

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL CONFIRMATION CASE NO. 6 of 2022

**With
R/CRIMINAL APPEAL NO. 1139 of 2022
With
CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2022
In R/CRIMINAL APPEAL NO. 1139 of 2022
With
R/CRIMINAL APPEAL NO. 1813 of 2022**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

Sd/-

**and
HONOURABLE MR. JUSTICE R. T. VACHHANI**

Sd/-

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Approved for Reporting	Yes	No
	✓	
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STATE OF GUJARAT

Versus

GOPI @ BHALABHAI GIRISHBHAI DEVIPUJAK & ORS.

Appearance:

MR J K SHAH, APP for the Appellant(s) No. 1
MR RAMNANDAN SINGH(1126) for the Respondent(s) No. 2,3
MR BHAVIK R SAMANI for the Appellant in CRA No.1813 of 2022
RULE SERVED for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 13/01/2026

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Since the facts of the case and issue involved in the captioned appeals, are identical and arise out of the same judgment, the appeals are taken up together and are being disposed of by this

common judgment.

2. The accused namely A-1 Gopi @ Bhalabhai Devipujak, A2 – Jayantibhai Vadi, A-3 Lalabhai Vadi were tried and prosecuted for the offence of gang rape and murder of married woman 'X'. The trial court vide its judgment and order dated 29.04.2022, passed in Sessions Case No.12 of 2021 (Old Case No.43 of 2019) convicted and awarded capital punishment for the offences punishable under Sections 302, 201, 366, 376(d) of the Indian Penal Code. The break-up of the sentence and fine amount is as follows:

Conviction under Section	Punishment	Fine	In default of fine
302 r/w 114 of IPC	Death Sentence	Rs.10,000/-	SI for 6 months
201 r/w 114 of IPC	RI for 3 years	Rs.5,000/-	SI for 3 months
366 r/w 114 of IPC	RI for 5 years	Rs.5,000/-	SI for 3 months
376(D) of IPC	Life Imprisonment	Rs.10,000/-	SI for 6 months

3. The death reference has come up before this Court for confirmation of a death sentence.
4. The appellants-accused herein also questioned the legality and correctness of the judgment of conviction and order of death sentence by preferring captioned appeals.



The Criminal Appeal No.1139 of 2022 is being filed by original accused no.A2 and A3 (Jayantibhai Vadi and Lalabhai Vadi).

The Criminal Appeal No.1813 of 2022 is being filed by original accused no.A1 – Gopi @ Bhalabhai Devipujak.

5. Factual background:

- 5.1 The accused were charged and convicted for the offence of gang rape and murder of married woman and after the murder, a dead body was dragged and thrown into another farm of village: Nirmali. The deceased lady sustained internal and external bodily injuries and she was strangled to death by accused A2 – Jayanti Vadi.
- 5.2 That, on 28.10.2018, at about 6:00 p.m., the accused Jayantibhai Vadi (A2) and Lalabhai Vadi (A3) kidnapped the deceased lady, resident of Village: Moti Jer, Kapadvanj, Kheda and taken to farm of Ambalal Patel situated at Nirmali Village. The accused A1 – Gopi, resident of Village: Moti Jer was happened to be nephew of deceased 'X'. In other words, the deceased was aunt of the A1.
- 5.3 The accused A1 at the time of incident of kidnapping, was



standing at the crossroad of Village: Moti Jer and after seeing the accused and deceased who were on the bike, tried to stop them, but, they did not stop there.

5.4 The accused A2 and A3 taken the deceased 'X' at the farm of Ambalal Patel, situated on Nirmali Road, where she was raped and while resisting the act, she was beaten up, which had caused serious injuries on her body. After the rape, she became unconscious, lying in a naked position in the farm.

5.5 The accused A3 Lalabhai came on the road from the field and was standing near the bike allegedly used in the crime. The accused A1 Gopi was in search of his aunt and after seeing the deceased in the company of the accused, he came at the shop of witness Ganpatsinh Zala (PW.14) who was running an egg shop on the roadside. The witness refused to give his bike. The accused A1, took the lift in the tractor of witness Narendra Rathod – PW-16 and he came down on the Nirmali Road near the office of Umiyanagar Milk Cooperative Society, where he saw the bike of accused no.2 Jayantibhai Vadi and the accused Lalabhai, who was standing near the bike.

5.6 The accused A1 Gopi, asked the accused Lalabhai A3 for the whereabouts of his aunt deceased 'X'. The accused Lalabhai in the response said that, please keep quiet, your

aunty is coming. In the meantime, the accused no.2 Jayantibhai had come on the road, where the accused A1 was standing in the company of A3. The accused A2 took the accused no.1 Gopi into the field, where the deceased 'X' was lying on the field. After seeing the deceased by the accused Gopi, the accused Jayantibhai told him that they already committed rape upon the deceased, and now it is your turn to commit a rape upon the deceased and further threatened that if he will not commit rape, they will kill him. In such circumstances, the accused Gopi had also committed rape upon the deceased 'X'.

5.7 It is further case of prosecution that, the accused A2 Jayantibhai asked the A1 and A3 caught hold the hands and legs of the deceased and thereafter, the deceased was strangulated to death by (Jayantibhai -A2). After the death, her dead body was dragged by using the "sari" which the deceased had worn and dead body was thrown into nearby farm of Hasmukh Joitaram and thereafter, the accused ran away on the bike which allegedly used in the crime.

6. The Kapadvanj Rural Police on the next day i.e. 29.10.2018, was informed about the dead body of the deceased 'X' found in the farm of Hasmukhbhai Joitaram. The Kapadvanj Police called the Officials of FSL and in their presence, drew the panchnama of scene of occurrence and collected necessary samples like Miraj



tobacco pouch, the currency notes of rupees ten and twenty, one empty bottled of liquor “Bagpiper” and also seized and collected the clothes of the deceased like blouse, petticoat and other things. The dead body was sent form post-mortem to the concerned Government Hospital. The cause of death was due to asphyxia on account of manual strangulation (throttling). The P.M. Doctor (PW.2) found injuries on the body of the deceased and in the opinion of the doctor, the possibility of rape cannot be ruled out. The P.M. Doctor collected the vaginal swab, cervical, anal and oral swabs along with the blood samples for the purpose of DNA profiling and chemical analysis.

The brother of the deceased lodged a complaint against unknown persons for committing the offence of rape and murder of his sister. The I.O. during the course of investigation, recorded the statements of the witnesses. He recorded the statement of Ganpatsinh Zala (PW.14), owner of Egg Shop and his helper Vijay Zala (PW.13) and during their interrogation, the I.O. learnt that the accused A1 – Gopi on the next day of the incident, went to the house of Vijay Zala (PW.13) and before him, the accused confessed that, he has killed his aunt. The I.O. arrested the accused Gopi on 01.11.2018 and based on the input, the accused no.2 and 3 were also being arrested on 01.11.2018. The I.O. sent the accused to the concerned hospital for medical examination and during their examination, the blood samples, the samples of their semen, nails, hair were being collected by the concerned doctor for DNA Profiling. The I.O. during the course of

investigation, the accused Gopi voluntarily show the place of occurrence and during reconstruction panchnama of the crime scene, he narrated the entire sequence of the offence.

In the aforesaid facts and circumstances, after obtaining the report from the FSL, the IO filed the chargesheet against the accused before the jurisdictional Magistrate.

As the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions as Kapadwanj, Kheda. The Sessions Court framed the charges against the appellants – accused, they did not admit the charge and claimed to be tried.

7. The prosecution, in order to prove the charge, adduce the following oral and documentary evidence in support of its case:

Oral evidence

PW 1–Exh.9	Arjunbhai Nanjibhai Rathva, Scientific officer
PW 2–Exh.15	Dr. Manubhai Halubhai Gadhvi, Medical officer
PW 3–Exh.25	Kiran Naginbhai Vaghri, Complainant
PW 4– Exh.27	Chinubhai Pratapbhai Rathod, Panch witness
PW 5– Exh.31	Hasmukhbhai Hargovindbhai Patel, Panch witness
PW 6– Exh.39	Jagdishbhai Halsukhbhai Vaghri, Panch witness
PW 7– Exh.42	Firozali Kamarali Saiyyed, Panch witness
PW 8– Exh.43	Sirajkhan Habibkhan Pathan, Panch witness
PW 9– Exh.52	Ilayas Allarkha Shiekh, Panch witness
PW 10– Exh.53	Mehboobbeg Sultanbeg Mirza, Panch witness
PW 11 –Exh.55	Mominali Akbarali Saiyyed, Panch witness
PW 12 –Exh.56	Bhawansinh Prabhatsinh Parmar, Panch witness
PW 13 –Exh.58	Vijaybhai Praveenbhai Zala
PW 14 –Exh.60	Ganpatsinh Chattrasinh Zala

PW 15 –Exh.61	Mohanbhai Somabhai Rathod
PW 16 –Exh.64	Narendrakumar Somabhai Rathod
PW 17 –Exh.65	Kulabhai Zala
PW 18 –Exh.67	Manubhai Heerabhai Parmar
PW 19 –Exh.76	Mafatbhai Mohanbhai Parmar
PW 20 –Exh.78	Ushaben Laleshbhai Choudhari
PW 21 –Exh.79	Bhuriben Naginbhai Devipujak
PW 22 –Exh.80	Ashwinbhai Ambalal Barot, Panch witness
PW 23 –Exh.85	Sureshkumar Arjanbhai Vaghela, Scientific officer
PW 24 –Exh.88	Mrudul Upendrabhai Bhatt
PW 25 –Exh.94	Savjibhai Merubhai Makwana
PW 26 –Exh.96	Rakeshkumar Ambalal Patel

Documentary evidence

Exh.17	PM Note
Exh.18	Cause of Death Certificate
Exh.26	Complaint
Exh.28	Inquest Panchnama
Exh.35	Panchnama of place of offence
Exh.41	Panchnama of clothes recovered from body of deceased
Exh.50	Arrest Panchnama
Exh.54	Panchnama of Motorcycle used in the offence
Exh.57	Panchnama of showing of place of offence to accused
Exh.69	Yadi of map
Exh.70	Yadi of map
Exh.71	Yadi of map
Exh.72	Map of place of offence
Exh.81	Panchnama of video cassette made showing the place of offence to accused
Exh.86	Directorate Forensic Science report
Exh.89	Letter to Vodafone
Exh.90	Mobile phone detail
Exh.91	Idea Certificate
Exh.95	Call form
Exh.97	Death form
Exh.98	FSL Mobile report
Exh.99	FSL receipt
Exh.100	FSL Letter
Exh.101	Forwarding notes
Exh.102	FSL report

Exh.103	Letter regarding articles to FSL
Exh.104	Forwarding notes
Exh.105	FSL Receipt
Exh.106	FSL Letter
Exh.107	FSL report
Exh.108	FSL receipt
Exh.109	Forwarding notes
Exh.110	FSL Letter
Exh.111	Biological report
Exh.112	Serological report
Exh.113	FSL Letter
Exh.114	Forwarding notes
Exh.115	Letter to FSL regarding articles
Exh.116	Forwarding notes
Exh.117	DNA division form of accused Jayantibhai
Exh.118	DNA division form of accused Lalabhai
Exh.119	DNA division form of accused Gopi
Exh.120	DNA division form of Mukeshbhai

8. After closure of the prosecution evidence, statement of the accused under Section 313 of the Cr.P.C., were recorded, to which, they stated that they have been falsely implicated in the offence and they are innocent and have not committed any offence.
9. Though opportunity was extended, no oral evidence being adduced by the appellants – accused.

Trial Court findings :

10. After hearing the parties and upon appreciation of material evidence, the accused held guilty for the offence of rape and murder and awarded death sentence and while recording the

sentence, the trial Court observed that, the crime committed by the accused is heinous crime and the manner in which the deceased was sexually abused and killed, the case would fall in the category of rarest of rate case. The trial Court relied upon the following circumstances as proved:

- (i) On 28.10.2018, the deceased was kidnapped by the accused A2 and A3 and was taken to private farm situated at Nirmali Road at Kheda and she was subjected to sexual assault by the accused in the farm;
- (ii) On 28.10.2018, the accused A1 Gopi Devipujak, contacted the accused Nos. 2 and 3 and after the meeting, he committed rape upon the deceased and on the next date i.e. on 29.10.2018, he confessed his guilt before the witness Vijay Pravin Zala – PW-13 and said extra judicial confession was being found voluntarily and true as testimony of the witness in this regard does inspire confidence and corroborated by his statement recorded by the Executive Magistrate under Section 164 of the Cr.P.C.
- (iii) On 28.10.2018, after committing rape upon the deceased, the accused A1 and A3, caught hold the deceased and A2 Jayantibhai strangled the deceased and killed her;
- (iv) On 28.10.2018, the dead body of the deceased for the purpose of disappearance of the evidence, dragged and

thrown into nearby the farm.

11. Evidence adduced by the prosecution:

- (1) Dr. Manubhai Gadhvi (PW-2) : This doctor being a Medical Officer, Kapadwanj Referral Hospital, had conducted postmortem on 29.10.2018 on the body of the deceased. The doctor in his chief examination has stated that the face of the deceased was congested and he noticed the mud over her face and there was an injury on her right eye and he also noticed the crush injury on both the hip and there was contuse wound on the left side of the lip of the deceased and so far as injuries over the internal part of the body is concerned, the abrasions were found on the left labia majora and there was a blood found in the anal. According to opinion of the doctor, he noticed the following :

“The body was that of a woman of about 35 years. The body was wearing a blue, green and yellow printed saree which was tied around the neck and face. The saree was soiled with mud. The body was identified. Rigor mortis was found on every part of the body. P.M. Levitt was fixed on the dependent parts of the body and except for the pressure points.

The face of the body was congested and smeared with mud. The eyes of the body were present with a petuncle hemorrhage on the right eye lid and were half open. The left eye was swollen and blackened and closed. The tongue was inside and there was a horizontal puncture wound on the lower part of the hip. Looking at the condition of the mouth, there was a puncture wound of 1 cm in size on the left side of the lower lip with a blood clot.

There was a 0.5 x 0.3 cm. skin-peeling wound on the left labia majora on the external genitalia. It was dark red. There were dirt and blood stains on the inside of her vagina and perineum and both thighs. Her anus was dilated and there was bleeding around it. Both upper and

lower limbs were straight.

The following injuries were found on external examination of the body.

*(i) There was a 2.5 x 0.3 cm * horizontal puncture wound * on the outer side of his left supra orbital. The margin of this wound was abraded and the blood was congealed. The injury was of dark red color. There was a subconjunctival hemorrhage above the left eye.*

*(ii) There was a 1-inch bruise in the middle of his lower lip, 2 cm below it. * 0.5 cm of blood clot*

*(iii) There were 11 skin abrasions on the right side of his neck, front and outside. The size ranged from 0.1 to 0.5 cm. to 0.5 * 1 cm. and were crescent-shaped. The space between each abrasion was 1 to 1.5 cm. The soft tissue under the incision was filled with blood. The skin abrasions and their surrounding areas were more visible. The color of these abrasions was dark red.*

*(iv) There was a linear skin-peeling wound measuring 9 * 0.3 cm in size in the middle 1/3 part of the neck, 7 cm below the master process of his neck. The direction of which was posterior and incised. The color of which was dark red.*

*(v) There was a 1.5 cm. skin lesion on the left side of his thyroid chrominance, extending outwards. The color was dark red. * 1 cm. Size of skin lesion*

*(vi) There was a 1 * 0.1 cm skin-peeling wound 1 cm above injury no. 5. It was dark red in color.*

(vii) There was a 0.5 cm deep, dark red, skin-peeling wound on the left side of his chest from the left sternal border and above the second.

*(viii) Skin peeling measuring 0.2 to 0.2 * 0.1 cm on the 1 cm medial side of injury no. 7*

(ix) There was a 0.1 to 0.1 cm skin-peeling wound on the lower aspect of his right chest, which was dark red in color.

(x) On the left side of his neck, there were multiple linear, 6 x 3 cm. sized, skin-peeling wounds on the outside. They were dark red in color.



(xi) *There were 8 horizontal skin-peeling wounds on the front and outer side of his left hip. Which were of dark red color.*

(xii) *On the front and inner side of his left thigh, 4 cm below the groin fold, there was a 1 x 0.2 cm skin-peeling wound, which was dark red in color.*

(xiii) *Injury No. 12 had a 2.5 cm. outer skin wound measuring 0.5*0.2 cm. which was dark red in color.*

(xiv) *There was a 3 x 2 cm skin-peeling wound on the upper part of the lateral mesentery of the right leg.*

(xv) *There were many skin abrasions on the back of the chest, more than 25 in number and the direction of which was vertical. Some of which were antemortem in nature and some of which were postmortem in nature. The size of which was 1 * 0.1 cm. to 7 * 0.2 cm.*

The above injuries were antemortem and fresh injuries before death.

Looking at the head during internal examination

(i) *The right temporal parietal lobe was filled with blood in an area of 6 * 5 cm. It was of dark red color.*

(ii) *There was a 7 * 4 cm area of blood on his left frontal part. Which was of dark red color. This injury was adjacent to injury no. 1 of column no. 17.*

(iii) *There was a 8-filled lesion on the left parietal and occipital part of the head. It was of dark red color. Blood in an area of 6 cm.*

No palpable or visible fracture was observed in the skull. The brain and meninges were congested in the interior of the skull and hemorrhagic spots were observed in the brain substance and meninges.

On examination of the chest, the lungs were congested, the larynx, esophagus, and trachea were congested. The soft tissues were filled with blood and hemorrhagic spots were visible on the inner layer of the trachea. Both lungs were congested and hemorrhagic spots were visible. The pericardium was congested. Fetal hemorrhage was visible inside the heart.

On internal examination of the abdomen, the inner wall and peritoneum were congested. The soft tissue around the esophagus was filled with blood and the esophagus was full. On looking inside the stomach, a brown paste-like material of 150 ml

was present and no specific odor was emanating from it. There was gas and mucus in the small intestine. There was fecal matter and gas in the large intestine. The organs like liver, spleen, kidneys etc. were congested. The urinary bladder was empty. The internal genital organs were congested.

The following samples were collected from the body of the deceased, sealed and sent to FSL for chemical analysis.

- (a) Bottle No. 1 contains the stomach and part of the intestine with its contents.*
- (b) Bottle No. 2 contains pieces of lungs, liver, spleen, and both kidneys.*
- (c) A sample of the preservative that was put in bottles no. 1 and 2 in bottle no. 3.*
- (d) Plaque blood in bottle no. 4.*

The injuries on the neck of the deceased were sufficient to cause death in the ordinary course of nature. The injuries on and around the private parts of the deceased indicate that the deceased was raped by more than one person before death."

In the opinion of the doctor, the cause of death was due the asphyxia on account of manual strangulation (throttling). The witness has further opined that, the injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause death and considering the nature of injuries, the possibility of commission of gang rape cannot be ruled out.

During the PM, the doctor took the blood samples of the deceased and vaginal, deep vaginal, cervical, anal, and oral swabs for DNA profiling and samples on the same day, handover to the concerned police officials.

The witness Dr. PW-2, when he was on duty, he had examined medically the appellants accused namely Gopi @

Bhalabhai, Jayantibhai Vadi and Lalabhai Vadi, after their arrest when they were brought before him on 02.11.2018 with police yadi. The Doctor in his chief-examination, while examining the A1-Gopi, has stated that, before examination, the accused gave a history of the incident which he had noted down in the case papers and as per the history, it was stated that,

“On 28.10.2018, when he was passing through cross-road of Motijer bus stand, he saw two persons on bike, carrying his sister-in-law and by taking lift in the tractor, when he reached near Nirmali Road, both the persons were standing beside the road and taken him to the field to show her sister in law and in the field, he was forced to commit intercourse upon her sister-in-law. “

The Doctor (PW.2) on the same day i.e. 02.11.2018, had examined accused Jayantibhai Vadi and before he could examine, the accused gave a history of the incident which he has noted in the case papers and in the history, it was stated that, “on 28.10.2018 at about 6:00 p.m., he and accused Lalabhai were riding on the bike and while reaching near bus stand of Village: Motijer, they gave lift to the deceased and dropped her near Nirmali Village.”

The Doctor (PW.2) had also examined the accused Lalabhai and as per the history given by Lalabhai, the deceased was given a lift by him when he along with accused Jayantibhai,

riding the bike passing near the bus stand of Motijer and dropped her near Nirmali.

The Doctor in the chief-examination has further stated that, he had taken the blood samples and other samples like saliva, hair, nails and sperm for the purpose of forensic analysis and DNA Profiling. The doctor has produced the necessary case papers at Exh.17 to 23.

In the cross-examination, the Doctor (PW.2) has denied that, as per the police yadi and command by the police, the history being noted by him in the case papers and as such, no such history being given by the accused. The doctor has denied to the suggestion asked by the defense that, the injuries whatever sustained by the deceased, could be possible by accident or someone jumped from the moving tractor.

- (2) Kiranbhai Naginbhai Vaghri (PW.3): This witness is the brother of the deceased and after receiving the message, he went to the place of incident where he saw the dead body of his sister. The witness had lodged an FIR against the unknown person on the next date i.e. 29.10.2018 which has been produced at Exh.26.
- (3) Vijay Pravinbhai Zala (PW.13): This witness was the friend of the accused A1 – Gopi Devipujak. The witness and the accused Gopi, at relevant time, were residents of Village: Motijer and since long, they were friends and knowing each other. The



witness was working as a helper with the Egg Shop of one Ganpatsinh Zala (PW.14) and his working hours was 5:00 p.m. to 11:00 p.m. The witness in his chief-examination has stated that, the accused Gopi had asked Ganpatsinh to give his motorbike, but, it was not given by him and therefore, he travelled in the tractor. The witness has further stated that, on that day, after the closure of the shop, he went to the house of Ganpatsinh and sleep over there. The witness has further stated that on the next day at about 8:00 a.m. in the morning, and at that time, the accused Gopi had come to the house for fishing purpose in the Vatrak River of the village. The witness has stated that, he along with the accused Gopi, had gone to the Vatrak River for fishing and while process of fishing, Gopi told him that, "I have killed my aunt." The witness has further stated that, after fishing, he went to his house and whatever confession being made by the accused, he conveyed the said confession to his father, Pravinbhai. The witness has further stated that, he does not know that why the accused Gopi intends to proceed towards Nirmali. The statement of witness recorded under Section 164 is produced at Exh.74.

In the cross-examination, the witness has admitted that, so as to record his statement, his name and age was being given to the police by his father. The witness has also denied to the suggestion that, the accused had never confessed his guilt before him and was never in his company for fishing. The witness has admitted his thumb impression allegedly made under his



statement recorded under Section 164 of the Cr.P.C.

- (4) Ganpatsinh Zala (PW.14): This witness was running his Egg Shop at Motijer – Nirmali Road and the business hours for running the shop was evening 5 to 10:00 p.m. and at relevant time, the witness Vijay Zala was working with him as a helper in the business. The witness in his chief-examination, has stated that, the accused Gopi at about 7:00 p.m. came to his shop and asked for the bike which he had denied to it. The witness has further stated that, at that time, one tractor driver along with his tractor, came to his shop and after completion of his snacks, when he is about to proceed towards Nirmali, the accused Gopi took a lift in the tractor. The witness has further stated that, on the next day in the evening, he learnt that the dead body of the deceased being found at the private farm near Nirmali. The witness has further stated that, after two-three days, the accused Gopi came to his shop and told him that, “he did a wrong thing and he has murdered his aunt and requested not to share the said things to anyone.” The witness has further stated that, after informing the said aspects by the accused to him, the accused Gopi left his shop.

In the cross-examination, the witness (PW.14) has stated that, he does not know of the intention of the accused Gopi that why has asked for the bike. The witness has admitted that, the police came to his shop and asked his name and address. The witness has denied that, the accused Gopi after denying him for



bike, thereafter he never came to his shop.

- (5) Mohanbhai Somabhai Rathod (PW.15): This witness is the owner of Grocery shop doing his business in the name and style of “Nageshwari Kirana Store” and running his shop near bus stand of Village: Lalpur. The prosecution has examined this witness to prove the fact that the deceased was lastly seen in the company of the accused no.2 and 3. According to prosecution case, on 28.10.2018 at about 7:00 p.m., the accused no.2 and 3 along with the deceased lady, came to the shop of the witness. The accused Jayantibhai went into the shop to purchase tobacco and beetal, whereas, the accused Lalabhai and the deceased were standing outside the shop. The witness in his chief-examination on this aspect, has stated that, in the evening hours, the accused Jayantibhai Vadi and Lalabhai along with one woman, came on the motorcycle from the side of Village: Motijer. The accused Jayantibhai came into the shop for purchase to Miraj tobacco and beetel, whereas, the accused Lalabhai and woman were standing outside his shop. The witness has further stated that, after purchasing, they proceeded towards Nirmali Village. The witness has identified the accused Jayantibhai in the court, but, could not identify the accused Lalabhai. In the cross-examination, the witness has admitted that, in his police statement dated 03.11.2018, he has stated that, in the evening hours, there was a rush in his shop and therefore, it is not in his knowledge that who came to his shop. In the cross-examination, the witness has specifically stated that, the accused were brought



to his shop by the police and at relevant time, he was told by the police that, these two accused had come to his shop and purchased a tobacco and beetel from him. In the cross-examination, the witness has admitted that, he was not knowing the accused Jayantibhai and Lalabhai and before the incident, he had no occasion to meet the accused and he also does not know about the residence and village of the accused.

- (6) Narendra Somabhai Rathod (PW.16): The witness is the resident of Village: Talpoda and at relevant time, he had bought a new tractor for farming purpose. On the day of incident i.e. 28.10.2018, by driving the tractor, he went to the house of his maternal uncle for unloading of the grass for animals. The witness has stated in his chief-examination that, while coming return back from his maternal uncle's house, one person at the cross-road of the village, asked to give lift to him, but, he did not heed the request and thereafter, he came to shop of Ganpatsinh Zala for snacks and at that time, he saw the person who had asked for the lift. The witness has further stated that, the person who was there at the shop, intends to go towards Nirmali Village and therefore, he take a seat in the tractor. The witness has further stated that, after proceeding from the shop of Ganpatsinh, he drew his tractor towards Nirmali Road and when the tractor reached near Nirmali, the person who was sitting in the tractor, asked to drop him there. The witness has further stated that, the person was dropped on the roadside and while dropping him, he



saw three persons along with one bike and out of three persons, one was woman and thereafter, he proceeded towards his village. In the cross-examination, the witness has admitted that, the name of the person who was sitting in the tractor was given to him by the police and at that time, there was dark and due to darkness, he could not be in a position to identify the person.

- (7) Pravinbhai Zala (PW.17): This witness is the father of witness PW.13 – Vijay Zala. The witness has stated in chief-examination that, before 2 years, in the morning, his son Vijay and the accused Gopi went for fishing and returned back at about 10 o'clock. The witness has further stated that, he was informed by his son that, the accused Gopi has killed his aunt.
- (8) Sureshbhai Arjanbhai Vaghela (PW.23): This witness had conducted the DNA Profiling and submitted its report dated 01.05.2019 and same is produced at Exh.86. The witness being a Scientific Officer serving with Directorate of Forensic Science University, has stated on the line of the report Exh.86. Instead of referring his oral evidence, we deemed it fit to refer the entire report which reads as under:



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FORENSIC EXAMINATION REPORT

DFS(G)/FM/2017



Case No.: DFS /EE/2018/DNA/ 580

Date: 01/05/2019

Police station: Kapadvanj Rural નિશીના. ૬/૩૨ District: Kheda
 C.R./ FIR No.: I 0046/2018 સેશન્સ ડેસ નં. ૩૨/૧૯ U/S: IPC – 302,201,366,376(D),114
 Mode of Receipt: Through Messenger એ. સેશન્સ ડેસ નં. ૩૨/૧૯ Dt. of Receipt: 15/11/2018

No. of Parcel (s) Received: Total 19 (Nineteen) sealed parcel.

Condition of seal (s) on the parcel (s): The seal was intact and as per the specimen.

Details of Parcel (s) and Exhibit (s) received:

Parcel Mark	Description	Remarks
A	Cloth Bag parcel, source of 'Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak'. Exhibit- A: Blouse* Black colored Blouse having brownish colored stain on it.	• Presence of blood Detected
B	Cloth Bag parcel, source of 'Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak'. Exhibit- B: Chaniyo* Purple colored Chaniyo having few dark brownish & white colored stain on it. <u>Note</u> -stains of exhibit were marked as B-1, B-2, B-3, B-4 and B-5 in our Laboratory.	• Presence of blood, Semen was detected
C	Cloth Bag parcel, source of 'Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak'. Exhibit- C: Saree* Navy blue and green colored design containing Saree having scattered dark brownish spot <u>Note</u> -stains of exhibit were marked as C-1 to C-9 in our Laboratory	• Presence of blood was detected in Mark C-1, C-2, C-4, C-5, C-6, C-8 & C-9 • Presence of blood, Semen was detected in Mark C-3 and C-7
D	Cloth bag parcel. Source of 'Gopi urfe Bhalabhai Girishbhai Devipujak'. Exhibit- D: T-shirt Black colored half sleeve T-shirt having no visible stain on it.	• Presence of blood, Semen could not be detected.

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E	Cloth bag parcel. Source of 'Gopi urfe Bhalabhai Girishbhai Devipujak'.	
	Exhibit- E: Pant Black colored Cotton jeans pant having no visible spot on it.	• Presence of blood, Semen could not be detected.
F	Cloth bag parcel. Source of 'Jayantibhai Bababhai Vadi'.	
	Exhibit- F: Shirt Maroon colored with black color lining full sleeve Shirt having no visible stain on it	• Presence of blood, Semen could not be detected.
G	Cloth bag parcel. Source of 'Jayantibhai Bababhai Vadi'.	
	Exhibit- G: Pant Dark Grey colored pant, having dust like spots	• Presence of blood, Semen could not be detected.
H	Cloth bag parcel. Source of 'Lalabhai Ramehsbhai Vadi'.	
	Exhibit- H: T-shirt * Yellow and red colored, half sleeve T-shirt having few light brownish colored stain on it.	• Presence of blood, Semen detected • Presence of Semen could not be detected.
I	Cloth bag parcel. Source of 'Lalabhai Ramehsbhai Vadi'.	
	Exhibit- I: Pant Dark brown Maroon coloured Jeans pant Having few whitish stiffed stain on it.	• Presence of Semen, Semen detected • Presence of blood could not be detected
J	A puttha Box parcel, if contains Two (02) Exhibits. Source of 'Gopi urfe Bhalabhai Girishbhai Devipujak'.	
	Exhibit- J-1: Blood * A Vacutainer tube having 3.0 ml reddish brown coloured fluid, stated as 'Blood'	Fluid identified as Blood
	Exhibit- J-2: Blood * A Vacutainer tube having 3.0 ml reddish brown coloured fluid, stated as 'Blood'	Fluid identified as Blood
K	A puttha Box parcel, if contains Two (02) Exhibits. Source of 'Jayantibhai Bababhai Vadi'.	
	Exhibit- K-1: Blood * A Vacutainer tube having 3.0 ml reddish brown coloured fluid, stated as 'Blood'	Fluid identified as Blood
	Exhibit- K-2: Blood * A Vacutainer tube having 3.0 ml reddish brown coloured fluid, stated as 'Blood'	Fluid identified as Blood
L	A puttha Box parcel, if contains Two (02) Exhibits. Source of 'Lalabhai Ramehsbhai Vadi'.	
	Exhibit- L-1: Blood * A Vacutainer tube having 3.0 ml reddish brown coloured fluid, stated as 'Blood'	Fluid identified as Blood

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M	Exhibit- L-2: Blood * A Vacutainer tube having 3.0 ml reddish brown coloured fluid, stated as 'Blood'	Fluid identified as Blood
	A puttha Box parcel, if contains Two (02) Exhibits. Source of 'Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak', P.M.No.12/18,Dt.29/10/18.	
	Exhibit- M-1: Nail * Glass phial having few nails, stated as 'Nail'	• Presence of blood Detected
N	Exhibit- M-2: Hair * Glassphial having few short cut hair, stated as 'Hair'	• Presence of blood was Detected
	A plastic dubbi parcel stated as source of 'Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak', P.M.No.12/18,Dt.29/10/18.	
	Exhibit- N-1: Swab A glass test tube having wooden stick wrapped cotton swab stated as "Superficial Vaginal Swab"	• Presence of blood, Semen was detected.
	Exhibit- N-2: Swab A glass test tube having wooden stick wrapped cotton swab stated as "Deep Vaginal Swab"	• Presence of blood, Semen was detected
	Exhibit- N-3: Swab A glass test tube having wooden stick wrapped cotton swab stated as "Cervical Swab"	• Presence of blood was detected. • Presence of Semen could not detected.
	Exhibit- N-4: Swab A glass test tube having wooden stick wrapped cotton swab stated as "Anal Swab"	• Presence of blood was detected. • Presence of Semen could not detected.
O	Exhibit- N-5: Swab A glass test tube having wooden stick wrapped cotton swab stated as "Oral Swab"	• Presence of blood, Saliva was detected. • Presence of Semen could not detected.
	A brown puttha Box parcel, if contains Two (02) Exhibits. Source of 'Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak', P.M.No.12/18,Dt.29/10/18.	
	Exhibit- O-1: Blood * A Vacutainer tube having 3.0 ml dark brownish coloured fluid, stated as 'Blood'	Fluid identified as Blood
P	Exhibit- O-2: Blood * A Vacutainer tube having 3.0 ml dark brownish coloured fluid, stated as 'Blood'	Fluid identified as Blood
	A brown puttha Box parcel, if contains Seven (07) Exhibits. Source of 'Gopi urfe Bhalabhai Girishbhai Devipujak'.	
	Exhibit- P-1: Blood* A glass phial having approximately 3.0 mL	Fluid identified as Blood

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	dark brownish fluid stated as 'Blood'	
	Exhibit- P-2: Blood* A glass phial having approximately 3.0 mL dark brownish fluid stated as 'Blood'	Fluid identified as Blood
	Exhibit- P-3: Saliva* A glass phial having approximately 1.0 mL colorless fluid stated as 'Saliva'	Fluid identified as saliva
	Exhibit- P-4: Hair* A glass phial having few short dark black colored hairs, stated as 'Auxiliary Hair'	• Presence of blood could not be detected.
	Exhibit- P-5: Pubic Hair* A glass phial having few short black colored hairs, stated as 'Pubic Hair'	• Presence of blood, Semen could not be detected.
	Exhibit- P-6: Nail* A glass phial having few nails, stated as 'Nail'	• Presence of blood could not be detected.
	Exhibit- P-7: Semen* Approximately 1.0 mL light yellowish fluid stated as 'Semen'	Fluid identified as Semen
Q	A brown putha Box parcel, if contains Seven (07) Exhibits. Source of 'Jayantibhai Bababhai Vadi'.	
	Exhibit- Q-1: Blood* A glass phial having approximately 3.0 mL dark brownish fluid stated as 'Blood'	Fluid identified as Blood
	Exhibit- Q-2: Blood* A glass phial having approximately 3.0 mL dark brownish fluid stated as 'Blood'	Fluid identified as Blood
	Exhibit- Q-3: Saliva A glass phial having approximately 1.0 mL colorless fluid stated as 'Saliva'	Fluid identified as saliva
	Exhibit- Q-4: Hair A glass phial having few short dark black colored hairs, stated as 'Auxiliary Hair'	• Presence of blood could not be detected.
	Exhibit- Q-5: Pubic Hair A glass phial having few short dark black colored hairs, stated as 'Pubic Hair'	• Presence of blood, Semen could not be detected.
	Exhibit- Q-6: Nail A glass phial having few nails, stated as 'Nail'	• Presence of blood could not be detected.
	Exhibit- Q-7: Semen Approximately 1.0 mL light yellowish fluid stated as 'Semen'	Fluid identified as Semen
R	A brown putha Box parcel, if contains Eight (08) Exhibits. source of 'Lalabhai Rameshbhai Vadi'.	

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	Exhibit- R-1: Blood* A glass phial having approximately 3.0 mL dark brownish fluid stated as 'Blood'	Fluid identified as Blood
	Exhibit- R-2: Blood* A glass phial having approximately 3.0 mL dark brownish fluid stated as 'Blood'	Fluid identified as Blood
	Exhibit- R-3: Saliva A glass phial having approximately 1.0 mL colorless fluid stated as 'Saliva'	Fluid identified as saliva
	Exhibit- R-4: Hair A glass phial having few short black colored hairs, stated as 'Scalp Hair'	• Presence of blood could not detected.
	Exhibit- R-5: Hair A glass phial having few short black colored hairs, stated as 'Auxiliary Hair'	• Presence of blood could not detected.
	Exhibit- R-6: Pubic Hair A glass phial having few short black colored hairs, stated as 'Pubic Hair'	• Presence of blood, Semen could not detected.
	Exhibit- R-7: Nail A glass phial having few nails, stated as 'Nail'	• Presence of blood could not detected.
	Exhibit- R-8: Semen Approximately 1.0 mL light yellowish fluid stated as 'Semen'	Fluid identified as Semen
S	A brown putha Box parcel, source of 'Mukeshbhai/Sukeshbhai Dharmabhai Vadi'.	
	Exhibit- S: Blood* A vacutainer tube having approximately 5.0 mL dark brownish fluid stated as 'Blood'	Fluid identified as Blood
Note-	* Stains/Fluid of the respective exhibits used for DNA analysis	

METHODS:

DNA from above mentioned exhibit(s)- A,B (Mark-B-1,B-2,B-3,B-4 and B-5),C Mark-C-3 and C-7) ,H,I,J-1,K-1,L-1,M-1,M-2,N-1,N-2,N-3,N-4,N-5,O-1 and S was isolated by organic extraction method and subjected to multiplex PCR reaction for twenty three STR loci and amelogenin using AmpFSTR® PowerPlex®Fusion 6C and/ or AmpFSTR® Yfiler® Plus Kit.

The amplified products alongwith controls were run on Genetic Analyzer (Model 3500) and analysis was carried out using Data Collection software (version 4.0) and GeneMapper ID-X software (version 1.4) with respect to standard ladder.

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RESULT OF ANALYSIS:

The following table shows amplification of Control 2800M DNA and sample(s) using the PowerPlex® Fusion 6C System.

GENETIC MARKER	Control DNA 2800M	Exhibit- A	Exhibit- B-1	Exhibit- B-2	Exhibit- B-3	Exhibit- B-4
Amelogenin	X, Y	X,X	X,Y	X,Y	X,Y	X,Y
D3S1358	17, 18	15,20	15,16,20	15,16,20	15,16,20	15,16,20
D1S1656	12, 13	11,17	8,11,15,17	8,11,15,17	8,11,15,17	8,11,15,17
D2S441	10, 14	11	11	11	11	11
D10S1248	13, 15	16	13,14,16	13,14,16	13,14,16	13,14,16
D13S317	9, 11	12,13	10,12,13,14	10,11,12,13,14	10,12,13,14	10,12,13,14
Penta E	7, 14	11,13	11,13	11,13	11,13	11,13
D16S539	9, 13	9,11	9,11,13	9,11,13	9,11,13	9,11,13
D18S51	16, 18	14	14	14	14	14
D2S1338	22, 25	19,23	18,19,22,23	18,22	18,22,23	18,19,22
CSF1PO	12, 12	11,13	11,12,13	11,12,13	11,12	11,12,13
Penta D	12, 13	10,11	9,10	9,10	9,10	9,10,11
TH01	6, 9,3	6,7	6,7,9,3	4,6,7,9,3	6,7,9,3	6,7,9,3
vWA	16, 19	17,18	17,18	17	17	17,18
D21S11	29,31,2	28,29	28,30,31,2	28,30,31,2	28,30,31,2	28,30,31,2
D7S820	8, 11	10	10,12	10,12	10,12	10,12
D5S818	12, 12	10,11	10,12	10,11,12	10,12	10,11,12
TPOX	11, 11	11,12	8,9,11,12	8,9	8,9,11,12	8,9
D8S1179	14, 15	10	10,15	10,15	10,15	10,15
D12S391	18, 23	18,19	19,22	19,22	19,22	19,22
D19S433	13, 14	13,15,2	13,14,15,15,2	13,14,15,15,2	13,14,15,15,2	13,14,15,15,2
SE33	15, 16	30,2,32,2	13,18,30,2,32,2	13,18,30,2,32,2	13,18,30,2,32,2	13,18
D22S1045	16, 16	11,15	11,14,15	14,15	14,15	14,15
DYS391	10	-	11	11	11	11
FGA	20, 23	20,23	20,21,23,24	20,21,23,24	20,21,23,24	20,21,23,24
DYS576	18	-	19	19	19	19
DYS570	17	-	18	18	18	18

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GENETIC MARKER	Control DNA 2800M	Exhibit- B-5	Exhibit- C-3	Exhibit- C-7	Exhibit- H
Amelogenin	X, Y	X,Y	X,Y	X,Y	X,X
D3S1358	17, 18	15,16,20	15,16,20	15,16,20	15,20
D1S1656	12, 13	8,11,15,17	8,11,17	8,11,15,17	11,17
D2S441	10, 14	11	11	11	11
D10S1248	13, 15	13,14,16	13,16	13,14,16	16
D13S317	9, 11	10,12,13,14	10,11,12,13	10,12,13,14	12,13
Penta E	7, 14	11,13	11,13,21	11,13	11,13
D16S539	9, 13	9,11,13	9,11,17	9,11,13	9,11
D18S51	16, 18	14	14	14	14
D2S1338	22, 25	18,19,22,23	18,19,21,23	18,19,22,23	19,23
CSF1PO	12, 12	11,12,13	11,13	11,12,13	11,13
Penta D	12, 13	9,10,11	10,11,12	9,10,11	10,11
TH01	6, 9.3	6,7,9.3	6,7,9.3	6,7,9.3	6,7
vWA	16, 19	17,18	16,17,18	17,18	17,18
D21S11	29,31.2	28,30,31.2	28,30	28,30,31.2	28,-
D7S820	8, 11	10,12	8,10,12	10,12	10
D5S818	12, 12	10,11,12	10,11,12	10,11,12	10,11
TPOX	11, 11	8,9,11,12	8,11,12	8,9,11,12	11,12
D8S1179	14, 15	7,10,15	10	10,15	10
D12S391	18, 23	18,19,22	18,19	18,19,22	18,19
D19S433	13, 14	13,14,15,15.2	12,13,15,15.2	13,14,15,15.2	13,15.2
SE33	15, 16	13,18,30.2,32.2	30.2,31.2,32.2	13,18,30.2,32.2	30.2,32.2
D22S1045	16, 16	11,14,15	11,15,16	11,14,15	11,15
DYS391	10	11	11	11	-
FGA	20, 23	20,21,23,24	20,21,23,24	20,21,23,24	20,23
DYS576	18	19	19	19	-
DYS570	17	18	18	18	-

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GENETIC MARKER	Control DNA 2800M	Exhibit- I	Exhibit- J-1	Exhibit- K-1	Exhibit- L-1	Exhibit- M-1	Exhibit- M
Amelogenin	X, Y	X,Y	X,Y	X,Y	X,Y	X,X	X,X
D3S1358	17, 18	14,17	15,16	15	14, 17	15,20	15,20
D1S1656	12, 13	12,15	8,15	16	12, 15	11, 17	11, 17
D2S441	10, 14	10	11	10	10	11	11
D10S1248	13, 15	15	13,14	16	15	16	16
D13S317	9, 11	8	10,14	12	8	12, 13	12, 13
Penta E	7, 14	5,15	11,13	5,22	5,15	-,13	11,13
D16S539	9, 13	12	11,13	11,12	12	9,11	9,11
D18S51	16, 18	17,18	14	14,16	17, 18	14	14
D2S1338	22, 25	20,23	18,22	24,25	20,23	19,23	19,23
CSF1PO	12, 12	13	11,12	11	13	11,13	11,13
Penta D	12, 13	10,11	9,10	10	10,11	10,11	10,11
TH01	6, 9.3	9,9.3	7,9.3	6,7	9,9.3	6,7	6,7
vWA	16, 19	13,15	17	17,18	13,15	17,18	17,18
D21S11	29,31.2	29,31.2	30,31.2	32.2	29,31.2	28	28
D7S820	8, 11	8,10	12	9,11	8,10	10	10
D5S818	12, 12	12,13	10,12	10,11	12,13	10,11	10,11
TPOX	11, 11	8,11	8,9	8,11	8,11	11,12	11,12
D8S1179	14, 15	10	10,15	13,17	10	10	10
D12S391	18, 23	25	19,22	18,22	25	18,19	18,19
D19S433	13, 14	14,2.15	14,15	13,15.2	14,2.15	13,15.2	13,15.2
SE33	15, 16	21,25.2	13,18	30.2,32.2	21,25.2	30.2,32.2	30.2,32.2
D22S1045	16, 16	11,15	14,15	11,15	11,15	11,15	11,15
DYS391	10	10	11	10	10	-	-
FGA	20, 23	21,22.2	21,24	21,21.2	21,22.2	20,23	20,23
DYS576	18	17	19	17	17	-	-
DYS570	17	20	18	20	20	-	-

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GENETIC MARKER	Control DNA 2800M	Exhibit- N-1	Exhibit- N-2	Exhibit- N-3	Exhibit- N-4	Exhibit- N-5
Amelogenin	X, Y	X,Y	X,Y	X,X	X,X	X,X
D3S1358	17, 18	15,16,20	15,16,20	15,20	15,20	15,20
D1S1656	12, 13	8,11,15,17	8,11,15,17	11,17	11,17	11,17
D2S441	10, 14	11	11	11	11	11
D10S1248	13, 15	13,14,16	13,14,16	16	16	16
D13S317	9, 11	10,12,13,14	10,12,13,14	12,13	12,13	12,13
Penta E	7, 14	11,13	11,13	11,13	11,13	11,13
D16S539	9, 13	9,11,13	9,11,13	9,11	9,11	9,11
D18S51	16, 18	14	14	14	14	14
D2S1338	22, 25	18,19,22,23	18,19,22,23	19,23	19,23	19,23
CSF1PO	12, 12	11,12,13	11,12,13	11,13	11,13	11,13
Penta D	12, 13	9,10,11	9,10,11	10,11	10,11	10,11
TH01	6, 9,3	6,7,9,3	6,7,9,3	6,7	6,7	6,7
vWA	16, 19	17,18	17,18	17,18	17,18	17,18
D21S11	29,31,2	28,30,31,2	28,30,31,2	28	28	28
D7S820	8, 11	10,12	10,12	10	10	10
D5S818	12, 12	10,11,12	10,11,12	10,11	10,11	10,11
TPOX	11, 11	8,9,11,12	8,9,11,12	11,12	11,12	11,12
D8S1179	14, 15	10,15	10,15	10	10	10
D12S391	18, 23	18,19,22	18,19,22	18,19	18,19	18,19
D19S433	13, 14	13,14,15,15.2	13,14,15,15.2	13,15.2	13,15.2	13,15.2
SE33	15, 16	13,18,30,2,32.2	13,18,30,2,32.2	30,2,32.2	30,2,32.2	30,2,32.2
D22S1045	16, 16	11,14,15	11,14,15	11,15	11,15	11,15
DYS391	10	11	11	-	-	-
FGA	20, 23	20,21,23,24	20,21,23,24	20,23	20,23	20,23
DYS576	18	19	19	-	-	-
DYS570	17	18	18	-	-	-

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GENETIC MARKER	Control DNA 2800M	Exhibit- O-1	Exhibit- S
Amelogenin	X, Y	X,X	X,Y
D3S1358	17, 18	15,20	16,20
D1S1656	12, 13	11,17	8,17
D2S441	10, 14	11	11
D10S1248	13, 15	16	13
D13S317	9, 11	12,13	10,11
Penta E	7, 14	11,13	13,21
D16S539	9, 13	9,11	9
D18S51	16, 18	14	17
D2S1338	22, 25	19,23	18,19
CSF1PO	12, 12	11,13	11,13
Penta D	12, 13	10,11	10,12
TH01	6, 9.3	6,7	6,9.3
vWA	16, 19	17,18	16,17
D21S11	29, 31.2	28	28,30
D7S820	8, 11	10	8,12
D5S818	12, 12	10,11	11,12
TPOX	11, 11	11,12	8,11
D8S1179	14, 15	10	10
D12S391	18, 23	18,19	19
D19S433	13, 14	13,15.2	12,15
SE33	15, 16	30.2,32.2	31.2
D22S1045	16, 16	11,15	15,16
DYS391	10	-	11
FGA	20, 23	20,23	21,24
DYS576	18	-	19
DYS570	17	-	18

OBSERVATION (S):

From above results, it is observed that—

1. Autosomal DNA Profile obtained from stains of Exhibit-A: Blouse (Source Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), stains of Exhibit-H: Shirt and Exhibit-I: Pant (Source of Lalbhai Ramehsbhai Vadi) Exhibit-J: Blood (Source of Gopi urfe Bhalabhai Girishbhai Devipujak), Exhibit-K-1: Blood (Source of Jayantibhai Bababhai Vadi), Exhibit-L-1: Blood (Source of Lalabhai urfe Kankadiya Vadi), Exhibit-M-1: Nail (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), Exhibit-M-2: Hair (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), stains of Exhibit-N-3: Cervical Swab (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), stains of Exhibit-N-4: Anal Swab (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak)

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Devipujak), stains of Exhibit-N-5: Oral Swab (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), Exhibit-O-1: Blood (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), Exhibit-S: Blood (Source of Mukeshbhai/Sukeshbhai Dharmabhai Vadi)

DFS(GYFM/29/1)

SIS

2. Multiple alleles of autosomal DNA profile obtained from Exhibit-B: Chaniyo stains of Mark- B-1,B-2,B-3,B-4 and B-5, Exhibit-C:Saree stains of Mark C-3 and C-7, stains of Exhibit-N-1: Vaginal Swab, stains of Exhibit-N-2: Deep Vaginal Swab (Source of all these exhibits were Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak)

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- Male DNA profile obtained in above samples were as follows

STR Marker	Observed Genotypes									
	DNA 007 Control Positive	Exh B-1	Exh C-3	Exh C-7	Exh J-1	Exh K-1	Exh L-1	Exh N-1	Exh N-2	Exh S
DYS576	19	19	19	19	19	17	17	19	19	19
DYS389I	13	14	14	14	14	13	13	14	14	14
DYS635	24	23	23	23	23	23	23	23	23	23
DYS389II	29	33	33	33	33	29	29	-	33	33
DYS627	21	17	17	17	17	17	17	17	17	17
DYS460	11	10	10	10	10	11	11	10	10	10
DYS458	17	16	16	16	16	16	16	16	16	16
DYS19	15	15	15	15	15	16	16	15	15	15
Y GATA H4	13	12	12	12	12	12	12	12	12	12
DYS448	19	20	20	20	20	20	20	20	20	20
DYS391	11	11	11	11	11	10	10	11	11	11
DYS456	15	15	15	15	15	15	15	15	15	15
DYS390	24	26	26	26	26	24	25	26	26	26
DYS438	12	11	11	11	11	11	11	11	11	11
DYS392	13	11	11	11	11	11	11	11	11	11
DYS518	37	42	42	42	42	42	42	42	42	42
DYS570	17	18	18	18	18	20	20	18	18	18
DYS437	15	14	14	14	14	14	14	14	14	14
DYS385	11,14	11,14	11,14	11,14	11,14	11,14	11,14	11,14	11,14	11,14
DYS449	30	32	32	32	32	33	33	32	32	32
DYS393	13	13	13	13	13	13	13	13	13	13
DYS439	12	10	10	10	10	9	9	10	10	10
DYS481	22	23	23	23	23	23	23	23	23	23
DYF387S1	35,37	40	40	40	40	37,39	37,39	40	40	40
DYS633	13	12	12	12	12	12	12	-	12	12

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SIT

OBSERVATION (S):

From above results, it is observed that--

1. Male (Y-STR) DNA Profile obtained from stains of Exhibit-B-1:Chaniyo: (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), Exhibit-C: Saree stains of Mark C-3 and C-7 (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak), stains of Exhibit-N-1: Vaginal Swab (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak) and stains of Exhibit-N-2: Deep Vaginal Swab (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak) and Exhibit-J-1: Blood (Source of Gopi urfe Bhalabhai Girishbhai Devipujak), Exhibit-K-1: Blood (Source of Jayantibhai Bababhai Vadi), Exhibit-L-1: Blood (Source of Lalabhai urfe Kankadiya Vadi), Exhibit-S: Blood (Source of Mukeshbhai/Sukeshbhai Dharmabhai Vadi).

CONCLUSION:

From above observation it is concluded that;

1. From stains of Exhibit-A: Blouse, Exhibit-M-1: Nail, Exhibit-M-2: Hair, stains of Exhibit-N-3: Cervical Swab, stains of Exhibit-N-4: Anal Swab, stains of Exhibit-N-5: Oral Swab and Exhibit-O-1: Blood (Source of all these exhibits were Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak) was identical, stating a source of single human female.
2. Male DNA profile of Exhibit-J-1: Blood (Source of Gopi urfe Bhalabhai Girishbhai Devipujak) and Exhibit-S: Blood (Source of Mukeshbhai/Sukeshbhai Dharmabhai Vadi) showed biologically paternal relation with each other.
3. Male DNA profile of Exhibit-K-1: Blood (Source of Jayantibhai Bababhai Vadi) and Exhibit-L-1: Blood (Source of Lalabhai urfe Kankadiya Vadi) showed biologically paternal relation with each other.
4. Alleles of amplified loci of autosomal DNA Profile obtained from Exhibit-B: Chaniyo stains of Mark B-1, B-2, B-3, B-4 and B-5, Exhibit-C: Saree stains of Mark C-7 (Source of all these exhibits were Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak) showed concomitance with autosomal DNA Profile obtained from Exhibit-J-1: Blood (Source of Gopi urfe Bhalabhai Girishbhai Devipujak) along with Exhibit-O-1: Blood (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak).

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5. Alleles of amplified loci of autosomal DNA Profile obtained from Exhibit-C: saree stains of Mark-C-3 (Source of all these exhibits were Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak) showed concomitance with autosomal DNA Profile obtained from Exhibit-S: Blood (Source of Mukeshbhai/Sukeshbhai Dhamabhai Vadi) along with Exhibit-O-1: Blood (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak).
6. Autosomal DNA Profile obtained from stains of Exhibit-H: T-Shirt (Source of Lalbhai Ramehsbhai Vadi) and Exhibit-O-1: Blood (Source of Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak) shows concordance with each other.
7. Autosomal DNA Profile obtained from stains of Exhibit-I: Pant (Source of Lalbhai Ramehsbhai Vadi) and Exhibit-L-1: Blood (Source of Lalabhai urfe Kankudiyo Rameshbhai Vadi) shows concordance with each other.
8. Jayantibhai Bababhai Vadi (source of Exhibit-K-1: Blood sample) and Lalabhai urfe Kankudiyo Rameshbhai Vadi (source of Exhibit-L-1: Blood sample) have not contributed in Multiple alleles of autosomal DNA profile obtained from Exhibit-B: Chaniyo Mark B-1, B-2, B-3, B-4 and B-5, stains of Exhibit-C: Saree stains of Mark C-3 and C-7, stains of Exhibit-N-1: Vaginal Swab, stains of Exhibit-N-2: Deep Vaginal Swab (Source of all these exhibits were Sangeetaben W/O Mukeshbhai Dhamabhai Devipujak)

Note:

1. Result(s) relate only to the exhibit(s) tested.
2. No further serological or nuclear DNA examinations carried out.
3. This report is admissible under section 293 Cr.P.C.

(S. A. Vaghela)
 (S. A. Vaghela)
 Scientific Officer,
 DNA Division
 Scientific Officer
 Directorate of Forensic Science
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(9) Rakeshkumar Ambalal Patel (PW:26): This witness being a PSI of Kapadvanj Police Station, was entrusted the investigation of the crime and after receiving the requisition, he took visit at the place where the dead body of the lady found in a naked position. The witness called the scientific officer of the FSL and in the presence of the panchas drew the panchnama of the place of the incident and seized and collected the clothes of the deceased as well as the things lying on the spot i.e. currency notes, pouch of the tobacco and empty wine bottle. The witness before whom brother of the deceased viz. Kiranbhai Devipujak lodged an FIR and after registration of the offence, he came into charge of the case. The witness during the investigation, prepared the enquest and sent the dead body for post-mortem, recorded the statements of the witnesses, arrested the accused on 02.11.2018, sent the accused for medical examination, obtained the necessary samples of the accused for DNA profiling, the accused Lala voluntarily pointed out the place of the incident and during the reconstruction panchnama, he had confessed the guilt and described the manner of incident and how the deceased was killed. The I.O. during the investigation, received the report of the DNA analysis and other reports of the FSL, and obtained the statements of the witnesses allegedly recorded under Section 164 of Cr.P.C. and after due investigation, the chargesheet against the accused for the offences of kidnapping, rape and murder being submitted before the Court.

In the cross examination, the I.O. had denied to the suggestion



that the accused have been falsely implicated in the offence and as such, there is no sufficient evidence linking him to the crime in question.

Submissions:

12. Mr. Ramnandan Singh, learned counsel appearing for and on behalf of accused nos. 2 and 3, has made the following submissions :

- (i) While assailing the impugned judgment, it was vehemently contended that, the judgment of conviction being based on circumstantial evidence and there being no eye-witness, the complete chain of events leading to involvement of the appellants have not been established by the prosecution.
- (ii) The prosecution has failed to prove its case beyond reasonable doubt and the findings of conviction being recorded on the basis of conjecture and surmises as it is settled position of law that, the suspicion however strong, cannot basis for punishment.
- (iii) So far as, role attributed to accused nos. 2 and 3 namely Jayantibhai Vadi and Lalabhai Vadi is concerned, it is the case of the prosecution that, on 28.10.2018, the deceased lady was taken on motor-bike and after abducting her she was taken to the private farm of village: Nirmali. The prosecution failed to prove the necessary ingredients of offence kidnapping and abduction. The victim was major at relevant time. Before she could taken to the farm, the bike was



stopped near the grocery shop of PW-15 Mohan Rathod and from his shop, the accused Jayantibhai Vadi purchased a pouch of Miraj Tobacco and bittle and the accused Lalabhai and victim were standing outside his shop. The trial Court while convicting the accused, taken into account the last scene evidence of grocery shop owner PW-15. The grocery shop owner was not known to the accused nor he met prior to the incident and admittedly, the accused were not resident of village: Moti Jer. The shop was situated in the bus stand area of the village and other shops also situated in this area. The victim had an opportunity either to run away or to make hue and cry about her kidnapping. The shop owner in the cross-examination, has admitted that, the police after the incident, brought the accused before him and told that, this accused had purchased Miraj Tobacco from your shop. The shop owner has also admitted that, due to rush in his shop, at relevant time, it is not possible him to remember the face of the accused and who had purchased the Miraj Tobacco and therefore, in absence of any evidence of TI parade of the witness, the evidence of shop keeper PW-15 with regard to the accused and deceased were last scene together and the accused forcefully compelled the deceased or induced her to remain in their company and therefore, the findings of conviction for the offence of kidnapping are not sustaining in law.

(iv) It is the prosecution case that, the accused nos. 2 and 3 have

committed offence of rape and murder. In order to prove the charge, the prosecution has mainly relied upon the circumstances of last scene together, DNA Analysis report and history allegedly made by the accused before the Doctor PW-2. The accused were arrested on 02.11.2018. The theory of last scene together so far, evidence of grocery shop keeper PW-15 is concerned, his evidence is not at all worthy to accept as the accused were shown to him and on the basis of input given by the police, he identified the accused in the Court, however, it is admitted facts that the shop keeper and accused are not belonged to same village, nor they known to each other or met prior to the incident at any place. Thus, the shop keeper's evidence (PW-15), cannot be relied to prove that on 28.10.2018 at about 6-00 pm, the deceased was in company of the accused. The another evidence of last scheme together relied by the trial Court is of PW-16 – Narendra Rathod. This witness had dropped the accused Gopi on Nirmali Road and while dropping the accused Gopi – A1, the witness had noticed the presence of accused nos. 2 and 3 and the deceased and according to version of the witness, they were standing beside the road and the bike was parked there. It is argued that, the tractor driver PW-16, is got up witness because, as per the prosecution case, after the kidnapping the deceased was taken to private farm where rape was committed by accused Lalabhai and Jayantibhai and after that, the accused Gopi met Lalabhai on the road and after

asking the whereabouts of the deceased, the accused nos. 2 and 3 taken the accused no. 1 in the field, where the deceased was lying. Thus, there is a material contradiction and improvement in the evidence of tractor driver with respect to presence of the accused at the place and therefore, the testimony of Narendra Rathod – tractor driver, to prove the circumstance of last scene theory without further corroboration to his testimony, cannot be accepted and relied upon. Thus, the presence of the accused at the field, where the offence committed, is not established and prove and as such there is no admissible evidence that the accused after kidnapping the deceased, committed rape and killed her by manual strangulation (throttling).

- (v) It is the case of the prosecution that after the arrest, the accused were referred to medical examination before PW-2 and before the doctor, the case history being given by the accused. The statement of accused no. 1 before the doctor in the form of case history, cannot be acted upon as substantial and admissible evidence, because in the history, the accused Gopi did not have referred the names of the accused. So far, accused nos. 2 and 3 are concerned, they denied to the facts that no such history being given by them to the doctor.
- (vi) In the facts of the present case, after the arrest of the accused, their blood samples and samples of sperms etc. being taken by the PW-2 and samples were handed over to the concerned



police official and same were deposited before the office of FSL at Ahmedabad. The samples of the deceased like vaginal swabs etc and cloths were seized and collected on 29.10.2018 and the sample of the accused for DNA profiling taken and collected on 02.11.2018 and all the samples deposited on 15.11.2018 and after receiving the same, the Scientific officer Mr. Suresh Vaghela PW-23, prepared a report of DNA Analysis – Exh. 86 and other reports. It is in these background facts, it was argued that the prosecution failed to prove the chain of custody requirement for DNA samples and in order to prove the integrity of the seal, the carrier of the samples has not been examined. The samples were lying in the police station for about 13 days and what kind of safety measure being followed by the police has not been proved with respect to the preservation, packaging and therefore, it creates a serious doubt regarding the integrity of the samples and accuracy and reliability of the DNA examination and therefore, the conviction stand alone on the basis of DNA analysis is not sustainable in law. In support this, reliance has been placed on the case of **Rahul Vs. State of Delhi(2023) 1 SCC 883**), to contend that if DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirement for admissibility in a court of law.

13. Mr. Bhavik Samani, learned counsel appearing for and on behalf of accused – Gopi @ Bhalabhai Devipujak, made the following



submissions:

- (i) Circumstantial evidence brought on record by the prosecution were not sufficient to bring home the charge of rape and murder against the accused Gopi, as the prosecution failed to prove and established a chain of unbroken events, unerringly pointing to the guilt of the accused and none else.
- (ii) In order to link the accused in the alleged crime, the prosecution has mainly relied upon the testimony of PW-13 Vijay Zala and Ganpatsinh Zala– PW-14. The witness Ganpatsinh Zala was having egg shop at the outskirts of village Moti Jer and the witness Vijay Zala was employed by him as his helper. As per the prosecution case, on 28.10.2018, at about 6-30, the accused Gopi came to the shop of Ganpatsinh Zala, and asked the witness to give his bike but he did not do it and after sometime, witness PW-16 Narendra Rathod, came with his tractor at his shop and took break-fast there and after that, when he was about to proceed towards Nirmali road, the accused Gopi got lift in the tractor and get down on the Nirmali Road. It is in this context, it was submitted that, the witness PW-16 was got up witness, as according to his evidence, the deceased was found in the company of the accused Nos. 2 and 3, when the accused no. 1 got down from the tractor. However, as per the prosecution case, before accused no.1 could reach at the Nirmali Road, the deceased was raped in the farm by accused nos. 2 and 3



and she was lying in the farm. So the version of PW-16 creates a doubt about his presence at the spot and giving lift to A1. Referring to the statement of PW-13 Vijay Zala, recorded under Section 164 Cr.P.C, (Exh. 74), it was submitted that, the witness Zala before the Magistrate had stated that the accused Gopi was came at the shop at about 11-00 pm and after taking snacks, he proceeded towards Nirmali. Thus, the version of tractor driver taking snacks at the shop of Ganpat Zala and giving lift to accused Gopi and dropped him at Nirmali Road, is falsified by the statement of the witness Vijay Zala and therefore, the presence of the accused at the shop of Ganpat Zala – PW-14 is not proved and established and further case of the prosecution about meeting with the co-accused on Nirmali Road, is also not established and proved.

- (iii) In order to prove the charge, the prosecution has mainly relied upon the extra judicial confession of accused Gopi before witness Vijay Zala – PW-13. The alleged confession is neither voluntary nor is true and in absence of any details with regard to how and at what time, the accused killed his aunt i.e. deceased, the evidence of the witness with regard to extra judicial confession admitting the guilt of the accused cannot be relied upon and cannot be formed the basis of conviction because, the evidence of extra judicial confession is weak piece of evidence and when it does not inspire confidence, and is not corroborated by any other evidence, the



same cannot be relied upon and conviction cannot be based thereon.

- (iv) The accused Gopi while he was referred for medical examination, the Doctor noted the history of the case and in the history, the accused admitted that, he along with 2 accused committed rape upon the deceased. It was argued that, the accused was brought before the doctor with police yadi and the police officials of Kapadwanj Police Station were present, when the history was noted by the doctor in the Government Hospital and therefore, the said history in the form of confession, is hit by Sections 25 and 26 of the Evidence Act, because, confession made to a police officer is prohibited and cannot be admitted in the evidence and no confession made by the accused while he is in police custody shall be proved against him, unless it is made in the immediate presence of Magistrate. Thus, the evidence of PW-2, who had noted the history of the case, cannot be read against the accused.
- (v) It is the case of the prosecution that after the arrest of accused Gopi, he voluntarily made a disclosure statement which led to discovery of place of offence and other places where the accused had an opportunity to meet the accused. It is argued that, the IO before the arrest of the accused, drew the panchnama of scene of occurrence and after the arrest, at the disclosure statement of the accused, drew the panchnama of

places as pointed out by the accused. The panchas of the panchnama has not deposed exactly the wordings of panchnama and therefore the contents of panchnama having not been proved by the panch witnesses and the IO in his deposition has also not proved the exact words uttered by the accused and the contents of panchnama. Heavy reliance has been placed on the case of **Ramanand @ Nandlal Bharti Vs State of Uttar Pradesh, 2022 SCC on-line 1396**, wherein, the Supreme Court, did not have accepted the evidence of discovery on the ground that the investigating officer in his oral evidence, has not said about the exact words uttered by the police at the police station and failed to prove the contents of the discovery panchnama. The Supreme Court in para-56 of the judgment said that, the requirement of law needs to be fulfilled before accepting the discovery by proving the contents of the panchname and the IO in his deposition obliged in law to prove the contents of the panchnama and it is only if the investigation officer has successfully proved the contents of discovery panchnama in accordance with law, then, in that case, the prosecution may be justified in relying upon such evidence and trial Court may also accept the evidence.

- (vi) So far as DNA analysis report is concerned, Mr. Samani, learned advocate adopted the arguments of Mr. R.N. Singh and also relied upon the judgment of Supreme Court, as referred above.



14. In such circumstances as referred above, the counsel Mr. R.N. Singh and Mr. Bhavik Samani, appearing for the accused have submitted that the prosecution has failed to prove its case beyond reasonable doubt by adducing cogent, acceptable and trustworthy evidence and as such, the judgment of conviction and sentence is liable to be set aside. The prosecution failed to prove its case by leading clinching and convincing circumstantial evidence and in absence of any legal and admissible evidence, the trial Court convicted the accused on the basis of surmises, conjectures and suspicion. So far as sentence of death penalty is concerned, the present case does not fall in the category of rarest of rare cases and the trial court failed to assign special reasons for awarding death sentence. Thus, it was prayed that there being merits in the appeal and the same may be allowed by setting aside the judgment of conviction and order of sentence.

15. On the other hand, Mr. J. K. Shah, learned Additional Public Prosecutor for the respondent-State vehemently opposed the appeals and contended that, the Trial Court has not committed any error while holding the appellants accused guilty for the offence of rape and murder. He further submitted that there is no reason for the police authority to implicate the accused in a serious charge of rape and murder and therefore, the allegation of false implication has no any basis. The accused Gopi was resident of Motijer Village and on 28.10.2018, he saw accused nos.2 and 3 taking away the deceased on their motorbike and said facts being proved and established by the evidence of PW:15 Mohan Rathod, who being an owner of grocery



shop, had identified in the Court as the accused and the deceased on the day of the incident, came to his shop for purchase of tobacco. The presence of the accused at the field is also established by the evidence of PW:16 Narendra Rathod as while dropping the accused Gopi at Nirmali Road he saw the accused and deceased standing beside the road. The accused had given a history before the doctor PW:2 who has deposed the factum of history in his case papers Exhs.20, 21 and 22 which proves that on 28.10.2018, the deceased lady was kidnapped by accused nos.2 and 3 and later on, accused no.1 joined with the co-accused for committing the offence of rape and murder. The medical evidence also proves that the possibility of gang rape cannot be ruled out as the deceased sustained injuries over her private parts and the manner in which the dead body was found in the private farm, the deceased died due to manual strangulation. The accused Gopi confessed his guilt before PW:13 and PW:14. In such circumstances, after the offence of kidnapping, the deceased was subjected to sexual assault and then, she was brutally killed by strangulation. The DNA analysis report Exh.86 further confirms the complicity of the accused Gopi. The accused Gopi voluntarily made disclosure statement before the police and in the presence of the panchas, he saw the place of incident where the deceased allegedly raped and killed. In such circumstances, Mr.J.K. Shah, would urge that the prosecution has proved beyond reasonable doubt the charge against the accused appellants and circumstances as referred above, have been proved beyond reasonable doubt and all the circumstances are sufficient to establish guilt of the accused as various circumstances forms a chain



pointing towards the accused appellants and none else. Thus, therefore, the State Counsel has prayed that there being no merits in the appeal and the same may be dismissed.

16. We have heard learned counsels for both the parties and perused the case records. In our opinion, the following facts are not in dispute:

- (1) The accused Gopi (A1) is resident of Village Motijer, Kapadvanj, Dist.: Kheda and deceased being his aunt also living in the same village with her husband.
- (2) Accused nos.2 and 3 are resident of Village Shihora and they along with the accused Gopi arrested on 01.10.2018, whereas alleged incident occurred on 28.10.2018.
- (3) The dead body of the deceased found in a naked position and her cloths, two Indian currency notes of Rs.50 and Rs.100 found from the place of occurrence. The I.O. while drawing the panchnama of the place of the incident also found the tobacco pouch and empty bottle of bagpiper whisk.
- (4) The deceased had sustained bodily injuries and injuries over her private part and as per the medical evidence, the cause of death was asphyxia on account throttling and the neck injuries as noted in the P.M. Report were sufficient in ordinary course of nature to cause death.
- (5) Death of the deceased was homicidal.



17. The prosecution case admittedly based on the circumstantial evidence. The prosecution relied upon the following circumstances:

- (1) the deceased was lastly seen in the company of the accused nos.2 and 3 (PW:15 – Mohan Rathod),
- (2) the accused were lastly seen by witness PW:16 Narendra Rathod,
- (3) extrajudicial confession of the accused A1 before the witness PW:13 Vijay Zala,
- (4) the statement of the accused in the form of medical history before the doctor PW:2 – Manubhai Gadhvi,
- (5) the DNA analysis report at Exh.86 proving the complicity of the accused in the crime.

18. Having regard to the evidence on record, the only question that arises for our consideration is as to whether the circumstances as referred above forms a chain of events pointing only to the guilt of the appellants accused and none-else.

19. Before we proceed with the analysis of evidence and the contentions of the parties, it is necessary to briefly examine the law relating to circumstantial evidence. It is settled position of law that the circumstantial evidence is not direct to the point in issue but consists of evidence of other facts which are so closely associated with the facts in issue that taken together, they formed a chain of circumstances from which the existence of the principle facts can be legally inferred or



presumed. The chain must be complete and each fact forming part of the chain must be proved. The circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and thereafter, the circumstances taken cumulatively should formed a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must further show that in all probabilities the offence must have been committed by the accused (**Sharad Birdhi Chand Sarda Vs. State of Mahahrashtra – AIR 1984 SC 1622**).

20. In the present case, on 28.10.2018, the alleged incident of rape and murder was being occurred and the dead body of the deceased in a naked position found in the private farm situated at Village: Nirmali, Kapadvanj, Kheda. We have gone through the medical evidence. There is no dispute that, the death of the deceased was homicidal in nature and having regard to the injuries suffered, the possibility of gangrape as opined by the doctor, cannot be ruled out. In that context, the issue is whether the prosecution able to prove the charge of rape and murder against the accused – appellants.

21. Analysis and findings:

We have heard at length learned counsel for the parties and perused the case records and findings of conviction and sentence recorded by the trial court.

22. According to the case of the prosecution, the accused were seen with the deceased on 28.10.2018 in the evening hours at the shop of

Mohan Rathod (PW.15) and thereafter, on Nirmali Road, seen by PW.16 – Narendra Rathod. It is in this context, before dealing with the issue of last seen theory, let us examine and refer the settled law in this regard.

Theory of last seen together:

(1) In the case of **Kanhaiya Lal Vs. State of Rajasthan (2004 (4) SCC 715)**, the Apex Court has held that evidence on “last seen together” is a weak piece of evidence and conviction only on the basis of last seen together without there being any corroborative evidence against the accused, is not sufficient to convict the accused for an offence under Section 302 Indian Penal Code. Paras-12 and 15 of the judgment read as under:

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

15. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh vs. State of Rajasthan, (2010) 15 SCC 588.”

(2) Similarly the Apex Court in **Rambrakash @ Jalim Vs. State of Chhattisgarh (2016 (12) SCC 251)**, has reiterated the legal position in the case of last seen together. Paras-12 and 13 which are

required to be referred and the same are reproduced herein:

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

13. In a similar fact situation this Court in Krishnan v.State of T.N. (2014) 12 SCC 279, held as follows: (SCC pp.284-85, paras 21-24)

“21. The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372), this Court held as follows: (SCC p.385, para 31)

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

22. This Court in Bodhraj v. State of J&K (2002) 8 SCC 45) held that: (SCC p.63, para 31)

“31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

It will be hazardous to come to a conclusion of guilt in cases

where there is no other positive evidence to conclude that the accused and the deceased were last seen together.

23. There is unexplained delay of six days in lodging the FIR. As per prosecution story the deceased Manikandan was last seen on 4-4-2004 at Vadakkumelur Village during Panguni Uthiram Festival at Mariyamman Temple. The body of the deceased was taken from the borewell by the fire service personnel after more than seven days. There is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of seven days there was nobody in contact with the deceased.

24. In Jaswant Gir v. State of Punjab (2005) 12 SCC 438, this Court held that in the absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of “last seen together” even if version of the prosecution witness in this regard is believed.”

23. The circumstance of last seen together in the facts of the present case and upon careful examination of the evidence, the witnesses either deposed at the behest of the police, or they were really not knowing the entire factual aspect of the crime. If we examine the evidence of PW.15 – Mohan Rathod, who had seen the deceased in the company of the accused no.2 and 3, does not inspire confidence because in the evening hours, according to his version, there were many customers standing at his shop. The accused no.2 was not personally knowing him, nor before the incident, he came into contact with the accused in any manner. Admittedly, police brought both the accused to the shop of the witness and informed that, these accused had come to his shop for purchasing tobacco and at that time, deceased and other accused were standing outside the shop. The I.O. failed to conduct TIP of the witness as this circumstance of last seen together was most important



link to connect the accused in the crime. There are glaring discrepancies in the evidence of PW.15 who allegedly seen the deceased last alive in the company of the accused no.2 and 3. In such circumstances, it was prudently not possible for the grocery shop owner to remember each customer and what kind of things he had purchased. Thus, in absence of any corroboration to the evidence of PW.15, his evidence on the aspect of last seen together theory, cannot be a ground to infer that the accused A2 and A3 were lastly in seen with the deceased on 28.10.2018 at about 6:45 p.m. by the witness. The another piece of evidence i.e. circumstance of last seen together is the evidence of PW.16 – Narendra Rathod who had seen the deceased lastly in the company of all accused. We have carefully examined his evidence. It is relevant to note that, the witness being a tractor driver, had come to roadside eatery shop of PW.14, where the PW.13 – Vijay Zala was employed as an Assistant. The witness Vijay Zala (PW.13) in his 164 statement (Exh.74) has categorically stated that on 28.10.2018, the accused Gopi (A1) came to the eatery shop at about 11:00 p.m. for snacks and after taking snacks, he left towards Nirmali Road. It is the case of prosecution that, on the same day, at about 6:30, the accused Gopi got a lift in the tractor of PW.16 and he was dropped at Nirmali Road and at that time, the tractor driver saw the accused no.2 and 3 along with deceased, standing on the roadside. The evidence of tractor driver is in contradiction with the statement of PW.13 recorded by the Magistrate under Section 164 of the Cr.P.C. and as per the statement, the A1 came at about 11 o' clock at the eatery shop. The second contradiction in the evidence of PW.16 is that, when the witness had

dropped the accused Gopi at Nirmali Road, the deceased was already taken in the private farm where the accused no.2 allegedly committed rape upon her. In such circumstances, the presence of the deceased and accused no.2 – Jayantibhai as per the prosecution case, was not at the roadside when the accused Gopi had been dropped by the witness (PW.16). Thus, after examination of the evidence of the aforesaid two witnesses, the circumstance of deceased found in the company of the accused on 28.10.2018 at the grocery shop of PW.15 and thereafter, at the Nirmali Road are not at all proved and established and on such evidence, the circumstances of last seen together does not by itself lead the inference that the deceased was lastly seen in the company of the accused.

24. The net result of the aforesaid discussion would be that the presence of the accused no.2 and 3 at the place where the incident occurred, has not been proved and established, nor it is established that, the deceased was lastly in their company and was kidnapped forcefully for sexual intercourse. It is relevant to note that the accused no.1 Gopi did not have disclosed the names of accused no.2 and 3 before the Doctor (PW.2) that, they had kidnapped the deceased from the bus stand of the Village: Motijer and after chasing him, he had saw the accused on Nirmali Road. Thus, the history before the doctor does not point out the names of accused no.2 and 3 and therefore, the presence of the accused on 28.10.2018 either at the crossroad of Village: Motijer, or at Nirmali Road where the incident occurred. We may profitably refer the evidentiary value of medical history always

recorded by the treating doctor. The Supreme Court in the case of *Pattipati Venkaih vs. State of A.P. (1985 (4) SCC 80)*, while observing the duty of the doctor, held that, the doctor is a prosecution witness for the limited purpose of the injury report and not a prosecution witness with regard to the occurrence. The observations made in para-17 are relevant to reproduce:

Para-17:

“Another argument advanced before us was that, although PWs 1 and 2 were supposed to be eye witnesses, they never cared to disclose of the names of the assailants to the doctor when body of the deceased was taken to the hospital. This argument is only stated to be rejected. The doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save life of a person brought to him and inform the police in medico legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to doctor. It is well settled that, the doctors before whom dead bodies are produced or injured persons are brought either themselves, take the dying declaration or hold the P.M. immediately and if they started examining the informants, they are likely to become the witness of the occurrence which is not permissible.”

In light of the settled principle of law and applying the same to the facts of the present case, it is not in dispute that, the accused after their arrest, were brought before the PW.2 with Police Yadi for medical examination on 02.11.2018 and police personnel had throughout accompanied the accused at the hospital and in his presence, the doctor did examination of the accused and noted the history. Thus, the history before the doctor as relied by the prosecution are not substantial and admissible evidence on two counts i.e. (i) it is none of the business of the doctor to record the history which has no relevance with the treatment or for the purpose for which the accused sent for obtaining necessary samples etc. and (ii) the so-called history

when noted by the doctor, the presence of the police constable as referred in the case papers, was throughout with the accused persons and therefore, any statement in the form of confession though before the doctor, but, in the presence of the police officials, cannot be admitted in evidence as the said confession is prohibited in law and hit by Sections 25 and 26 of The Evidence Act. Thus, the circumstance of medical history connecting the accused in the alleged crime, cannot be admitted in evidence and on that basis, no inference can be drawn that, the accused on 28.10.2018, in the evening hours, took the deceased on their bike and taken her in the private field.

25. The next circumstance, involving the accused no.1 Gopi Devipujak relied by the prosecution is the extra judicial confession made before the two witnesses namely PW.13 – Vijay Zala and PW.14 – Ganpatsinh Zala. It is the case of prosecution that, the accused Gopi on 28.10.2018, came to the roadside eatery shop of PW.14 and asked to lent his bike so that he could catch the deceased and accused no.2 and 3. The witness refused to give his bike and accused chosen to sit in the eatery shop and at that time, PW.16 by driving his tractor, came at the shop for snacks and after completion of snacks, he gave a lift to the accused Gopi and dropped him at Nirmali Road. The said circumstance as discussed in the presiding paragraph of this judgment, the prosecution failed to prove the said aspect of presence of the accused in the eatery shop because the Assistant Vijay Zala being a friend of Gopi, in his 164 statement (Exh.74), categorically stated that the accused Gopi came to the eatery shop at about 11 o' clock and after

taking snacks, he proceeded towards Nirmali Road. The theory of taking lift in the tractor by the accused and the factum of snacks being taken by the tractor driver (PW.16) is falsified by the 164 statement of the witness (PW.13). Thus, the presence of accused Gopi in the eatery shop at about 7 o' clock on 28.10.2018 and taking lift in the tractor and went to Nirmali Road, are not proved and established. It is further case of prosecution that, PW.13 and accused Gopi resident of Village: Motijer, were friends and they used to go for fishing together. It is in this context the piece of circumstance relied by the prosecution is that, on the next day of the incident i.e. 29.10.2018 at about 8:00 a.m. the accused Gopi went to the house of PW.13 and when they were in the Vatrak river for fishing purpose, the accused Gopi made a confession in one line that, "he had killed his aunt."

In other words, according to prosecution case, the accused Gopi confessed his guilt before the witness (PW.13) and the said confession was made voluntarily by him and it reflects true facts of the incident and the evidence of PW.13 on this aspect is credible. Before dealing with the issue of extra judicial confession it is necessary to refer the settled position of law.

Extrajudicial confession:

The Supreme Court in the case of **Ramu Appa Mahapatra Vs. State of Maharashtra (2025 (2) SCR 388)**, while acquitting the accused emphasizing that the extrajudicial confession are inherently weak evidence and requires strong, credible corroboration, not just



suspicion, to sustain a conviction, especially with contradictory testimonies and missing evidence. Paras-16 to 19, referring the earlier judgment of the Supreme Court on the subject of extrajudicial confession, reads as under:

"16. Extra-judicial confession of an offence made by the Accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the Accused before or immediately after the incident; human blood being found on the clothes or person of the Accused which matches with that of the Accused; leading to discovery, recovery of weapon etc. As we know, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the Accused or the guilt of any other person. The circumstances would not only have to be proved beyond reasonable doubt, those would also have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. All these circumstances should be complete and there should be no gap left in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the Accused and totally inconsistent with his innocence. The circumstances taken cumulatively must be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else. While there is no doubt that conviction can be based solely on circumstantial evidence but great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the Accused must be accepted.

17. In State of Rajasthan v. Raja Ram MANU/SC/0595/2003 : 2003:INSC:388 : (2003) 8 SCC 180, this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity. As to extra-judicial confessions,

two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the Accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case judged in the light of Section 24 of the Indian Evidence Act, 1872 (briefly 'the Evidence Act' hereinafter). The law is clear that a confession cannot be used against an Accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

17.1. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appear to be unbiased, not even remotely inimical to the Accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the Accused. The words spoken by the witness should be clear, unambiguous and unmistakably convey that the Accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

17.2. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable Rule of law.

18. In Sansar Chand v. State of Rajasthan MANU/SC/0869/2010 : 2010:INSC:712 : (2010) 10 SCC 604, this Court accepted the admissibility of extra-judicial confession and held that there is no absolute Rule that an extra-judicial confession can never be the basis of a conviction although ordinarily an extra-judicial confession should be corroborated by some

other material.

19. Evidentiary value of an extra-judicial confession was again examined in detail by this Court in Sahadevan v. State of Tamil Nadu MANU/SC/0499/2012 : (2012) 6 SCC 403. That was also a case where conviction was based on extra-judicial confession. This Court held that in a case based on circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the Accused. That apart, in a case of circumstantial evidence where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court. However, the confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the veracity of the witness to whom it has been made.

19.1. This Court acknowledged that extra-judicial confession is a weak piece of evidence. Wherever the court intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, such evidence should not be considered. This Court held as follows:

14 . It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

19.2. Upon an indepth analysis of judicial precedents, this Court in Sahadevan (supra) summed up the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an Accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law."

In light of the settled position of law, the issue arise for out consideration as to whether the extra judicial confession of the accused confessing his guilt of killing his aunt is voluntary, true and credible to infer the involvement of the accused in commission of crime. The answer is no because the PW.13 – Vijay Zala according to prosecution case, was working as a helper at the roadside eatery owned by PW.14 and the working hours was 5 p.m. to 11:30 p.m. The witness was used to sleep in the house of PW.14 after completion of his daily work. The prosecution case is that, on the next date i.e. 29.10.2018, the witness (PW.13) was at his father's home and in the morning, the accused Gopi came to the house and both together went for fishing nearby the river and while fishing, the accused Gopi made a confession about killing of his aunt. The one line confession does not inspire confidence because how and where, the deceased was killed, has not been stated by the accused, nor asked by the witness. The father of PW.13 who later on came to know about the confession made by the accused Gopi, in his deposition, stated that, when Gopi came to his house, he was not there at the home and his son later on, informed him about the confession. In



such circumstances, in absence of any corroboration to the evidence of extra judicial confession, the reliance on the sole evidence of PW.13 to prove the guilt of the accused on the basis of extra judicial confession is prudently not acceptable and permissible as the one line confession does not inspire confidence about the truthfulness of the confession because in absence of any further particulars on this aspect like time, date and motive of killing, it cannot be acted upon.

26. The another circumstances pointing towards the guilt of the accused relied by the prosecution is DNA Analysis. The Scientific Officer (PW.23) Suresh Vaghela had conducted DNA Profiling and issued a report at Exh.86 dated 01.05.2019. Admittedly, the alleged incident occurred on 28.10.2018. The P.M. of the deceased conducted on 29.10.2018 and the doctor (PW.2) has taken necessary samples from the body of the deceased for DNA Profiling and after sealing the samples, they were handed over to the concerned police officials for depositing in the FSL. All three accused were arrested on 01.11.2018 and on 02.11.2018, they were brought before PW.2 for medical examination and for taking necessary samples of DNA Profiling and after taking the samples of blood etc., the sealed samples handed over to the concerned police for FSL. The samples of deceased and accused received by Ahmedabad FSL on 15.11.2018 i.e. after delay of 14 days. No reason is forthcoming as to why the samples were lying in the police station for a period of 14 days and during the said period, what kind of measures for preserving the samples being taken. It is in these background facts, the contention raised is that, there are several discrepancies like delay in forwarding the samples, breached in

protocols for preserving the samples, gaps in the chain of custody which create doubts regarding the accuracy, integrity of the samples and test reports and therefore, the DNA Profiling Report (Exh.86) cannot be relied upon to prove the complicity of the accused.

DNA profiling:

(1) DNA evidence may be more useful for purposes of investigation and so far its evidentiary value is concerned, the Apex Court in its various judgments held that the DNA evidence is in the nature of opinion evidence as envisaged under Section 45 of the Evidence Act and like any other opinion evidence, and its probative value varies from case to case and it depends on the quality control and quality assurance procedure in the laboratory (**Rahul Vs. State of Delhi - 2023 (1) SCC 83**).

In the facts of the present case, admittedly, after delay of 14 days, the samples were forwarded to the FSL, Ahmedabad and the delay is unexplained and during the said period, under what condition, samples were preserved, that is also not come on record. Recently, in the case of *Karandeep Sharma @ Razia @ Raju vs. State of Gujarat (2025 INSC 444)*, the Supreme Court on the issue of reliability and admissibility of the evidence of DNA Profiling, held and observed that, the prosecution would first be required to prove the sanctity and chain of custody of samples/articles right from the time of their preparation, collection till the time they reached the FSL and for this purpose, the link evidence would have to be establish by examining the concerned



witnesses. In another case, the Supreme Court (*Putai vs. State of Uttar Pradesh (2025) INSC 1042*), while allowing the criminal appeals of two villagers, Putai and Dilip, who had been sentenced – one of them to death – for the rape and murder of 12 years old girl. The conviction has been set aside on the ground that, the prosecution’s circumstantial case was fatally tainted by an unproven and incomplete chain of custody for crucial DNA samples and other forensic exhibits. In the case of *Prakash Nishad vs. State of Maharashtra (2023 16 SCC 357)*, on the aspect of delay in forwarding the samples to the laboratory, the Apex Court has observed that, when there is unexplained delay in sending the samples to the FSL, the concomitant prospect of contamination could not be ruled out and the need for expediency in sending the samples to the laboratories was underscored. Recently, the Supreme Court in the case of **Kattavellai @ Devakar Vs. State of Tamil Nadu (2025 INSC 845)**, while discarding the DNA evidence, observed that, despite the presence of DNA evidence, it has to be discarded to the reason that, proper methods and procedures were not followed in the collection, sealing, storage and employment of the evidence in the course of appellant – convict’s conviction. DNA, as we have observed has to be largely dependable, even though these evidence is only of probative value, subject to the condition that it is properly dealt with. Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many regions across the world. It is also equally true that, many persons wrongly convicted, have finally have justice served, with them being declared innocence because of advancement in this technology. It is unfortunate

that, alongside such advancement, we still have cases where despite the evidence being present, it has to be rejected for the reason that, the concerned persons, either doctors or investigators have been careless in handling of such sensitive evidence. The Supreme Court in para-44 of the judgment, issued the following directions, which shall be followed henceforth in all cases, where DNA evidence is involved.

"1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48-hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.

3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register

shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse."

In light of the above and evidence on record, the DNA Profiling Report (Exh.86) says that, the bloodstains marks on the sari and petticoat of the deceased showed concomitance with autosomal DNA Profile of Gopi @ Bhalabhai Devipujak. So far as accused no.3 – Lalabhai is concerned, the bloodstains found on his T-shirt and blood of the deceased shows concordance with each other. There is no incriminating findings against the accused no.2 – Jayantibhai Vadi. In these background facts, in order to prove the probative value of the DNA Report, the prosecution failed to forward it within a reasonable time (48 hours) and in absence of any explanation about the sanctity and chain of custody of the samples, no reliance can be placed on the report to connect the accused in the crime. It is the prosecution to prove that, after samples were drawn, then, for about 14 days, how they stored, transported and received by the FSL. The prosecution should have examine the police official who was in custody of samples and the person who had deposited the samples with the FSL. In such circumstances, the DNA Profiling Report cannot be read against the accused A1 and A3 so as to infer their involvement in the alleged offence.

27. The another circumstances relied by the prosecution is the admission of the accused A1 – Gopi Devipujak as during the

investigation, he made a disclosure statement while pointing out the place of offence. It is relevant to note that, neither the panchas, nor the I.O. has stated the exact words spoken by the accused about his willingness to show the place. Recently, the Supreme Court in the case of *Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh (2022 SCC OnLine 1396)*, has emphasized the necessity of proving the exact words uttered by the accused and proving the contents of discovery panchnama. In para-54 to 56, the Supreme Court held that, the investigating officer in his deposition is obliged in law to prove the contents of panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then, in that case, the prosecution may be justified in relying upon such evidence.

In the present case, the panchnama as relied by the prosecution is reconstruction of the offence and accused jointly being referred in the panchnama and it cannot be said to be a discovery panchnama under Section 27 of The Evidence Act because on 29.10.2018, the police in the presence of panchas, had drawn the panchnama of place of offence and subsequently after the arrest of the accused, the another panchnama of pointing out the place, being drawn. Thus, the information whatever disclosed cannot relates distinctly to the fact discovered because the fact already been discovered before the alleged panchnama of reconstruction. In such circumstances, the so called confession of the accused Gopi – A1 which was before the police officials and is hit by Sections 25 and 26 of the Evidence Act and considering the nature of panchnama, which do not fall under Section 27 of the Evidence Act and on this circumstance, inference cannot be drawn against the accused for their involvement in the crime.



28. We are conscious about the seriousness of the offence as the deceased was raped and killed in a brutal manner. However, it is one of the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that, suspicion however be strong, can never take place of the proof. There is indeed a long distance between accused may have committed the offence and must have committed the offence, which must be traversed by the prosecution by adducing reliance and cogent evidence. The Supreme Court in the case of *Jaharlaldas vs. State of Orissa (1991 3 SCC 27)* has held that, even if the offence is shocking one, the gravity of offence cannot by itself overweight as far as legal proof is concerned. Recently, the Supreme Court in the case of *Surendra Koli vs. State of U.P. (2025 LawSuit SC 1479)*, while acquitting the accused in the case known as “Nitharikand”, held that, the offences in Nithari were heinous and the suffering of the family is beyond measure. It is a matter of deep regret that despite of prolonged investigation, the identity of the accused perpetrator has not been established in the manner that meets the legal standards. Criminal law does not permit conviction on conjectures or on a hunch. Suspicion however grave, cannot proof beyond reasonable doubt. Courts cannot prefer expediency over legality. The presumption of innocence endures until guilt is proved through admissible and reliable evidence and when the proof fails, the only lawful outcome is to set aside the conviction even in a case involving horrific crimes.

29. For the reasons aforementioned, we are of the considered opinion that, the prosecution failed to prove all necessary circumstances by reliable and clinching evidence which would constitute a complete chain



without a snap as would permit no confusion other than the one of the guilt of the accused. Resultantly, the prosecution has not been able to prove its case beyond reasonable doubt against the accused as complete chain of incriminating circumstances pointing towards guilt of the accused has not been established and proved. The accused no.1 to 3 are acquitted of all charges.

30. Accordingly, the Criminal Appeal No.1139 of 2022 and Criminal Appeal No.1813 of 2022 are allowed. The judgment of conviction dated 29.04.2022 and order of death sentence passed by the Additional Sessions Judge, Kapadvanj at Kheda in Sessions Case No.12 of 2021 (Old Case No.43 of 2019) is set aside. In view of disposal of Criminal Appeal No.1139 of 2022, Criminal Misc. Application (For Direction) No.1 of 2022 in Criminal Appeal No.1139 of 2022 stands disposed of accordingly. The appellants-accused are in jail. They shall be released forthwith unless their custody is necessary in any other case. In view of setting aside of the judgment of conviction, the Criminal Confirmation Case No.6 of 2022 is disposed of accordingly. Registry shall send the R & P to the concerned court, henceforth.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

TAUSIF SAIYED