IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL CONFIRMATION CASE NO. 1 of 2020

With
R/CRIMINAL APPEAL NO. 531 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

==========

Approved for Reporting	Yes	No

==========

STATE OF GUJARAT
Versus
TUKNA BUDHIYA DAS

==========

Appearance:
MR JK SHAH APP for the Appellant
MR PK SHUKLA(1056) for the Respondent

==========

CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 23/12/2025

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

1. The death reference has come up before this Court for confirmation of a death sentence awarded to the appellant by judgment dated 02.01.2020 passed in Sessions Case No.278 of 2017, whereby, the Additional Sessions Court, Surat has convicted the appellant - Tukna Gudia Das, under Sections 302, 376(2)(i)(n), 315 of Indian Penal Code and Section 4, 5(j)((ii)(n)

and 6 of the POCSO Act and vide order dated 10.01.2020 awarded death sentence.

2. The appellant-accused herein has also questioned the legality and correctness of the judgment of conviction and order of death sentence by preferring conviction appeal (Criminal Appeal No.531 of 2021).

3. The prosecution case, in a nutshell, is that, the appellant Tukna Das, is father of minor deceased. He migrated from Orissa and stayed at Surat with the family. It is the case of prosecution that, the appellant had sexually abused his minor daughter and out of the said sexual abuse, the deceased got pregnant and in order to save the family from public humility and disrespect, initially deceased was taken to private clinic and thereafter, on 29.06.2017, on the pretext of medical treatment, she was taken by the accused at the Chowpati Area of Surat, where the accused had purchased bhajiya (snacks) from the shop of PW-20 and then, took the deceased at the farm of Madan Patel (PW-10) where she was done to death by strangulation. On the second day of the incident i.e. on 30.06.2017, the farm owner (PW.10) saw the dead body of the deceased and informed the Dummas Police Station, Surat. The accidental death being registered and the dead body thereafter, sent for post-mortem. It was revealed that, the deceased was killed by throttling and at relevant time, she was carrying a pregnancy. The biological samples of the deceased as well as the unborn child for DNA Analysis being taken by the P.M. Doctor. The dead body

was kept in morgue up to 05.07.2017. On the basis of cause of death, the IO Mr. Nakum (PW-23), himself lodged an FIR against the unknown person for the offence of murder. The appellant accused and other family members were living in the rented premises in the Pandesara area of Surat. The wife of the appellant and his brother was in search of deceased and the accused appellant was not revealing the whereabouts of the deceased. They contacted the owner of the house Mr. Rabari and with the aid of Mr. Rabari, they approached the Pandesara Police Station and accordingly, after due inquiry, it was reveal that the deceased was the daughter of the appellant and the dead body of her being identified by the mother and brother of the accused. The Dummas Police, upon preliminary inquiry, came to know that the appellant had abused sexually the deceased, as a result, she got pregnant and in order to save himself from this act, she had been done to death by act of throttling. The accused came to be arrested on 06.07.2017 and during the remand period, his blood sample for DNA profile being taken by the Civil Hospital, Surat. The IO during the investigation, recorded the statements of the material witnesses, drew the discovery panchnama under Section 27 of the Evidence Act, whereby the accused appellant voluntarily pointed out the place of occurrence and the shop where he had purchased snacks. After transfer of the IO, the investigation was handed over to Mr. Makwana (PW-24) and upon receiving the DNA test reports and other reports from the FSL, the chargesheet against the accused for the aforesaid offences came to be filed. As the case

was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions at Surat. The Sessions Court framed the charges against the appellant-accused. He did not admit the charge and claimed to be tried.

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

Oral evidence

PW 1–Exh.10	Dr. Jigeshkumar Bhavsinghbhai Patel
PW 2 – Exh.18	Dr. Urvi Manish Ravinga
PW 3 – Exh.20	Dr. Kapildev Umeshchandra Jariwala
PW 4 – Exh.21	Dr. Manishkumar Vallabhbhai Ravinga
PW 5 – Exh.23	Rohitbhai Jaysinghbhai Choudhary
PW 6 – Exh.32	Dharmendrabhai Nathubhai Patel
PW 7 – Exh.36	Rameshchandra Gopalbhai Chouhan
PW 8 – Exh.39	Anand Kantilal Vadivala
PW 9 – Exh.40	Rohitbhai Nanubhai Patel
PW10 – Exh.42	Madanbhai Ramjibhai Patel
PW11 – Exh.44	Pratibhaben Mukeshbhai Patel
PW12 – Exh.45	Deepakbhai Bhanabhai Patel
PW13 – Exh.47	Dharmeshkumar Hasmukhbhai Patel
PW14 – Exh.50	Neetilkumar Ishwarbhai Patel
PW15 – Exh.51	Saajankumar Dineshbhai Vasava
PW16 – Exh.52	Satishbhai Bhagwandas Prajapati

PW17 – Exh.55	Sureshbhai Ramvasi Prajapati
PW18 – Exh.56	Hasmukbhai Chaturbhai Prajapati
PW19 – Exh.57	Nandan Jamna Rai
PW20 – Exh.59	Hiteshkumar Bhanabhai Patel
PW21 – Exh.61	Kiritbhai Natvarbhai Patel
PW22 – Exh.63	Deepakbhai Gumanbhai Gamit
PW23 – Exh.64	Madhubhai Ratnabhai Nakum
PW24 – Exh.85	Vinodbhai Mafabhai Makwana
PW25 – Exh.92	Pradeepkumar Shrastidhar
PW26 – Exh.99	Jatinbhai Maganbhai Rabari
PW27–Exh.101	Abdul Barik Aharaf Amir

Documentary evidence

Exh.11	PM Note
Exh.12	Cause of Death Certificate
Exh.19	Vani general Hospital certificate of victim
Exh.25	Certificate
Exh.26	Panchnama of Death
Exh.33	FSL Forwarding letter
Exh.38	Map of place of offence
Exh.34	DNA Report
Exh.41	Panchnama of place of offence
Exh.46	Panchnama of state of body of accused
Exh.48	Panchnama of clothes recovered from deceased

Exh.53	Panchnama of identification
Exh.58	Discovery Panchnama
Exh.65	FIR
Exh.66	Accused New civil hospital certificate
Exh.67	Medical certificate of accused
Exh.68	Aadhar Card copy of deceased
Exh.69	Muddamal report
Exh.70	Forwarding notes
Exh.71	Forwarding notes
Exh.72	Receipt of articles by FSL
Exh.73	Receipt of articles by FSL
Exh.74	Receipt of articles by FSL
Exh.75	Blood Sample report
Exh.76	FSL Forwarding letter
Exh.77	Report
Exh.78	FSL Forwarding letter and Biological Report
Exh.79	Report of place of offence
Exh.95	Written information given to the police by the school principal regarding the victim's date of birth on the letter pad of Nagar Primary Education Committee School No. 221
Exh.102	A.H.C. Dumas P.S.T. Mr. Abdul Barik's report to P.I.Dumas Police station
Exh.103	List made by P.I. Shri LCB Surt to A.H.C. Dumas

	P.O.S. Abdul Barik
Exh.104	A.H.C. Dumas P.S.T. Mr. Abdul Barik report to P.I. Dumas P.S.T
Exh.105	A.H.C. Dumas P.S.T. Mr. Abdul Barik report to P.I. Dumas P.S.T
Exh.106	Yadi by Mr. Abdul Barik to Principal of school of deceased
Exh.107	A.H.C. Dumas P.S.T. Mr. Abdul Barik report to P.I. Dumas P.S.T
Exh.108	A.H.C. Dumas P.S.T. Mr. Abdul Barik report to P.I. Dumas P.S.T
Exh.109	A.H.C. Dumas P.S.T. Mr. Abdul Barik report to P.I. Dumas P.S.T

5. After closure of the prosecution evidence, statement of the accused under Section 313 of Cr.P.C. was recorded to which he stated that, he has been falsely implicated in the offence and he is innocent and has not committed any offence.

6. Though the opportunity was extended, no oral evidence being adduced by the appellant-accused.

7. **Trial Court's findings**:

After hearing the parties and upon appreciation of material evidence, the accused held guilty for the offence of murder and rape. The trial Court mainly relied upon the three circumstances namely (i) DNA Report, (ii) last seen together theory and (iii) non-explanation of the accused and his conduct. The trial court

while awarding death sentence, recorded that, the crime committed by the accused is heinous crime and the manner in which the deceased was sexually abused, the case would fall in the category of rarest of rare case and therefore, it was concluded that, the extreme penalty of death is require to be inflicted.

8. **Evidence adduced by the prosecution**:

8.1 Dr. Jignesh Patel (PW.1): This Doctor being an Assistant Professor, serving in the Forensic Department, New Civil Hospital, Surat conducted the post-mortem on the body of the deceased. According to him, he noticed the following internal injuries on the body of the deceased:

> (i) 1 x 0.2c.m size, oblique scratch abrasion seen over right side of the neck, its upper inner end is 4 cm below from chin and 2 cm right from mid-line which reddish in colour
> (ii) 1.4 x 0.2 cm size lacerated wound seen over the inner surface of lower lip at its mid-line;
> (iii) 1 x 1 cm contusion seen over neck right side which is 4 cm right from mid-line and 5 cm below from right angle of mandible which is reddish in colour;

The doctor during the post-mortem noticed the internal injuries namely (i) right side of temporalis muscle is contused and shows extravasation of blood (4x3 cm), (ii) on internal examination of neck region, neck muscles and soft tissues are congested and thyroid cartilage are contused and extravasation of blood seen around it. Superior horn of right side thyroid cartilage is contused. Hyroid bone is intact. Multiple patcheal hemorrhage

is seen over epiglottis and tracheal lumen. (iii) In the stomach, 612 gram female foetus found with intact umbical cord.

According to opinion of the doctor, the cause of death was asphyxia due to throttling. In the opinion of the doctor, if someone forcefully press the neck of the person, he/she might be died due to suffocation. The doctor in his deposition, has further stated that, for the purpose of DNA Profiling and Chemical Analysis purpose, he took the blood samples of the deceased as well as foetus and vaginal swab and after properly sealing it, the same were handed over to the Police Constable Dipakbhai for depositing the sampled with the FSL, Surat.

In the cross-examination, it is stated by the doctor that, the blood sample for DNA Test, being taken into EDTA Bulb. The doctor has admitted that, to maintain the temperature of the blood, it is require to be kept in the ice box and in the present case, whether it was kept in the ice box or not, that he has not referred either in the P.M. Note or in the forwarding letter addressed to FSL, Surat. It is stated by the doctor that, before 18 to 36 hours from the date of postmortem, the death might be occurred. It is also stated by the doctor that, he does not know the reasonable time limit for depositing the sample with the FSL.

8.2 Dr. Urvi Manish Raninga: The witness being a Homeopathic Doctor, is doing her private practice at Surat and according to her record, on 15.06.2017, the victim aged about 13 years along with

her father named Tukna Das, came to her clinic and in the history, the father has said that, the victim was having a stomach pain and further said that, the deceased did not have her period for last 4 months. The witness, was unable to identified the accused in the Court and has clearly denied that, the accused brought the deceased to her clinic. The witness was declared hostile and after declaring her hostile, she did not have support to the prosecution case.

8.3 Dr. Kapildev Umeshchandra (PW.3): The witness being Gynec doctor, was doing his practice in the name of Vani Hospital at Surat and as per the refer note of Dr. Urvi Raninga, he had examined the deceased and at relevant time, the appellant being a father had brought her to his hospital. This witness did not have extended any treatment to the victim and referred her to the Civil Hospital. The witness could not identified the accused in the Court and denied that, the deceased was brought by the accused to his hospital. The witness was declared hostile and in the cross-examination, he did not have supported the case of the prosecution.

8.4 Rohit Chaudhary (PW.5): This witness was on duty with Dummas Police Station and while on duty as a Constable, he received a phone call on 30.06.2017 from one Mr. Madan Patel (PW-10) about the dead body of the deceased found in his field. The information received was noted in the register as Accidental Case No. 13 of 2017 and thereafter, the witness visited the place of

incident and prepared the inquest and sent dead body for PM. The dead body was found that the dead body of one girl was being found in the farm situated near Lotus Lake. The witness has noted the declaration of the farm owner which he produced at Exh.24 and after reaching at the place, he prepared an inquest and sent the dead body for P.M. and the entry to this effect came to be registered as Accidental Death No.13 of 2017.

8.5 Dharmendra Nathubhai Patel (PW.6): By examining this witness, the prosecution has brought on record the DNA Profiling Report (Exh.34). The witness in his chief-examination has stated that, since 2013, he is associated with the Forensic Science Laboratory at Surat and discharging as a Scientific Officer. The witness has a qualification of B.Sc. (Zoology) and since April, 2017, he was having additional charge of Biology Department. In the chief examination, the witness has stated that, due to his length of service, he got experience in various branches of FSL and time to time, he had been imparted training by his Department.

The witness has further stated that, on 13.07.2017, when he was on duty, he received three sealed samples duty kept in paper envelope for DNA Profiling from Dummas Police. The samples were marked as Exh. C1 and C2, which marked as blood samples of unknown girl and blood samples of unknown baby recovered from the uterus of unknown girl and the third sample (Exh.D) was the blood of Tukna Budhiya Das. The witness has further stated that, he made the profile of the samples for DNA

test and during the test, he found two allele and out of two, one allele was matched with the samples (Exh.D) and the test result would establish that the biological father of Exh. C1 and the baby Exh. C2 is the Tukna Budhiya Das. The witness had produced the sheet containing details of parcel and exhibit received and methodology applied for the test and result of analysis as well as the final observation of the DNA test, which he has produced at Exh. 34.

In the cross-examination, the witness has denied to the suggestion that, he was not competent and qualified to do the DNA profiling. The witness has admitted that, from the date of taking blood sample and till the its examination by the FSL, the temperature of the blood samples required to be maintained. The witness has stated that the temperature of the samples were maintained but he has not mentioned in the report, how it was maintained. The witness has stated that, there is no need to mention in the report that the temperature of the samples being properly maintained. The witness has denied to the suggestion that, if there is a delay in forwarding the samples to the laboratory, then, it would impact on the accuracy of the result and possibility of contamination. The witness has stated that the test of DNA is not 100% sure. Lastly, it was asked to the witness that, he was not qualified and competent to do DNA profiling, because he was not possessing requisite qualification, which the witness has denied.

8.6 Madanbhai Ramjibhai Patel (PW.10): The dead body of the deceased found in the farm of the witness and on 30.06.2017, when he visited his farm, he found the dead body of the deceased and accordingly, he had informed Dummas Police and declaration to this effect being made by him.

8.7 Hitesh Bhanabhai Patel (PW.20): This witness having snacks (Bhajiya) shop in the Chopati area of Surat and is doing his business in the name of "Sai Snacks. The witness in the chief examination, has stated that, he was called upon at the Dummas Police station, where he had saw one person, who had come to his shop to purchase a snack. The witness has further stated that the person had given him Rs.20/- and asked to sell snack (Bhajiya), however, in view of the small amount, it could not be possible to sell the snack and on the humanitarian ground, he had given 100 gram snack (Bhajiya) as the daughter of the person was hungry and on her request, he had given the snacks and the person was talking in Hindi language. The witness has further stated that due to heavy rush of the customers, he could not identify the girl. The witness has identified the accused and further stated that he, who present in the police station, when he had been called by the police and therefore, he identified the accused.

8.8 Madhubhai Ratnabhai Nakum (PW:23): This witness was posted as Police Inspector with Dummas Police Station, Surat and had conducted the inquiry as well as investigation of the entire case. This witness, after registration of the accidental death, went

to the place of occurrence and drew the panchnama of the place of the incident and sent the dead body for the post-morterm purpose and after receiving the post-morterm report, he lodged an FIR against the unknown accused for killing the deceased by throttling. In order to find out the identity of the dead body, the I.O. deputed the different teams for revelation of the identity of the deceased and it was revealed that the deceased was the daughter of the appellant herein and he was living with his wife in the rented premises owned by Jatin Rabari. The witness has stated that the dead body was identified by mother of the deceased on 05.07.2017 and the same was handed over to the family of the deceased. The I.O. in his deposition has stated that he recorded the statement of brother of the appellant Balram Budhiya Das and wife Santoshi Tukna Budhiya Das and others and during the investigation, it was revealed that, the accused took away the deceased on 29.06.2017 at about 03:30 p.m. for medical treatment as due to pregnancy she was having a stomach pain and instead of taking treatment, the deceased was taken in the Chopati area, where she was feed with snacks and in the night hours, the appellant took her to the farm and taking disadvantage of the situation, she was done to death by throttling. The I.O. in his deposition further stated that during the investigation, it revealed that the family members were not happy with the conduct of the appellant as he was not giving satisfactory answers about the whereabouts of the deceased and after contacting the police, through house owner, the identity of the deceased was being

revealed and further it was revealed that, the deceased was killed by the appellant and at relevant time, she was carrying pregnancy, The IO in his deposition, further stated that he had arrested the accused on 06.07.2017 and sent him for medical examination and collection of blood samples for DNA profiling and during the police custody, the accused had voluntarily pointed out the scene of occurrence and the shop where he has purchased the snacks. The IO in his deposition has further stated that the samples for DNA profiling being deposited by constable Vihar Vinodbhai. The IO has further stated that on account of his transfer, he had handed over the investigation to Mr. V.M. Makwana.

In the cross examination, the I.O. has stated that he had disclosed the FIR and also proceeded to investigate the case. The I.O. has further admitted that, the accused was found from his rented premises. The IO has denied to the suggestion that, the accused was falsely implicated in the offence and in order to solve the case, he was falsely chargesheeted and in order to file chargesheet against him, he prepared a false panchnama and other evidence.

8.9 Vinod Mafabhai Makwana (PW:24): This witness had filed the chargesheet against the accused and during the investigation, except the submissions of the DNA report, he did not have investigated the case on any other aspect. In the cross examination, he admitted that the DNA samples were received by the FSL, Surat on 12.07.2017. The witness has denied that despite

of insufficient evidence connecting the appellant accused, he has filed a false chargesheet.

Submissions on behalf of the appellant - accused:

9. Mr. P.K. Shukla, learned counsel for the appellant, has submitted that the learned Trial Court erred in not granting the benefit of doubt to the appellant and convicted him mechanically without appreciating that the prosecution has been unable to establish its case beyond reasonable doubt; there is no direct evidence against the appellant accused; the two doctors PW:2 and PW:3 have not stated anything against the accused that the deceased was brought to their clinic by the accused and they could not identify the accused in the Court; PW:20 Hitesh Patel, has a shop in Chowpati area, Surat and according to the prosecution case, the deceased and the appellant lastly seen by him as he came to his shop for purchasing snacks (bhajiya); the evidence of PW:20 is not convincing and acceptable to prove the theory of last seen together evidence; the witness has not given any specific date and time as to when and on what time, the accused visited his shop; the witness was called upon by the police and in the police station, the accused was shown to him; the witness has admitted in his deposition that due to heavy rush of customers, he could not notice the presence of the deceased girl; the prosecution could have shown the photograph of the deceased in order to prove the theory of last seen together but the same was not done, which

proves that the witness PW:20 was got up witness and he was identified the accused in the Court because during the investigation, the accused was shown to him in the police station; thus, there is no evidence that the accused and the deceased had left the home together; the Trial Court, in order to prove the charge of murder, has mainly relied on the circumstances of last seen together and the same is not been proved by adducing cogent and convincing evidence; law is settled by the Supreme Court in its various judgments that the evidence of last seen together is weak piece of evidence and conviction only on the basis of last seen together without their being any corroboration of evidence against the accused is not sufficient to convict the accused for the offence of murder;

10. Mr.Shukla, learned counsel has submitted that the Trial Court has mainly relied on the testimony of the investigating officer. The prosecution failed to examine the material witnesses who could throw light on the issue of pregnancy and theory of last seen together; most important witness having been withheld for no reason; the mother of the deceased Santoshi, the brother of the accused Balram and house owner Mr.Pankaj Rabari having not been examined by the prosecution to prove that the victim was having pregnancy by the act of the accused and accused under the pretext of medical treatment, taken her to the secluded place and killed her by throttling; the statement of the investigating officer on this aspect cannot be accepted unless it has been proved by examining the material witnesses.

11. Mr. Shukla has further submitted that in the present case, the prosecution case rests on the circumstantial evidence. The incriminating circumstance relied by the Trial Court is last seen together theory, DNA test report and conduct of the accused. The theory of last seen together is not proved by the prosecution. The DNA test report goes against the accused as according to the report, the appellant was biological father of unborn baby girl. The alleged incident of murder being took place on 29.06.2007; the post-morterm conducted on 30.06.2007 and the samples for DNA being taken by the P.M. doctor on 30.06.2007 and handed over on the same day to Dummas Police. The accused was arrested on 06.07.2007; The blood sample of the accused for DNA purpose collected on the same day; the samples of the unborn baby which was taken on 30.06.2007 and the samples of the accused were being deposited with the FSL, Surat on 13.07.2007; thus there was unexplained delay of 13 days in depositing the blood samples; the scientific officer has admitted the delay in receiving the samples; the evidence of scientific officer on the aspect of procedure with respect of examination of DNA and delay without their being any safety measured with respect to preservation, packaging and forwarding of samples, raises doubt regarding the integrity of samples and the accuracy and reliability of DNA examination; thus, the DNA evidence is significant but not conclusive to establish the paternity of child and in absence of any corroborative evidence, reliance cannot be placed on the DNA test to establish the complicity of the accused in the crime.

12. Lastly, it was submitted by Mr. Sukla that the accused was very much available in the house and the I.O. has admitted that he was arrested from the house and therefore, the conduct of the accused cannot be in any manner to be taken adverse to him to prove his complicity in the crime.

13. On the issue of pointing out the place of occurrence and shop of PW:20 by the accused, it was submitted that the so-called confession, as recorded in the panchnama is hit by Sections 25 and 26 of the Evidence Act and conduct showing the place of occurrence would not fall under the discovery of place as contemplated under Section 27 of the Evidence Act because the place of occurrence has already been disclosed by the farm owner and panchnama of place of occurrence being drawn by the police, so as such, there is no discovery in consequent information received from the accused and it cannot relates distinctly to the facts discovered because the facts of scene of offence has already been discovered, while drawing the panchnama of the place of offence.

14. In such circumstances, as referred to above, the Trial Court has convicted the accused mainly because a serious allegation being made but the accused can be convicted when the allegations are proved beyond reasonable doubt. It is one of the fundamental principles of criminal jurisprudence that the accused is presumed to be innocent till is proved to be guilty and it is equally well

settled that suspicion however strong can never take the place of proof. Thus, therefore, it was submitted that the prosecution has failed to prove its case beyond reasonable doubt and the judgment of conviction and sentence is liable to be set aside, as the findings of the Trial Court are contrary to the evidence on record and against the settled principle of law and the conviction and the death penalty be set aside and the accused may be acquitted of the charge of murder and rape.

Submissions on behalf of the State:

15. Learned Additional Public Prosecutor Mr. J. K. Shah for the State has supported the impugned judgment and death sentence and vehemently opposed the appeal. It was submitted that the accused being a father took the girl before the local doctor as the girl was having a pregnancy, but somehow the issue was not resolved and thereafter, on 29.06.2017, the deceased daughter was taken by the accused at the Chopati Area of Surat where he purchased the snacks from the shop of PW:20 and the corn from the street vendor and thereafter, by taking her in the private farm, she was killed by throttling as the accused was having knowledge that the daughter was impregnated by him and in order to save from the crime, she had been killed. The prosecution has proved the theory of last seen together as the deceased was in the company of the accused being seen by PW:20. Prior to the incident, the accused twice visited the local doctor and that evidence of PWs:2, 3 and 4 clearly established and proved that the deceased was brought by

the accused before them for treatment of pregnancy. The second incriminating evidence in the chain of circumstances is the DNA test report which suggestive of the fact that accused was biological father of the deceased as well as the unborn girl child. The appellant since from the day of the incident, did not inform the family members about whereabouts of the deceased and failed to give satisfactory answer with respect to deceased and did not furnish any explanation in his statement under Section 313 of Cr.P.C. regarding incriminating material that has been produced against him and legitimate inference can be drawn that he was guilty of the offence. In such circumstances, the chain of circumstances is complete, connecting the accused to the crime and rule out any his innocence. The Trial Court, while sentencing the accused for a death penalty, has assigned special reason and the manner in which she was impregnated by the accused and then after, in order to save himself for the punishment, he killed the deceased which proves the act was planned and it was cold blooded murder and therefore, the act of the accused would fall under the rarest of rare case and imposing any other punishment would completely inadequate and would not meet the end of justice.

16. In such circumstances, as referred to above, the prosecution is able to prove the charge of murder and rape against the accused beyond all reasonable doubt and as such, the Trial Court has not committed any error while holding the accused guilty for the offence and awarding the death sentence and thus, it is prayed that

there being no merits in the appeal and the same may be dismissed.

17. We have heard learned counsels for the respective parties and perused the records and proceedings of the case.

18. The present case rests on the circumstantial evidence as no one has seen the incident of murder. The Trial Court has mainly relied on the circumstances like last seen together theory, DNA evidence, non-explanation of the accused and his conduct. Before adverting to the contentions raised by the respective parties, it would be profitable to bearing in mind the fundamental principles of criminal jurisprudence, which says that the burden of proof squarely rests on the prosecution and that general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be and strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The Supreme Court has always emphasized that even if the offence is shocking one, the gravity of the offence cannot by itself overweight as far as legal proof is concerned. In the case of **Jaharlal Das Vs. State of Orissa (1991 (3) SCC 27)**, it was held that in cases depending highly upon circumstantial evidence, there is always a danger that the conjunctures or suspicion may take the place of legal proof and the Court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out of a reasonable likelihood of innocence of the

accused and therefore, it was held that in order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

(i) The circumstances from which and inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) Though circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; and

(iii) The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probabilities a crime was committed by the accused and non-else, and it should also be incapable of explanation on any other hypothesis then that of the guilty of the accused.

19. The facts of this case are to be considered on the touchstone of the law which has been laid down by the Apex Court. In the present case, the circumstances of last seen together required to be dealt with in the background of settled law. It is the case of the prosecution that the accused lastly was seen in the company of deceased by the PW-20, who is the selling the snacks in the area of Chopati at Surat. We have carefully examined the testimony of shop owner PW-20 Hitesh Patel. Admittedly, he was called upon by the IO at the police station for the purpose of recording his statement and at that time, the accused was in the police custody and he was shown by the police and confirmed from him, that he

has purchased the snacks from his shop. There was no any TI parade being held of the witness for identification of the accused. The witness in his deposition did not have stated that on which day and time, the accused was came to his shop. The witness was also not sure about the presence of the deceased with the accused, as he could not notice her because of heavy rush of the customer. Thus, in our opinion, the evidence on the aspect of last scene theory, the witness PW-20 is got up witness and at the instance of police, he had identified the accused. The IO was failed to properly investigate the case because in such type of sensitive case, the identification parade of the witness would strengthen the prosecution case and there was no need to show the accused to the witness in the police station. In that view of the matter, the evidence of PW-20 cannot be acted upon or relied to establish the circumstance that the accused on the day of incident i.e. on 29.06.2017, before the incident, he was in the company of deceased and soon after purchase of the snacks, within time gap of 3 to 4 hours, the deceased was allegedly killed. We may profitably refer the case of **Kanaiyalal Vs. State of Rajasthan (2014 (4) SCC 715)**, on the proposition that the evidence of last seen together is a weak piece of evidence and conviction only on the basis of last seen together without their being any corroborative evidence is not sufficient to convict the accused. The Supreme Court in Paras-12 and 15 of the judgment, laid down that 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 a something more establishing connectivity between the accused and the crime and mere a non-explanation on the part of the accused by itself cannot lead to proof of guilt against the accused. It is relevant to note that the wife of the accused Satoshi and his brother Balram have not been examined by the prosecution and according to the prosecution case, they were knowing about the facts of the pregnancy and medical treatment taken from the private clinic. Therefore, the material witnesses have not been examined and thus, it cannot solely rely on the evidence of PW:20 to prove the circumstance that the deceased and the appellant were lastly seen together. The IO was knowing about the recording the statement of the material witnesses as referred above and despite of this, without any explanation, the witnesses were not examined to prove the factum of pregnancy at the instance of the accused and the last scene theory.

20. The second circumstance relied upon by the prosecution is the DNA test report. The contention is being raised 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 creates doubts regarding the accuracy, and integrity of the samples and accuracy in the test report and therefore, the same cannot be relied upon to prove the involvement of the accused in the crime.

21. Before dealing with the contentions regarding the admissibility of the DNA evidence, it is necessary to note the importance of the DNA evidence in the criminal case and investigation. The DNA (Deoxyribonucleic Acid) is the biological blue print of every life on earth and is made up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-lines with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. Further, DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. DNA profiling involves identification of an individual based on the blood sample of his mother, father, brother, and so on. Successful identification from skeleton remains can also be performed by DNA profiling.

22. Recently, the Apex court in the case of **Karandeep Sharma @ Razia @ Raju Vs. State of Gujarat, (2025 INSC 444),** on the issue of reliability and admissibility, it has been held that, in order to make the DNA report, acceptable, reliable and admissible, the prosecution would first be required to prove the sanctity and chain of custody of the 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 established by examining the concerned witnesses.

23. So far as quality control of samples and the testing methods, the Supreme Court in the cases of **Anil Vs. State of Maharashtra (2014 (4) SCC 69), Manoj Vs. State of Madhya Pradesh**

(2023(3) SCC 353), and Pattu Rajan Vs. State of Tamil Nadu (2019 (4) SCC 771), held that, there is need to ensure the quality control of the samples and the testing methods used as a part of DNA examination and stress upon on the need to ensure that possibility of contamination is eliminated. On the issue of collection and preservation of the evidence, the Supreme Court held that, if the DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the scientific requirements for admissibility in a court of law, because extremely small sample of DNA can be used as an evidence, greater attention to contamination is used is necessary while locating, collecting and preserving. The Supreme Court while referring Section 45 of the Evidence Act, held that, the DNA evidence is also in the nature of opinion evidence and an expert giving evidence before the Court, placed a crucial role, especially, since the entire purpose and the object of opinion evidence is to be aid the court in forming its opinion on the question concerning Foreign Law, Science, Arts etc. on which, the court might have not an expertise to form an opinion on its own. The probative value accorded to DNA evidence, which varies from case to case, depending on the facts and circumstances and weight accorded to other evidence on record, whether contrary or corroborative.

24. In **Anil Vs. State of Maharashtra (2014 (4) SCC 69)**, the Supreme Court observed that DNA profiles have had a tremendous impact on criminal investigation. A DNA profile is valid and reliable, but the same depends on quality controls and

procedures in the laboratory. We may add to this position and say that, quality control and procedure outside the laboratory matter equal as much in ensuring that the best results can be derived from the samples collected.

25. On the aspect of delay in forwarding the samples to the laboratory, the Apex Court, in case of **Prakash Nishal Vs. State of Maharashtra, [(2023) 16 SCC 357]**, has observed that, when there is an unexplained delay in sending the samples to the FSL, the concomitant prospect of contamination could not ruled out and the need for expediency in sending the samples to the laboratories was underscored.

26. 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.

27. Revert back to the facts of the present case, the issue arises for our consideration, as to whether the DNA profile as assessed by PW-6 Dharmendra Patel, by his report Exh. 34, is valid and reliable and can be read in evidence against the accused?

28. We have carefully examined the evidence of Scientific Officer Mr. Dharmendra Patel (PW-6) and the DNA report Exh. 34. According to said report, non-maternal alleles of DNA profile of blood samples of baby recovered from uterus of unknown girl (source of Exh.C2) are present in the DNA profile of blood

sample of Tukna Budhiya Das (source of Exh.D) and on that basis, it was concluded that the STR profiles of Mr.Tukna Budhiya Das is consistent as a biological father of baby recovered from uterus of unknown girl (source of Exh. C/2 blood sample). The blood samples were taken by PW:1, Dr. J.B. Patel, who had conducted P.M. report on the body of the deceased. The blood samples preserved in an EDTA Bulb and kept in sealed paper cover. The samples were handed over by P.M. doctor to Dummas Police Constable on 30.06.2017 and deposited with the FSL, Surat on 13.07.2017 by the Dummas Police. The appellant accused came to be arrested on 06.07.2017 and his blood samples for DNA profiling collected on the same day by the doctor of civil hospital, Surat. Both the samples were deposited with laboratory on 13.07.2017. There was a total delay of 13 days in depositing the biological samples and from the date of arrest of the accused, if we calculate, there was a delay of 7 days in dispatching the samples. The prosecution has not explained about the reasons for delay in dispatching the samples. The samples were collected in EDTA tube by the PM doctor PW-1. On the same day, the three blood samples were being handed over to the Dummas Police and samples were lying in the police station till 13.07.2006. The liquid blood samples must be kept in thermoses flask or thermocol box stuffed with ice / coolant pack. However, in order to maintain the temperature of the biological samples, they were not kept in the ice box, for which there is no explanation coming forth either from the Investigation Officer. The Scientific Officer being an

expert in the field had admitted that, in order to maintain proper accuracy of the blood samples, they must be preserved in the proper temperature. The second discrepancy we find is that, the police officer, who had received the samples from the doctor PW-1 and handed over to the FSL, is not examined by the prosecution to prove the chain of custody and the steps of precautions, that required to be taken for maintaining the temperature of the samples. It is relevant to note that the Scientific Officer, who had conducted the profiling was in charge of the biological department of the FSL, Surat, meaning thereby, there was no regular posting of qualified Scientific Officer. The qualification of the Scientific Officer in this case is B.Sc. (Zoology). Thus the competentness of the Scientific officer to express any opinion in this regard is in doubtful and according to his version, based on the automated application, the result being mentioned in the report. In such circumstances, the DNA evidence on account of unexplained delay in depositing the samples with the laboratory and in absence of necessary precautionary steps in maintaining the temperature of the blood samples in a proper manner, the possibility of contamination cannot be ruled out and therefore, in absence of maintaining the quality control of the samples and possibility of contamination, the DNA evidence cannot be relied upon and read in the evidence against the accused.

29. For the reasons recorded, in our opinion, the prosecution failed to prove all necessary circumstance by reliable and clinching evidence which would constitute a complete chain without a snap

as would permit to conclusion other than the one of the guilt of the accused. In the present case, the prosecution has not been able to prove its case beyond reasonable doubt as complete chain of incriminating circumstances pointing towards guilt of the accused, has not been established and proved and the court below while convicting the accused under Sections 302, 376(2)(i)(n), 315 of Indian Penal Code and Sections 4, 5(j)(ii)(n) and 6 of POCSO Act, failed in error in coming to the conclusion that the prosecution has established its case based on circumstantial evidence beyond or reasonable doubt.

30. In the result, the appellant accused in this appeal is entitled to succeed. Consequently, appeal is allowed. The impugned judgment of conviction dated 02.01.2020 and order of death sentence dated 10.01.2020 passed in Sessions Case No. 278 of 2017 by learned Additional Sessions Judge, Surat is set aside. The appellant accused is in jail. He shall be released henceforth unless his custody is necessary in any other case. In view of the setting aside the judgment of conviction, the Confirmation Case No. 1 of 2020 is disposed of accordingly. Registry shall send R&P to the concerned court henceforth.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI