HIGH COURT OF TRIPURA
AGARTALA
Crl. A.(J) 54/2024

Sri Ritesh Debbarma, son of Shambhuram Debbarma, resident of Birchandra Thakur Para, P.S. Kalyanpur, District- Khowai, Tripura;

----Appellant

Versus

The State of Tripura **----Respondent**

For the Appellant(s)	:	Mr. Ratan Datta, Advocate Mr. A. Baidya, Advocate Ms. A. Chakma, Advocate Ms. D. Debroy, Advocate
For the Respondent(s)	:	Mr. Raju Datta, PP
Date of hearing	:	**31.03.2026**
Date of delivery of judgment & Order	:	**07.04.2026**
Whether fit for reporting	:	**Yes**

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT

(Dr.T.Amarnath Goud, J)

1. Heard Mr. Ratan Datta, learned counsel appearing for the appellant. Also heard Mr. Raju Datta, learned Public Prosecutor, appearing for the respondent-State.

2. The convict-appellant, by means of filing the present appeal has challenged the judgment and order of conviction and sentence dated 10.07.2024 passed by the learned Sessions Judge, Khowai, Tripura, in connection with case No. S.T.(Type-1) 26 of 2018, whereby the appellant was convicted under Sections 376D,302,34 of the IPC and was sentenced to under rigorous imprisonment for life, which shall mean remainder of his natural life, and was ordered to pay a fine of Rs.50,000/- with default

stipulation, for committing offence punishable under Sections 376D read with section 34 of IPC; and was further sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- with default stipulation for committing offence punishable under Sections 302 read with section 34 of IPC; wherein both the sentences shall run concurrently.

(3)(a) Facts leading to the present appeal are that, on 10.03.2017, one Surabala Debbarma (PW-2) lodged an oral complaint with the Kalyanpur police station to the effect that on 09.03.2017 in the night at about 21.00 hours, she was taking rice in her house and her daughter, the victim herein, (aged about 18 years), a Madhyamik candidate, on receiving a phone call went out of the house and since the victim did not return home for quite sometime, the informant came out of her house and searched for her daughter in the nearby surrounding and also in the house of her neighbours, but could not trace her. Subsequently in the next day morning at around 7 a.m. she came to know from one Swadesh Debbarma ((PW-5) that the condition her daughter i.e. the victim, was serious and was lying on a field at Ganthabil and on getting the information, she rushed there and found the victim lying on the field, and on seeing the same, she apprehended that someone might have raped and then killed her daughter i.e. the victim. Subsequently, the complaint was registered as Kalyanpur PS case no. 2017/KLN/006, dated 10.03.2017 under Sections 376D/302/34 IPC, and the same was endorsed to SI Nidhi Ram Reang (PW-41) for investigation.

(3)(b) In course of investigation, the IO visited the PO, examined material witnesses and recorded their statement under Section 161 Cr.P.C., arranged for post mortem examination of the deceased and seized several incriminating materials by preparing seizure list, collected medical examination reports of the victim and accused persons as well as SFSL reports of the samples obtained. In between the investigation, the accused persons, namely, Dipankar Debbarma, Amrit Debbarma (juvenile in conflict) and the present appellant, Ritesh Debbarma were arrested. The I.O. has also arranged for obtaining disclosure statements of the accused persons. On completion of investigation, charge sheet was filed. On receipt of the charge sheet, specific case was registered before the learned trial court. Charge was framed against the accused persons, namely, Dipankar Debbarma and the present appellant, to which both of them pleaded not guilty and claimed to be tried. Accordingly, trial commenced.

(3)(c) In course of trial, prosecution examined as many as 43 witnesses and exhibited some documents. On closure of prosecution witnesses, the appellant was examined under Section 313 Cr.P.C. to which he denied all the incrimination materials brought against him, but denied to adduce any defence witness. After hearing argument of both sides, learned trial court passed the judgment and order of conviction and sentence, as stated *supra*. Being aggrieved, the appellant has filed the present appeal challenging the impugned judgment and order of conviction and sentence.

4. Mr. Ratan Datta, learned counsel appearing for the appellant, has argued that the entire prosecution is based on circumstantial evidence as there is no eye witness to the alleged incident. Further, learned counsel has submitted that the complainant has exaggerated her statement during her deposition and moreso all the witnesses are hearsay. Mr. Datta, has also questioned the delay in lodging the FIR. He has also submitted that though mobile phones of the victim and appellant and other accused persons are seized but CDR has not been collected, it cannot be assumed that the appellant had called the victim over phone on the relevant date and time and committed the crime. Learned counsel has also submitted that the medical reports so collected are very much contradictory and the same do not establish involvement of the appellant in the alleged commission of offence.

5. Mr. Datta, has further submitted that the cause of death of victim is asphyxia which is homicidal in nature. Learned counsel has also submitted that the questions put to the appellant in his examination under Section 313 CrPC are self contradictory. Mr. Datta has submitted that the post mortem report also does not disclose any evidence so as to ascertain that the appellant is involved in the alleged commission of rape and murder. Mr. Datta, has further argued that the conviction has been solely made on the basis of DNA profiling i.e. collection of anal swap, but as per deposition of PW-38, the MO of Kalyanpur CHC, she has collected only the vaginal swap and scalp hair as produced by police after

seizure, and also argued that the word 'etc.' made in her deposition does not mean that she has collected or received the anal swap under seizure for medical test.

6. He has further submitted that in examination of accused under section 313 CrPC, detailed question has to be put to the accused with regard to the findings or results of the medical examination conducted by the medical officers and, thus, it has been argued that as per settled provisions of law the accused has not been given a fair opportunity in that regard. Learned counsel has also submitted at the time of post mortem the viscera was collected from the hospital and was handed over to the police without any acknowledgement, and the same was collected on 10.03.02017 and was handed over on 19.03.2017 and there is no evidence as to where the same was preserved for a long period. Learned counsel has also argued that there was no evidence on record indicating when the DNA samples were collected, how they were preserved, or in what manner they were forwarded to the laboratory and in the absence of this evidence, the credibility of the DNA report stands vitiated and the conviction is bad in law. Mr. Datta, has also argued that from the disclosure statement of the other accused persons it is well established that the appellant was not present or involved with the alleged commission of offence.

7. He has also submitted that as per Section 27 of the Indian Evidence Act, extra-judicial confession of co-accused or accused before the police at police station is not admissible in law

and herein this case, the disclosure statement was made at the police station before Executive Magistrate but not before any Judicial Magistrate, which is required under the Act. Mr. Datta, learned counsel rests his submission on the prayer of acquittal of the appellant.

8. In support of his submission, Mr. Datta, learned counsel on the issue of DNA profiling, has placed reliance upon the judgment of the apex court in ***Kattavellai @ Devakar vs. State of Tamilnadu***, reported in ***2025 SCC Online SC 1439***; ***Dashwanth vs. State of Tamil Nadu***, reported in ***2025 SCc OnLine SC 2186***; on the issue of order extra-judicial confession, placed reliance upon the judgment of the apex court in ***Bernard Lyngdoh Phawa vs. State of Meghalaya***, reported in ***2026 SCC Online SC 116***; on the issue of breach of Section 313 Cr.P.C., placed reliance upon the judgment of the apex court in ***Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal and ors***, reported in ***AIR OnLine 2025 SC 1073***; on the issue of circumstantial evidence, placed reliance upon the judgment of the apex court in ***Chandrapal vs. State of Chhattisgarh***, reported in ***AIR 2022 SCC 2542.***

9. On the other hand, Mr. Raju Datta, learned PP appearing for the respondent-State at the very inception has submitted that PW-2, the complainant, in her examination in chief has specifically stated that the accused persons alongwith the present appellant over phone called her daughter on the alleged date and time to which her daughter attended and left the house.

It has been further submitted that from the deposition of PWs 17 and 18, presence of the accused person at the alleged place of occurrence has been confirmed.

10. Mr. Datta, learned PP has further submitted that from the DNA examination report, it is very much evident that the appellant has actively participated in the alleged commission of rape and murder of the victim. Learned PP has further submitted that from the seizure list dated 10.03.2017 (Exbt-1) it is evident that the anal swab was collected at Kalyanpur CHC morgue in presence of witnesses and the same was confirmed by PW-38. It was further submitted that the blood sample of the appellant was collected on 14.03.2017 at Kalyanpur CHC and the same was confirmed by PW-21. Further, learned PP has submitted that from the DNA profiling it is evident that the anal swab of the deceased matches with the blood sample of the appellant.

11. Learned PP has further submitted that the appellant during his examination under Section 313 Cr.P.C. declined to adduce any witness on his behalf. Further the disclosure statement of the appellant is in corroboration with the disclosure statement of other accused persons which clearly establishes the prosecution story. Learned PP has further submitted that the conviction returned by the learned trial court is based on a thorough and careful appreciation of the oral and documentary evidences which is well-reasoned and legally sound and the same requires no interference.

12. We have meticulously perused the case records and the evidences, both oral and documentary, let in by the parties and also the judgment returned by the learned trial court.

13. To prove the case prosecution has examined as many as 43 witnesses. PW-2 is the complainant, and as per her complaint it is stated on 09.03.2017 at around 9 p.m. on attending a phone call her daughter i.e. the victim went out of the house, but after elapse of a considerable period when she did not return, the complaint searched for her whereabout and on 10.03.2017 on an information she could find dead body of her daughter in a paddy field of Gantabill and accordingly on 10.03.2017 her complaint was registered as FIR and subsequently upon investigation, the appellant was arrested.

14. During examination in chief, PW-2, stated that on 09.03.2017 at night at about 9.00 p.m. Hritesh, the appellant herein, Dipankar and Amrit called her daughter over phone and upon attending the same she went out of her house and did not return home and on next day morning her daughter was found lying in the paddy field of one Nagendra Debbarma. Though her statements in examination in chief are found to be exaggerated, but during her cross examination, except mere denial and suggestion, defence failed to contradict or discard her such statement.

15. Further, PWs 3,5,7,8,9,10,16,17,18,23,36, in same line in their deposition deposed that the place from where the dead body was recovered was a paddy field at Gantabil.

16. Further, as per the complainant, the incident occurred in the night of 09.03.2017 and from the evidence of PW-17 and PW18 it is found that on 09.03.2017 at night at about 1.00 to 1.30 am (night), when they were returning from a marriage ceremony, they met the appellant and Amrit (juvenile in conflict)in a bridge at Phaguabari on a Splendor bike and on the next day they came to learn that about the incident. The evidence of PW-17 and 18 can be taken into consideration since the alleged splendor bike was seized by the police in course of investigation by preparing seizure list (Exbt.53). From the testimony of PW- 17 and 18, the appellant and co-accused Amrit were last seen at night at about 1-1.30 am near a bridge in their area on a Splendor bike.

17. The body of deceased was found in a nearby paddy field in the morning where both the appellant and co-accused, Amrit were seen together. In cross-examination, the defence could not disprove the said circumstance and during examination of the appellant under Section 313 Cr.P.C. he simply denied but did not adduce any defence witness in his behalf. Thus, adverse inference can be drawn that the appellant alongwith other co-accused have committed the alleged rape and murder.

18. Section 106 of the Evidence Act, 1872, (now corresponding to Section 109 of the Bharatiya Sakshya Adhiniyam, 2023), comes into play only when the prosecution has successfully established a prima facie case and a chain of evidence from which a reasonable inference of guilt can be drawn against the accused/appellant. It is designed to shift the burden of proof to

the accused/appellant only for facts that are specifically within their personal knowledge, which are difficult for the prosecution to prove. It is a cardinal principle that Section 106 of the Evidence Act shall apply and the onus to explain would shift on to the appellant only after the prosecution succeeds in establishing the facts from which a reasonable inference can be drawn regarding existence of other facts which are within the knowledge of the appellant. When the appellant fails to give proper explanation, the Court can draw an adverse inference against the appellant. In cases based on circumstantial evidence, the failure on the part of appellant to provide a reasonable explanation, as required under Section 106 of the Evidence Act, can complete the chain of circumstantial evidence. Thus, from the entirety of the facts and circumstances conjointly with the evidence of PW-17 and 18, involvement of the appellant in the alleged crime cannot be ruled out. Had the case been based on circumstantial evidence, the presence of appellant with the other co-accused, the various recoveries and the medical evidences, as had been broadly classified fulfills the basis of conviction. From the disclosure statement, re-creation of crime scene, pointing of memorandum, leading to discovery of mobile from the house of co-accused, Dipankar Debbarma and seizure of motorbike from accused Amrit Debbarma with whom the appellant was seen by PWs 17 and 18 on the alleged date, proves involvement of the appellant in the alleged crime. This piece of circumstantial evidence is quite

specific and is of a crucial nature and undoubtedly connects the appellant with the crime.

19. From the deposition of PW-2, as per defense, it seems that PW-2 has made aggregated statements. It is trite law that if the aggregated statements are inconsistent, contradict each other, the same can be considered as unreliable, but such aggregated statement may be admissible, depending on corroboration by other specific evidence(s). An honest witness can be incorrect about details, while the aggregation statement of the said witness can show a broader truth to an incident.

20. Since from the ingredients of offences as were available before the learned trial court from the materials produced, charge was framed against the appellant and others specifically under Section 302, 376-D and 34 of the IPC, but the appellant has totally failed to present any evidence in his favour either in cross-examination or in his examination under Section 313 Cr.P.C., challenging existence of common intention or commission of gang-rape and murder.

21. The 313 statement is designed to allow the accused to personally explain incriminating circumstances against him subsequent to which the case will be decided based on the evidence presented by the prosecution and the explanations given by the accused in his 313 statement. A failure to offer a plausible explanation for incriminating circumstances in the 313 statement or to produce defence witnesses allows the court to draw reasonable and logical inferences against the accused. In the case

in hand, the defense has miserably failed to fulfill the following requirement. From the 313 examination, it is found that the learned trial court has put and disclosed all the facts and circumstances in details to the appellant, to which he denied and also denied to adduce any evidence on his behalf. The appellant was examined under Section 313 Cr.P.C. and all the incriminating circumstances were put to him. However, in his reply, he simply denied the allegations by stating that he was innocent and had been falsely implicated in the instant case. Even, he did not choose to lead any evidence in his defense. The appellant failed to furnish any explanation whatsoever in relation to the offence, when he was examined under Section 313 Cr.P.C. and hence the learned trial Court was to draw an inference, including an adverse inference, in accordance with law. Thus, submission of learned counsel appearing on behalf of the appellant that incriminating documents which were not put to appellant in his statement recorded under Section 313 Cr.PC. is rejected being devoid of any force as this court is of the opinion that learned trial Court has put all incriminating questions to appellant in the present case.

22. There is no evidence on record in order to prove that disclosure statement of co-accused and the appellant was procured under pressure. Disclosure statement of appellant and co-accused was recorded in accordance with of law and proved by way of testimony of marginal witness. A disclosure statement must be made while the accused is in police custody to be admissible under Section 27 of the Indian Evidence Act and the statement

must directly lead to the discovery of a material object or fact. The statement which is admissible under Section 27 is that the information shall be leading to discovery Thus, what is admissible being the information, the same has to be proved by discovery, in other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved. The Hon'ble apex Court in ***Raja Khan vs. State of Chhattisgarh***, reported in ***(2025) 3 SCC 314***, has dealt with the similar where the exact information given by the accused while in custody which led to recovery of the article has to be proved and while dealing with Section 25, 26 and 27 of the Evidence Act opined that statement whether confessional or not, held, is allowed to be given in evidence but that portion only which distinctly relates to discovery of the fact is admissible and the discovery of fact, includes the object found, the place from which it is produced and the knowledge of the appellant as to its existence. In ***paras 28, 29, 30 and 31***, the Hon'ble apex Court has held as under:

> **"28. Sections 25 and 26 of the Evidence Act stipulate that confession made to a police officer is not admissible. However, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these sections [Delhi Administration vs. Bal Krishan & Ors., (1972) 4 SCC 659].**
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> **29. This Court is of the view that Section 27 lifts the ban, though partially, to the admissibility of confessions. The removal of the ban is not of such an extent so as to absolutely undo the object of Section 26. As such the statement whether confessional or not is allowed to be given in evidence but that portion only which distinctly relates to discovery of the fact is admissible. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the Appellant-accused as to its existence (Udai Bhan Vs. State of Uttar Pradesh, AIR 1962 SC 1116).**
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> **30. The essential ingredients of Section 27 of the Evidence Act are three fold:**
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> **(i)The information given by the accused must led to the discovery of the fact which is the direct outcome of such information.**
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> **(ii)Only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused.**
>
> **(iii) The discovery of the facts must relate to the commission of such offence.**
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> **31. The question as to whether evidence relating to recovery is sufficient to fasten guilt on the accused was considered by this Court in Bodhraj Alias Bodha & Ors. v. State of Jammu & Kashmir, (2002) 8 SCC 45, wherein it has been held as under: (SCCpp.58-59, para 18)**
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> **"18… Section 27 of the Indian Evidence Act, 1872 (in short "Evidence Act") is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the**

fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by this Court in Delhi Admn v. Balakrishan [(1972) 4 SCC 659] and Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828]. The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken in to custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor [AIR (1947) PC 67], is the most quoted authority of supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [See State of Maharashtra v. Dam Gopinath Shirde and Ors, (2000) 6 SCC 269]. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

(emphasis supplied) "

In the case in hand, it is found that PW-9 and PW-10, in their examination in chief stated that on 15.03.2017 they were called by police of Kalyanpur PS and at about 12/12.30 p.m. when they reached at the PS, they alongwith the appellant, Ritesh and Dipankar were taken to a place where Ritesh and Dipankar gave statement that after committing rape they murdered the victim [name withheld] and they also demonstrated in that regard and those statements were recorded by darogababu in writing. PW-9 deposed that he had videographed the entire episode and after recording the statement police obtained his signature and his said deposition was corroborated by PW-10. From the disclosure

statement(Exbt 6 to 6/4 and 8 to 8/4), it is evident that the co-accused and the appellant had voluntarily and without any threat, fear or coercion had disclosed the entire fact which was reduced into writing by the investigating officer and in the presence and assistance of the accused and appellant, scene of crime was constructed and leading to discovery took place and subsequently the investigating officer prepared the pointing of memorandum (Exbt.7 to 7.4 and 9/1) in presence of PW-9 and PW-10 and PW-43(Executive Magistrate).

23. During examination in chief, PW-43 has stated that both the accused persons, Ritesh Debbarma and Dipankar Debbarma, under the custody of I.O. at Kalyanpur PS gave their respective disclosure statement and both of them re-created the entire crime scene. PW-43 has also identified his signatures on the exhibited documents. Such immediacy between the disclosure and discovery adds to the credibility of the prosecution version and rules out the possibility of fabrication of the case. It is significant that the discoveries are not of trivial. This goes to the very root of the case, as the disclosure and discovery coupled with the re-creation of crime scene at the instance of the appellant and co-accused, forms a chain which *prima facie* points to the guilt of the appellant.

24. From the disclosure statement of accused Dipankar Debbarma it is evident that on 09.03.2017 Ritesh Debbarma, the appellant, alongwith Dipankar Debbarma and other drank alcohol and made call to the victim and thereafter they went to marriage

ceremony Sonachari by riding motor bike of Amrit Debbarma, juvenile in conflict, and after return they again called the victim on her mobile and on her arrival Ritesh and the victim left them and after long wait they met with Ritesh and the victim on the pitch road and thereafter at about 10.00 p.m. riding on motorcycle they went to open paddy field at Ganthabill where he and Amrit Debbarma raped her repeatedly and murdered the victim by throttling. He also narrated that at about 11.30 p.m. night after killing the victim he took the mobile and sim card of the victim to his house and thrown the sim card of victim into kachcha latrine. He also has re-created the crime scene and led to discovery. The disclosure statement of Ritesh Debbarma, the appellant, is in the same tune to that of other accused Dipankar Debbarma. Ritesh Debbarma only has further stated that he had sexual relation with the victim prior to meeting with the co-accused and Amrit Debbarma on the pitch road. He has also recreated the crime scene and led to discovery. Thus, it can safely be presumed that the appellant is involved in the alleged commission of crime.

25. It is evident that anal swab was seized by the police under a seizure list and PW-1, PW-4 and PW-37 put their signatures on the said seizure list dated 10.03.2017 marked as Exbt.1 and the same was collected from the body of the deceased during post mortem examination, and the same was confirmed by PW-27 and PW-38. This court has meticulously gone through the observations made by the learned trial court in the impugned judgment while dealing with the forensic and postmortem report.

Needless to say the manner the learned trial court made its observation in Para 14 of the judgment, while dealing with the medical evidence, is appropriate depending upon facts and circumstances of the case.

26. For better appreciation, para 14 of the judgment is reproduced here-in-below:

"14. Usually, crime like gang-rape and murder are committed in an isolated place. Hardly, eye-witnesses are available in such Cases and as such, forensic and medical reports are very important tools for the prosecution to prove its Case. Hence, let us now analyze the forensic and postmortem reports.

PW21, Dr. Subhankar Nath, is the Dy. Director, DNA Typing Division at the State Forensic Science laboratory, Narasinghgarh, (in short SFSL), who deposed that on 28.03.2017, his DNA Division received 10 exhibit pieces, marked as A6, A7, A8, A9(i), A9(ii), A9(iii), C1, B4, C4 and D4 from the Biology/Serology Division. PW21 deposed that he examined all the 10 exhibits within a period from 01.04.2017 to 11.04.2017 and submitted an inter divisional examination report to the Biology/serology division. According to PW21, the 10 exhibits are as follows:

1) Exhibit A6-A piece of cotton said to be vaginal swab of the deceased.

2) Exhibit A7 piece of blood stain gauze said to be the blood sample of the deceased.

3) Exhibit A8 - piece of cotton said to be the anal swab of the deceased.

4) Exhibit A9(i) - Deep blue colour cloth piece said to be the piece of cloth (deep blue colour top) of wearing apparel of the deceased.

5) Exhibit A9(ii) white colour cloth piece (sky blue-white-green-black colour printed long pant) of wearing apparel of deceased.

6) Exhibit A9(iii) - white colour cloth piece said to be the piece of cloth (white colour bra) of wearing apparel of deceased.

7) Exhibit C1 Old white colour cloth piece said to be the piece of cloth (grey colour cotton Jeans long pant) of wearing apparel of Accused Amrit Debbarma.

8) Exhibit B4- one yellow paper envelope levelled with case reference and Exbt. mark B4, blood sample in gauze cloth of Dipankar Debbarma, 26 years/M with address, one signature of Dr. Rashmi Debbarma, one stamp impression of emergency medical officer, Kalyanpur CHC, Khowai, inside of which, blood stain gauze said to be the blood sample of accused Dipankar Debbarma.

9) Exhibit C4 one yellow paper envelope levelled with case reference and exhibit mark C4, blood sample in gauze cloth of Amrit Debbarma, 19 years/M with address & one signature of Dr. Rashmi Debbarma without stamp impression, inside of which, blood stain gauze said to be the blood sample of accused Amrit Debbarma.

10) Exhibit D4 one yellow paper envelope levelled with case reference and exhibit mark D4, blood sample in gauze cloth of Ritesh Debbarma, 24 years/M with address & one signature of Dr. Rashmi Debbarma with one stamp

impression of emergency Medical officer, Kalyanpur CHC, Khowai, inside of which, blood stain gauze said to be the blood sample of accused Ritesh Debbarma.

PW21 further elaborated the results of his examination, which are as follows:

A) The exhibits marked A7, A9(i), A9(ii), A9(iii), C1, B4, C4 and D4 were examined in various methods for detection of blood.

B) The exhibit mark A6, A8, A9(i), A9(ii), and A9(iii) were examined in various methods for detection of seminal stain/spermatozoa of human origin.

RESULT:

I) Blood stain was detected in the exhibits marked as A7, A9 (i), A9(ii), A9(iii), C1, B4, C4 and D4.

II) Seminal stain/spermatozoa of human origin was detected in the exhibits marked A6, A8, A9(i) and A9(ii) &

III) Seminal stain spermatozoa of human origin was not detected in the exhibit marked A9(iii).

The PW21 further deposed that semen stain cotton piece of exhibit A6 (source: vaginal swab of deceased); blood stain gauze piece of Exhibit A7 (source: blood sample of the deceased); semen stain of cotton piece of Exhibit A8 (source: Anal Swab of the deceased); a portion of blood stain cloth piece of Exhibit A9(i) (source: piece of cloth {deep blue colour top) of wearing apparel of the deceased); a portion of semen stain cloth piece of Exhibit A9(i) (source: piece of cloth (deep blue colour top} of wearing apparel of the deceased); a portion of blood stain cloth piece of Exhibit A9(ii) (source: piece of cloth (sky-blue-white-green-black colour printed long pant} of wearing apparel of the deceased); a portion of semen stain cloth piece of exhibit A9(ii) (source: piece of cloth (sky-blue-white-green-black colour printed long pant} of wearing apparel of the deceased; blood stain cloth piece of exhibit A9(iii) (source: piece of cloth (white colour bra) of wearing apparel of the deceased: blood stain cloth piece of exhibit C1 (source: piece of cloth (grey cloour cotton jeans long pant) of wearing apparel of Amrit Debbarma; a portion of blood stain gauze of exhibit B4 (source: blood sample of Dipankar Debbarma), a portion of blood stain gauge of exhibit C4 (source: blood sample of Amrit Debbarma) & a portion of blood stain gauze of exhibit D4 (source: blood sample of Ritesh Debbarma) were subjected for DNA isolation by organic extraction method. He stated that the DNA recovered from the above mentioned exhibits were subjected to various methods and the resultant allelic distribution for the studied loci in different exhibits is shown in the table of annexure A of the report.

After applying the above methods, the following observations were made by PW21, such as -

1) Mixed male genetic profile was generated for exhibit A6 (vaginal swab of deceased),

2) Female genetic profile was generated for exhibit A7 (blood sample of the deceased),

3) Mixed male genetic profile generated for exhibit A8 (anal swab of the deceased),

4) Female genetic profile was generated for exhibit A9(i) (piece of cloth {deep blue colour top} of wearing apparel of the deceased),

5) Mixed male genetic profile was generated for exhibit A9(i) (piece of cloth (deep blue colour top of wearing apparel of the deceased),
6) Mixed male genetic profile was generated for exhibit A9(ii) (piece of cloth (sky-blue-white-green-black colour printed long pant) of wearing apparel of deceased),
7) Female genetic profile was generated for exhibit A9(ii) (piece of cloth (sky-blue-white-green-black colour printed long pant) of wearing apparel of deceased),
8) Female genetic profile was generated for exhibit A9(iii) (piece of cloth {white colour bra) of wearing apparel of the deceased),
9) Male genetic profile was generated for exhibit C1 (cloth piece (grey colour cotton Jeans long pant} of wearing apparel of Amrti Debbarma),
10) Male genetic profile was generated for exhibit B4 (blood sample of Dipankar Debbarma),
11) Male genetic profile was generated for exhibit C4 (blood sample of Amrit Debbarma),
12) Male genetic profile was generated for exhibit D4 (blood sample of Ritesh Debbarma),
13) The alleles of the amplified loci of DNA profile of exhibit A6 (vaginal swab of the deceased) matches with the alleles of the amplified loci of DNA profile of exhibit B4 (blood sample of Dipankar Debbarma) and exhibit C4 (blood sample of Amrit Debbarma),
14) The alleles of the amplified loci of DNA profile of exhibit A8 (anal swab of deceased) matches with the alleles of the amplified loci of DNA profile of exhibit C4 (blood sample of Amrit Debbarma) and exhibit D4 (blood sample of Ritesh Debbarma),
15) The alleles of the amplified loci of DNA profile of exhibit A9(i) (piece of cloth (deep blue colour top) of wearing apparel of deceased) matches with the alleles of the amplified loci of DNA profile of exhibit B4 (blood sample of Dipankar Debbarma) and exhibit C4 (blood sample of Amrit Debbarma),
16) The alleles of the amplified loci of DNA profile of exhibit A9(i) (piece of cloth (deep blue colour top) of wearing apparel of the deceased) matches with the alleles of the amplified loci of DNA profile of exhibit A7 (blood sample of the deceased).
17) The alleles of the amplified loci of DNA profile of exhibit A9(ii) (piece of cloth {sky blue-white-green-black colour printed long pant} of wearing apparel of deceased) matches with the alleles of the amplified loci of DNA profile of exhibit B4 (blood sample of Dipankar Debbarma) and exhibit C4 (blood sample of Amrit Debbarma),
18) The alleles of the amplified loci of DNA profile of exhibit A9(ii) (piece of cloth (sky blue-white-green-black colour printed long pant} of wearing apparel of deceased) matches with the alleles of the amplified loci of DNA profile of exhibit A7 (blood sample of the deceased),
19) The alleles of the amplified loci of DNA profile of exhibit A9(iii) (piece of cloth {white colour bra} of wearing apparel of the deceased) matches with the alleles of the amplified loci of DNA profile of exhibit A7 (blood sample of the deceased),

20) The alleles of the amplified loci of DNA profile of exhibit C1 (cloth piece said to be {grey colour cotton Jeans long pant) of wearing apparel of Amrit Debbarma) matches with the alleles of the amplified loci of DNA profile of exhibit C4 (blood sample of Amrit Debbarma).

On the basis of the above examination, results and findings, PW21 placed his conclusion as follows:

1) the semen stain detected in exhibit A6 (vaginal swab of deceased) originated from two different sources, i.e. exhibit B4 (blood sample of accused Dipankar Debbarma) and exhibit C4 (blood sample of accused Amrit Debbarma),

2) The semen stain detected in exhibit A8 (anal swab of deceased) originated from two different sources, i.e. exhibit C4 (blood sample of accused Amrit Debbarma) and exhibit D4 (blood sample of accused Ritesh Debbarma),

3) The semen stain detected in exhibit A9(i) (piece of cloth of wearing apparel of deceased) originated from two different sources, i.e. exhibit B4 (blood sample of accused Dipankar Debbarma) and exhibit C4 (blood sample of accused Amrit Debbarma),

4) The blood stain detected in exhibit A9(i) (wearing apparel of deceased) originated from single source exhibit A7, i.e. blood sample of deceased.

5) The semen stain detected in exhibit A9(ii) (wearing apparel of deceased) originated from two sources, i.e. exhibit B4 (blood sample of accused Dipankar Debbarma) and exhibit C4 (blood sample of accused Amrit Debbarma),

6) The blood stain detected in exhibit A9(ii) (wearing apparel of deceased) originated from single source exhibit A7 (blood sample of deceased),

7) The blood stain detected in exhibit A9(iii) (wearing apparel of deceased) originated from single source exhibit A7 (blood sample of deceased),

8) The blood stain detected in exhibit C1 (wearing apparel of accused Amrit Debbarma) originated from single source exhibit C4 (blood sample of accused Amrit Debbarma).

PW21 further identified his report in 13 sheets (including the allelic distribution table), which is marked from Exbt-12/1 to Exbt-12/13 and all his signatures from Exbt-12A to Exbt-12M.

PW21 was also cross-examined by Ld. Counsels for the accused persons, during he only denied the suggestion that his report was prepared mechanically.

The forensic expert (PW21) gave a very comprehensive report and from the said report, it is established that DNA of semen stain of deceased victim was matching with the DNA of blood samples of the accused person namely, Dipankar Debbarma, Ritesh Debbarma and another. Such a matching can only be the result of sexual intercourse/activity done by the accused persons with the victim. These results are scientific evidence proving the involvement of the accused persons in the gang-rape and murder of the victim. The forensic report was brought to the knowledge of the accused persons, but they did not furnish any explanation in their statement at the time of their examination U/S-313 of the Cr.P.C. During cross-examination of PW21, the accused side put only one suggestion to him that PW21 submitted his report mechanically, which he denied.

Ld. Counsel for the accused persons arguing much alleging improper collection, sampling, labeling, etc. of the samples in this Case, specially in DNA analysis, but there is no proof that DNA evidence was not properly collected, packaged,

preserved, examined and documented. Ld. PP also submitted in his argument that there is no statutory provision which prescribes any particular mode for such packing, etc. He further submitted that when the DNA test report conclusively proves the involvement of the accused persons, even if the oral evidence is weak, conviction can be recorded.

PW22, Smt. Monika Debbarma, in her deposition stated that on 21.03.2017, she was posted as Sr. Scientific Officer-cum-ACE at the State Forensic Science Laboratory, Narsinghar and on that day a sealed parcel was received by her office in connection with Kalyanpur PS Case No.06 of 2017 dated 10.03.2017 with the impression of SDPO, Teliamura and inside, there were five exhibits containing liver with gall bladder, stomach and small intestine, kidney and urine, which were collected from the body of the deceased victim at the time of conducting her postmortem examination. PW22 also added that on examination, ethyl alcohol was detected in the viscera sample of the victim and thereafter she prepared her report (Ext.13/1 and 13/2) which bears her signatures (Ext. 13A and 13B). From the aforementioned forensic report, intake of alcohol by the victim, is very much clear.

PW42, Dr. Reshmi Debbarma in her deposition submitted that on 14.03.2017 she was posted as Medical Officer at Kalyanpur CHC and on that day a per requisition of Police, she conducted potency test of the accused Dipankar Debbarma, aged about 26 years and also Ritesh Debbarma, aged about 24 years. On examination, she stated to have found their genital organs to be normal and potent and that they were capable of sexual intercourse. She prepared her report in this regard (Exbt.54 and Exbt.55) with her signatures (Exbt.54/1 and Exbt.55/1).

PW27, is Dr. Sandip Chakraborty and PW38, Dr. Sutapa Das, who conducted postmortem examination on the body of the deceased victim, stated in their deposition that on the basis of their examination and the SFSL report, they gave their final report (Exbt.17) that there are signs suggestive of forceful vaginal and anal intercourse upon the victim under the influence of ethyl alcohol and cause of her death was due to asphyxia, as a result of manual strangulation, which is homicidal in nature. PW27 and PW38, who were a team along with another to conduct postmortem examination on the body of the victim, gave the same version. They unequivocally opined that cause of death was due to asphyxia as a result of manual strangulation, which is homicidal in nature. Defence side could not rebut the postmortem report (Ext.17).

From the aforementioned opinion of both the doctors, there is no doubt that the victim had been forcefully gang-raped and there-after suffered homicidal death due to manual strangulation. The forensic report (Exbt. 12/1 to Exbt.12/13) coupled with the medical report (Exbt.17) given by PW27, Dr. Sandip Chakraborty & PW38, Dr. Sutapa Das, makes it clear that accused persons namely, Dipankar Debbarma and Ritesh Debbarma along with another are the persons, who were responsible for the gang-rape and murder of the victim.

27. The blood sample of appellant, co-accused and the deceased in a sealed condition reached the Forensic Science Laboratory. The DNA report dated 11.04.2017 contains a finding

that sealed packets were received on 28.03.2017, and all the sealed packets were intact. This report dated 11.04.2017 is admissible in evidence as per Section 293 of Cr.P.C. Thus, right from taking the blood sample of appellant, co-accused, deceased, the swab of deceased till its receipt in the Forensic Science Laboratory, the purity of the process is beyond any pale of doubt. As discussed above, the chain of events/circumstances are duly established by the prosecution before the Court below. Further, as per observation of PW-21, who had conducted the DNA test, the semen stain detected in exhibit A8 i.e. anal swab of deceased has originated from two different sources, i.e. exhibit C4 (blood sample of accused Amrit Debbarma) and exhibit D4 (blood sample of accused Ritesh Debbarma). Moreso, as per report of PW-21, DNA of semen stain of deceased victim was matching with the DNA of blood samples of the accused person namely, Dipankar Debbarma, the appellant, Ritesh Debbarma and another. Such a matching can only be the result of sexual intercourse/activity done by the accused persons with the victim. These results are scientific evidence proving the involvement of the accused persons in the gang-rape and murder of the victim. Further, blood sample and the swab was indeed taken, sealed and was sent to FSL laboratory with quite promptitude. The DNA is a scientific report and conviction can be based on said DNA report.

28. At this juncture, this court is to take into consideration the argument advanced by learned counsel for the appellant that PW38 only collected scalp hair, vaginal swap, stomach etc.

Learned counsel stressed upon the word ***etc.*** and contended that she did not collect the anal swab. On to this, this court is to observe that in criminal case, when a doctor or forensic expert lists specific evidence items *viz.* blood sample, clothing, bullet and follows them with **"etc."** (short for *et cetera*), it means **"and other similar, related items** likely refers to other materials collected, such as swabs or biological samples. This abbreviation indicates that the list is not exhaustive and that additional, similar items were collected and sent for analysis to the forensic laboratory. Thus, at this stage, this court cannot accept the said argument as advanced by learned counsel.

29. It is not in dispute that the death of the deceased is homicidal in nature. Once the death is homicidal in nature, the burden lies on the prosecution to prove that the death was due to the act committed by the accused with the intention and knowledge that this act would cause death of the deceased which would amount to offence of murder. In the present case there is no direct evidence or any eye witness to the said incident in question, but the case is based on circumstantial evidence. Therefore, where the case is based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established and shall be consistent. Therefore, the circumstances should be of a conclusive nature. There must be a chain of evidence .Keeping in mind this cardinal principle, it will therefore have to be seen from the evidence that has come on record, whether the circumstances from which the conclusion of

guilt is to be drawn are fully established and all the facts so established are consistent. Considering the evidence of PW 17 and PW-18 and recovery of the dead body of the deceased in the next day morning from a nearby paddy, this court came to a conclusion that the circumstance of last seen together has been cogently proved by the prosecution. Further, the disclosure statement of co-accused and the appellant, being of corroborative nature and subsequently re-creation of crime scene by the co-accused and the appellant and thereby leading to discovery proves their commission of offence with a motive to rape and kill the victim. Consecutively, the medical evidence viz. SFL report and DNA report, matching of anal swab, blood sample, amplify the prosecution case leaving no room to have any doubt on involvement of the appellant in the alleged commission of crime or rape and murder. From the above perspective, the citations, as relied on by learned counsel for the appellant, are not applicable at this stage.

30. As per the disclosure statement of the appellant (Ritesh Debbarma), it is admitted that he had sexual intercourse with the deceased and later his statement is vague. However, he has stated as under:

> **"I Sri Ritesh Debbarma 24 years S/O Sri Shamburam Debbarma Birchana Thakur Para, PS: Kalyanpur voluntarily disclose without any fear and any pressure. I state that I read upto Class-X in bengali Medium School at Kunjaban High School. I am unmarried youth. Self state that on 19/03/2017 at about 05:00 PM in front of my house at Birchandra Thakur Para self met Sri Hideng Debbarma, Sri Amrit Debbarma both of Dulalia and Dipankar Debbarma of Ganthabill. After that at around 06:00 PM together we drank alcohol at my house. That time I and my friend Dipankar Debbarma made frequent call to Bithika Debbarma at her Mobile No.8732803890 from my friend Dipankar Debbarma mobile No. 9402386814. Thereafter, at around 07:30 PM I and all my friends went in the marriage ceremony at Sonachari in the house of Aku Debbarma S/O Lt Takhirai Debbarma with a motor bike of Sri Amrit Debbarma of Dulalia being driven by Dipankar Debbarma and had dinner there. Thereafter, at 8:30 P.M. together went at Baramaidan Bazar near Church and had two bottles of beer, money for the beer was paid by Dipankar Debbarma. After consuming beer left for the house of Bithika Debbarma. At 09:00 PM. on arrival near the**

house of Bithika Debbarma at Baramaidan we called her on her mobile phone to come outside their dwelling hut. Thereafter, I with Bithika Debbarma left my friends went ourselves behind the Tower at Baramaidan rubber garden. There I had sexual relationship with Bithika Debbarma. After sexual relationship I and Bithika Debbarma proceed on the pitch road of Baramaidan-Kalyanpur road. Thereafter, self along with two friend Dipankar Debbarma, Sri Amrit Debbarma and Bithika Debbarma went in the open Paddy field at Ganthabill. Self also state that self got down before TSR camp from the Motor Bike and from the shop self bought two pieces of flakes and cold drink with cost of Rs 20/-(Rupees twenty) and my friends Dipankar Debbarma, Sri Amrit Debbarma and Bithika Debbarma going in the open Paddy field of Ganthabill. After buying flakes and cold drink self went at Ganthabill and met them. Thereafter, self with the motor Bike waiting them at Fakwa Bari pucca bridge. That time self met Tabal Debbarma and other and asked why I was at that night time. After long wait Amrit Debbarma came near Fakwa bari bridge and together with his motor bike left the spot at around 11:30 hrs. I also state that infront of the shop of Thua Debbarma self taken my bicycle and Sri Amrit Debbama washed his hand. Thereafter, went to my home. If I am taken to the place will be able to show the places of crime scene".

31. As per the disclosure statement of co-accused, Dipankar Debbarma, it is admitted that they have committed the crime. The disclosure statement of co-accused is hereunder:

"I Sri Dipankar Debbarma, age 26 years S/O Sri Sumendra Debarma @Padrai of Ganthabill, West Kunjaban, PS: Kalyanpur voluntarily disclose without any fear and any pressure. I state that I read upto upto Cl-V in Bengali Medium School at Baramaidan H.S School. I have got married with Smt Rehena Debbarma in the year 2010 and have one daughter namely Miss Liza Debbarma age 4 years. I state that self recognized upon Bithika Debbarma D/O Sri Purna Mohan Debbarma of Baramaidan Bazar, PS:Kalyanpur. I state that on 09/03/2017 at about 05:00 PM in front of the house of Sri Ritesh Debbarma at Birchandra Thakur Para self met with Sri Ritesh Debbarma, Sri Hideng Debbarma, Sri Amrit Debbarma of Dulalia. At 06:00 PM we drank alcohol together in the house of Sri Ritesh Debbarma. That time I and my friend Sri Ritesh Debbarma made frequent call to Bithika Debbarma, my cousin sister, at her Mobile No.8732803890 from my mobile No. 9402386814. Thereafter, at around 07:30 PM I and all my friends went in the marriage ceremony at Sonachari in the house of Aku Debbarma S/O- Lt Takhirai Debbarma by riding a motor Bike of Sri Amrit Debbarma of Dulalia and had dinner there. Thereafter, at around 08:30 PM together at Baramaidan Bazar near Church and we had two bottles of beer, money for the beer was paid by me. After consuming beer at around 09:30 PM night we left for the house of Bithika Debbarma. On arrival near the house of Bithika Debbarma at Baramaidan called her on her mobile phone to came outside their dwelling hut. Thereafter, Ritesh Debbarma with Bithika Debbarma left us. That time my friend Amrit Debbarma and myself search upon Ritesh Debbarma and Bithika Debbarma. After long wait Ritesh Debbarma and Bithika Debbarma approach to us on the pitch road of Kalyanpur- Baramaidan road. Thereafter, at around 10:00 PM riding on the motor cycle along with my two friend namely Sri Amrit Debbarma, Ritesh Debbarma and Bithika Debbarma we went in the open Paddy field at Ganthabill. In the open Paddy field Sri Amrit Debbarma first rape on Bithika Debbarma thereafter self repeatedly rape and together with Amrit Debbarma and murder Bithika Debbarma by throttling. Myself press on the neck of Bithika Debbarma and Amrit Debbarma closed her mouth. Thereafter, I found my mobile is missing from my pocket and lastly self made call to my number by Bithika's Mobile and found my started ringing. At around 11:30 PM night after killing Bithika Debbarma self took the mobile set and sim card in my house at Ganthabill. I also state that I hide Bithika Debbarma mobile in my dwelling hut wrapped with cloth. I also state that I thrown one sim in the streams and other one in kacha latrine tank. If I am taken to the place, I will be able to show the places of sim card, Bithika mobile set and other places of crime scene."

32. It is to be noted here that if the appellant herein is having intimacy relation with the deceased then how he can allow the co-accused to take her (the victim) away and commit the said heinous crime. This clearly makes this Court to draw an adverse inference against the conduct of the appellant.

33. The disclosure statement of the co-accused, Dipankar Debbarma and the appellant, Ritesh Debbarma, discloses that they have made phone call to the victim on the alleged date and time, receiving which the victim came out of her house subsequent to which she was raped and murdered. Thus, it can safely be said that both the accused persons with an intention to commit the crime had called the victim and thereby the appellant and co-accused, Dipankar alongwith another had committed the crime. Therefore, where participation of the appellant in a crime is proved and the common intention is also established, Section 34 IPC would come into play.

34. A reading of Section 34 of the IPC reveals that when a criminal act is done by several persons with a common intention each of the persons is liable for that act in the same manner as if it were done by him alone. As reference, Section 34 of the IPC, is reproduced hereunder:

> "**34. Acts done by several persons in furtherance of common intention.—**
> **When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."**

The Hon'ble apex Court in ***Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka***, reported in ***(2022) 7 SCC 521*** (para 26), in dealing with Section 34 of IPC, held as under:

> **"26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted,**

the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

35. Having regard to the facts and circumstances and considering the relevant facts that the victim was subjected to rape and murder at the hands of the appellant, therefore, sentence of life imprisonment for remainder of natural life imposed upon on the appellant by the trial Court is just, proper, and commensurate with the gravity of the offence committed by him.

36. In the result, after having critically appreciated the entire evidences, both oral and documentary on record, as well as the judgment of the Court below in great detail, we are in agreement with the reasons recorded by the trial court while awarding sentence to the accused-appellant.

37. In our considered view, the judgment and order passed by the Court below does not suffer from any error whatsoever.

38. Accordingly, the judgment of conviction and sentence dated 10.07.2024 passed in S.T.(T-1)26 of 2018 is affirmed. Consequently, the appeal stands dismissed. Send down the LCRs.

S.DATTA PURKAYASTHA,J **DR.T. AMARNATH GOUD,J**

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