section 201 of Indian Penal Code, he has been sentenced to undergo rigorous imprisonment for five years and pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months. The accused has challenged the said conviction in the appeal. The appeal has been admitted.*
4. *Accused contends that, the learned trial Judge has not appreciated the evidence properly. The chit was in fact found on the person of deceased was disclosing names of other persons. It is stated that, diary disclosing the name of the appellant was separately seized. The case of the prosecution was based on circumstantial evidence. The learned trial Judge has unnecessarily relied on the opinion of the handwriting expert. In absence of corroboration the said report ought not to have been relied. Only on the basis of DNA report it cannot be said that, applicant was the assailant. The prosecution has not proved that, there was any kind of motive for the applicant to commit the offence. Therefore, he has prayed for suspending the sentence and releasing him on bail.*
5. *Heard learned advocate Mr. Naseem R. Shaikh for applicant and learned Addl. Public Prosecutor Ms. P. V. Diggikar for State. Perused the record and proceeding. Both of them have argued in support of their respective contentions.*
6. *At the outset it is required to be seen that even till the charge-sheet was filed, the identity of the deceased was not established. So also when the charge was framed at that time also it was in respect of murder of an unknown*

person. Even during the trial there was no attempt on the part of the prosecution to establish the identity of the deceased. The fact of establishment of identity is related to the motive. If the identity itself is not established, it cannot be said that, there was any kind of motive or intention to the accused to commit any crime.

7. The case of the prosecution is based on circumstantial evidence. The circumstantial evidence is in the nature of alleged diary of the accused in which the contents were in the handwriting of the accused. The second circumstance is, the DNA report in which it is reported that the sample of the saliva of the accused matched with the residue in the butt of cigarette, so also the blood on the clothes. Except these two facts, there is nothing. Important point to be noted is that, the prosecution has not clarified as to how or by which means the murder was committed. As per the medical evidence the probable cause of death is hemorrhagic shock due to head injury and multiple injuries. The external examination showed in all eight injuries. The death might be homicidal, however in order to connect the said death with the accused, evidence beyond reasonable doubt was required. Only on the two pieces of evidence, that is the presence of the diary containing the handwriting of the accused and the butt of cigarette whether would prove the offence beyond reasonable doubt is a question. This is with the background that the identity of the deceased is not established at all. Therefore, definitely case is made out to release the applicant on bail by suspending the sentence. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The substantial sentence awarded to the applicant Mahesh Vasant Chilwante in Sessions Case No. 21 of 2015, by learned Additional Sessions Judge -3, Osmanabad, on 12-02-2016, is hereby suspended till the final hearing and disposal of Criminal Appeal No. 452 of 2016.
- 3) He be released on P.R. of Rs.30,000/- (thirty thousand) with one or two sureties of Rs.15,000/- (fifteen thousand).
- 4) Send the record and proceeding to the trial Court for preparation of paper book.”

3. We have heard the learned advocate for the appellant and the learned prosecutor for the respondent/ State, extensively on 12.02.2021, 16.02.2021, 18.02.2021 and today.

4. The case of the prosecution has been recorded in the order passed by this Court dated 01.11.2018, reproduced above. We are, therefore, refraining from repeating the same.

5. The prosecution had examined the following witnesses :-

- PW-1 Dr.Rekha Haridas Tike, who conducted the postmortem.
- PW-2 Vitthal Chandu Kale, informant.
- PW-3 Kiran Mahadeo Lagdive, who made a report exhibit-15 to the Police informing about an unknown male dead body lying in a field.
- PW-4 Balaji Ram Chaughule, panch witness of the seizure of two phone diaries from the house of the appellant/ accused at Ratnapur and for obtaining the specimen handwriting of the appellant/ accused.
- PW-5 Shivaji Mohan Vidhate, brother-in-law of the appellant.
- PW-6 Parmeshwar Vitharao Mupade, muddemal carrier.
- PW-7 Pandurang Pappu Bhosale, muddemal carrier.
- PW-8 Seema Mahesh Chilwante, divorced wife of the appellant.
- PW-9 Santosh Kaduba Kanhere, Assistant State Examiner of Documents (CID), handwriting expert.

- PW-10 Subrao Bhimrao Gaware, Police Head Constable, video- grapher of the spot where the dead body was found and prepared the CD.
- PW-11 Balasaheb Shankar Gawade, second Investigating Officer from 04.11.2014.
- PW-12 Dattatraya Umakant Zingade, Police Head Constable, who seized the clothes of the appellant.
- PW-13 Vaishali Kadukar, S.D.P.O., first Investigating Officer, who was subsequently transferred.

6. The appellant examined DW-1 Mesu Pandit Vidhate, who was the husband of his sister.

7. The extensive submissions of the learned advocate for the appellant can be summarized as under:-

(a) PW-8 Seema was the wife of the appellant. She had obtained a divorce decree in HMP No.81/2013 on 12.06.2014 when the appellant was behind the bars (due to the present case).

(b) Though the handwriting on the chit found in the pant pocket of the dead body may be said to be matching with the handwriting of the appellant, the prosecution cannot establish that the appellant has murdered an unknown person.

(c) Though the saliva on the cigarette butt was subjected to a

DNA test with the blood samples of the appellant that matched, the prosecution cannot establish that the appellant has committed the murder of an unidentified person.

(d) The clothes of the appellant viz. pant and shirt were seized from his sister's house on 09.01.2014 and sent for analysis to the Forensic Science Laboratory on 17.12.2014. The blood stains found on the clothes did not disclose any blood group as such determination was inconclusive.

(e) Even if the deceased may be said to have suffered a homicidal death, the prosecution has to prove that the death was caused by the appellant and in the absence of any evidence, direct or circumstantial, the appellant cannot be held guilty.

(f) It is most improbable that, assuming that the appellant killed an unknown person, that the blood stained clothes would be preserved by the appellant in his sister's home for months.

(g) The appellant was not acquainted with the dead person, there was no motive and there was no reason at all for him to kill an unknown person only to frame his two brothers-in-law and the paternal uncle of his estranged wife.

(h) One day prior to the discovery of the dead body i.e. 19.12.2013, the appellant was at the house of DW-1 at Pachvemail, Taluka Tasgaon, District Sangli, at about 07:00 PM.

(i) The appellant had claimed to have gone to Kokatnur

(Karnataka State) for a fair and he had reached Pachvamaail to meet his mother on 19.12.2013.

(j) There can be no conviction on the basis of an insignificant chit found inside the pant pocket of the deceased or a cigarette butt lying near the body, despite the DNA indicating the saliva of the appellant on such butt.

(k) A conviction cannot be based on suspicion or inferences.

(l) Reliance is placed upon the following judgments :-

- (i) *Jitendra Suresh Gabhane vs. The State of Maharashtra, 2017 (4) Bom. C.R. (Cri) 289 : 2017 (3) AIR Bom. R. (Cri) 786.*
- (ii) *State of Maharashtra and others vs. Krushna and others, 2017 (3) Crimes 383.*
- (iii) *Baldau Sharma vs. State of Chhattisgarh, 2017 (172) AIC 603 : 2017 (2) CGLJ 274.*
- (iv) *Murarilal vs. State of M.P, AIR 1980 SC 531.*
- (v) *Shaikh Mohammed Salim Karimullah and others vs. State of Maharashtra, 1998 Cri. L.J. 3170 (Bombay).*
- (vi) *Sujit Biswas vs. State of Assam, AIR 2013 SC (cri) 1487 : 2014 (1) SCC (Cri) 677.*
- (vii) *Chennadi Jalapathi Reddy vs. Baddam Pratapa Reddy, AIR Online 2019 SC 970.*

(viii) *D.Chenna Reddy vs. State of Andhra Pradesh, 2014 (sup)*

Cri. CC 348 : 2014 (1) AICLR 842.

8. The submissions of the learned prosecutor can be summarized as under :-

(a) The appellant had a marital discord with his wife PW-8 and had developed animosity towards her two brothers, namely, Shivaji (PW-5) and Anand, who has not been examined. He also had developed animosity towards the maternal uncle of his wife, Hanumant, who has also not been examined by the prosecution.

(b) In order to implicate the above stated three persons, he has murdered an unknown person (deceased herein) and he planted a chit exhibit Q/1 in the pant pocket of the deceased. He gave a fictitious name to the unknown person as 'Ganesh Keshav Shelke', Ramwadi, Taluka Phaltan, District Satara.

(c) Despite the best efforts of the Police Department in publicizing the picture of the dead body all over the State and by contacting various Police Stations to scrutinize complaints about missing persons, no person by name Ganesh Keshav Shelke was reported to be missing and therefore, the identity of the deceased person remained a mystery.

(d) There can be no pardon to a person who may have murdered

an unidentified person, purely on the ground of the identity of the deceased person being unknown.

(e) PW-8 has specifically identified the writing on the chit as being the handwriting of the appellant.

(f) PW-8 is a natural witness and no corroboration is necessary when a wife identifies a particular handwriting as being the handwriting of her husband.

(g) The appellant, by killing the unknown person, tried to implicate three relatives of the wife and thus, got exposed since PW-8 and PW-5 Shivaji noticed that the handwriting on the chit was the handwriting of the appellant. His involvement in planting the chit was, therefore, proved.

(h) A cigarette butt was found near the body. The butt was seized and was referred to the Forensic Science Laboratory as it was expected that the saliva of the smoker would be traced on the butt and the filter. By the consent of the appellant, his blood sample was taken and the DNA result clearly indicated the appellant to be the smoker of the said cigarette.

(i) The arrest panchanama exhibit-46 dated 14.01.2014 at 21:15 hours indicates at clause 22 (Marathi portion pertaining to habits) that the appellant was a cigarette smoker, he used to chew tobacco, he used to consume liquor and also used to gamble. Therefore, the connection of

the appellant with the saliva found on the cigarette butt and the location of the butt near the dead body, is a clinching piece of evidence.

(j) The plea of alibi put forth by the appellant is completely shattered in the cross-examination of DW-1 as there was no corroborative evidence to support the version of DW-1 Mesu Pandit Vidhate, husband of the sister of the appellant.

(k) PW-9 Santosh Kanhere was the Assistant State Examiner of Documents (CID), who examined the specimen handwriting on six loose sheets (S-1 to S-6) and natural writings on three pocket diaries (Exhibit N-1 to N-10). He found similar writing habits indicating towards a common authorship of Exhibits S-1 to S-6 and N-4 to N-10 and Q-1, which is the handwriting found on the chit.

(l) PW-11 is the second I.O., who had issued the request letter to the handwriting expert and had sought the permission of the learned Magistrate to have the custody of the appellant, who was in magisterial custody, for taking the blood sample so as to be referred for the purposes of DNA testing.

(m) PW-13 is the first I.O.- SDPO, Osmanabad, who had arrested the appellant vide arrest panchanama Exhibit-46, had obtained the specimen handwriting of the appellant on 15.01.2014. She was thereafter, transferred.

(n) PW-11, the second I.O., took the investigation forward and

has established the guilt of the appellant with circumstantial evidence and scientific evidence.

(o) Reliance is placed upon the following judgments:-

- (i) *State of Gujarat vs. Jayantibhai Somabhai Khant, Criminal Appeal No.224/2012, decided on 30.04.2015, Gujarat High Court.*
- (ii) *Dharam Deo Yadav vs. State of U.P., (2014) 5 SCC 509.*
- (iii) *Kishan Chand vs. State of Himachal Pradesh, Criminal Appeal No.620/2015 decided on 16.03.2018 (Himachal Pradesh High Court).*
- (iv) *Vikas Bhaskar Bhalerao vs. The State of Maharashtra, Criminal Appeal No.885/2015 decided on 16.03.2020 (Bombay High Court).*
- (v) *Thogorani alias K. Damayanti vs. State of Orissa, 2004 Cri.L.J. 4003, Orissa High Court.*
- (vi) *Geetha d/o Kuttan vs. The State of Kerala, Cri.MC No.8850/2002 decided on 17.03.2005 (Kerala High Court).*
- (vii) *State of Karnataka vs. S.P. Prasanna, Criminal Appeal No.1551/2005 decided on 24.06.2011 (Karnataka High Court).*
- (viii) *S.P. Prasanna vs. State of Karnataka, 2018 ALL SCR (Cri)*

1312.

- (ix) *State of Bombay vs. Kathi Kalu Oghad, AIR 1961 SC 1808 (11 Judges Bench).*
- (x) *Murarilal vs. State of M.P., AIR 1980 SC 531.*
- (xi) *Santosh Kumar Singh vs. State through CBI, (2010) 9 SCC 747 (Priyadarshani Matoo case).*
- (xii) *Mukesh and another vs. State (NCT of Delhi) and others, (2017) 6 SCC 1 (Nirbhaya case).*

9. We have perused the appeal paper book, threadbare, the record and proceedings and the muddemal property.

WHETHER, HOMICIDAL DEATH?

10. There is no dispute about the homicidal death of the unknown deceased. We find that there was one suggestion given to PW-1 Dr.Tike, Autopsy Surgeon, that the death of the person is possible by falling from a tree from a distance of 15 to 20 feet. PW-1 has opined that this could be possible. Rigor mortis was present in both legs and was absent in both hands. Rigor mortis sets in from around the eyes, after about three hours of the death and gradually starts spreading to the entire body in a period of about 12 hours. It then gradually starts reducing from head downwards and disappears in between three to four days from the

date of death. It is, therefore, a speculation, in the absence of any specific statement by PW-1, that the death of the unknown person may have occurred in between 17.12.2013 and 18.12.2013.

11. PW-1 has noted the probable reason of death as being due to haemorrhagic shock owing to head injury and multiple injuries. Contusion was present below the right eye and blood was oozing from the mouth, left ear and nose. Laceration inside lower lip and two central lower teeth were noticed to have been broken. There was a bruise below the right eye and the mandible and maxillary bones were found to be fractured. Internal injury revealed a scalp injury and a fracture from behind the left ear upto the forehead of the size 12 x 0.5 cm, bone depth. He has then opined that the injuries in columns 17 and 19 would cause the death of the person and such injuries can be caused by a weapon like a stone or a hard blunt object.

12. Considering the suggestion that the deceased was likely to have fallen from a tree, we have perused the spot panchanama and the inquest panchanama along with ocular evidence. The body was lying flat on the back and was covered with a Solapuri cloth sheet which is called in local parlance as “Chaadar” or “Chaddar” in Hindi. If the deceased had fallen from a tree, he would have raised cries and would have sought help. He would have made some efforts to seek help for rescuing himself. The fact that the body was well laid on the ground with a cloth sheet covering

him, rules out an accidental death owing to a fall from a tree. The manner in which the body was noticed is indicative that someone had covered a cloth sheet on the body.

13. Taking into account the above factors, we do not find that the Trial Court has committed any error in concluding that the unknown person had suffered a homicidal death.

IDENTITY OF THE DEAD BODY

14. The record reveals that the Investigating Agency had circulated the photographs of the dead person all over the State and had tried to collect information as regards the complaints of missing persons. So also, the village Ramwadi, Taluka Phaltan was also surveyed to find out as to whether, there was any person by name Ganesh Keshav Shelke (name found on the chit). There were no leads to establish the identity of the dead body. No person came forward to identify or claim the dead body. Finally, the S.D.P.O. performed the funeral rites. As such, it is possible that somebody has played a prank of writing a fictitious name on the chit. Be that as it may, the identity of the body was not established.

ANALYSIS OF THE CIGARETTE BUTT

15. The arrest panchanama indicates that the appellant was found to be a smoker. The spot panchanama indicates that the cigarette

butt was found on a bandh (boundary between two agricultural fields) adjacent to the place where the dead body was found. Same was picked up by the police as an incriminating piece of evidence. The DNA report indicates that the DNA strain matches with the DNA of the appellant. The spot panchanama was proved by PW-2 Vitthal Kale. Vide letter dated 09.04.2014 exhibit-53, the SDPO addressed the Director, Forensic Science Laboratory, to tender a report after conducting the DNA test, as to whether, the DNA profile from the saliva of the cigarette butt matches with the DNA profile of the appellant. The said profile has matched and it is established that the said cigarette carried the saliva of the appellant. The Chemical Analyzer specifically expressed his interpretation as under :-

“DNA profile of saliva detected on cigarette butt found at scene of crime in F.S.L.M.L. Case No.DNA-562/14 and DNA profile of blood sample of Mahesh Vasant Chilwante are identical and from one and same source of male origin. DNA profile matched the obligate maternal and paternal alleles present in the source of blood.”

We have perused the STR LOCUS and the Genotype and we find that the DNA of the saliva on the cigarette butt is identical to the DNA of the appellant.

16. In ***Santosh Kumar Singh (supra)***, the Honourable Apex Court considered the aspect of circumstantial evidence and concluded in paragraphs 65 and 66 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 emphasize 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 U.K. in 1987 and joined the 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 recognized by this Court in Kamalanantha V. State of Tamil Nadu [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.*

17. It was thus, concluded that the court should not and cannot substitute it's own opinion for that of an expert, more particularly when, in science, such a DNA profiling by recent scientific methods would indicate the involvement of a person in a crime or may also establish his non-involvement.

18. In ***Mukesh and another (supra)***, the Honourable Apex Court again had an occasion to deal with the DNA test as a piece of evidence and concluded in paragraphs 210 to 218, 222 to 224, 227 and 228, 311.12, 311.13, 457 and 459 to 461 as under :-

“210. Having dealt with the aspect pertaining to insertion of rod, it is apposite to advert to the medical evidence and

post mortem report. We have, while dealing with other aspects, referred to certain aspects including DNA analysis of medical evidence but the same requires to be critically dealt with as the prosecution has placed heavy reliance upon it.

211. DNA is the abbreviation of Deoxyribo Nucleic Acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behaviour and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix structure which can be compared with a twisted rope 'ladder'.

212. The nature and characteristics of DNA had been succinctly explained by Phillips, L.J. in R.v. Doheny [(1997) 1 Cr App R 369 (CA)]. In the above case, the accused were convicted relying on results obtained by comparing DNA profiles obtained from a stain left at the scene of the crime with DNA profiles obtained from a sample of blood provided by the appellant. In the above context, with regard to DNA, the following was stated by Phillips, L.J.:

"Deoxyribonucleic acid, or DNA, consists of long ribbon-like molecules, the chromosomes, 46 of which lie tightly coiled in nearly every cell of the body. These chromosomes – 23 provided from the mother and 23 from the father at conception, form the genetic blueprint of the body. Different sections of DNA have different identifiable and discrete characteristics. When a criminal leaves a stain of blood or semen at the scene of the crime it may prove possible to extract from that crime stain sufficient sections of DNA to enable a comparison to be made with the same sections extracted from a sample of blood provided by the suspect. This process is complex and we could not hope to describe it more clearly or succinctly than did Lord Taylor, C.J. in Deen (transcript: 21.12.1993), so we shall gratefully adopt his description:

"The process of DNA profiling starts with DNA being extracted from the crime stain and also from a sample taken from the suspect. In each case the DNA is cut into

smaller lengths by specific enzymes. The fragments produced are sorted according to size by a process of electrophoresis. This involves placing the fragments in a gel and drawing them electromagnetically along a track through the gel. The fragments with smaller molecular weight travel further than the heavier ones. The pattern thus created is transferred from the gel onto a membrane. Radioactive DNA probes, taken from elsewhere, which bind with the sequences of most interest in the sample DNA are then applied. After the excess of the DNA probe is washed off, an X-ray film is placed over the membrane to record the band pattern. This produces an auto radiograph which can be photographed. When the crime stain DNA and the sample DNA from the suspect have been run in separate tracks through the gel, the resultant auto-radiographs can be compared. The two DNA profiles can then be said either to match or not.””

213. *In the United States, in an early case Frye v. United States, it was laid down that scientific evidence is admissible only if the principle on which it is based is substantially established to have general acceptance in the field to which it belonged. The US Supreme Court reversed the above formulation in Daubert v. Merrell Dow Pharmaceuticals, Inc. stating thus:*

“11. Although the Frye decision itself focused exclusively on “novel” scientific techniques, we do not read the requirements of Rule 702 to apply specially or exclusively to unconventional evidence. Of course, well- established propositions are less likely to be challenged than those that are novel, and they are more handily defended. Indeed, theories that are so firmly established as to have attained the status of scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under Federal Rule of Evidence 201.

13. This is not to say that judicial interpretation, as opposed to adjudicative fact finding, does not share basic characteristics of the scientific endeavor:

“The work of a judge is in one sense enduring and in another ephemeral... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine.” B.Cardozo, The Nature of the Judicial Process 178, 179

(1921).”

214. *The principle was summarized by Blackmun, J., as follows: (Daubert case, SCC Online US SC)*

“To summarize: “general acceptance” is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence—especially Rule 702—do assign to the trial judge the task of ensuring that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

The inquiries of the District Court and the Court of Appeals focused almost exclusively on “general acceptance,” as gauged by publication and the decisions of other courts. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.”

After the above judgment, the DNA Test has been frequently applied in the United States of America.

215. *In District Attorney’s Office for the Third Judicial District v. Osborne, Roberts, C.J. of the Supreme Court of United States, while referring to the DNA Test, stated as follows:*

“DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure-usually but not always through legislation.

...

Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid- 1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for

matching tissues when such evidence is at issue.”

216. *DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53-A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53-A relates to the examination of a person accused of rape by a medical practitioner.*

217. *Similarly, under Section 164-A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must. Section 53-A sub-section (2) as well as Section 164-A sub-section (2) are to the following effect:*

“53-A. Examination of person accused of rape by Medical Practitioner.-

(1)

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

164-A. Medical Examination of the victim of rape.-

(1)

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the

following particulars, namely:-

- (i) the name and address of the woman and of the person by whom she was brought;*
- (ii) the age of the woman;*
- (iii) the description of material taken from the person of the woman for DNA profiling;*
- (iv) marks of injury, if any, on the person of the woman;*
- (v) general mental condition of the woman; and*
- (vi) other material particulars in reasonable detail.”*

218. *This Court had the occasion to consider various aspects of DNA profiling and DNA reports. K.T. Thomas, J. in Kamti Devi v. Poshi Ram, observed:*

“10. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. ...”

“222. In Krishan Kumar Malik v. State of Haryana, in a gang rape case when the prosecution did not conduct DNA test or analysis and matching of semen of the appellant-accused with that found on the undergarments of the prosecutrix, this Court held that after the incorporation of Section 53- A in CrPC, it has become necessary for the prosecution to go in for DNA test in such type of cases. The relevant paragraph is reproduced below:

“44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f 23.06.2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in CrPC the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.”

223. *In Surendra Koli v. State of U.P., the appellant, a serial killer, was awarded death sentence which was confirmed*

by the High Court. While confirming the death sentence, this Court relied on the result of the DNA test conducted on the part of the body of the deceased girl. Para 12 is reproduced below:-

“12. The DNA test of Rimpa by CDFD, a pioneer institute in Hyderabad matched with that of blood of her parents and brother. The doctors at AIIMS have put the parts of the deceased girls which have been recovered by the doctors of AIIMS together. These bodies have been recovered in the presence of the doctors of AIIMS at the pointing out by the accused Surendra Koli. Thus, recovery is admissible under Section 27 of the Evidence Act.”

224. In Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra, the accused was awarded death sentence on charges of killing large number of innocent persons on 26th November, 2008 at Bombay. The accused with others had come from Pakistan using a boat ‘Kuber’ and several articles were recovered from ‘Kuber’. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA test and the DNA test matched with several accused. The Court observed:

“333. It is seen above that among the articles recovered from Kuber were a number of blankets, shawls and many other items of clothing. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA profiling and, excepting Imran Babar (deceased Accused 2), Abdul Rahman Bada (deceased Accused 5), Fahadullah (deceased Accused 7) and Shoaib (deceased Accused 9), the rest of six accused were connected with various articles found and recovered from the Kuber. The appellant’s DNA matched the DNA profile from a sweat stain detected on one of the jackets. A chart showing the matching of the DNA of the different accused with DNA profiles from stains on different articles found and recovered from the Kuber is annexed at the end of the judgment as Schedule III.”

“227. In Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, the appellant, father of the child born to his wife, questioned the paternity of the child on the ground that she did not stay with him for the last two years. The Court directed for DNA test. The DNA result opined that the

appellant was not the biological father of the child. The Court also had the occasion to consider Section 112 of the Evidence Act which raises a presumption that birth during marriage is conclusive proof of legitimacy. The Court relied on the DNA test holding the DNA test to be scientifically accurate. The pertinent observations are extracted below:

“19. The husband’s plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardised as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. “Truth must triumph” is the hallmark of justice.

20. As regards the authority of this Court in Kamti Devi, this Court on appreciation of evidence came to the conclusion that the husband had no opportunity whatsoever to have liaison with the wife. There was no DNA test held in the case. In the said background i.e. non-access of the husband to the wife, this Court held that the result of DNA test “is not enough to escape from the conclusiveness of Section 112 of the Act.” The judgment has to be understood in the factual scenario of the said case. The said judgment has not held that DNA test is to be ignored. In fact, this Court has taken note of the fact that DNA test is scientifically accurate. We hasten to add that in none of the cases referred to above, this Court confronted with a situation in which a DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child under Section 112 of the Evidence Act. In view of what we have observed above, these judgments in no way advance the case of the respondents.”

228. From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non- acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test

report is to be accepted.”

“311.12. The DNA profiling, which has been done after taking due care for quality, proves to the hilt the presence of the accused persons in the bus and their involvement in the crime. The submission that certain samples were later on taken from the accused and planted on the deceased to prove the DNA aspect is noted only to be rejected because it has no legs to stand upon.

311.13. The argument that the transfusion of blood has the potentiality to give rise to two categories of DNA or two DNAs is farthest from truth and there is no evidence on that score. On the contrary, the evidence in exclusivity points to the matching of the DNA of the deceased with that of the accused on many aspects. The evidence brought on record with regard to finger prints is absolutely impeccable and the trial court and the High Court have correctly placed reliance on the same and we, in our analysis, have found that there is no reason to disbelieve the same.”

“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 53-A 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.”

“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. 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.

461. 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.”

19. In ***Mukesh and another (supra)***, the scientific evidence was put to test and it was concluded that the DNA analysis cogently linked each accused with the victims, one of whom was Nirbhaya (a fictitious name given to the victim) who had suffered a brutal, barbaric gang rape, unnatural sex and a barbaric assault leading to the death of Nirbhaya.

20. The DNA, which is a complex molecule and has a double helix structure which can be compared with a twisted rope ‘ladder’, was held by the Honourable Apex Court, in Nirbhaya’s case, to be a specific test which would determine human character, behaviour and body characteristics. It would be apposite to refer to the importance of DNA technology as a part of forensic science and scientific discipline as observed by the Honourable Apex Court in paragraphs 210 to 228, which are reproduced above.

21. In the instant case, the consent of the appellant for collecting blood samples was taken and as noted above, the same was forwarded to the Forensic Science Laboratory, which returned with a specific conclusion/ result indicating precise matching of the DNA genotype of the appellant and the saliva on the cigarette butt. We, therefore, have no hesitation in accepting that this report of the Chemical Analyzer

establishes that the cigarette butt found on the bandh near the dead body was the remainder of the cigarette smoked by the appellant.

HANDWRITING ON THE CHIT

22. PW-8 got married to the appellant around 2008 and the marriage lasted for about five years. She claimed to have identified the handwriting on the chit as being the handwriting of her husband. There is no evidence adduced by her touching the aspect of the source of her knowledge or identification of the handwriting on the chit, except that she was his wife.

23. PW-5, brother of PW-8 and whose name appears in the chit, claimed to have identified the handwriting of the appellant on the chit. He has not led evidence to indicate as to what was the occasion for him to be conversant with the handwriting of the appellant, which could have enabled him to recognize the handwriting on the chit with precise. He is alleged to be illiterate.

24. Nevertheless, PW-9 who was the Assistant State Examiner of Documents with the C.I.D., submitted his opinion that the handwriting on the chit Q-1 showed similarities with the handwriting on the specimen samples N-4 to N-10 thereby, indicating common authorship. He has also arrived at the same conclusion with regard to Exhibits S-1 to S-6. He has, therefore, submitted his expert opinion that the type of writing on the chit

Q-1 is similar to the natural writing in three pocket diaries of the appellant and the specimen handwriting found on exhibits N-4 to N-10. In the cross-examination, PW-9 has conceded that he cannot tell the age of the writing on each of the documents at issue, referred to him. He specifically mentions that the handwriting on three documents exhibits N-1 to N-3 seized from the house of the sister of the appellant, does not match, shows dissimilarities and indicates different authors.

MOTIVE BEHIND KILLING AN UNKNOWN PERSON

25. The learned prosecutor on the basis of the record has strenuously canvassed that the appellant was extremely disturbed due to the marital discord and desertion by his wife. He had started blaming her two brothers and her paternal uncle for his miseries. He had every desire to cause harm to them and therefore, he has killed an unknown person, prepared a fictitious chit and had given a fictitious name to the body. The intention to insert the said chit in the pant pocket of the deceased was to implicate his two brothers-in-law and the uncle of his wife. By doing so, he desired to implicate them so as to fetch an order of conviction.

26. We are of the view that if the appellant had developed great amount of animosity and antipathy towards his wife, her uncle and her two brothers, he could have implicated his wife in the same crime. It also appears to us that this theory of the prosecution could be said to be highly

imaginative. We are unable to be convinced that the appellant had a strong, unbearable and uncontrollable desire to cause miseries to the wife and the above relatives and therefore, he killed a harmless, innocent and an unknown person so as to implicate them with the hope that they would be prosecuted in the court of law and would be convicted. If his such desire was of such a high intensity, he would have caused harm directly to the wife or to any of these three relatives, instead of killing an unknown person, to implicate them.

27. In *State of Bombay v. Kathi Kalu Oghad (supra)*, the Honourable Apex Court (11 judges Bench) has concluded that if an accused person furnishes evidence in the form of giving a specimen handwriting or impressions of his fingers or palms or his foot, it cannot be said that such way of identification could be included in the expression “to be a witness”. We, therefore, do not find fault in the investigating authorities collecting specimen handwriting and his blood samples as a part of their investigation keeping in view the conclusions of the Honourable Apex Court in *Murarilal vs. State of M.P. (supra)* in paragraphs 11 and 12, which read as under :-

“11. We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for

the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

12. *The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that *Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of Madhya Pradesh* were cases where the Court itself compared the writings."*

28. Considering the law, we are of the view that such report of a handwriting expert could be considered in the light of corroborative and attending circumstances and at times, we could also compare the

handwriting appearing in the documents before us.

HAS THE APPELLANT MURDERED AN UNKNOWN PERSON?

29. Though the handwriting expert PW-9 has based his testimony on specific reports and the DNA profiling establishing the saliva of the appellant being found on the cigarette butt, the issue before us is as to whether, we could base an order of conviction in the peculiar facts and circumstances of this case, presuming that the accused may have killed the deceased.

30. There is no dispute that this case rests purely on circumstantial evidence. There is no eye witness to the homicidal death of the unknown person. The Police Authorities have failed in establishing the identity of a human being who had lived on this earth for about 25 to 30 years as mentioned in the postmortem report. It is a mystery as to how did the said body or person reach the place where he was killed or may have been killed and carried to the place where the body was found. The Police claimed to have found blood stains on the clothes of the appellant, which were seized from his sister's home from village Pachavamail on 09.01.2014 and which were sent for examination to the Forensic Science Laboratory on 17.12.2014. The blood stains on the clothes were of a human. However, the blood grouping was inconclusive.

31. No doubt, as is held in paragraph 43 of ***Santosh Kumar Singh***

(*supra*), the appellant could have explained as to how his cigarette butt or the chit landed near the dead body and inside the pant pocket, respectively. The case of the appellant is that he has been falsely implicated and the cigarette butt may have been planted. He has denied the handwriting in the chit.

32. The question before us is as to whether, the prosecution has been able to fully convince us, in the light of the law laid down in *Chandran @ Surendran and another vs. State of Kerala, 1991 Supp (1) SCC 39*, that we can safely draw a conclusion that the appellant and the appellant alone and no other, has committed the murder. No doubt, the prosecution has brought on record such evidence which establishes the link of the appellant to the extent of his handwriting in the chit and his saliva on the cigarette butt found near the body. As such, a strong suspicion is created by such evidence which is held to be of probative value, that the appellant was near the unknown person and planted the chit to implicate the relatives of his wife. Being a smoker and being under great stress, may be after having murdered an unknown person, he may have smoked a cigarette and accidentally dropped the butt near the body. This is a probable story on the basis of strong suspicion. However, the Honourable Apex Court has recently held on 12.02.2021 in the case of *The State of Odisha vs. Banabihari Mohapatra and another, Special Leave Petition (Crl) No.1156/2021*, that suspicion, however strong it may be,

cannot be a substitute for substantive evidence. Suspicion can never take place of proof and the court cannot base its order of conviction on the basis of suspicion.

33. In **Chandran @ Surendran (supra)**, the Honourable Supreme Court has held in paragraphs 12 and 13 as under:-

“12. Admittedly, there is no direct evidence connecting the appellants with the offence. No identification parade seems to have been conducted although PW 33 has deposed that he requested for an identification parade. Further, there is no evidence about the movement of these appellants near the scene either before or after the occurrence. Therefore, the inference of guilt of the appellants is to be drawn from circumstantial evidence only. It is needless to emphasise that those circumstances should be of definite tendency pointing towards the guilt of the appellants and in their totality must unerringly lead to the conclusion that the offence was committed by the appellants and none else. The circumstantial evidence adduced by the prosecution in the instant case is two fold:

(1) The recovery of MOs 1 to 3 said to have been made in pursuance of the statement of the first accused to the police.

(2) The evidence of PW 30, the Fingerprint Expert to the effect that the finger impressions found on the two glass pieces seized from the scene of the occurrence were found on comparison and examination as those of appellants 1 and 2.

13. As the appellants are awarded the extreme penalty of law only on the above two pieces of evidence, we have to scrutinise these two circumstantial pieces of evidence in a very careful, cautious and meticulous way and see whether this evidence can be accepted and acted upon to mulct these appellants with this dastardly crime. The fact that these two murders which are cruel and revolting had been perpetrated in a very shocking nature should not be allowed in any way to influence the mind of the court while examining the alleged involvement of the appellants.

It is worthwhile to recall an observation of this Court in Datar Singh v. State of Punjab, [(1975) 4 SCC 272] articulating that (SCC p. 275, para 3) “Courts of justice cannot be swayed by sentiment or prejudice against a person accused of the very reprehensible crime”

34. The appellant has examined DW-1 Mesu Pandit Vidhate, who is the brother of the sister of the appellant. He has made a bald statement in his testimony at Exhibit-71 that the appellant had gone to Kokatnur (Karnataka State) for a fair on 19.12.2013 at about 07:00 PM. He came to meet his mother in the village of DW-1 viz. Pachavamail and thereafter, all of them went to Kokatnur. It is settled law that the plea of alibi has to be supported with very strong evidence, of a high probative value, which can be compared with the probative value of the prosecution evidence to prove a crime beyond reasonable doubt. Besides a mere statement by DW-1, there is no material to corroborate the journey of the appellant from Osmanabad to Phaltan and from Phaltan to Kokatnur. Humans may lie, but documents would not lie. Besides a solitary statement by DW-1, there is no corroboration to support the said oral statement. Moreover, the death of the unknown person appears to have occurred either on 17.12.2013 or 18.12.2013.

35. PW-8, divorced wife of the appellant, has stated that her milkman had told her that he had seen the appellant loitering some time in the area where the dead body was found. This is a statement made on

hearsay and the milkman was never examined by the prosecution. So also, this statement is an omission since no such statement was made by PW-8 when her statement was recorded under Section 161 of the Cr.P.C..

36. It is well settled that when a court develops a suspicion about the offence having been committed by the accused and when it finds a doubtful case of the prosecution, of not being able to prove beyond any doubt that the appellant alone and nobody else has committed the crime, the benefit of doubt will have to be given to the accused. We are dealing with a human being and the case involves his role in the crime. His personal liberty and freedom depends upon whether, the crime can be said to have been committed by him. As is often said in criminal jurisprudence that nine guilty persons may be acquitted under the benefit of doubt, but not a single innocent person could be convicted merely on the basis of suspicion.

37. We are circumspect as to whether, we could base a conclusion of conviction on the saliva of the appellant having been found on the cigarette butt and his handwriting having been found in a chit retrieved from the pant pocket of the deceased. To the extent of the chit and cigarette butt, the evidence may be unshakable. However, the possibility of somebody else having killed the deceased and to the misfortune of the appellant, he having developed a desire to take the opportunity of implicating his wife's relatives in such a death, cannot be ruled out. We do

find that the prosecution was very close to solving the murder mystery and we also find that scientific evidence based on technological advancement might prove only the presence of the appellant near the dead body. What is intriguing is who has killed the unknown person and whether, the case of the prosecution that the appellant killed the innocent unknown person so as to implicate his wife's relatives and make them suffer the rigours of litigation and probable conviction, could be accepted. We find such story of 'indirect revenge' to be quite imaginative, but unconvincing.

38. The learned Trial Court has failed to consider the crystallized law applicable to such cases and has drawn a conclusion that as the handwriting of the appellant matches with the chit found in the pant pocket of the dead body and as the cigarette butt with his saliva was found near the body, the appellant could have been the person who murdered the unknown person, which is an unsustainable conclusion.

39. In view of the above, as the prosecution has been unable to conclusively prove the murder of the unknown person and convince us to draw a conclusion that the appellant, the appellant alone and nobody else has committed the murder, that we grant the benefit of doubt to the appellant.

40. Consequentially, this Criminal Appeal is allowed. The impugned judgment and order dated 12.02.2016 is quashed and set aside

and the appellant is acquitted of having committed an offence punishable under Section 302 r/w Section 201 of the Indian Penal Code. He shall, therefore, be set at liberty and shall be released from jail. The record and proceedings be returned to the Trial Court and the mudemal shall be destroyed after the appeal period is over.

41. The learned prosecutor submits that the State would prefer an appeal for challenging this judgment before the Honourable Apex Court. In view of the said statement, while releasing the appellant/accused from jail, he shall be subjected to the compliance of Section 437-A of the Code of Criminal Procedure, 1973 by furnishing a P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) and a surety of the like amount keeping in view the statement of the learned advocate that the appellant is in abject poverty and though he was granted bail by this Court, he could not furnish the sureties.

42. Since the appellant was represented through the High Court Legal Services Sub-Committee, Aurangabad, we quantify the fees of the learned advocate for the appellant at Rs.20,000/- (Rupees Twenty Thousand).