Chapter 3

JUDICIAL DECISION MAKING IN INDIA IN CRIMINAL CASES USING FORENSIC DNA

OVERVIEW

In this chapter more than 100 cases has been studied under DNA evidence from 1995-2015 (twenty-one years). The cases are broadly categorized into two types. The first type consists of “CRIMINAL CASES IN WHICH DNA EVIDENCE WAS USED FOR RECORDING CONVICTION OR ACQUITTAL”. The second type consists of “CASES IN WHICH DNA EVIDENCE WAS USED IN DETERMINING PATERNITY OR MATERNITY” The legal provisions has been studied under which the DNA evidence has been referred. The cases has been studied in a tabular form to record the number of acquittal and conviction and similarly cases to determine paternity, has been studied in the tabular form. Findings have been forwarded after the case study for both type of cases, which are followed by reasons for acquittal and revelations. Under revelation the rate of conviction and acquittal has been calculated and for paternity cases the rate of petitions which has been allowed in favour of the petitioner has been calculated.

The chapter has been broadly studied under the following topics:

3.1 Introduction

3.2 Legal Provisions Under Which DNA Evidence Was Used/Referred

3.3 Cases in Which DNA Evidence Was Used For Recording Conviction or Acquittal

3.4 Cases in Which DNA Evidence Was Used In Determining Paternity or Maternity

3.5 Table of Criminal Cases in Which DNA Evidence Was Used For Recording Conviction or Acquittal

3.6 Table of Cases in Which DNA Evidence Was Used In Determining Paternity or Maternity
3.7 Critical Analysis of The Cases in which DNA Evidence Was Used For Recording Conviction and Acquittal

3.8 Findings/Critical Analysis of The Cases in which DNA Evidence Was Used In Determining Paternity or Maternity

3.1 INTRODUCTION

Deoxyribo Nucleic Acid (DNA) is unique in every individual, for which it is used as a means for identification. Repetitive sections of DNA are called Short Tandem Repeats (STR) which varies between individuals. A DNA profile is created by analyzing the number of STR’s that occur at specific points in an individual’s DNA. DNA evidence has made the most significant contribution in the world on criminal investigations. The matching of DNA profiles by comparing it with a specimen obtained from a crime scene with one obtained from the database or suspect is the most common technique used in criminal investigations\(^1\). The DNA profiling technique involves a lengthy procedure which involves the following steps. Firstly, extraction and purification of DNA from specimen. Secondly, fragmentation of DNA using “restriction enzyme”. Thirdly, arranging the fragments on the basis of their length by agarose gel electrophoresis. Fourthly, transfer of separated fragments to nylon membrane by “Southern blotting”. Fifthly, hybridisation with a radioactive labelled probe. Sixthly, visualising the bands of DNA by autoradiography.

For the purpose of DNA profiling, DNA is first extracted from a specimen by an elaborate chemical process, which is then mixed with a special enzyme called “restriction endonuclease” which functions as molecular scissors to cut the DNA at specific sites. This technique of analysis is known as restriction fragment length polymorphism (RFLP). The restricted fragments are then separated according to size using gel electrophoresis technique. Then the DNA fragments are transferred from the gel to a nylon membrane, which process is called as “Southern Blotting”. This is

followed by hybridisation process, which involves bringing in contact a radioactive labelled probe. The probe bound fragments, being radioactive, can then be recorded on an X-ray plate, which process is known as autoradiography. The X-ray plate will show dark bands appearing very much like bar code. In nutshell, this is the process of DNA profiling. The comparison of the bands in the DNA profiles of different specimen from the same individual will show similarity, whereas DNA specimen of two different individuals will show different DNA band profiles.

More recently, another technique known as polymerase chain reaction (PCR) has been developed for DNA profiling. This method is specifically recommended where DNA is insufficient for analysis or it is in degraded form. The PCR technique takes into account polymorphic DNA segments present in the specimen and by polymerase chain reaction (PCR) produce multiple copies of a particular polymorphic DNA segment, sufficient to meet the requirements of DNA profiling test.

In February 2009, the prestigious National Academy of Sciences (NAS) of United States, issued a long-awaited report on forensic sciences which concluded: “With the exception of DNA analysis, no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” Although forensic science can lead to erroneous convictions and sometimes are not dependable. but scientists have come to the conclusion that DNA typing is the New Model For Scientific Forensic Identification. During the past decade thousands of people who were convicted of heinous crimes including and were sentenced to death had been exonerated by DNA analysis.

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2 Supra note 2 at 351, 352
4 DNA profiling (also called DNA testing, DNA typing, or genetic fingerprinting) is a technique employed by forensic scientists to assist in the identification of individuals by their respective DNA profiles.
3.2 LEGAL PROVISIONS UNDER WHICH DNA EVIDENCE WAS USED/REFERRED

The legal aspect relating to collection of DNA is covered by different sections of the Code of Criminal Procedure, 1973 and the Constitution of India. There were cases where the court commented on the relevancy and legal aspects of DNA test and the situations in which it can be conducted. The court discussed the admissibility of DNA profiling technique and held that that DNA profiling technique has been expressly included among various forms of medical examination in amended Explanation to Section 53 CrPC. DNA profile is different from a DNA sample which is usually obtained from bodily substances. Moreover the court opined that “Conducting DNA profiling is not a violation of Fundamental Rights under Article 20(3) of the Constitution of India and 161(2) of CrPC\(^5\). In another case the court gave an explanation when DNA test is required to identify the dead body, although the test was not required to identify the dead body in this case\(^6\).

The types of cases and legislations in which DNA evidence played a significant role in solving the crime:

**The Indian Penal Code, 1860:** murder, rape or murder with rape, dacoity, kidnapping, abduction, etc.

**The Arms Act, 1959:** Section 25-Punishment for certain offences, Section 27-Punishment for using arms, etc. Section 35 – Criminal responsibility of persons in occupation of premises in certain cases.

**The Narcotic Drugs and Psychotropic Substances Act, 1985:** Section 50 – Conditions under which search of persons shall be conducted.

**The Scheduled Castes And The Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Section 3 – Punishment for offences of atrocities .

**The Medical Termination of Pregnancy Act, 1971:** Section – When pregnancies may be terminated by registered medical practitioners.

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\(^5\) Selvi v State. Of Karnataka (2010) 7 SCC 263  
3.3 CRIMINAL CASES IN WHICH DNA EVIDENCE WAS USED FOR RECORDING CONVICTION OR ACQUITTAL


Petitioner along with seven others were charge sheeted for offences punishable under sections 120(B), 302 read with 34, 376, 376(2)(c) read with 109, 201, 202 read with 114 and 506(ii) of IPC. Hence this petition for bail was filed. Held, all particulars required under section 173(2) of CrPC, viz. statement of witnesses examined during course of investigation were produced except further statement of victim girl, DNA report and abortion certificate into court. However when petitioner approached Magistrate to provide copies of charge sheet and copies of documents Magistrate declined to grant copies and passed order stating that scientific reports are awaited after receipt of which only charge-sheet to be prepared and furnished to petitioner. Prosecution had examined 109 witnesses and there were statements recorded under section 164 of CrPC. medical evidence and DNA certificate. However keeping in view position of petitioner and status of victim and nature of evidence so collected, release of petitioner on bail would have an impact in tampering with material collected by
investigating agency. Thus release of petitioner was not conducive to fair trial. Hence the petition was dismissed.\(^7\)


On the night of 21.05.1991 Rajiv Gandhi, former Prime Minister of India, was assassinated by a human bomb. With him 15 persons including 9 policemen died and 43 suffered grievous or simple injuries. Assassin Dhanu, an LTTE (Liberation Tigers of Tamil Eelam) activist, who detonated the belt bomb concealed under her waist and Haribabu, a photographer and also a conspirator, engaged to take photographs of the horrific sight, also died in the blast. The incident was a result of a conspiracy. Seven accused who were alive and were involved in the conspiracy including a woman were convicted under sections 302 read with section 120 B of IPC. Death sentence was awarded to 4 of the seven convicted accused (including the woman) were confirmed. Sentence of the remaining 3 convicts altered to life imprisonment. **DNA profiling** not only assisted in identifying the victims but also established the identity of the perpetrators mainly by the belt being recovered from the scene of crime which was carrying paltry body flesh tissue.\(^8\)


The accused were convicted under sections **376 and 302 and 120B IPC**. A serious charge of rape of 13 girls was made. The potency of A-1 was tested and he was found to be normal and capable of having sexual intercourse. The **D.N.A. Test** revealed that he had fathered the terminated foetus of P.W.14. Further allegations were that since the deceased protested against this act of A-1, he was brutally murdered by A-1 and A-2. Prosecution established that A-1 and A-2 caused bodily injuries on deceased with stick on left upper limb and lower limb. Both A-1 and A-2 kicked deceased on his back and

\(^8\) *State v. Nalini* (1999) 5 SCC 253
chest when he fell down after being untied. Deceased was confined in kudil without being provided with food or water on instructions of A-1 and A-2. Deceased was starved to death. Prior and subsequent conduct of A-1 and A-2 and circumstances of case including motive and their intention to murder was established. The conviction of A-1 and A-2 were upheld and the appeal was dismissed.\footnote{Chandradevi v. Sate of Tamil Nadu by Inspector of Police, C.B., C.I.D. (12.12.2002 – MADHC) MANU/TN/2335/2002}

   a) Background of the case: The trial court convicted the respondent and his father under section 302 IPC for the murder of B, the wife of the respondent. The respondents preferred an appeal before the High Court. During the pendency of the appeal the father of the respondent expired. The High Court did not accept the case put forward by the prosecution on various grounds. Hence the present appeal was preferred before the Supreme Court by the State.

   b) Facts of the case: B, the wife of the respondent disappeared. On a complaint lodged about the missing of B, investigation was taken up by police. Some human bones were recovered through the said process which was marked as MO 13 and MO 20.

   c) Typology of Forensic Evidence Used in the Case: The bones were subjected to DNA examination in order to establish the identity of the said bones with that of B.

   d) Report Of The Experts Regarding The Case: The DNA examination resulted in matching of the bones with that of the grouping of her close relatives.

   e) Ground For Accepting The Forensic Evidence: The Supreme Court opined that even if it proceeded on the basis that the DNA examination resulted in identifying the bones found by the police as that of Beena, still what had to be established was the involvement of the respondent in the commission of her
murder. What had to be established was that there were some definite evidence to indicate that B had been done to death of which the respondent was or must be aware as also proximate to the time of being last seen together. No such clinching evidence was put forward. It is true that even in the absence of the *corpus delicti* it was possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material was made available to the court.

f) **Impact of Forensic Evidence (Acquittal):** In view of the matter, the court did not think any case was made out by the appellant State to interfere with the order made by the High Court. The appeal was therefore dismissed\(^\text{10}\).


a) **Background of the case:** The accused preferred the appeal before the Supreme Court against conviction and sentence under section 376 IPC recorded by the trial court and High Court, sentencing him to life imprisonment with infliction of huge amount of fine amounting to Rs. 5,10,000/-. 

b) **Facts of the case:** It is an classic example as to how the insatiable lust for sex of A-1 lead to the raping of 13 Ashram girls and murder of one person who had dared to disclose the misdeeds of A-1. A-1 known as Swami Premananda was running an orphanage at Sri Lanka. Due to ethnic violence in the region A-1 shifted to India along with twelve young Tamil Girls and a few women. The ashram was vast and had several branches in different countries of the world, including UK, Switzerland etc. Except two people all the other victims were Sri Lankan. Most of them were orphans and left in the Ashram when they were small children, therefore all of them were dependent on the accused for their livelihood and were under complete mercy and control of A-1 and other accused. They were warned and threatened not to disclose to anybody about the misdeeds of A-1. PW3 to PW15 except PW7, PW11 and PW10 have named A-

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\(^{10}\) *State of Karnataka v. M.V. Mahesh* (2003) 3 SCC 353
1 and his forcible rape on them. PW7 and PW11 have state to have consented for sexual intercourse with A-1 and PW10 has admitted forcible rape by a known person. Some of the girls also became pregnant, after which they were forced to abort the pregnancy. Thereafter, PW1, PW30 and PW16 managed to escape and lodged a complaint against A-1.

c) **Typology of Forensic Evidence Used in the Case:** DNA test on dead foetus was performed to establish the paternity in this case.

d) **Report Of The Experts Regarding The Case:** Dr. Lalji Singh, PW59 Deputy Director, Centre for Cellular and Molecular Biology (CCMB), Hyderabad, was examined. He stated that after the detailed examination, the result was submitted vide Ext.P-185. The operative portion of the report is as follows” “When DNA profile of A1 in Track 3 was compared with the tissue from the foetus (Track 2) and Aruljothi (Track 1) it was seen that every band present in Track 2 was fully accounted for either being inherited from the mother (Track 1) or from the alleged father (Track 3). The alleged father A-1 and the mother Aruljothi were therefore the biological parents of the dead foetus. The doctor was subjected to lengthy cross examination. He had categorically stated that if really there was any contamination, it would result in non-matching of bands. He had also stated that multilocus/single locus probe have been carried out throughout the world for DNA test. Regarding database and contamination Dr. Lalji has stated that the paternity of a child is determined by identifying which were the bands of maternal and which are paternal. Therefore, comparison of DNA fingerprinting of the child with the mother will identify which were the bands maternally inherited. Elimination of the maternal bands will leave those bands inherited from the child’s father, the paternally specific bands. If the alleged father’s fingerprinting pattern contains all of these bands, then he is the true biological father of the child and paternity is confirmed11. He also clarified that a laboratory error can produce mismatch but it cannot produce a proper match. The witness further clarified that when a sample is taken in a sterile

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11 CELLMARK, United States is Ext. D-42
container following the instructions given by CCMB scrupulously there is no possibility of any bacterial or any other infection. He again further stated that the contamination never results in a proper match. It could give rise to exclusion nor to positive inclusion. The witness in cross-examination had specifically stated that according to him, for paternity test, large-scale population database was neither required at any point of time. When the identity of the child were to be established and the samples of the parents were not available and one has to establish it on the basis of probability only in such cases databases might be required. In short if both the parents were available, no databases were required for paternity testing. On behalf of A-1, DW-49 Dr. Wilson J. was examined but the High Court had rejected that evidence on different grounds which were laid down. The Supreme Court was of the view that those were good reasons forwarded by the High Court to have rejected his testimony.

e) **Ground For Accepting The Forensic Evidence:** Both the trial court and the High Court appreciated the evidence of Dr. Lalji and the Supreme Court held that both the courts had appreciated the evidence correctly. The Supreme Court held that no infirmity was there in the well merited findings concurrently recorded by the two courts below, which do not warrant the Supreme Courts Intervention. The facts of the instant case were shocking to the judicial conscience. The Ashram which was supposed to be God’s abode turned out to be a devil’s workshop. According to the court this case had more than one rarest of rare cases. Having regard to the amplitude and gravity of the offence, perpetrated in an organized and systematic manner, the nature of the offence and its deleterious effects not only against the victims, but the civilized society at large, needed to be curbed by a strong judicial hand.

f) **Impact of Forensic Evidence (Conviction):** Therefore the sentence and conviction as recorded by the trial court and confirmed by the High Court were confirmed by the Supreme Court\(^\text{12}\).

\(^{12}\) Kamalanath & Others v. State of Tamil Nadu (2005) 5 SCC 194

a) Background of the case: Aggrieved by the orders passed by a Single Judge of the Allahabad High Court releasing the accused Amarmani Tripathi (A-5) and Madhumati Tripathi (A-4) on bail, the State of Uttar Pradesh through CBI filed these appeals. They were acquitted of the charges against section 302 and 201 IPC.

b) Facts of the case: M, the deceased was shot dead in her house by two persons who were later on identified as S and P. Investigation in the case revealed that M was killed pursuant to a conspiracy involving A-5 and his wife A-4. The sister of the deceased lodged a report in regard to the blind murder of her sister. The case was transferred to the Crome Branch, CID. On a request made by the State, CBI took over the investigation. A-5 was a minister in the U.P. Government who was having an affair with the deceased, a young poetess. This led to M’s pregnancy thrice. On the first two occasions, the pregnancy was aborted at the instance of A-5. On the third occasion, in spite of pressure and persuasion of A-5, M refused to abort the pregnancy. The post-mortem revealed a six-month old foetus in her womb. A-4 was upset when she learnt about the illicit intimacy between A-5 and M. She made several calls to the deceased and her family to threaten and abuse them. Then A-4 informed the cousin of A-5 about the incident and planned to kill M. The matter was also conveyed to A-5 by the cousin. A-5 told his cousin that M could be eliminated by taking care to see that his name was not linked with the incident. Being the minister of U.P. he shall also protect them, moreover, he was no more interested in M as A felt that if M gave birth to the child, it could adversely affect his image as politician and Minister and also cause problem in his family.
c) **Typology of Forensic Evidence Used in the Case:** The DNA test of the foetus was conducted.

d) **Report Of The Experts Regarding The Case:** The DNA test of the foetus established the paternity of A-5.

e) **Ground For Accepting The Forensic Evidence:** The Supreme Court was of the view that there was voluminous evidence collected by CBI to show the involvement of Amarmani Tripathi and his effort to interfere with the investigation of the case before the grant of bail and also after the grant of bail. There were also written complaints with the investigation agency that A-5 after the release on bail tried to threaten as well as win over Nidhi Shukla, sister of the deceased and her mother by offering bribe. In the opinion of the Supreme Court, the High Court gravely erred in granting bail to A-5. According to the Supreme Court, the High Court also failed to consider/take into consideration the voluminous evidence which had been collected by the investigating agency which had been referred by the investigating agency in their statement of objections to the application for grant of bail.

f) **Impact of Forensic Evidence (Conviction):** For the abovementioned reasons the orders passed by the High Court were set aside. The bail bonds of the respondents were cancelled, the respondents were directed to surrender forthwith and in case they failed to do so, the State was directed to take effective steps to take the respondents in custody. The appeals of the State were thus disposed of.¹³

7. **Anil @ Raju Namdev Patil v. Administration of Daman and Diu, Daman and Anr. (24.11.2006 – SC) MANU/SC/8725/2006**

The appellant was convicted under section 364A, 302 and 201 of IPC. Hence this appeal As regards medical evidence, PW35, the doctor opined that although it was

not possible to determine the cause and time of death, the age of human skull and mandible provided showed that the same was of a boy of less than six years of age. In regard of report of DNA test, the learned Judge relied upon the evidence of Dr. Rao, PW39 and also the evidence of others who collected the blood samples of the parents of the deceased and sent them to C.D.F.D. Hyderabad. Dr. Rao opined that the remnants were that of deceased. The learned judge also relied upon the recovery of articles and other burnt clothes from the scene of offence which was pointed out by way of corroborative evidence by the appellant. He also relied upon the recovery of the bones in furtherance of the disclosure statement made by the appellant in his confession leading to the recovery of the bones. Reliance was also placed on the confession of the accused. Noticing that there was no direct evidence, the following circumstances were held to be sufficient to prove his guilt. Appeal was dismissed and conviction was upheld.14


Accused was convicted for wrongful confinement and rape upon the victim under sections 342 and 376(2)(f) IPC. Held, an Assistant Sessions Judge can impose punishment upto 10 years. There were no mitigating circumstances at all in favour of the accused for reduction of sentence. Deterrence remained as one of the objects behind the imposition of punishment. The medical evidence proved that rape was committed on the victim. PW15, the Senior Scientific Officer, carried out the DNA test on the basis of the materials forwarded to him. He confirmed that that the accused is the contributor of the semen which was collected by doctor, PW5, in the form of vaginal swab. The injuries inflicted on the victim although might heal, but nevertheless the scars left by the said injuries, which were physical, emotional and psychological might never heal and she might have to live with them for a long time to come. Appeal was devoid of any merit and was dismissed by upholding the conviction.15

14 Anil @ Raju Namdev Patil v. Administration of Daman and Diu, Daman and Anr. (24.11.2006 – SC) MANU/SC/8725/2006


The appellant was convicted under sections 302, 365 and 201 of IPC. The dead body of the deceased was recovered. DNA test was conducted and it was accepted by the court. The conduct of both the appellants and that they disappeared, since the day the husband went missing and they were staying in hotel rooms and under one roof, positively indicated towards their illicit relations and ill motives. The conviction of the appellants of the offence under sections 302/34, 365 and 201 of IPC was confirmed. Hence the appeal was dismissed.16


The appellants were convicted for rape under section 376(2)(g) of IPC. Conviction was based on the testimony of the prosecutrix and DNA report. Appellants contended that in view of the totality of evidence, the impugned judgment of conviction and sentence was not sustainable. Held, the evidence on record clearly showed that the accused persons entered into the room of the prosecutrix, forcibly pressed cloth on her mouth and they laid her on the bed and thereafter committed rape one after another. The evidence of prosecutrix was convincing and it is the settled principle of law that evidence of prosecutrix itself is sufficient to warrant conviction. On perusal of the evidence on record, the court held that the Trial Court properly appreciated the evidence, facts and law and rightly recorded the order of conviction and sentence.17

16 Shakti Singh And Another v. State of Rajasthan (29.05.2006 – RAJHC) MANU/RH/0276/2006

17 Ajit Barman and Ors. v. State of West Bengal (29.03.2007 – CALHC) MANU/WB/0151/2007

Appellant filed the present appeal against his conviction under section 302 and 201 of IPC. Held, there was no hesitation in accepting evidence of witness to effect that appellant had taken them up to well and on his pointing out, a dead body was recovered from that well. DNA test of the dead body got conducted by the prosecution. Prosecution had also succeeded in establishing that dead body recovered at instance of appellant was that of complainant’s son deceased. All that which was required to be shown was that something belonging to deceased was recovered pursuant to information given by appellant and which prosecution had succeeded in establishing. Therefore the case of the prosecution was established beyond any shadow of doubt. The court did not find any infirmity in findings of trial court holding appellant guilty and consequently this appeal was liable to be dismissed. Conviction upheld.18


Trial judge convicted appellant for an offence of rape under section 376 IPC. Hence this appeal. Held, age of prosecutrix (PW1) was 18 years according to her own statement in FIR. So, on date of occurrence prosecutrix must had been about 17 years. Moreover, according to her, appellant had sexual intercourse with her only with her consent. Admittedly, PW1 was more than 16 years of age on date of occurrence. It was also the case of the prosecutrix, that she became pregnant only because of the accused. To rebut this part of the evidence of the prosecutrix, the accused had produced Ex.D.1 report of the DNA test conducted for the prosecutrix and the accused. The result of the report revealed that the accused is not the father of the child born to PW1. So, it went without saying that apart from the accused the prosecutrix PW1 had sex with other person. Hence, offence under section 375 IPC could not be said to be made out against appellant. Thus appeal was allowed recording acquittal.19

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Trial court convicted appellant accused under section 376(ii)(f) of IPC. Hence this appeal. Held, only because no questions were put to victim to find out her understanding capacity, her evidence, could not be rejected. Evidence of victim was sufficiently corroborated not only by her father but also by doctors and this evidence itself was more than sufficient to prove charge against accused. Presence of semen stains on the clothes of the victim was a piece of corroborative evidence and this had been confirmed being that of accused by DNA testing. Prosecution had proved its case beyond reasonable doubt against accused. The appeal was dismissed and conviction was upheld.20


a) Background of the case: The appellant was charged for murder of his wife by the Learned Trial Judge. The trial judge found the appellant guilty of commission of offence under sections 302 and 201 of IPC and sentenced him to death. The appellant appealed before the High Court. The High Court affirmed the judgment of conviction and sentence. Hence the appeal was filed before the Supreme Court.

b) Facts of the case: The appellant murdered his wife and buried her dead body in the backyard of the house with the motive of usurping the wife’s huge property. On the confession of the appellant accused, a wooden box was recovered inside which the skeleton of the dead body was found.

c) Typology of Forensic Evidence Used in the Case: DNA fingerprinting was used to identify the skeleton of the deceased.

d) **Report Of The Experts Regarding The Case:** After the recovery of the skeleton and conduction of post mortem, the doctor preserved the bone marrow, hair and soft tissues for DNA fingerprinting. PW14 on the basis of the FSL report formed his opinion that the cause of the death was homicidal. PW14 also opined that after consumption of some medicine, the deceased was put in a box and the lid was suddenly closed, in such case an unexpected death may occur due to natural causes also. The bones were sent for DNA Test to Hyderabad Forensic Science Laboratory, through Forensic Science Laboratory, Bangalore. Dr. Lalji Singh scientist was examined as PW24. According to him, he and Dr. G.V. Rao, another scientist carried the process of DNA isolation and testing from Exts. A to D i.e from blood of the father, teeth of the deceased, hair of the deceased and blood of the mother in two tests being polymerase chain reaction (PCR) and HLA DQ typing, both the tests confirmed that the deceased was the offspring of Mirza Gulam Hussain Namazie and Gauhar Taj Begum Namazie. PW 17 Dr. G. V. Rao, categorically stated that in carrying out DNA fingerprinting they followed the same procedure as in the case of blood samples received earlier which were examined. He proved the report prepared by him and Dr. Lalji Singh on 4.10.1995. PW1, Dr. T.R. Kumari was an Assistant Director of Forensic Science Laboratory. She gave her opinion on 15.09.1994 which was marked as Ext. P-125 stating presence of different chemicals detected by her in the articles sent to her for examination. But there was no poison.

e) **Ground For Accepting The Forensic Evidence:** The qualification of the expert had not been questioned before the court. The learned counsel appearing on behalf of the appellant had not raised any contention which would point out that the methodology conducted by the experts in carrying out the study was in any manner unscientific or raised any suspicion as regards the correctness thereof.

f) **Impact of Forensic Evidence (Conviction):** The court was of the opinion, that the case fell within the rarest of rare category and confirmed the death sentence
of the accused. The matter was then referred to a larger Bench of the Supreme Court for confirmation of the sentence in view of the difference of opinion\(^{21}\). However in Swamy Shraddananda (2) the death sentence was commuted to life imprisonment by the Supreme Court\(^{22}\).

MANU/RH/0799/2008

Appellant challenged judgment passed by Trial Court whereby he was convicted and sentenced under sections **302, 363, 201 and 120B of IPC**. Held, case was based on circumstantial evidence. Burden of proof in a criminal trial never shifts and it is always burden of prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. Prosecution offered three different stories to court but the evidence was inextricably mixed up. Evidence of last seen was conspicuously missing from statement of witness. Conduct of prosecution raised grave doubts about authenticity of case. There was also absence of cogent evidence about sexual exploitation of deceased. The IO for the CBI, admitted that the blood stained clothes of the deceased were recovered and the same were sent to the Rajasthan State Forensic Science Laboratory at Jaipur. But subsequently directions were issued during the course of trial, that the clothes were to be sent to the CBBM at Hyderabad for blood grouping and **DNA testing**. The findings of the said testing were intentionally withheld from the court by the prosecution. The IO, the said report was withheld as “it did not buttress the case of the prosecution”. Therefore, adverse inference was drawn for withholding the said report from the trial court and the trial court has misread the evidence on the point of blood group of the deceased. Prosecution failed to establish its case beyond a reasonable doubt and the evidence was not only contradictory, but also suffered from


missing links. Thus, chain was incomplete. Appellant was acquitted of all the charges and the appeal was allowed.  


Appellants were convicted. Hence the present appeal was preferred. DNA test was conducted. The conviction of trial court of A-1 to A-3 under section 120(B) of IPC was confirmed. Conviction of A-1 to A-7 and A-14 under section 302 IPC was also confirmed. Conviction of A-4 and A-5 under section 379 of IPC was confirmed. Conviction of A-3 and A-6 under sections 344, 365 and 363 of IPC were confirmed. Sentence imposed upon A-11 under section 302 of IPC was set aside, and he was acquitted of that charge. As a result, the criminal appeals were dismissed.


a. Background of the case: Challenge in this appeal was the judgment of the Division Bench of the Rajasthan High Court in which six persons who faced trial for alleged commission of the offences punishable under section 396 of IPC and sections 3 and 35 of the Arms Act, 1959. The learned Sessions Judge acquitted the accused persons of all the charges. Being aggrieved by the order the State filed an application before the High Court seeking leave to appeal. The High Court granted the leave and summoned the respondents through bailable warrants. The State filed an application in terms of section 390 read with section 482 of the Code for revoking the earlier order and to commit the accused persons to prison after summoning them through non-bailable warrants. A similar prayer was also made in the revision petition.

24 N. Hariharan @ Hari and Ors. v. State by the DSP, Metro Wing (21.11.2008 – MADHC) MANU/TN/1224/2008
filed by the widow of the deceased. The prayers were accepted by the impugned order. The High Court after giving a thoughtful consideration to the nature of the accusation made and the manner in which the crime was alleged to have been committed and the gravity of the offence directed that warrant of arrest be issued against the respondent accused M and A and they be produced before the learned Sessions Judge, who shall commit them to prison pending the disposal of the appeal.

b. **Facts of the case:** On the relevant day at about 8 p.m. in the night the accused persons assaulted the accountant C at Radha Kishan Filling Station (petrol pump) and fled away jointly with the booty of Rs. 1,61,800. In committing this plunder, one of the accused persons murdered R, the owner of the petrol pump by firing a shot from the gun.

c. **Typology of Forensic Evidence Used in the Case:** DNA test was conducted from the hair recovered from the nails of the hands of the deceased.

d. **Report Of The Experts Regarding The Case:** Hair of the accused persons left in the nails of hands of the deceased were tested with the blood sample of accused persons and positive report in relation to accused persons M and A, was found on DNA test.

e. **Ground For Accepting The Forensic Evidence:** The Supreme Court was of the opinion that the High Court had found that prima facie the evidence regarding identification made in court and DNA test had not been considered in the proper perspective by the trial court. It was noted that the DNA report of the hair allegedly seized from the hands of the deceased prima facie established that it was of the accused M and A who remained throughout the trial in custody. That being so, the Supreme Court did not find any infirmity in the impugned judgment to warrant interference.

f. **Impact of Forensic Evidence (Conviction):** The appeal was dismissed.\(^{25}\)

\(^{25}\) *Amin Khan v. State of Rajasthan & Others* (2009) 3 SCC 776

The appellants were convicted under section 376(2)(g) of IPC. Held, evidence of DNA experts corroborated evidence given by two witnesses who were present at place of occurrence and met victim just after victim was assaulted for first time and before she was assaulted for second time. Evidence given by victim and her sister and brother-in-law was available. Brutal violation of victim was established through medical evidence. Evidence of IO revealed, that even 24 hours after assault and after receipt of medical attention at hospital, victim was not in position to make statement to police, as she was in a semi-conscious state. All the facts clearly indicated that victim was severely assaulted on night by several persons. The accused also made extra judicial confession before public as was evidenced through concerned witnesses. The extra judicial confession made by accused was found corroborated by medical evidence, DNA evidence and also evidence of concerned witnesses. Thus appellants had been correctly convicted and the impugned judgment and order of the trial court was accordingly affirmed. Appeal was dismissed.26


In this case the accused were convicted under section 302 read with section 34 of IPC. There was no eyewitness to the fact of the murder of the deceased. The body parts of the deceased in pieces were discovered at the instance of A-2. DNA test was conducted on the recovered body parts. The court held that the recovery of the body parts under section 27 of the Evidence Act cannot be linked to the murder when identification of the body of the deceased failed due to non recovery of the whole body parts. Hence, when there is no satisfactory proof of the guilt the accused persons cannot be held guilty under sections 302 but were found guilty of having committed offence

under sections 364A, 419, 465, 468, 328, 342 and 187 read with section 120(B) of IPC. Therefore the appeal was partly allowed as convicted under the above-mentioned sections.27


Present appeals had been filed against order of the trial court whereby A-1 was convicted for the offence under section 302 and 201 of IPC whereas the other appeal was filed by the State against order whereby accused 1 and 2 were acquitted for offence under section 363 and 364 IPC. Prosecution case clearly suggested that accused had kidnapped deceased with a view to demand ransom from his parents and since grandfather of deceased called him accused pressed his nose and mouth which resulted in his death. Then accused burnt the dead body of the deceased by taking it to jungle in a gunny bag and setting it on fire after pouring kerosene on it. DNA test was conducted to identify the dead body of the deceased. The court held that the accused was also liable to be convicted for offence punishable under section 363 of IPC as it was clear that he was kidnapped by the accused for ransom. Therefore the appeal filed by the accused was dismissed. Acquittal of the accused for offence punishable under section 363 of IPC was quashed and set aside and accused was convicted for offence punishable under section 363.28


Challenge in the appeal is against the conviction of the appellant for offences punishable under sections 449, 379, 380, 302 and 201 of IPC. Appellant was sentenced to death for the offence under section 302 and to imprisonment for different periods for the offences under other sections. In his appeal before the Supreme Court, appellant challenged his conviction on various grounds like failure of prosecution to complete the chain of circumstantial evidence, lack of motive, unreliableness of the recoveries effected by the prosecution etc. and irregularity in the judicial confession. The Apex Court held that there was no irregularity in the judicial confession given by the accused voluntarily while he was on bail and dismissed the appeal. As there was no direct evidence the prosecution relied on circumstances to fasten the guilt of the accused. Accordingly, the conviction was recorded. The High Court confirmed the conviction and sentence was imposed. It has come in the evidence of PW53 that human spermatozoa was detected in the pubic hair and vaginal swab of one of the deceased. These swabs were subjected to DNA test after taking the blood samples of the appellant. Ext. 90 dated 27.12.2002 completely absolved the appellant as being source of male DNA. Although the DNA evidence was in favour of the accused but the other evidences like fingerprints etc. proved the guilt of the accused. Thus the appeal was dismissed and the conviction death sentence awarded to the appellant/accused was upheld.29


a) Background of the case: The appellant Pantangi Balarama Reddy was accused under sections 302, 120B, 449 and 307 read with section 149 of IPC and section 27(2) of Arms Act and sentenced to life imprisonment. He was also convicted under other various sections of IPC and Arms Act. Dissatisfied with the judgment of conviction and sentence, an appeal was preferred by the accused before the High Court of Andhra

Pradesh. Whereas the appeal of the accused was dismissed for which the accused again appealed before the Supreme Court.

b) **Facts of the case:** The accused was convicted for murdering a member of Parliament of Andhra Pradesh and his gunman and sentenced to imprisonment under the abovementioned sections. The gunman who later died also fired a shot on the accused. The accused wore a pink colour shirt and escaped in a white ambassador car after he sustained bullet injuries.

c) **Typology of Forensic Evidence Used in the Case:** DNA test/ DNA Fingerprint was conducted for the identification of the accused from a pink colour shirt which was seized from the abandoned car used by the accused to escape.

d) **Report Of The Experts Regarding The Case:** Dr. G. V. Rao, was examined as PW 46 and he submitted a report opining: “Result of Examination”. In the report it was mentioned that the DNA profile of exhibits 1, 2, 3 and 11 were tallying with the rest of the exhibits. Exhibits 4, 5, 6 and 7 were tallying with each other and were from one and the same source. Exhibits 4, 5, 6 and 7 do not tally with the rest of the exhibits. Exhibit 13, 14 and 15 are tallying with each other and are from one and the same source. Exhibit 16 and 17 are tallying with each other and are from one and the same source. DNA test of the bloodstains found on the pink shirt matched with the blood group of the accused.

e) **Ground For Accepting The Forensic Evidence:** In this case the DNA test acted as a corroborative evidence along with other evidence. In this case the appellant’s presence was admitted and that he belonged to Peoples war Group was also undisputed. He participated in the crime was proved with reference to the pink-coloured shirt won by him and his arrest immediately in an injured condition along with the report of the DNA expert. Moreover the court submitted that the issue raised by the Counsel of the appellant that DNA should not be relied upon cannot be accepted. The court submitted that “Deoxyribonucleic acid, is found in the cells of living beings and it is the blueprint of an individual. DNA decides the characteristics of persons such as colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting,
identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred percent precise experts opine."

The court also reiterated there is no doubt that there is a need for quality control so precautions are necessary to be taken to ensure preparation of High Molecular Weight DNA, complete digestion of the sample with appropriate enzyme, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. In the present case there was nothing to show that such precautions were not taken. Unquestionably, the evidence of the expert is admissible in accordance with section 45 of the Indian Evidence Act, 1872. In cross examination PW 46 stated that if the DNA fingerprint of a person matches with that of the sample, it means that the sample has come from the person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.

f) **Impact of Forensic Evidence (Conviction):** The appeal was dismissed and the conviction of the Trial Court was upheld as the High Court of Andhra Pradesh also upheld the conviction of the trial court dismissing the appeal.

23. **State v Jyotish Prasad and Anr. (10.07.2009 – DELHC)**

MANU/DE/0999/2009

Present appeal was filed against order whereby Trial Court convicted accused under sections 34, 201, 302, 376(2)(g) and 394 of IPC with death sentence and death sentence reference was filed by the State for approval. The court held that events starting from discovery of dead body to arrest of appellants form a complete and unbroken sequence and that in itself lend credibility to the prosecution case. Test conducted on blood samples from appellants were revealed in report. Report indicated that blood group of both appellants was O. It was evident that blood group of blood stains in shirt belonging to appellant was same as blood group of deceased. DNA test performed provided sufficient evidence to conclude that biological fluid present on

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sources which leaves no doubt those appellants were involved in rape and murder of the deceased. Therefore conviction of appellant upheld but since the case did not fall within the category of rarest of rare cases, court was unable to confirm death sentence which was altered to imprisonment for life insofar as offence punishable under section 302 of IPC. Therefore High Court upheld impugned judgment on conviction of appellants and modified sentence as above.  


This is a case of the assassination of the former Chief Minister of Punjab and Haryana brought before the High Court of Punjab and Haryana. The trial court convicted accused JSH and BS under section 302 and 307 r/w 120B, section 306/109 of IPC and sentenced them to death. BS was also convicted under section 6 of Explosive Substances Act 1884. DNA test was conducted on the parts of the body recovered as the deceased was assassinated using human bomb. The court held that without having any evidence in favour of accused BS coupled with his three confessional statement having being part and parcel in the assassination of former Chief-Minister proves his involvement in the case and thus the conviction of the trial court regarding BS was confirmed. On the basis of evidence the court substituted the death sentence imposed on accused JSH by trial court to imprisonment for life. Conviction upheld in case of BS and commuted in case of JSH.  

25. High Court of Karnataka v. Madhu & Ors. (08.09.2010 – KARHC) MANU/KA/1523/2010


The accused were convicted under sections 364, 302, 201 and 34 of IPC by the trial court. Held, prosecution had successfully established guilt of A-1 by adducing evidence of extra judicial confessions made by him to PW11 and PW13. Prosecution had also successfully established that PW1 had identified dead body was of deceased by tattoo marks and also by DNA report. In view of evidence, prosecution had successfully proved guilt of accused. Hence conviction and sentence of death sentence imposed by trial court deserved to be upheld.  


The appellant was convicted under sections 302 and 304B IPC. Chain of circumstances was not established. There were some material contradictions although death occurred within seven years of marriage and demand for dowry or harassment was established. DNA report as regards the hair found from the chest of the deceased and hair taken from the scalp of the accused was called for. Although the DNA report was not filed but the court opined that the non-availability of the DNA report cannot belie the story of the prosecution but would have strengthened the prosecution story. Held, in circumstantial evidence, the chain of circumstances must be complete. If there is a gap or inspires no confidence as such conviction under section 302 IPC is not sustainable but as ingredient of section 304-B IPC are established so it is appropriate to convict the accused under sections 304(B) IPC instead of under section 302 IPC. Thus appeal was partly allowed by modifying the conviction.  

33 High Court of Karnataka v. Madhu & Ors. (08.09.2010 – KARHC) MANU/KA/1523/2010


a) **Background of the case:** The appellant/accused Santosh Kumar Singh, committed rape and murder of a hapless junior college student for having refused his amorous overtures after causing severe harassment and stalking her. The trial court acquitted him. Death sentence was awarded by High Court for the offences under sections 302 and 376 of IPC. Hence this appeal was preferred against the judgment of High Court by the appellant/accused.

b) **Facts of the case:** The deceased Priyadarshini Mattoo was a LL.B. student of Delhi University, Campus Law Centre. The appellant Santosh Kumar Singh was a pass out of the same faculty under Delhi University. Being attracted towards the deceased, the appellant used to visit the campus even after passing out in 1994. The appellant harassed and intimidated the deceased despite her request and her disapproval. Several complaints were also made by the deceased against the appellant in different police stations. Thereafter on 23.01.1996, the girl was found murdered. A case was registered on the basis of the complaint by the father of the deceased.

c) **Typology of Forensic Evidence Used in the Case:** During the inquest proceedings some hair were recovered from the dead body, broken pieces of glass and bloodstains were found near the dead body. Blood samples of the appellant/accused was also procured for DNA test. DNA profiling was conducted from several articles like the clothes and underwear of the deceased, underwear of the appellant/accused and vaginal swabs of the deceased. There was no outwardly sign of sexual assault which was visible except the T-shirt worn by the deceased was found slightly torn. But the DNA found in the deceased vagina helped to recognize the appellant/accused as the DNA profile of the semen matched the DNA profile of the appellant’s blood.

d) **Report Of The Experts Regarding The Case:** The accused appellant was brought before the inspector Lalit Mohan on the suspicion raised by the mother of the deceased. The inspector noticed tenderness on his right hand and an injury which was
not bandaged or plastered. The accused was also sent for medical examination where the doctor after examining him found two injuries on his person, one, a swelling on the right hand dorsum lateral aspect, tenderness with crepitus and two, scar marks, old and healed multiple wounds both on lower limbs and on the chest. The doctor also advised an x-ray of the right hand. Nail scrapings and hair samples of the appellant were also taken and handed over to the sub-inspector. An x-ray was made, which detected fracture of the 5th metacarpal bone of the right hand and according to the opinion of the doctor, the injury was grievous in nature and caused by a blunt weapon. The dead body was subjected to post-mortem and the vaginal swabs and slides as well as samples of blood and hair and also the clothes of the deceased were sent for examination by the doctors. Post mortem examination indicated nineteen injuries on the deceased person including three broken ribs caused by appellant mercilessly beating her with his helmet. Thereafter DNA profiling was conducted by two experts namely, Dr. Lalji Singh and Dr. G.V. Rao. They revealed that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having being contaminated or tampered with. The two scientists gave very comprehensive statement supported by documents that DNA on the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the appellant was from a single source and that source was the appellant.

e) Ground For Accepting The Forensic Evidence: The court held that it cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development. It was deposed in the examination-in-chief that Dr. Lalji Singh had been involved with the DNA Technology ever since 1974 and he had returned to India from UK in 1987 and joined CCMB, Hyderabad and had developed indigenous methods and techniques for DNA fingerprinting which were now being used in this country. The Supreme Court had already recognized the expertise of Dr. Lalji Singh in the case of Kamalanantha35. Dr. G.V. Rao was a scientist of equal repute and he had in fact conducted the test under the supervision of Dr. Lalji Singh. From the arguments placed before it, the Supreme Court had no doubt that these two

35 Kamalanantha v. State of Tamil Nadu, ((2005) 5 SCC 194
scientists were persons of eminence and that the laboratory in question was also held in the highest esteem in India. Although the trial court has given adverse findings on the accuracy of the tests carried out, not a single question was put to Dr. Lalji Singh. The Supreme Court rejected the view of the trial court on the ground that it would be dangerous to set aside the expert report by making reference to some texts on that subject without such text being put to the expert. Therefore the court cannot take over the function of an expert. For placing its views the court relied another case. According to the Supreme Court, the trial court was not justified in rejecting the DNA report as nothing adverse could be pointed out against the two experts. The court said that DNA report must be accepted as scientifically accurate and an exact science. The trial court while arriving at the conclusion raised the issue that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with. The Supreme Court felt that trial court made an error regarding raising such issue as that too was sufficiently explained. 20ml blood were taken from the appellant’s body for DNA profiling and transferred into four vials, each containing 5ml. Vials were also sealed and signed by hospital doctor under whose supervision the blood samples were taken. Arguments were raised on behalf of the appellant that the blood samples were tampered with which was baseless as the expert who conducted DNA profiling in the CCMB deposed that due to some leakage found in the vials for which traces of blood appeared on the material with which the vials were sealed, only 3ml was blood was found in each vial which amounted to total 12ml blood and the loss of 8ml blood was thus accounted for. Before handling over the vials to CCMB, blood was stored in a refrigerator in government hospital and therefore there was no possibility of evaporation of blood.

f) Impact of Forensic Evidence (Conviction): The Supreme Court commuted the death sentence of the appellant to life imprisonment as it appeared before the court that the sentencing part is difficult as the court had to choose between life sentence and death sentence. The court explained the philosophy of the “rarest of the rare” principle. As the options were extremely limited, and the court itself felt difficulty in awarding one or the other, it was appropriate that the lesser sentence be awarded. The court

further had taken into account the justifying circumstances especially when the High Court has reversed the judgment of acquittal based on circumstantial evidence. The court also considered that the appellant was a young man of 24 at the time of the incident and after acquittal got married and was the father of a girl child. The court felt that in the fifteen years after the commission of the offence the appellant would reform reflecting over his past conducts especially after the death of his father within one year after his conviction and looking into the dismal future of his family. Therefore Conviction resulted. 37


The appellant was convicted under sections 302 and 201 of IPC. Held the prosecution case entirely based on circumstantial evidence, relying on last seen theory and failure of the accused to explain some material circumstances. On internal examination of the dead bod of the victim, doctor noticed fracture of 7th rib. The DNA report also indicated that the rib fracture was not ante mortem. The circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled. In the instant appeal, the prosecution case stands established based on re-appreciation of the evidence as adduced before the trial court that it was the accused which caused the homicidal death. The order of conviction recorded by the Additional Sessions Judge was confirmed and the appeal was dismissed.38

37 Santosh Kumar Singh v. State (through CBI), (2010) 9 SCC 747

38 Vansha Lakama Gangad (through jail) v. The State of Maharashtra (05.04.2010 – BOMHC) MANU/MH/0319/2010

An appeal was filed in the Madras High Court against conviction of the appellant under sections 120B, 201, 302, 364, 449 and 485 of IPC for reduction of the sentence and a reference came for the confirmation of the death sentence. DNA test was conducted which was accepted by the court and the prosecution proved its case beyond reasonable doubt that both the accused were guilty of murder of D1 and D2. Both accused were guilty under sections 201, 302, 364, 392 and 449 of IPC and accused were not guilty under section 120B of IPC. A-1 was entitled to acquittal under section 485 of IPC. Accordingly, court confirmed conviction of accused recorded by trial court except conviction under section 120B and 485. Even though court had found that the murders committed by the two accused fell within ambit of rarest of rare dictum, Court felt reluctant to impose death penalty in view of the nature of evidence. Court opined that the imposition of life sentence which was alternative to death sentence would be appropriate sentence. Appeal was partly allowed by altering the conviction. \(^{39}\)

30. Inspector of Police, Tamil Nadu v John David (2011) 5 SCC 509

a) Background of the case: This appeal is directed against the judgment and order passed by the Madras High Court, the High Court acquitted the respondent of the present case under sections 302, 364, 201 and 342 by reversing the order of the trial court at Cuddalore.

b) Facts of the case: The facts of this case are very shocking and distressing as one young boy who was a medical student was murdered by another senior medical student of the same college. After the murder the dead body was disposed of after cutting it into different pieces which was very gruesome and ghastly. On 6.11.1996 at

about 2 P.M. the accused John David took away Navarasu, deceased and subjected him to severe ragging in the hostel room of the college and when the deceased did not subjugate himself to the accused, the accused caused head injury to the deceased and when he was lying on the ground unconsciously, the accused severed his head and limbs with the help of stainless steel knives and removed his gold ring, watch and gold chain and caused his death. After that with the intention of hiding the evidence and also to show his alibi he had put the head and the gold articles of the deceased in a zip bag and threw it into canal water near the hostel and burnt the bloodstained clothes of the deceased on the open terrace of the hostel building and took the torso in a suitcase along with the limbs in a train to Madras and threw the limbs in a river when the train crossed Cuddalore and put the torso in a bus at Tambaram.

c) Typology of Forensic Evidence Used in the Case: Identification of the dead body was done through DNA fingerprinting and other forensic techniques. DNA test was conducted from the recovered skull, torso and some other limbs.

d) Report Of The Experts Regarding The Case: PW66 Dr. Ravindran stated in his evidence that the deceased died because of decapitation by injuries and the injury is ante-mortem. The doctor also opined that a sharp cutting weapon might have been used for causing injuries. The doctor also confirmed that the torso and head belonged to one and the same person. The DNA test was conducted by Dr. G.V. Rao, PW 77. The doctor had also compared the tissues taken from the severed head, torso and limbs and on scientific analysis he had found that the same gene found in the blood of PW1 (the father of the deceased) and Baby Ponnusamy (mother of the deceased) was found from the recovered body parts and therefore it is supposed to belong to the only missing son of PW1.

e) Ground For Accepting The Forensic Evidence: The court accepted the opinions of the experts which were held to be accepted to sustain conviction of the
accused. The court was of considered opinion that the prosecution has established its case on the basis of strong and cogent circumstantial evidence.

f) Impact of Forensic Evidence (Conviction): The court was of the view that the decision of the High Court was totally erroneous in reversing the order of conviction recorded by the trial court and outcome of misreading and misinterpreting the evidence on record. Accordingly, the judgment and order of the High Court was set aside and the judgment of the trial court was restored with only one rider that the sentences awarded shall run concurrently and not consecutively and therefore the appeal allowed.


Criminal Appeal Nos. 702/2007, 334/2008, 87/2009 and 395/2009 arose out of the judgment dated 18.09.2007 and order on sentence dated 09.10.2007 whereby the Appellants Jayant, Yashpal and Devendri were convicted under Section 365/396 of the Indian Penal Code (IPC); the Appellant Manju Kumar was convicted for the offence punishable under Section 412 IPC. In Criminal Appeal No.649/2010 the Appellant Sanjay Singh Rathi (hereinafter referred to as "Rathi") impugns the judgment dated 09.04.2010 and the order on sentence dated 16.04.2010 whereby he was convicted for the offence punishable under Section 365/396 IPC. All Appellants except Manju Kumar were sentenced to undergo imprisonment for life for the offence punishable under Section 396 IPC. They were sentenced to undergo Rigorous Imprisonment (RI) for five years for the offence punishable under Section 365 IPC. Appellant Manju Kumar was sentenced to undergo RI for four years. Sentence of fine was also imposed on the Appellants. These appeals related to the abduction of one Ajay (the deceased), his murder and dacoity of the Tata Sumo, which he used to ply as a taxi for his living. The report by the expert indicated that the source "C" i.e. femur bone of the dead body yielded partial DNA profile and thus the result was inconclusive. The prosecution did not rely on the report as it was not positive. The witness was not called for cross-examination to challenge the.

40 Inspector of Police, Tamil Nadu v John David (2011) 5 SCC 509
conclusion. According to the view of the Supreme Court, since the DNA report is inconclusive, the Court has to consider the other evidence to find out if the identity of the dead body was established. From the report it could not be concluded that it was not Ajay's dead body. The guilt of the accused persons was proved beyond reasonable doubt. Appeal of Manju Kumar bearing number 702/2007 was allowed and order of conviction was set aside as mere possession of a stolen property belonging to a gang of dacoits was not sufficient to hold a person guilty under section 411/412 IPC. The other appeals were dismissed and conviction upheld.41


The appellant were convicted under sections 120B, 364A, 302 of IPC. Hence this appeal. Held, there was no evidence to prove that family members of deceased had any enmity towards appellants so as to falsely implicate them. Therefore, motive of abduction of deceased to extort money from his family members was clearly proved. Prosecution witnesses had supported case of prosecution. At, instance of accused persons, recovery of headless dead body and weapon of offence was effected. After the body was recovered, its identity was established by the family members and also by sampling the blood of the deceased with the blood samples of parent and DNA fingerprinting. Further, recovery of personal articles of deceased was also effected from accused persons. There was no reason to doubt recoveries made by various police witnesses as they have corroborated each other on every aspect. Therefore, considering testimonies of witnesses and documents on record, offence against appellants was proved beyond reasonable doubt. Appeal was dismissed and conviction upheld.42


33. **Nithari Murder Case, Surendra Koli v. State of Uttar Pradesh & Others**  
(2011) 4 SCC 80

a) **Background of the case:** Maninder Singh Pandher, Accused 1 and appellant Surendra Koli, Accused 2 were convicted under Sections 302/364/376 of the Indian Penal Code, 1860 by Special Sessions Trial No. 611 of 2007 decided on 13.02.2009 by the Additional Sessions Judge, Ghaziabad, U.P. Death sentence was imposed on both the accused by the said judgment. In appeal/reference to the High Court Accused 1 was acquitted and Accused 1’s death sentence was affirmed. Hence, the present appeal had been filed by Accused 1, Surendra Koli.

b) **Facts of the case:** The facts of the case are dreadful and terrible. Since 2005 till a period of two years several children went missing from Sector 31, Nithari Village, Gautam Budh Nagar, Noida. It was alleged that the appellant killed, have chopped and eaten the body parts after cooking them. Appellant Surendra Koli was the servant of Accused 1, Maninder Singh, and they lived together at D-5, Sector 31, Noida. Admittedly, in a confession made by Surendra Koli under section 164 CrPC on 01.03.2007 before the Magistrate which was voluntary, he admitted in great detail that he used to kill the girls after luring them inside House No. D-5, Sector 31, Noida bt strangulating them, and he would then chop up and eat up their body parts after cooking them. Some body parts, slippers and clothes were also recovered which were thrown in the enclosed gallery behind the house, from the confession made to the Magistrate. The appellant also voluntarily lead the police to the specific spot where he had kept the articles/body parts hidden. On his pointing out, the police recovered 15 skulls and bones and a knife was recovered from the water tank of a bathroom. During the scooping of the drain on 31.12.2006 in front of the house, bones and chappals were recovered. He had also given a graphic description about the several murders he had committed.

c) **Typology of Forensic Evidence Used In The Case:** DNA fingerprinting was used to establish the identity of the dead bodies or the body parts found. DNA test was
also conducted from the other articles found since all the bodies or parts of it could not be recovered.

d) **Report Of The Expert Regarding The Case:** One girl named Rimpa Halder, had gone missing. Her parents has filed a missing report at the police station on 20.07.2005. Identity of the dead body of Rimpa was established by the DNA test conducted by the CDFD, a pioneer institute in Hyderabad. The DNA test was conducted by matching her DNA with that of her parents and brother. Doctors of AIIMS have put together the parts recovered from the search.

e) **Ground For Accepting The Forensic Evidence:** To explain the reliability of DNA evidence, the court referred to a writing of James D. Watson. “No doubt DNA provides very reliable evidence, yet the evidence needs very careful handling otherwise it may lead to miscarriage of justice. James D. Watson, one of the discoverers of DNA who was awarded the 1962 Noble Prize for medicine, has made the following observations about handling of DNA evidence, “Keeping track of molecular evidence, as opposed to knives and guns, can be an especially demanding chore; scrapings from a sidewalk may be visually indistinguishable from scrapings from a gatepost, and subsequently extracted DNA samples will doubtless look even more alike when placed in small plastic test tubes. [O.J.] Simpson’s [a celebrated homicide case in the United States] defense team was able to point a number of instances when it seemed at least possible, if not probable, that samples had been confused or, even worse contaminated.”

The court held that in the present case the identity of Rimpa Halder was established by matching DNA extracted from pieces of her body with the DNA extracted from her parents and brother. Such kind of matching can establish identity to a certain degree of probability but not absolute identity of deceased person. There is absolutely no discussion in any of the Supreme Court Judgements or High Court Judgments regarding what degree of probability was found in the case of Rimpa when her DNA was matched with DNA of her parents and her brother, and whether the degree of probability found in the case is judicially acceptable. The court also referred a foreign

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judgment on DNA fingerprinting of the Supreme Court of Florida and commented as “very lively discussion on DNA fingerprinting”\textsuperscript{44}. In USA, Scientific Working Group on DNA Analysis Methods (SWGDAM) has developed “Interpretation Guidelines for Autosomal STR Typing by forensic DNA Testing Laboratories\textsuperscript{45}”. Hence the DNA evidence was accepted in this case.

f) **Impact of Forensic Evidence (Conviction):** The appellant was convicted. The court found no reason to interfere with the findings of the Trial Court and the High Court as the appellant was guilty of murdering Rimpa Halder and upheld the death sentence. The killings were gruesome and barbaric. The appellant on seeing small girls passing by the house, lured them inside, and then strangulate them and after killing them tried to have sex with the body and then would cut off their body parts and eat them. Some parts of the body were thrown in the passage gallery and drain. The house became a slaughterhouse where innocent children were regularly butchered. The court said that the case clearly falls under the rarest of rare case and no mercy can be shown to appellant Surendra Koli. The appeal was thus dismissed\textsuperscript{46}.


Trial court convicted appellant for offence punishable under sections 302, 364 and 201 of IPC. Hence this appeal was filed. Held, it was established that appellant enticed deceased from his place of employment. Appellant could not escape liability for offence punishable under section 364 of IPC as there was evidence to show that he had knowledge of deceased skeleton being buried in fields of his uncle. It was also proved that appellant made disclosure statement Ex.PW-14/A exhibiting his knowledge of the skeleton and there was discovery of skeleton confirming appellant’s knowledge of burying the skeleton. **Identity of the skeleton was also established by DNA**


\textsuperscript{46} Surendra Koli v. State of Uttar Pradesh & Others (2011) 4 SCC 80
Therefore circumstances established unerringly towards the guilt of the accused. Hence conviction order passed by trial court was justified and the appeal was dismissed.47


Appeal was against judgment passed by Sessions Judge, acquitting accused respondent S. Held, extra judicial confession of accused/respondents was corroborated by medical evidence and DNA report as well as strong motive of accused/respondents, who had sexually assaulted and murdered victim. Prosecution was able to prove case against accused R, as such he was held guilty for offence under section 376 of IPC. For killing victim, accused was held guilty for offence under section 302 of IPC. Benefit of doubt was given to accused S for both the offences as there was sufficient material on record whereby doubt was created. Therefore accused S was acquitted and Sessions Judge had rightly concluded that prosecution had failed to prove guilt of respondent accused S. Therefore accused R was convicted and accused S was acquitted. DNA test was accepted.48

36. Jairnail Singh @ Jailli, s/o Shri Baru Ram v. State of Himachal Pradesh (03.01.2012 – HPHC) MANU/HP/0024/2012

The appellant was convicted under section 376 IPC. Held, in present case, it was worth inspiring confidence and was duly corroborated by independent witnesses and medical evidence. The victim was medically examined on the same day of incidence. Her wearing apparels were taken into possession by doctor, which was sealed and sent for chemical examination. DNA profile obtained from blood sample of prosecutrix matched with DNA profile obtained from the pant of accused. There was


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overwhelming evidence that accused was connected with alleged offence and there was no fault in conviction of accused for offence under section 376 IPC, Considering age of prosecutrix and age of accused coupled with plight of accused and that accused was not previously convicted, the substantive sentence of seven years was reduced to five years and the rigorous imprisonment for two years in default of payment of fine was also reduced to simple imprisonment of six months. With such modifications in conviction the appeal was disposed of.  


a. Background of the case: The appellant accused had been convicted and sentenced to death sentence by the Additional Sessions Judge, Greater Mumbai. The judgment by the trial court gave rise to a reference to the Bombay High Court as confirmation case and also an appeal by the accused appellant against the conviction and sentences of the trial court under section 302, 326, 506 IPC and sections 25 and 27 of Arms Act. The High Court upheld the judgment of the trial court against which the accused appealed before the Supreme Court.

b. Facts of the case: This was the largest terrorist attack case in Mumbai which started on 26.11.2008 and killed 166 persons, injured 238 people and destroyed property estimated at Rs. 150 crores. The sole surviving terrorist Ajmal Kasab was captured among ten terrorist. He made bold confession under section 164 of CrPC which was corroborated with ocular evidence of eyewitnesses who had life and death encounters with the terrorists and it was further corroborated with forensic evidences like DNA etc.

49 Jairnail Singh @ Jailli, s/o Shri Baru Ram v. State of Himachal Pradesh (03.01.2012 – HPHC) MANU/HP/0024/2012
c. **Typology of Forensic Evidence Used in the Case:** Identification by DNA and others. From articles of clothing, blankets etc. of the accused DNA test was conducted using stains of sweat, saliva and other bodily secretions found on the said articles and DNA samples taken from their dead bodies.

d. **Report Of The Experts Regarding The Case:** Many articles were recovered from the rubber boat “Kuber” which the terrorists used to enter India. The stains of sweat, saliva and other bodily secretions on the articles were subjected to DNA profiling and the experts opined that except Imran Babar (deceased accused 2), Abdul Rahman Bada (deceased accused 5), Fahadullah (deceased accused 7) and Shoaib (deceased accused 9), the rest of the six accused were connected with various articles found and recovered from the Kuber. The appellant’s DNA matched the DNA profile from a sweat stain detected from one of the jackets. Among total ten terrorist who committed the offence, six terrorist were identified from the DNA evidence which was recorded in Schedule III of the case. Under the head of opinion of expert in the said schedule it is mentioned as “The DNA profile from the control sample matched with the DNA profile from sweat detected on jacket/blanket/monkey cap/jacket/Israeli cap/handkerchief” which was reported in Ext. 205-F, 205-B, 205-E, 205-G, 205D, 205C.

e. **Ground For Accepting The Forensic Evidence:** The court viewed that in all human affairs absolute certainty is myth. The court in most of the occasions tried to find out certain probabilities as a substitute for proof beyond reasonable doubt. Nevertheless, in this case from the evidence adduced the court believed that absolute certainty is not a myth but can be a reality. The present case was an exception as the court was more than certain that the planning and conspiracy to commit the crime was proved beyond reasonable doubt.
f. Impact of Forensic Evidence (Conviction): The court upheld the conviction of Kasab. The accused was thus sentenced to death as the crime was executed by him.50


a) Background of the case: Background of the case: The present appeal was directed against the judgment of the High Court confirming the judgment of conviction and order of sentence passed by the Learned Additional Sessions Judge. A-2, the present appellant was charged under section 302 read with section 34 and was sentenced to life imprisonment. A-2 was also sentenced to suffer rigorous imprisonment for 3 years for each of the offences under sections 201, 435, 411. All the sentences were directed to run concurrently.

b) Facts of the case: The deceased was the Chief Track Engineer, South Central Railway. He was living in the Bungalow of Railway Officers along with his wife, son and daughter. A-1 was working as office peon in South Central Railways and was attached to the bungalow of the deceased for the last seven years. A-1 was residing in the servant quarters of the said bungalow. A-1 was arrogant, evasive and was in a habit of revolting against the wife of the deceased as she was a strict person and demanded better performance of duties from A-1. Nearly, a week before the occurrence, the wife of the deceased scolded A-1, which aggravated the grudge of A-1 on her. After that, A-1 met A-2 and A-3 and they all planned to kill the entire family of the deceased and to decamp with the gold ornaments etc. The plan was executed and the accused persons killed all of the persons of the said bungalow and shifted the dead bodies to the car putting the body of B, in the dickey of the car. After taking the car near the railway tracks, A-2 purchased petrol. Then the accused persons jointly had put petrol on the car and burnt the dead bodies with the car.

50 Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra (2012) 9 SCC 1
c) **Typology of Forensic Evidence Used in the Case:** DNA test confirmed that it was deceased family which was found burnt in car.

d) **Report Of The Experts Regarding The Case:** The identity of the deceased persons as well as the connection of A-3 with the commission of the crime had duly been proved by Ext. P-96, the DNA Report from the Forensic Science Laboratory, Hyderabad which was specifically recorded and supported by the evidence of PW39, the doctor. According to PW39, he had received the requisition from the Commissioner of Police for performing the DNA test. He stated that he conducted the DNA test on the items which were received by him. The analysis was taken up by organic extraction process and thereby he could establish the identity of the deceased persons and also the involvement of A-3 after examination of the submitted blood samples.

e) **Ground For Accepting The Forensic Evidence:** Although there was no eyewitness the attendant circumstances had been fully established by the prosecution. The forensic expert’s view corroborated the circumstances.

f) **Impact of Forensic Evidence (Conviction):** The appeal was dismissed as the Supreme Court Judges found no infirmity in the judgment under appeal and found no merit in the submissions raised on behalf of the accused.\(^{51}\)


a) **Background of the case:** The present appeal arose from the judgment of the Division Bench of the Allahabad High Court upholding the sentence of death awarded to the appellant Sandeep and modifying the sentence into one of life imprisonment insofar as it related to the other appellant Shashi Bhushan. The appellant was convicted under section 302/34 and 316/34 of IPC.

b) **Facts of the case:** The appellant along with his companion was charged with having killed his girlfriend by taking her from Delhi to U.P. on pretext of marrying her in Haridwar. The crime was noticed by two police constables who heard shrieks coming from car. The matter was reported to police patrol party who intercepted the car which was at a lonely place on road when appellant and his companion were taking out an injured woman from car. The police jeep in which PW1 and others were proceeding stopped ahead of the Indica car and caught hold of the two young men and also noticed a girl with injuries. When PW1 questioned her, she disclosed her name, parent’s address and that she developed friendship with the appellant Sandeep while she was working in a mobile shop and that she was pregnant. The crime was committed as the girl refused to abort pregnancy caused by the appellant.

c) **Typology of Forensic Evidence Used in the Case:** DNA test was conducted for determining the paternity of the foetus which was found in the womb of the deceased.

d) **Report Of The Experts Regarding The Case:** PW10, the Junior Scientific Officer of the CFL, Chandigarh stated that the blood samples of the accused S and the foetus were received by him on 27.01.2005 and that the necessary test was conducted based on which a report on 13-B/1, 13-A/2 and 13-C/3 was forwarded which confirmed that the accused S was the biological father of the foetus. He also confirmed in the cross-examination that the earlier sample of the foetus preserved in formalin solution received on 05.01.2005 was returned back without opening the seal as the same was kept in formalin solution and standard protocol analysis was not available in the laboratory. He further confirmed that when the sample on second time was received along with the letter dated 25.01.2005, the same was preserved in ice separately which they were able to test in their laboratory for finding out the result. It had also come in his evidence that the collection of the samples, preservation of samples and transportation of samples if not carefully done, might affect the result, but in the present case the result reported by him was not based on wrong facts.
e) **Ground For Accepting The Forensic Evidence:** In the light of the said expert evidence of the Junior Scientific Officer, the appellant S was too late to contend that improper preservation of the foetus resulted in a wrong report that the accused S was the biological father of the foetus received from deceased Jyoti. As the said submission was not supported by any relevant material on record and as the appellant was not able to substantiate the said argument with any other supporting material, the court did not find any substance in the said submission. So the court held that. The circumstance, namely the report of DNA in having concluded that accused Sandeep was the biological father of the recovered foetus of Jyoti was one other relevant fact to prove the guilt of the said accused.

f) **Impact of Forensic Evidence (Conviction):** The appeal of the appellant was disposed of by modifying the punishment imposed on the accused from death sentence to life imprisonment and he should undergo the sentence for a fixed period of thirty years without any remission to be allowed. The appeal of the other appellant was dismissed. He had to serve imprisonment for 20 years.52


The appellants were convicted under sections 376, 302 and 120B IPC. Hence, this appeal. Held injuries on body of deceased, in addition to DNA report that matched with the DNA of appellant No. 1 with biological fluid found on clothes of deceased and opinion of PW7 stating that sexual assault prior to murder could not be ruled out, all pointed towards undeniable inference that appellant No.1 raped deceased and then murdered her by strangulation. Recoveries pursuant to disclosure statement of appellants were established. Motive as alleged by prosecution against appellant No. 1 was plausible and rationally acceptable. In present case, chain of circumstantial evidence was complete and was substantial in inculpating guilt of Appellant No. 1. Other than evidence of PW3 and recoveries affected allegedly at instance of Appellant No. 2, there was no other evidence that linked Appellant No. 2 to offence committed in present matter. Motive against Appellant No. 2 was not established. Therefore,

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Appellant No. 2 was entitled to benefit of doubt on account of prosecutions failure to prove its case beyond all reasonable doubt. Thus judgment of trial court convicting A-2 was set aside. **Conviction** of A-1 was upheld except conviction under section 120B of IPC. Appeal filed by A-2 was allowed and appeal filed by A-1 was dismissed.\(^{53}\)


The appellant was convicted under section **90 and 376 of IPC**. Consent given for sexual intercourse with a person with whom a victim is deeply in love on a promise that he would marry her on a later date cannot be said to be given under misconception of fact. Consent given pursuant to a false representation that the accused intends to marry could be regarded as consent given under a misconception of fact. **DNA test report** submitted by Rajiv Gandhi Centre for Bio-Technology will not come within the purview of institutions mention in section 293(4) of CrPC. No offence is made out under section 3(2)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, merely because of the fact that the victim happens to be a member of the Scheduled Caste or Scheduled Tribe. There should be evidence to establish that the offence was committed against a person on the ground that such person is a member of Scheduled Caste or Scheduled Tribe. The appeal was allowed and the appellant was **acquitted**.\(^{54}\)

42. In Reference v. Kamlesh @ Ghanti (11.10.2013- MPHC) MANU/MP/2655/2013

The accused in this case was convicted under section **366(A), 374, 363, 376(A), 302** of IPC. **DNA test was conducted and its report was presented in evidence.** Keeping in view, the totality of the circumstances and the legal principles, the court was of considered view that the crime in question was committed by the appellant in a pre-

\(^{53}\) Vinay Kumar v. State (03.07.2012 – DELHC) MANU/DE/3096/2012  
determined and cold blooded manner on a small child without any provocation. As a result the reference made by the court below was answered in the affirmative, by confirming the death sentence awarded to the appellant. The conviction and death sentence awarded to the appellant was thus affirmed by the High Court of Madhya Pradesh.55

43. Katturaja and Vettum Perumal @ Krishnan @ Kitchi v. State (29.10.2013 – MADHC) MANU/TN/2277/2013

The accused were convicted under sections 302/34 and 449 of IPC and sections 3(2)(v) of SC & ST (Prevention of Atrocities) Act, 1989 and were sentenced to death. Hence this appeal. Held, link between material objects and crime had not been established properly. In view of infirmities in evidence let in by prosecution, so-called confession of 1st accused and alleged recovery of material objects at his instance could not be believed. Alleged recovery of aruval at instance of second accused had not been linked in any manner with alleged crime. Although DNA analysis was conducted the officers who conducted investigation had failed to make proper investigation. The DNA analysis conducted by PW34 disclosed that DNA extracted from M.O. 13 recovered at the instance of the second accused tallied with DNA extracted from the dress materials of D-1. Further investigation would bring out further materials by way of evidence so as to find out the truth. There were no sufficient evidence to hold that these accused were perpetrators of the heinous crime. Hence, conviction and sentence imposed by trial court on appellants/accused were set aside. Appeal allowed by recording acquittal.56


55 In Reference v. Kamlesh @ Ghanti (11.10.2013- MPHC) MANU/MP/2655/2013

The appellant was convicted for various offences under sections 302, 364, 376, 392 and 201 IPC by trial court. Hence this appeal. Held circumstance that appellant was last seen with deceased had been proved beyond reasonable doubt. Evidence proved that appellant after committing murder of deceased took gold ornaments on her body and sold them, thus, motive to get money was established. PW33 had collected the piece of liver, lung, kidney etc. of the unknown female deceased as well as preserved the blood of the parents of the said victim for DNA test and had forwarded the same in a sealed condition to police inspector. PW43 conducted the DNA isolation from the samples and subjected it to multiplex PCR reaction. Finally, he concluded that the tissue (source Exhibit D) belonged to biological female offspring of the said parents of the aforesaid victim. Various facts, established by prosecution, successfully completed the chain of circumstantial evidence. Confessional statement, with regard to participation, successfully completed chain of circumstantial evidence. Confessional statement, with regard to participation of appellant in crime separately and independently corroborated with other circumstance. Case of the appellant was proved beyond reasonable doubt. Conviction of the appellant was justified and the appeal was dismissed.


Present appeal was filed against order whereby death sentence was awarded to appellant for offence of murder (sec. 302), rape (sec. 376(2)(f)) and unnatural offences (sec 377) of IPC. Held evidence of residents of locality about cruelty and beating was fully corroborated by postmortem report. Trial rightly held that cause of death was cumulative effect of multiple injuries caused to victim. Post mortem report, DNA report and evidence of medical officer completely connected with each other. No explanation was given by appellant. Appeal was dismissed and conviction of the trial court was upheld.

57 Mahanand Naik v. State (07.08.2013 – BOMHC) MANU/MH/1481/2013
58 In Re: Rajesh and Another (16.07.2013 – MPHC) MANU/MP/1834/2013

The appellant was convicted under section 365, 302 and 404 of IPC. Present appeal was filed challenging the conviction of the appellant for kidnapping and murder. Deceased was last seen alive with appellant. Circumstantial evidence produced showed that appellant kidnapped deceased and caused his death. Deceased’s material ornaments were recovered from possession of appellant. DNA test was conducted but the DNA report could not be relied upon. Chain of circumstances established to show that the prosecution proved its case beyond reasonable doubt. Hence appeal was dismissed. Conviction sustained. DNA test was thus rejected.59


Sessions Judge convicted appellant accused for offences punishable under section 302 and 201 of IPC. Held, Anatomy Department found that the recovered box contained non-human bones. There was total failure on the part of the prosecution to prove that bones seized from compound of appellant were human bones. Consequently DNA test holding that bones were of deceased was of absolutely no assistance to prosecution and Trial Court had not even bothered to refer to document [Exh. 48] which was duly proved by prosecution itself. Thus appellant was acquitted of charges under IPC. Judgment and order of Sessions Judge was set aside. Appeal was allowed. Therefore the court rejected DNA evidence in this case.60


a) Background of the case: The appeal had been preferred against the judgment and order of the Kerala High Court by way of which it had affirmed the judgment and order of the Sessions Court, Kottayam. The appellant was convicted under section 302 read with section 120B and was awarded a sentence of life and a fine of Rs. 1 lakh. He was also convicted under section 201 read with section 120 B and sentenced to

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imprisonment for a period of 3 years and a fine of Rs. 2000 each along with A-2. They were further convicted under section 364 read with section 120 B and sentenced to undergo RI for a period of 7 years each and to pay a fine of Rs. 5000 each.

b) **Facts of the case:** The appellant at the relevant time was the Deputy Superintendent of Police at Malappuram and his wife was living at Palluruthy, and was using a vehicle which was driven by P, the deceased. P was also related to the appellant. P developed an illicit relationship with the appellant’s wife and the appellant was informed of this development by his manager. After that P was asked not to come to the appellant’s house thereafter and thus P left and began working in a shop as a driver. After a few days a pair of human legs were found floating in the backwaters of Vembanad Lake by a person thereafter lodged a complaint to PW68, Sub-Inspector of Kottayam West Police. After two days, PW1, the father of P lodged an FIR that his son had gone missing. The next day a torso in a plastic bag was seen floating on the eastern side of the lake. Upon obtaining requisite information, K.M. Antony, PW17, Circle Inspector, reached the scene with PW1, when PW1 identified the torso to be that of his son. While the inquest of the torso was being conducted, a pair of hands was seen floating in the lake. PW17 recovered the same and conducted inquest. PW1 identified the hands to be those of his son as well.

c) **Typology of Forensic Evidence Used in the Case:** DNA test was conducted to dismembered parts of the body to determine whether the same was the dead body of the deceased P.

d) **Report Of The Experts Regarding The Case:** The DNA analysis made it clear that the blood samples of the parents of P matched with the DNA of P and the same proved and established the identity of the dead body as the DNA had also been extracted from the portion of the limbs recovered from the lake and compared with that of DNA of the parents.
e) **Ground For Accepting The Forensic Evidence**: The court below accepted that there was no dispute that P was a victim of homicide and that the dismembered parts of the body recovered from the lake were those of P, as the same stood proved by the DNA report. The Supreme Court was also of the view that the DNA report did not leave any room for doubt with respect to the said identification. The same stood proved by superimposition.

f) **Impact of Forensic Evidence (Conviction)**: The appeal was dismissed and the conviction of the appellant was upheld\(^{61}\).

49. **Sahib Hussain v. State of Rajasthan (2013) 9 SCC 778**

a) **Background of the case**: The appeal was directed against the final judgment and order of the High Court of Rajasthan whereby the High Court disposed of the appeal filed by the appellant herein against the order of conviction and sentence passed by the Additional Sessions Judge (Fast Tract) by commuting the sentence of death to imprisonment for life for the offence of murder under section 302 of IPC

b) **Facts of the case**: The appellant herein killed five persons. PW1 the informant, who belonged to the same place of the deceased while on his way back home found the appellant herein talking to one PW4 that he had finished S, the mother and also killed the three children and the father of the three. After hearing when PW1 went towards their house, he found M, the father lying in a pool of blood and the others were lying dead. M died on the way to the hospital. During trial, it came to the knowledge of the court that there was a scuffle between the appellant herein and the deceased S, wife of M, which resulted in such a gruesome act. A bloodstained axe was recovered. Clothes worn by the appellant were also recovered. Further, a pair of bloodstained chappal was also seized.

\(^{61}\)*R. Shaji v. State of Kerala (2013) 14 SCC 266*
c) **Typology of Forensic Evidence Used in the Case: DNA test** was conducted from the blood which was found from the recoveries.

d) **Report Of The Experts Regarding The Case:** The FSL report and the DNA report matched with the blood group of the deceased and the blood group found on the chappals, pants, shirt and axe.

e) **Ground For Accepting The Forensic Evidence:** The Supreme Court was of the view that the courts below rightly concluded, that the above reports support the case of the prosecution.

f) **Impact of Forensic Evidence (Conviction):** The appeal was dismissed and the conviction of the High Court was upheld\(^{62}\).

50. Sant Ram @ Sadhu Ram v. The State (31.07.2013 – DELHC)

MANU/DE/2302/2013

The appellant was convicted and sentenced to imprisonment for life with rider and fine under sections 376, 506 IPC. Therefore the appellant preferred the present appeal and contended that the DNA test was not properly conducted and he was falsely implicated by wife and daughter for money. Held, prosecutrix and her mother were the material witnesses and a baby was delivered after registration of FIR. Blood samples of the baby, prosecutrix and appellant were collected under the order of the court. **Appellant voluntarily agreed to give blood samples for DNA test.** No fault of the expert was established in withdrawal of the blood. Expert opined that the prosecutrix was about 17 years on the date of commission of the offence. Cross-examination also revealed consent to sexual act although but the prosecutrix testified that the act committed by keeping her at knife point and under threat. There was no reason to disbelieve the testimony of the prosecutrix as she was dependant on the appellant for food and shelter.

\(^{62}\) Sahib Hussain v. State of Rajasthan (2013) 9 SCC 778
The court was of the opinion that consent under threat is no consent. Hence, case did not fall in any clause under sub-section (2) of section 376 and the appellant was not liable to be punished with imprisonment for life with rider. Sentence maintained but without the rider. Appeal was disposed off. Convicted without rider. DNA test was conducted.  


The appellant was convicted under sections 376, 363 and 366 of IPC. Held, it was found prosecution had been unable to establish its case beyond reasonable doubt. Even in expert evidence, i.e. the DNA report of FSL, there was no match of semen found on clothes of prosecutrix with that of accused. Appeal was allowed and the appellant was acquitted.


Present appeal was filed challenging order of conviction for offence of murder under section 302 of IPC. Held prosecution failed to prove that weapon seized from deceased premises was of appellant. No mens rea had been proved against appellants for commission of crime. DNA test was conducted but could not be relied upon or accepted. Statements of witnesses had not proved that appellant had committed crime. Order of conviction was not maintainable. Appeal allowed and accused was acquitted.


63 Sant Ram @ Sadhu Ram v. The State (31.07.2013 – DELHC) MANU/DE/2302/2013

64 Sashi Kumar v. State of Himachal Pradesh (07.01.2013 – HPHC) MANU/HP/0311/2013

The present appeal was filed for challenging the order whereby the appellants were convicted for offences punishable under sections 364A and 120B of IPC. Held, evidence on record proved that there was plan to abduct victim. Appellants were seen at place where meetings were conducted for abduction. Appellants had not been able to explain their presence at specified location in their statements. Separate acts were assigned to each of the conspirators. Appellants were identified by prosecution witness. Bloodstains were recovered from specified locations. The police produced the CFSL report relating to the DNA test of the bloodstained clothes found in the Bhoot Bungalow, where the victim was confined. Bloodstains matched with the victim’s blood. The motive of the abduction was proved that the abduction of the victim was undertaken for ransom. Demand made by one of the conspirators was evident from call records. E-mails proved that ransom was received. There were complete chain of circumstances which admitted no other conclusion but that appellants were guilty of commission of criminal acts alleged against them. The circumstances proved prosecution case beyond all reasonable doubt. Therefore conviction of appellants was justified and appeal was dismissed.\(^\text{66}\)


This is a case of Allahabad High Court. The trial court convicted the appellant under sections 302, 376 and 201 of IPC. Hence the present appeal was preferred to the High Court. In this case the complicity of the appellant was established from DNA matching of hair which was collected from between fingers of deceased, with hair of appellant. The circumstances thus proved that the appellant had committed the offence. Further this was not the rarest of rare cases, where special reasons existed for only awarding death penalty and where other option of awarding sentence of imprisonment for life was unquestionable foreclosed. Therefore the High Court held the conviction of the appellant was valid but death sentence awarded to the appellant was commuted to

sentence of imprisonment for life. **Conviction** granted and appeal was thus dismissed. Court accepted the **DNA Evidence** placed on record.67

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a) **Background of the case:** The accused, Anil was charge-sheeted with offences punishable under sections 302, 377 and 201 of the Indian Penal Code (IPC). The principal District and Sessions Judge, Nagpur, convicted the Appellant for the offence punishable under Section 302 IPC and sentenced him to death and also imposed a fine of Rs. 10,000/- and in default to suffer rigorous imprisonment for one year for the offence punishable under section 377 IPC, he was also sentences to pay a fine of Rs. 1000/- and in default to suffer rigorous imprisonment for a period of three months. Substantive sentences were ordered to run concurrently. Since the accused was sentenced to death, reference was sent to High Court for confirmation of death sentence. The accused also filed Criminal Appeal No. 17 of 2011. The Division Bench of the High Court noticed that the DNA profile blood sample were not placed before the trial court and examination-in-chief of an important prosecution witness, the Assistant Chemical Analyzer of Forensic Science Laboratory, was not conducted. The Bench therefore remitted the case to the trial court for production of additional evidence. The Sessions Court, after recording the additional evidence and recalling and further examining the witnesses, as ordered, forwarded the same to the High Court. The appeal was then heard by the Division Bench of the High Court on 10.10.2011 along with the confirmation case and the additional evidence recorded and the High Court confirmed the death sentence of the accused. Therefore the present appeal has been preferred before the Supreme Court, against the death sentence which was confirmed by the High Court.

b) **Facts of the case:** A boy aged about 10 years had gone to school on 10.01.2008 morning. Normally he used to return in the evening, but on that day he did not return. Since the whereabouts of the boy were not known, the mother of the boy, who was a maid servant, lodged a complaint on 15.01.2008, after running here and there anxiously

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for several days, before PW10, the Sub-Inspector of Police, attached to Crime Branch, Nagpur. In the meantime, Mary, a lady residing near the house of the accused, informed PW10 that the dead body of a boy aged about 9-10 years was seen floating in a well near the old cemetery. PW10 then proceeded to the spot and with the assistance of fire brigade took the dead body from the well and sent the same to Mayo Hospital for conducting post-mortem examination. After getting the post-mortem report, PW10 lodged the report and registered the offence under Sections 377, 302 and 201 of IPC. PW14, the police Sub-Inspector attached to Sadar Police Station, was entrusted with the investigation and subsequently the accused was arrested on 17.01.2008.

c) Typology of Forensic Evidence Used in the Case: DNA Evidence is used in this case. On the disclosure of the accused, many articles such as school bag of the deceased, was recovered from the house of the accused. The school bag contained various books of different subject, which bore the name of the deceased. A Bermuda pant, belonging to the accused, a jeans belonging to the deceased were recovered on 17.01.2008. The shirt worn by the accused was also recovered on his pointing. The accused was sent for medical examination and the blood sample was taken on 18.01.2008. Seized articles were referred to the Chemical Analysis at Nagpur. The reports of the Analyzer are marked as Exts. 35 and Exts. 38.

d) Report Of The Experts Regarding The Case: PW4, the doctor who conducted post-mortem examination of the dead body found several external and internal injuries on the body of the deceased. He also stated that all the internal injuries correspond to external injuries and they were ante-mortem and were ordinarily sufficient to cause death. The doctor has also opined that there was possibility of carnal intercourse with the deceased, though the causes of death were head injury. PW4 also stated that he had seen the DNA report and stated that the report indicates anal smear of the deceased gave a mixed DNA profile which matches with semen on half pant and blood of accused. Another report of DNA was also shown by PW4, which was in respect of the control sample blood of the accused and reiterated that DNA profile of blood matches with DNA profile of semen found in the anus of the deceased. PW5, the Assistant Chemical Analyzer, Forensic Science Lab, Kalina, Mumbai stated that she had received the parcels from the Regional Forensic Science Laboratory, Nagpur on
24.01.2008 and she started the analysis on the same day. Exh.1 was the DNA profile of the accused and Exh. 5 was the anal smear of the deceased matched with the profile obtained from Exh.5 anal smear and also Exh.4, blood stain gauze collected from the deceased. Two tests were conducted by PW5, one nuclear nuclear Short Tandem Repeats (STR) and Y Short Tandem Repeats (YSTR). She also obtained blood samples of the accused and matched the profile obtained from that blood with the profile of Exhs.1 (semen stain cutting from half pant) and 5 and the profiles matched with each other. PW12, the Medical Officer attached to Mayo Hospital, Nagpur was examined to prove that he had received the requisition for taking blood samples, pubic hair, nails and semen of the accused under requisition at Exh. 75 which was handed over to the police. PW15 and PW16 were also examined to establish the procedure followed for taking the parcel to the Chemical Analyzer for DNA test as well as for collecting blood samples etc. PW5, Dr. Varsha Rathod, had been working as a Assistant Chemical Analyzer since 1994 and had analyzed thousands of samples including DNA test. She had also conducted two tests, STR and YSTR. Both the tests are scientifically proven and the competence of the doctor who conducted the test was not questioned. Thus, DNA test report could be safely accepted, which clearly point out that the deceased was subjected to unnatural sex which points towards the offence under section 377.

e) **Ground For Accepting The Forensic Evidence:** After going through the evidence of PW4, PW5, read with the evidence of PW12, PW15 and PW16, the court held that the DNA test was successfully conducted and that the anal smear matched with the DNA profile of semen stains which were found on the pant of the accused and were matched with the control blood sample of the accused as well as blood sample of the deceased. Though in the present case a submission was made that the boy had not resisted, being in the company of the accused for few days, the court was of the view that since the boy was a minor, consent of a passive agent is not at all a defence. Therefore, according to the court, prosecution could clearly establish that after subjecting the boy to Pederasty or sodomy, he was strangled to death.
f) **Impact of Forensic Evidence (Conviction):** The Supreme Court commuted the death sentence as to life imprisonment on several grounds. According to the court the Learned counsel for the accused submitted that the accused had no previous criminal history and would not be a menace to the society. Further, it was pointed out that the possibility of reformation or rehabilitation of the accused, who is 42 years old, cannot be ruled out, moreover the State did not point out that it was impossible to rehabilitate the accused. It was also highlighted that the accused had not kidnapped the boy, but the boy voluntarily came and stayed with him. Accordingly, the court sentenced the accused to an imprisonment for a further period of thirty years, without remission, in addition to sentence already undergone as it appeared as an adequate punishment in the present case rather than death sentence. Hence the appeal was accordingly disposed of.  

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Present appeal was filed against the order whereby the appellant was convicted for offences of murder under section **302** and giving false information to screen offender under section **201** of IPC. Appellant caused bodily injury to deceased with intention to kill her and it was not accidental one. There was conclusive proof by scientific examination (DNA test) that deceased was done to death by spanner found in appellant’s car. Discovery of various evidence also confirmed that there was concrete intention and plan on part of appellant to finish deceased. Hence, prosecution proved circumstances by re-appreciating of entire evidence that appellant was rightly punished for committing murder and there was no infirmity in the impugned order. Appeal was dismissed and the conviction was upheld.  

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Present appeal was filed challenging the order whereby Court convicted appellants for offence of murder of an infant. The dead body of the infant was exhumed for the purpose of drawing samples to carry out the DNA test. The DNA test concluded that the accused appellants were the biological parents of the deceased infant. Held, in case of murder based on circumstantial evidence, accused was not to be convicted unless circumstances propounded by prosecution were clearly established through strong evidence. In the case on hand, considering the peculiar facts and circumstances and evidence on record, the positive DNA report should not have been accepted by the trial court in isolation to record conviction. Positive DNA report can be of great significance where there is other evidence in support of the same. If DNA report is the only piece of evidence and although it is positive, the same would not be sufficient to hold the accused guilty. Thus, guilt of appellant was not proved beyond reasonable doubt. Prosecution failed to prove that appellants killed infant child. Trial court erred in finding appellants guilty of offence of murder punishable under section 302 of Code. Appellant was acquitted and appeal was disposed of.70


a) Background of the case: The appellant in the present case was accused for murder and rape of a young girl. On being arrested, the accused confessed that he had committed the murder along with other three co-associates, whom he named. The three co-associates were also arrested. The trial court acquitted the three people but the appellant was found guilty for the commission of the offences punishable under section 302 read with section 34 and 201. Aggrieved by the same, the accused appealed before the High Court at Allahabad and the State filed Government Appeal against the order of acquittal passed against the rest of the accused persons. The High Court dismissed both

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the appeals and confirmed the death sentence awarded by the trial court on the ground that the case falls under the rarest of rare category. Against the judgment of the High Court, this appeal has been preferred the appellant accused, Dharam Deo Yadav.

b) **Facts of the case:** In this case a New Zealand resident named Diana Clare Routley visited India in 1997. After visiting Agra, she reached Varanasi on 07.08.1997 and stated in Room No. 103 of Old Vishnu Guest House. She left the guest house on 10.07.1997 at about 7 am for Darjeeling and thereafter she was found missing. Having no information about Diana, her father Allan Jack Routley, informed the authorities and thereafter came to India and lodged an FIR against Dharam Dev Yadav who worked as a guide and worked for Old Vishnu Guest House, where she stayed. Later the accused confessed that he had committed the murder of Diana and pointed the place where the dead body of Diana was buried by the accused after causing her death by way of strangulation. The skeleton of the deceased was recovered from the house of the accused.

c) **Typology of Forensic Evidence Used in the Case:** DNA test was used in the case for identifying the person from the recovered skeleton. Doctor conducting post mortem adopted a conclusive test known as “**Short Tandem Space Repeats**” (S.T.R.) analysis, which produces results even on degraded biological samples - DNA sample got from skeleton matched with the blood sample of father of deceased. Through this method the prosecution could prove before the court that the skeleton recovered from the house of the accused belonged to deceased.

d) **Report Of The Experts Regarding The Case:** PW20, Dr. C.B. Tripathi, conducted the post-mortem examination. PW21, Dr. G.V. Rao, Chief of the DNA Fingerprinting Laboratory, conducted the DNA isolation on the basis of samples of blood of Allan Jack Routley, the father of the deceased and femur and humerus bones of skeleton. PW21 testified that he was satisfied regarding authenticity of the seal and its intactness when it was produced before him for the analysis. Short Tandem Space Repeat (S.T.R.) analysis was adopted by PW21, as it is also regarded as a conclusive test. DNA Fingerprinting through STR analysis on perusal of STR profile of the source
of the father of the deceased and sources of femur and humerus bones of deceased concluded the sources are biologically related to each other.

e) **Ground For Accepting The Forensic Evidence:** In reply to the questions raised by the counsel for the appellant regarding the reliability of the DNA report and its admissibility in criminal investigation, the court referred to the conclusiveness of the DNA test. According to the court DNA forms a natural barrier against exogenous DNA contamination and are resistant to environmental assaults. In the present case the blood sample of the father of the deceased was taken in accordance with the set up precept and procedure for DNA isolation test and the same was sent along with taken out femur and humerus bones of recovered skeleton to the Centre for D.N.A. Fingerprinting and Diagnostics (CDFD), Ministry of Science and Technology, Government of India, Hyderabad. The court also said that the question regarding whether DNA Tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. Samples of DNA are being used in the Criminal Justice System since more than half a century. Although debate remains over the safeguards which should be required in testing samples and in presenting evidence in Court. DNA profile, is consistently held to be valid and reliable but it depends on the quality control and quality assurance procedures in the laboratory. So far as applicability of DNA evidence in this case, the DNA sample from the skeleton matched with the father and all sampling and testing have been done by experts whose scientific knowledge and experience have not been doubted in these proceedings. Therefore the court had no reason to discard the evidence since the prosecution succeeded in showing that the skeleton recovered from the house was that of the deceased and none other than the accused had strangulated her to death and buried the dead body in the house.

f) **Impact of Forensic Evidence (Conviction):** Death sentence was commuted to life imprisonment due to lack of evidence with regard to the manner in which the crime was committed. Moreover, the case did not fall under rarest of rare cases. Apart from this a further award of 20 years rigorous imprisonment was awarded over and above
period already undergone by accused, without any remission, would meet ends of justice.


The death reference and connected appeal arose out of the judgment of conviction passed by the Additional Sessions Judge whereby the accused were convicted under section 376 and 302 of IPC. The deceased, a female child of about 3 to 4 years of age was sexually abused beyond words and her dead body was found lying in a Nala. DNA test was conducted. The report leads to definite and inescapable conclusion that the three accused persons were the perpetrators of the shocking and horrible crime. The Supreme Court opined that the burden of proving that the DNA Report was vitiated for any reason was on the accused. None of the accused had advanced any cogent reason for discarding or rejecting the report. Hence the conviction and death sentence awarded to the each of the accused was confirmed.


a) **Background of the case:** Death penalties were imposed on the appellant by the learned trial judge which has been confirmed by the High Court. Therefore this appeal has been preferred before the Supreme Court. The appellants were convicted for offences under sections 302 and 120B of IPC and also for the offences under Arms Act.

b) **Facts of the case:** On 20.12.2003 the SP received anonymous letters and phone calls to the effect that some unidentified dead bodies were lying dumped on the hillocks of village Nandos. A search operation was organized on the same day in course of which seven dead bodies were recovered. Two more bodies were recovered on the next day and one dead body was recovered on 29.12.2003. Along with the dead bodies,

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articled like clothes, trouser hooks, two blood stained diaries were also recovered. Though all the dead bodies were sent for post mortem examination the high level of decomposition rendered any post autopsy opinion impossible. Some of the parts of the dead bodies were sent to Centre for DNA Fingerprinting and Diagnosis, Hyderabad, for DNA test. Having traced the initial identity of some of the deceased from the recovered diary their relatives were traced and the blood samples of the relative were also sent for DNA test. The investigation led to the arrest of the accused. The case of the prosecution was that appellants had spread false rumours that A-1 had supernatural powers to cause money showers and persuaded victims to arrange cash and come to a place called Nandos Plateau to multiply their cash. The accused arranged for the stay of the victims and also the conveyance to the place of crime, where the victims were robbed and murdered.

c) **Typology of Forensic Evidence Used in the Case:** DNA fingerprinting was used to identify the deceased from their decomposed dead bodies.

d) **Report Of The Experts Regarding The Case:** As per the forensic report the age of all the deceased persons were 25 to 45 except DB 6 who was estimated to be from 12 to 18 years and DB 9 18 to 20 years. All the dead bodies belonged to male persons except DB7. All the people also died before six months prior to the forensic examination. Identity of DB 1, 2 and 6 to 9 were established by DNA report of examiner PW107 Dr. S. Pandurang, Senior Technical Examiner in CDFD, Hyderabad.

e) **Ground For Accepting The Forensic Evidence:** The court was convinced on the forensic evidence produced before it but balancing the two sets of circumstances, i.e. one favouring commutation and the other upholding the death penalty, the court considered the mitigating circumstances.
f) Impact of Forensic Evidence (Conviction): Although the conviction was upheld the death sentence was commuted to life imprisonment.  


Present appeal was filed challenging the death penalty awarded by Trial Court to convicting the appellant for offences of sexual assault under section 376 and murder under section 302 of IPC. Held, victim and her friend had reposed complete confidence in occupants of a bus while boarding same to reach destination. Convicts misused confidence and faith of victim and her friend, made them to board bus so as to overpower them on way and satisfy their lust. Crime was pre-planned and executed by restoring to diabolic method, exhibiting inhuman conduct in ghastly manner. Convicts behaved in barbaric and inhuman manner by inserting rods and hand in victim’s private parts and taking out her internal organs. Convicts also pulled victim with hair, dragged her from rear portion of bus to front gate and threw her out of bus along with her friend in nude condition on road side. Not only to deter others from committing such atrocious crimes but also to give emphatic expression to society’s abhorrence of such crimes, death penalty needed to be confirmed. Order of trial court was justified in respect of granting death penalty to convicts. No infirmity was found in the impugned order. DNA test of the appellants was conducted and accepted by the court.


Present appeal was filed against order of conviction for offence of dowry death, cruelty and destruction of evidence under sections 201, 304B and 498A of Code. Held, all sorts of incriminating materials were confronted to Appellant so adduced on behalf of prosecution during course of trial, which was not at all answered or explained by the


appellant. Allegations made by prosecution witness against appellant was found fully corroborated. The decomposed body of the victim was subjected to DNA test. Story of disappearance of deceased shrewdly woven in preplanned manner apprehended some sort of foul game extending to murder. The Delay in filing FIR was properly explained. In said circumstances, impugned order of conviction required no interference. Appeal was dismissed.⁷⁵

63. **Rajkumar v State of MP (2014) 5 SCC 353**

a) **Background of the case:** The appeal was preferred against the impugned judgment and order dated 27.06.2013 passed by the High Court of Madhya Pradesh confirming the death sentence awarded by the trial court under section 302 of IPC and affirming the conviction of the appellant under section 376 and 450 of IPC.

b) **Facts of the case:** The appellant aged 32 years came to the came to the house of his neighbour, PW1, and stayed with his four children, as PW1 and his wife went to irrigate agricultural fields in the night. The appellant was in visiting terms with the family. At midnight he raped the prosecutrix, the daughter of PW1 and and caused grievous injuries consequent to which she died. The next morning when PW1 along with his wife returned, they found the prosecutrix aged about 14 years is dead. Immediately after which they went to the police station and lodged the complaint.

c) **Typology of Forensic Evidence Used in the Case:** DNA test report established the presence of semen of appellant in vaginal swab of prosecutrix. The specimen of the blood of the appellant was obtained to conduct DNA fingerprinting after taking permission of the judicial magistrate and sent for analysis in the State Forensic Science Laboratory.

d) **Report Of The Experts Regarding The Case:** Dr. Surendra Barkare, PW6 and Dr. (Smt) Prabha Pipre (PW7) conducted the post-mortem of the prosecutrix and submitted the report. As per the report, rape had been committed upon the deceased. PW6 deposed and proved the post-mortem report and concluded that the prosecutrix died of asphyxia as a result of strangulation and her death was homicidal in nature. So far as the analysis report of the material sent and the DNA report is concerned, it revealed that the semen of the appellant was found on the slide prepared from the vaginal swab of the deceased. The clothes of the deceased were also found having appellant’s semen spots. The hair which was found near the place of occurrence was found to be that of the appellant as per the DNA report.

e) **Ground For Accepting The Forensic Evidence:** The court had taken into consideration the impugned judgments rendered by the High Court as well as the trial court and the evidence on record. The court affirmed the findings of fact recorded by the courts below, particularly in respect of the DNA report to the extent that the semen of the appellant was found in the vaginal swab of the prosecutrix and that she died of asphyxia. Before the court parted in this case, it had noted with appreciation that in the said case the investigation and all judicial proceedings up to the court stood concluded in a time period of less than eight months from the date of incidence. Thus, according to the court it was an exemplary expeditious justice in a country of chronic delay by smooth functioning of the investigating agency, courts and members of legal fraternity. The court expected such prompt disposal of cases specifically in cases of such grave nature.

f) **Impact of Forensic Evidence (Conviction):** Taking into consideration, different judgments placed before it, the court was of the view although the appellant committed a heinous crime and raped an innocent, helpless and defenceless minor girl who was in his custody, he is liable to be punished severely but it is not a case which falls in the category of rarest of rare cases. Hence the death sentence was set aside and life imprisonment was awarded. The court specifically mentioned that the appellant
must serve a minimum of 35 years in jail without remission before considering his case for premature release.⁷⁶


This was a case where the appellant was convicted under sections 376(2) (c), 465, 466, 468 and 504, 506 of IPC. Hence the present appeal was filed by the appellant. DNA test was conducted which proved the guilt of the appellant. Hence the appeal was dismissed and the conviction was upheld.⁷⁷


In this case the accused was convicted under sections 302, 307, 353, 363, 364(A), 376 (2)(g) read with section 34 and section 5 of IPC and section 50 Narcotics And Psychotropic Substances Act, 1985 by the High Court. Two minor children were kidnapped, one of them was gang raped and both of them were given poison and pushed into the canal alive where they suffered a watery grave. DNA test was conducted and accepted by the court. Death sentence was confirmed by the Supreme Court.⁷⁸


Present appeal was filed for challenging conviction of appellant for offences punishable under section 363, 376 and 302 of IPC on basis of sufficient evidence. Prosecution witness had seen deceased with appellant at last time. Injuries found over head and face were individually and collectively sufficient to cause death in ordinary course of nature. Injuries present in the vagina were suggestive of sexual intercourse. Evidence on record showed that articles were seized from spot for analysis in presence of witnesses, which

⁷⁶ Rajkumar v State of MP (2014) 5 SCC 353
⁷⁸ State by the Inspector of Police v. Manoharan (12.03.2014 – MADHC) MANU/TN/0496/MADHC
was duly proved. **DNA test was conducted and accepted.** Although appellant contended that blood samples were tampered, evidence of doctor proved that there was no tampering of blood samples. Thus prosecution proved offence of appellant. Therefore appellant was **convicted** and the appeal disposed of.79


Present appeal was filed against order whereby appellant was convicted for offence of rape and murder under sections **376 and 302 of IPC**. Held, in present case DNA Fingerprint analysis confirmed that anal swabs taken from victim contained alleles which were fully accounted for in blood sample taken from appellant/accused. Failure to match blood stains on various articles including finger tips, skirt, pant etc. did not in any manner rule out clinching nature of DNA Fingerprint Analysis. There was no doubt that homicidal death of child was caused by appellant by his brutal act of rape. In such circumstances, appellant was rightly convicted for offence of rape and murder. Appeal was disposed of. **Conviction upheld. DNA Fingerprinting conducted**.80


The State filed the appeal for confirmation of the death sentence awarded to the appellant/accused. The appeal was filed by the appellant against order of conviction for offence of rape and murder under section **376, 302 IPC**. Held, evidence on record showed that victim had been abducted in public gaze and consequently removed from society, was ravished and murdered. As per medical report, appellant’s **DNA extracted from blood and semen were matched when compared with samples found on victim’s body**. Materials on record showed that appellant acted like predator moving on streets and were looking for prey. After committing crime, the appellant had defiled body of victim. Prosecution had proved that it was rarest of rare case where sentence of

80 **State v. Bharat Singh (17.04.2014 – DELHC) MANU/DE/0920/2014**
death could be inflicted for violent rape followed by murder. Therefore order of conviction was maintainable and appeal of appellant was dismissed.\textsuperscript{81}


Present appeal was filed for challenging order whereby, accused was acquitted from offence punishable under section \textbf{376 and 377 of IPC}. Trial court rejected evidence of prosecutrix on ground that she was child and she was not competent to give evidence. Held. Evidence of child witness could not be rejected per se, but court as a rule of prudence was required to consider such evidence with close scrutiny. Prosecutrix in her testimony in Court, described in sufficient detail incident of rape which happened with her and also identified accused as person who had ravished her. Presence of blood of prosecutrix on clothes of accused corroborated testimony of prosecutrix. DNA test was also conducted and relied by the court. Therefore, prosecution established guilt of accused. Accused was convicted for the offence of rape. Appeal was allowed.\textsuperscript{82}


a) **Background of the case:** Death sentence was awarded to Sushil Sharma, the present appellant by the Sessions Court, which was confirmed by the Delhi High Court and therefore it was challenged by him before the Supreme Court by a special leave through the instant case. The appellant was tried for the offences punishable under section 302, 120B read with sections 302 and 201 of IPC.

b) **Facts of the case:** A young lady named Naina Sahani was brutally killed by her husband Sushil Sharma as he was suspecting that she was having some affair with

\textsuperscript{81} State v. Ravi Kumar (26.08.2014 – DELHC) MANU/DE/1977/2014
\textsuperscript{82} State v. Sujeet Kumar (13.10.2014 – DELHC) MANU/DE/2573/2014
PW12, her friend Matloob Karim. After killing her the appellant, with the help of A-2 burnt her body in the tandoor of his restaurant.

c) **Typology of Forensic Evidence Used in the Case: DNA and others.** DNA test was conducted to determine the identity of the charred dead body recovered from the tandoor.

d) **Report Of The Experts Regarding The Case: DNA test** was conducted from the Centre for Cellular and Molecular Biology, Hyderabad for confirming the identity of the corpse by forwarding to it the blood samples of the parents of the deceased and the tissues (muscle) from the thigh, radius and ulna bones and two ribs of the deceased. The investigation was started by PW81, Niranjan Singh and after holding the inquest the dead body had been sent to RML Hospital. This was confirmed by the statement of Dr. Joginder Pal, PW85, who stated that on 03.07.1995 an unknown female body was brought to RML Hospital at 6.20 am. and he had also examined the dead body and prepared a report Ext.PW-85/A where he noted the condition of the charred body. The body was then identified on 05.07.1995 by PW-12, Matloob Karim as that of the deceased at the same hospital.

e) **Ground For Accepting The Forensic Evidence:** The court laid that DNA report established that the dead body, belonged to the deceased who was the daughter of Harbhajan Singh and Smt. Jaswant Kaur. Thus, the court laid down that the prosecution has successfully established that the dead body was of Naina Sahni, wife of the appellant.

f) **Impact of Forensic Evidence (Conviction):** The court confirmed the conviction of the appellant for the offences punishable under Sections 302, 120B and 201 of IPC. But it was commuted to life imprisonment on various mitigating circumstances although according to the court the offence is brutal but brutality alone was not a justification to award death sentence in the case83.

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71. The State of Maharashtra and Ors. v. Sadashiv Jetappa Kamble and Ors. (08.05.2014 – BOMHC) MANU/MH/2590/2014

Present reference was filed for confirmation of death sentence awarded to accused for offence punishable under sections 376(2)(f), 363 and 201 of Code. Held, sufficient evidence was found to sustain the conviction. **DNA report** showed that the blood on the frock of the deceased tallied with DNA of semen on underwear and pant of accused. Mitigating factors were that accused was suffering from HIV which was clear from medical report. Secondly, accused had been acquitted in two cases relied upon by prosecution to show that he was habitually involved in illegal activities. In view of mitigating factor, the court was not inclined to confirm the death sentence, instead inclined to commute sentence of death to life imprisonment. Reference answered accordingly. **Convicted** but sentence commuted. **DNA report was accepted.**


Present reference was filed for confirmation of death sentence awarded to accused convicted under sections 302, 342 and 376(2)(f) of IPC. Held victim girl was helpless, innocent child of less than seven years when accused brutally and inhumanly raped her and caused her death in a violent manner. **DNA test was conducted. DNA report (Exh 47) showed that DNA of semen detected in the vaginal smear of the victim.** Thus considering the aggravating circumstances and mitigating circumstances there was only circumstances and no mitigating circumstances. Present case falls in rarest of rare category, hence death sentence was confirmed. **Conviction sustained.**

73. The State of Maharashtra v. Sadashiv Jetappa Kamble (08.05.2014 – BOMHC) MANU/MH/2679/2014

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84 The State of Maharashtra and Ors. v. Sadashiv Jetappa Kamble and Ors. (08.05.2014 – BOMHC) MANU/MH/2590/2014
Present appeal was filed against order whereby death sentence was awarded to appellant for offence punishable under sections 201, 302, 363 and 376 of the Code. Held, no doubt was there that the offence committed by the accused deserved severe condemnation and was heinous crime but on looking to cumulative facts and on balancing aggravating and mitigating circumstances of the case, present case did not fell in category of rarest of rare cases. From the evidence of the doctor and other evidence on record, especially the DNA reports, it was proved beyond reasonable doubt by the prosecution that the accused committed rape on the victim girl and thereafter throttled her to death. Hence, present Court was not inclined to confirm sentence of death. However sentence of imprisonment under sections 302 and 376 were made consecutive. Therefore, conviction of appellant was maintained by the conversion of the death sentence to life imprisonment. Appeal was partly allowed.86

74. Gautam Chowdhury v. The State of West Bengal (04.02.2015 – CALHC) MANU/WB/0048/2015

Present appeal was filed against order of sentence of conviction under sections 376 and 417 of the Code. Held, statement of complainant had given clear statement of evidence with regard to role of appellant in crime. Complainant had not been shaken from her evidence in cross-examination. Complainant was admittedly minor, so matter of cohabitation with her by appellant did not attract element of consent. Complainant by expressing willingness in Court to undergo DNA test for her child read with her cogent evidence with regard to details of incident on fateful night, left little iota of doubt with regard to complicity of accused. Oral testimony of victim which was found to be cogent, reliable, convincing and trustworthy must be given credence by court. Therefore, appellant was not entitled to extended benefit of doubt. Appeal was dismissed and conviction sustained.87

86 The State of Maharashtra v. Sadashiv Jetappa Kamble (08.05.2014 – BOMHC) MANU/MH/2679/2014
87 Gautam Chowdhury v. The State of West Bengal (04.02.2015 – CALHC) MANU/WB/0048/2015
The appellants were convicted under sections 363, 364, 376(2)(f), 302 and 201 of IPC and sections 3(2)(v) and 3(2)(vi) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and was awarded death sentence. Since, the co-accused was a juvenile at the time of commission of the offence, his case was separated and referred to the Juvenile Justice Board for further proceedings. Aggrieved by the aforesaid judgment and order of the High Court, the appellant-accused filed appeals before the Supreme Court. The Supreme Court held that the High Court was correct in recording that the recovery of dead body of the deceased, the blood stained weapon of offence and the blood stained clothes from house of the accused were established beyond any shadow of doubt. Moreover the High Court had also carefully examined the evidence on record including testimonies of prosecution witnesses and recorded the finding that the said statements do not reflect any discrepancy of facts and therefore, considered them as cogent and credible evidence. Further, that the medical evidence and DNA report clearly indicated the commission of rape and the murder of the deceased. Thus, the Supreme Court upheld the judgment and order of the High Court commuting the sentence of death awarded by the trial court. Thus conviction was commuted.


Present petition was filed against order wherein petitioner accused was convicted for offences punishable under sections 201 and 302 of the Code. Held, evidence on record proved that dead body of victim was discovered at instance of appellant. As he chose to refrain from telling court as to how he came to know about it, presumption was well justified that concealment of dead body was made by the appellant himself. Cross examination of prosecution witness, proved that appellant was very much knowing victim. Victim’s father, was having some money due on appellant, which appellant

88 Kalu Khan v. State of Rajasthan (10.03.2015 – SC) MANU/SC/0440/2015
used to refuse. Viscera of the dead body and other materials were collected and handed over for DNA examination. Although there was absence of DNA finding, which could not be made available in the present case as no amplifiable DNA could be obtained from the samples sent but there was no doubt relating to the identification of the dead body as the appellant himself led to the discovery of her dead body, which indirectly proved that the dead body was of none else but of the victim. In face of overwhelming evidence on record and homicidal death of victim, coupled with her missing and misleading messages sent to her relatives, there remained no doubt about involvement of appellant in offence. Therefore trial court had, on proper appreciation of evidence on record, rightly held guilt of appellant to be proved for both offences punishable under sections 201 and 302 of Code, beyond reasonable doubt. Petition was dismissed and the conviction was upheld. 89

3.4 CASES IN WHICH DNA EVIDENCE WAS USED IN DETERMINING PATERNITY OR MATERNITY


This is a case of Andhra Pradesh High Court. Petitioner claimed to be the son of the respondent. DNA test was conducted. Test concluded that that the respondent was the father of the petitioner. DNA test gained legal validity in India in paternity case. It was proved that petitioner was the son of respondent although he was illegitimate. Being the illegitimate son of the respondent he claimed maintenance under section 125 of CrPC as he had no source of income and the respondent had neglected to maintain petitioner. As ingredients of section 125 were satisfied, held petitioner was entitled to maintenance. 90

89 Santosh Namdeo Bhukan v. The Sate of Maharashtra (12.02.2015 – BOMHC) MANU/MH/0270/2015
a) **Background of the case:** Respondent 1 wife filed application under section 125 of CrPC before the Judicial Magistrate, for her maintenance. The JM allowed the said application and granted a monthly maintenance of Rs. 400 to her and Rs. 200 to her daughter. The order was challenged by the husband (the appellant herein) before the Sessions Court. The revision application was heard by the 1st Additional Sessions Judge who by his judgment and order partly allowed the revision application of the appellant and set aside the maintenance granted to respondent 1. The order granting maintenance of Rs. 200 per month to the minor daughter was maintained. Against the judgment and order the appellant filed another case before the High Court at Orissa. Respondent 1 wife had also filed Revision Petition before the same High Court. The High Court heard both the revision applications together, dismissed the revision application filed by the appellant and allowed the revision application filed by Respondent 1 wife. Hence the present appeal was filed by the husband before the Supreme Court.

b) **Facts of the case:** Both the parties were residents of the same village and at the relevant time the, the appellant was a bachelor and working a a Junior Employment Officer at Nayagarh. It was also accepted that he was a friend of the elder brother of Respondent 1 and was frequently visiting their house in connection with a social and cultural organization of the village. He fell in love with Respondent 1 and developed an intimacy with her. It had also come on record that the appellant was proposing a pre-marital sexual relationship to Respondent 1, which was persistently refused by her. Thereafter, the appellant took a vow in the name of God to marry her and thereby won the faith of respondent 1. Due to the cohabitation Respondent 1 conceived and hence she insisted for arranging the marriage, which the appellant refused on one pretext or the other. R-1 took various actions of writing to various authorities and ultimately, she launched a hunger strike in front of the office of the appellant. Thereafter, on the intervention of the Sub-Divisional Officer and other persons, the marriage was arranged in the temple, in presence of witnesses. After marriage Respondent 1 was being taken to the house of the appellant. On the way, she was persuaded to stay at her paternal house on the ground that his father may not accept her as a bride. At that stage, she was
in an advanced stage of pregnancy. She stayed at her parental house and within 3 to 4 days she gave birth to a female child, Respondent 2. The parties continued to live separately as before. The appellant contended before the High Court that he is not the father of the child.

c) **Typology of Forensic Evidence Used in the Case:** The appellant refused to undergo a DNA Test.

d) **Report Of The Experts Regarding The Case:** As the appellant refused to undergo the DNA test, there was no report of the expert.

e) **Ground For Accepting The Forensic Evidence:** The court held where the purported father denied paternity but refused to undergo DNA Test, such a person was disentitled from disputing paternity.

f) **Impact of Forensic Evidence:** The appeal of the appellant husband was dismissed.  

Order granting maintenance to petitioner wife and her minor child, was set aside by the Revisional Court. Hence present petition was filed to quash the order of the Revisional Court. Held, result of DNA test by itself could be taken as conclusive in deciding paternity. It was the duty of the court before making the order under section 125 CrPC to find the paternity of the child in a summary manner. Both the courts below did not appreciate the evidence in the right perspective. Therefore the orders of the courts below were set aside and the petition was disposed of.


91 *Dwarika Prasad Satpathy v. Bidyut Prava Dixit And Another* (1999) 7 SCC 675

Respondent No. 3 cohabited with petitioner with giving assurance of marriage. Consequently two children were born. R-3 denied marriage. Petitioner filed suit and SDJM took cognizance against respondent No. 3 for commission of offence under sections 376, 506 and 34 of IPC. Thereafter case was committed to Court of Sessions. Petitioner filed application before Sessions Judge for direction to make further investigation of aforesaid case stating therein that investigation officer had not taken any step for medical examination of petitioner with regard to her age and had not conducted DNA test regarding paternity of issues born. Application was rejected. Hence present Writ petition with prayer for direction to IO to conduct DNA test and blood grouping test for determination of paternity of her children. This IO was directed to collect blood samples from R-3 and two children of petitioner and conduct DNA test and submit said report to Sessions Judge who will admit the said report for proving or disproving the guilt of the accused. Petition was allowed.93


In this case the petitioner was before the Kerala High Court with a claim which was permitted by law. She claimed maintenance by trying to determine the paternity of her child but her petition was rejected by the court below as the court did not accept the DNA test report since the expert was not examined. The High Court allowed the petition and opined that report of DNA fingerprinting issued from DNA Fingerprinting and Diagnostic Centre, Hyderabad, which is a Central Government Undertaking, can be admitted in evidence without examination of the expert under section 293 of CrPC. Hence DNA Fingerprinting cannot be rejected on the sole ground that the Government Scientific Expert who issued the same is not enumerated under sub-section (4) of Section 293 CrPC. On the other hand, it has to be admitted in evidence under sub-section (1) of section 293 as a report which was issued under the hand of Government Scientific Expert. At that time when Section 293 was brought into the Code, DNA

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Fingerprinting might have been an alien theme, and so it did not strike the attention of the Legislature.\textsuperscript{94}


The question raised in this matter was whether a person disputing paternity of the child could seek for subjecting the mother and child to DNA test to determine paternity? Held, in the view of the ratio laid down by the Apex Court in Banarasi Dass v. Teeku Dutta\textsuperscript{95}, it was to be held that in the maintenance proceedings, the party disputing the paternity of the child has to prove his ‘non access’ with the mother of the child during the relevant time in order to dispel the presumption under section \textbf{112 of the Evidence Act, 1872} and such presumption should have to be displaced by leading strong preponderance of evidence and not by mere filing of petition for determining the paternity by medical tests i.e. DNA, the impugned order was liable to be set aside and accordingly set aside. Criminal petition of the appellant was thus allowed.\textsuperscript{96}


a) **Background of the case:** The instant Criminal Writ Petition was filed under Article 32 of the Constitution of India for the production of her daughter baby Simran in the Court with the following prayer:

i) To issue appropriate writ, order or directions in the nature of habeas corpus, directing the respondents to produce baby Simran, in body in the Hon’ble Supreme Court, enabling the petitioner to meet her being her natural guardian/mother.

ii) Issue appropriate Writ, order or direction to the respondents to disclose the whereabouts of baby Simran, and DNA test be conducted to affirm and ascertain the

\textsuperscript{94} \textit{Geetha v. State of Kerala & Another} (17.03.2005 – KERHC) MANU/KE/0077/2005

\textsuperscript{95} \textit{Banarasi Dass v. Teeku Dutta} (2005) 4 SCC 449

\textsuperscript{96} \textit{Smt. Didde Sundara Mani and Anr. v. Didde Venkata Subbarao and Anr.} (09. 06.2005 – APHC) MANU/AP/0579/2005
correct identity of Baby Simran being the daughter of the petitioner and custody of the child given to the petitioner.

iii) Pass such order or other reliefs, as the Hon’ble court may deem fit and proper in the facts and circumstances of the case.

b) Facts of the case: The petitioner Nirmaljit Kaur, got married according to Surinder Singh Batra and from the wedlock a female baby Simran was born on 16.02.1992. Thereafter, the husband died intestate, leaving behind the petitioner and his only baby. On 1997, the Respondents forcibly took away the baby from the petitioner and ousted her from the matrimonial house. It was alleged that in order to divest the legitimate right of the petitioner to succeed the respondents fabricated a Will through which as it was claimed by the respondents, the husband appointed Respondent 3 as the guardian of the child. Consequently the petitioner wife, claimed guardianship of her minor child and at the same time respondent 3 also claimed the guardianship under the said Will to District Judge, Amritsar. The District Judge dismissed the application of the respondent. However this order was set aside by the High Court. The District Judge, however, interim custody to the petitioner and directed the child to be produced on 27.7.1998. It was also submitted the child was thereafter taken to USA in a clandestine manner without the permission and knowledge of court. Later the respondents concealed the child and did not allow the mother to meet the child inspite of various request made by the petitioner mother. Since February 2000, the whereabouts of the child were not known. Therefore the petitioner claimed that only DNA Test can only establish the identity of the child and claimed that the child can be handed over after conduction of such test. Moreover when the photograph of the child on the passport which was presented before the court were shown to the petitioner, she stated that the photograph was not of her daughter.

c) Typology of Forensic Evidence Used in the Case: On 15.07.2005, having regard to the nature of the dispute, the court decided to resolve the dispute as far as scientifically accurate, by having the DNA test of the petitioner, the child, respondent 3 and his wife, Respondent 5.
d) **Report Of The Experts Regarding The Case:** DNA was extracted from the blood of both Nirmaljit Kaur, the petitioner and the child, Simran. Profiles were prepared from the said blood samples. AmpF/STR identifier was used for DNA profiling of the samples. Data was analyzed using genescan and genotyper software. The DNA profile of the source Exhibit B (Ms Simran Batra) was not matching with the DNA profile of the source Exhibit A (Smt. Nirmaljit Kaur). The alleles shown by red colour in the enclosed Table 1 present in the DNA profile of the source of Exhibit B were unaccounted in the DNA profile of the source of Exhibit A. Therefore it was concluded that the source of Exhibit A is not the biological mother of the source of Exhibit B.

e) **Ground For Accepting The Forensic Evidence:** Therefore it was proved by the DNA test that the child produced before the court is not the petitioner’s real daughter. The court stated that since it is proved by the DNA Test that the child produced before the court was not the child of the petitioner it was the duty of the respondents to produce the child which was forcibly taken by them on the date of the death of the husband of the petitioner. The court also held that the respondents went to the court with unclean hands and with a view to grab the property of the late husband of the petitioner. as several deliberate falsifications, misrepresentations and filing of false affidavits and passports were committed by the respondents to avoid the production of the original passport. A Direction was issued to the counsel for the respondents to produce the original passport of the minor Simran. The court reiterated that the result of the DNA Test is crystal clear and perfect as the respondents filed an apology before the court for producing the wrong child by mistake and it also proved that the petitioner’s real child was in the custody of the respondents. Several deliberate attempts were made by the respondents to prove the petitioner guilty but were ultimately falsified by their own conduct in filing affidavits and production of original passport in the court, when they were caught red-handed.

f) **Impact of Forensic Evidence (Conviction):** Therefore the court without any hesitation held that respondents are guilty of contempt of court, and liable to
punishment for their proved misconduct and disobedience. A fine of Rs. 2000/- each were imposed on the respondents and the Registrar General was directed to keep the passports which have been surrendered before the court in safe custody until further orders were given. The Writ Petition was thus allowed.97


Constitution of India, 1950 Article 226. Writ of Habeas Corpus. FIR was registered under section 364A of IPC. Question arose on interim custody of child for his welfare and interest. As per DNA report, Respondent No. 7 and his wife were not biological parents of the child. In view of the above circumstances, court directed the child should be sent to SOS Children Village of India for his welfare and appointed Director of the same institution as a guardian of the child. The matter was thus disposed of.98


Judicial Magistrate allowed petition of prosecution and granted permission to police to perform DNA typing test on accused as well as complainant and her child. Hence, this petition was filed. Held accused and complainant was factually not married and complainant had given birth to a child. However, section 112 of the Act was not applicable to case as there was no relationship of wife and husband between the complainant and accused. Therefore accused disowned paternity of the child. Further trial court passed an order that DNA typing test was must for case under section 417 IPC. Thus, there was no infirmity in finding of Trial Court. Petition was dismissed.99


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Application seeking for direction for subjecting child to DNA test, to prove paternity was rejected in a case filed under section 125 of CrPC. Hence present revision. Held, it was a well considered order and finding made was in tune with decision of Supreme Court in Banarsi Dass v. Teeku Dutta (Mrs.) & Another. Therefore revision was allowed.


In this case the offence of rape under section 376 IPC was committed on a minor girl who as a consequence gave birth to a male child. A revision application was made under section 311 of CrPC to the Calcutta High Court for conducting the DNA test of the victim, her child and the accused. The High Court rejected the application as there was no merit in it and maintained that the Assistant Sessions Judge was right in rejecting the application under section 311 for conducting the DNA test. The court opined that the provision of section 311 is wide but it could not be used for any purpose or in any manner the prosecution likes. The section could not be used in cases where evidence was closed and entire defence was disclosed and earlier there was no attempt by the prosecution to hold the DNA test. The revisional application was thus dismissed.

88. Ranjeet Sinha @ Ranjeet Prasad Singh v. The State of Bihar and Another (04.10.2007 – PATNAHC) MANU/BH/0332/2007

Petitioner preferred revision against order directing him to pay maintenance to opposite party 2 under section 125 of CrPC and to set DNA test of petitioner and child born out of opposite party No. 2. Held prayer for DNA test was made after lapse of 15 years of institution of case before Revisional Court. Apparently purpose of filing such

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100 2005 (3 CTC) 227 (SC)
application was to avoid payment of maintenance to hapless wife and child. Further, unlike matrimonial proceedings under section 125 strict proof of marriage is not required as it did not finally determine rights and obligations of parties. Therefore, court below had rightly rejected prayer for DNA test. Petition was dismissed.103

89. Sharik Ammed (Advocate) v. Sunder Lal (12.03.2007 – CGHC)
MANU/CG/0159/2007

Family court allowed application filed by respondent for direction to petitioner to undergo DNA test in case of claim of maintenance under section 125 of CrPC. Petition filed under section 227 of the Constitution of India, against the order. Held paternity of child can be proved from other evidences from fact that both persons were having physical relations, when the child was conceived was born during that period, as a result of their relationship. Direction for conduction of DNA test is to be given to a person who denies the factum of physical relations and birth of a child during that period to rebut allegations of the mother. When well settled principles of law, were applied to the facts of the present case, it appeared that court below had not examined paternity on the basis of other evidences before directing DNA test. Thus the matter was remitted back to the Family Court with direction to decide issue on basis of other evidences before passing a direction for DNA test.104


Present revision petition was filed by the petitioner husband, against order whereby respondent’s petition under section 45 of IE Act to refer them and petitioner to DNA test for proving that respondent 2 was born to respondent 1 through the petitioner, was allowed. Proceedings under section 125 of CrPC is quasi-criminal and petitioner cannot be treated as accused in strict sense but court can ask him to undergo test, which will

103 Ranjeet Sinha @ Ranjeet Prasad Singh v. The State of Bihar and Another (04.10.2007 – PATNAHC) MANU/BH/0332/2007
set at rest dispute regarding paternity of second respondent. There is no infirmity in impugned order hence revision petition was dismissed.\textsuperscript{105}

91. Sabur Hossain Biswas @ Paltu v. The State of West Bengal and Ors.  
(10.01.2008 – CALHC) MANU/WB/00332008

Appellant was convicted under section \textbf{376 and 417 IPC}. During course of trial, a petition was filed for conducting DNA test of victim and her child. Trial court allowed the petition holding that DNA test would conclusively determine paternity or otherwise of the accused. Hence this revision application by appellant. Held, under section 362 of CrPC when an order of rejection of prayer of holding DNA test was passed when eight witnesses were already examined, contrary order on renewal of prayer of prosecution is impermissible. Issue before the trial court was not whether the child was fathered by the present petitioner but whether the petitioner had committed the offence of rape. Therefore, holding of DNA test will not be relevant to the consideration of the charge. As held in \textit{Goutam Kundu v. State of West Bengal}, courts in India, cannot order blood test as a matter of course. DNA test cannot escape the conclusiveness of section 112 of Evidence Act. If the evidence of the prosecutrix and any other witnesses supporting in the prosecution are found by the trial court sufficient to indicate that offence under section 376 of IPC has been committed by the petitioner then the result of the DNA test by itself would be of no avail. Therefore it is not a deserving case where DNA test should be held. Impugned order of the trial court was set aside. Revisional application was allowed.\textsuperscript{106}

92. Premasundari and N. Vanathi represented by her mother and guardian  

Application under section 125 of CrPC claiming maintenance was dismissed by Family Court. Hence present petition was preferred. Held, in the present case, respondent while denying his paternity of child, he could have preferred an application before trial court

\textsuperscript{105} \textit{Mothyukuri Shivakumar alias Chitti Babu v. Mothukuri Narayanamma and Others} (01.08.2008 – APHC) MANU/AP/0601/2008  
\textsuperscript{106} \textit{Sabur Hossain Biswas @ Paltu v. The State of West Bengal and Ors.} (10.01.2008 – CALHC) MANU/WB/00332008
for DNA test and he being an advocate, being aware of procedures could have chosen
to file such an application but he conveniently avoided. Case was to be decided on
preponderance of probabilities with available evidence. Fact that first petitioner was
kept as a mistress by respondent was established. While so, second petitioner being
child of respondent was entitled for maintenance. The respondent had not stated
anything about his income. According to first respondent had got income from his
profession and also had got immovable properties. Even in counter statement filed,
respondent had not denied fact of owning properties. Petition was allowed.107

93. Babita Devi @ Babali And Others v. The State of Jharkhand (25.04.2011-
JHRHC) MANU/JH/0479/2011

A revision petition was filed in the Jharkhand High Court by Petitioner No.1 for DNA
test of her daughter as it was rejected by the trial court. The High Court referred to the
case of Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for
Women and Another where it was observed that DNA test was matter relating to the
paternity of a child and should not be directed by Court as a matter of course or in a
routine manner, whenever such a request was made. Court has to consider diverse
aspects including presumption under section 112 of Evidence Act, pros and cons of
such order and the test of “eminent need” whether it was not possible for Court to reach
truth without use of such test. Result of a genuine DNA test may not be enough to
escape from conclusiveness of Section 112 of the Act. When there was apparent
conflict between right to privacy of a person not to submit himself forcibly to medical
examination and duty of court to reach truth, court must exercise its discretion only
after balancing interest of parties and on due consideration whether for a just decision
in matter. Held in the present case DNA test was eminently needed. The Revision was
thus allowed.108

107 Premasundari and N. Vanathi represented by her mother and guardian Premasundari v. R. Natarajan
(11.11.2010 – MADHC) MANU/TN/3155/2010
108 Babita Devi @ Babali And Others v. The State of Jharkhand (25.04.2011- JHRHC)
MANU/JH/0479/2011

The respondent claimed maintenance under section 125 of CrPC for herself and her child. The petitioner totally denied relationship with respondents. He neither admitted relationship with R-1 nor paternity of R-2 with him. When there was total denial of relationship by party in matrimonial matters, only alternative was to prove said relationship through scientific examination. Contention raised between parties was whether child born during alleged continuance of marriage. Hence case of petitioner was deserving one where DNA test could be directed to be conducted. Therefore, order under revision referring petitioner to DNA test along with respondents was sustainable and the same did not warrant any interference by court.109


a) **Background of the case:** A suit was filed by Rohit Shekhar for paternity declaration and perpetual injunction against denial of paternity. During the pendency of the suit an application was filed for direction to R-1 to submit himself for DNA test. The said application was contested by R-1. The learned single judge before whom the suit was pending allowed the said application and directed the parties to appear before the Joint Registrar. The Joint Registrar was directed to arrange for the DNA testing of R-1. Against the said judgment R-1 preferred an appeal which was dismissed by the Division Bench of the High Court. Against the said order of the Division Bench of High Court R-1 preferred a SLP. In the said SLP R-1 sought an interim ex-parte stay of the operation of the orders of the High Court. The Supreme Court issued notice of the SLP, but rejected the prayer for interim relief. The Joint Registrar of the High Court directed R-1 to appear for collection of blood samples. R-1 did not appear and on the contrary filed another application against the order whereon the present appeal is preferred. R-1 in the said application sought a direction that he should not be pressurised, compelled or forced in any manner to involuntarily provide blood or other

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tissue sample for DNA testing. In this regard Sections 53, 53A and 54 of Criminal Procedure Code, 1973 was also consulted.

b) **Facts of the case:** A suit was filed by the appellant for declaration, that he is the natural born son of Respondent 1 and Respondent 2, Dr. Ujjwala Sharma and R-1 is the father of the appellant and for perpetual injunction restraining R-1 from denying in public or otherwise the fact that he is the father of the appellant. The said suit was pending for consideration.

c) **Typology of Forensic Evidence Used in the Case:** DNA profile test was conducted to determine the paternity of the putative father.

d) **Report Of The Experts Regarding The Case:** This case was concerned only with the direction for conducting the DNA test. Detailed direction was issued by the Supreme Court so that genuineness of sample remains free from controversy. DNA lab was directed to furnish its report in a sealed cover.

e) **Ground For Accepting The Forensic Evidence:** The Supreme court in *Sharda v. Dharmpal*\(^ {110} \) and *Bhabani Prasad Jena v. Orissa State Commission for Women*\(^ {111} \) held that there is no violation of the right to life, or privacy of a person in directing a DNA test to be undergone by him – to undergo such test is not an invasion of his right to life. Bhabani Prasad Jena affirms the power of the Court to direct a DNA test though cautious that the said power should be exercised after weighing all “pros and cons” and satisfying the “test of eminent need” for such an order is fulfilled.

f) **Impact of Forensic Evidence:** The High Court held that court can use reasonable force by taking police assistance if blood sample is not willingly given as putative father was unwilling to subject himself to DNA test. Hence an SLP was filed before the Supreme Court by Narayan Dutt Tiwari, the putative father. The Supreme Court while dismissing putative father’s SLP, modifying High Court directions to the extent that confidentiality would be afforded to petitioner by taking sample at his

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\(^{110}\) *Sharda v. Dharmpal* (2003) 4 SCC 493

\(^{111}\) *Bhabani Prasad Jena v. Orissa State Commission for Women* (2010) 8 SCC 633
residence instead of requiring him to come to court premises for this purpose. Petitioner’s old age was also taken into consideration. Putative son and his mother also permitted to be present at the time of taking sample so that genuineness of sample remains free from controversy.\textsuperscript{112}

96. {\textbf{Bitupan Saikia v. Nipa Saikia & Anr. (07.03.2013 – GUHC) MANU/GH/0273/2013}}

A prayer was sought by petitioner (putative father) in the Guwahati High Court for carrying out DNA test to ascertain paternity of child born to Respondent No. 1. Held the right of petitioner to prove paternity by resorting to a DNA test cannot be taken away by demanding from petitioner proof of his innocence by adducing oral or documentary evidence. When a Title Suit had been filed by petitioner seeking a declaration that he was not father of child born to Respondent No. 1, basing on attending facts and circumstances, in Court’s view, a strong prima facie case, with sufficient material was made out for a DNA test to decide paternity of a child. Therefore the petition was allowed.\textsuperscript{113}


This is a case of Kerala High Court. Here the legitimacy and paternity of children was in issue. The case was filed referring section \textbf{125 of CrPC and 112 of Indian Evidence Act}. The court opined that DNA test need not be ordered as a matter of routine in all cases where the legitimacy or paternity of a child is in issue. A distinction had to be drawn between ‘legitimacy’ and ‘paternity’ of the child. Legitimacy can be established by legal presumption, while it is desirable to establish paternity by DNA

\textsuperscript{112} Narayan Dutt Tiwari v. Rohit Shekhar & Another (2012) 12 SCC 554

\textsuperscript{113} Bitupan Saikia v. Nipa Saikia & Anr. (07.03.2013 – GUHC) MANU/GH/0273/2013
test, particularly when both parties agree. The order of the trial court was set aside and
the court ordered a DNA test. The revision petition was thus allowed.  

98. X v. State and Ors. (22.03.2013 – DELHC) MANU/DE/0747/2013

This writ petition under Article 226 was filed by victim of rape for directions to State
for terminating her pregnancy under section 482 of Medical Termination of
Pregnancy Act, 1971 and 482 of CrPC and to preserve the foetus for DNA test. Status
report filed. Pregnancy can be terminated with minimal known risks. State had no
objection for such. Enquiries were made, victim was major, had consultation with her
counsel and understand the consequence of her act and expressed willingness for
termination of pregnancy. Consent of woman was essential in such cases who is likely
to face mental, physical, social and economical problems in future. Petition was
allowed and Directions issued.  


a) Background of the case: The learned Magistrate of the trial court accepted the
plea of the wife of the appellant and granted maintenance to her and her daughter. The
husband challenged the order in revision, and failed. Thereafter, he filed a petition
under Section 482 of CrPC to the High Court for direction from the said court to
conduct DNA Test of the child which was refused. It is against the said order of refusal,
the present leave petition was filed before the Hon’ble Supreme Court and the leave
was granted subject to the payment of all dues paid in terms of the order passed by the
learned Magistrate. Therefore both the parties were directed to make a joint application
to the Forensic Science Laboratory at Nagpur for conducting the test.

115 X v. State and Ors. (22.03.2013 – DELHC) MANU/DE/0747/2013
b) **Facts of the case:** The wife filed an application for maintenance under section 125 of CrPC, but the same was dismissed by the magistrate. Thereafter, the wife resorted to a fresh proceeding under section 125 of CrPC claiming maintenance for herself and her daughter alleging that she started living with her husband from 20.06.1996 and stayed with him for about two years and during that period got pregnant. She was sent for delivery at her parent’s place where she gave birth to a girl child. The husband denied the assertion that the wife stayed with him and that Respondent 2 was his daughter. The husband also said he had no physical relationship with his wife. The magistrate accepted the plea of the wife and awarded maintenance of Rs. 900 per month to the wife and Rs 500 per month to the daughter.

c) **Typology of Forensic Evidence Used in the Case:** DNA test was conducted to determine the paternity of the child.

d) **Report Of The Experts Regarding The Case:** In the light of the aforesaid order of the Supreme Court, the Regional Forensic Science Laboratory, Nagpur has submitted the result of DNA testing and opined that the appellant is not the biological father of the Respondent 2. Not being satisfied with the said report the respondents made a request for retest. The said prayer of the respondents were accepted and accordingly the court directed Central Forensic Science Laboratory (CFSL) Hyderabad to conduct such test and the parties were directed to appear before the laboratory on 24.08.2011. The CFSL conducted the test as directed and concluded that “Nandlal Wasudeo Badwaik could be excluded from being the biological father of Respondent 2.”

e) **Ground For Accepting The Forensic Evidence:** According to the court DNA test is an accurate test and on that basis it is clear that the appellant is not the biological father of the girl child. However, at the same time, the condition precedent for invocation of section 112 of the Evidence Act had been established and no finding had been recorded with regard to the plea of the husband that he had no access to his wife at the time when the child could have been begotten. Admittedly, the child had been borne during the continuance of valid marriage between the appellant and the respondent wife. Therefore provisions of section 112 of the Evidence Act, conclusively prove that
Respondent 2 was the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis did not clearly specify that the appellant is not the biological father of the girl. So, a complex question arose before the court to settle the matter. The court ultimately relied on the DNA test. The court viewed that section 112 was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of the DNA test is said to be scientifically accurate. Although section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated in the section but the same is rebuttable. The presumption might afford legitimate means of arriving at an affirmative legal conclusion. While the truth of fact was known, in the opinion of the court there was no need or room for any presumption. Where there is evidence to the contrary the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In the court’s opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the later i.e scientific advancement must prevail over the former. Therefore the husband’s plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and the appellant thus could not be compelled by the court to bear the fatherhood of a child, when the scientific reports prove to the contrary. The court was conscious that an innocent child may not be bastardised as the contrary. The court was conscious that an innocent child may not be bastardised as the marriage between her mother and father were subsisting at the time of her birth but in view of the DNA test reports and what had been observed by the court, the court could not preclude the consequence which would be denying the truth.

f) Impact of Forensic Evidence: As a result, the court allowed the appeal, set aside the impugned judgment so far as it directed for the payment of maintenance to
Respondent 2. However, it was directed that the payment already made should not be recovered from the respondents\textsuperscript{116}.


In this case the illegitimate son was claiming maintenance against father under section 125 of CrPC. Father was not consenting for DNA test. The father had admitted that he had acquaintance with the mother of the son but no reason or explanation was forwarded as to why a false case was brought against him. Hence the claim of maintenance against father and the paternity of the illegitimate son was proved. With reference to section 114 of IE Act, it was held that an adverse inference can be drawn by the Court in the matter of paternity, where person alleged to be the father of child refuses to undergo DNA test. Hence the petition of the so was allowed.\textsuperscript{117}

### 3.5 TABLE OF CRIMINAL CASES IN WHICH DNA EVIDENCE WAS USED FOR RECORDING CONVICTION OR ACQUITTAL

**TABLE 3.1**

<table>
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<th>Srl. No.</th>
<th>Case No. &amp; Year</th>
<th>Offence Under Legislations</th>
<th>Fate Of The Forensic Report</th>
<th>Result of the case</th>
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<tbody>
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<td>1.</td>
<td>Swami Premananda v. Inspector of Police (29.09.1995 MADHC) MANU/TN/1057/1995</td>
<td>120(B), 302 34, 376, 376(2)(c), 109, 201, 202, 114, 506(ii) IPC.</td>
<td>DNA report was accepted by the court</td>
<td>Convicted</td>
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<tr>
<td>2.</td>
<td>Rajiv Gandhi Assassination Case: State v. Nalini (1999) 5 SCC 253</td>
<td>302, 120B IPC</td>
<td>DNA profiling assisted in identifying the perpetrators as well as the victims</td>
<td>Conviction</td>
</tr>
</tbody>
</table>

\textsuperscript{116} Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014) 2 SCC 576


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<tr>
<th>Case</th>
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<th>Details</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Chandradevi v. Sate of Tamil Nadu by Inspector of Police, C.B., C.I.D. (12.12.2002 – MADHC) MANU/TN/2335/2002</td>
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<td>The D.N.A. Test revealed that the accused had fathered the terminated foetus of P.W.14</td>
<td>Conviction</td>
</tr>
<tr>
<td>State of Karnataka v. M.V. Mahesh (2003) 3 SCC 353</td>
<td>302 IPC</td>
<td>The DNA examination resulted in matching of the bones with that of the grouping of deceased’s close relatives</td>
<td>Acquittal</td>
</tr>
<tr>
<td>Kamalanath &amp; Others v. State of Tamil Nadu (2005) 5 SCC 194</td>
<td>376 IPC</td>
<td>DNA test on the dead foetus was performed to establish the paternity</td>
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</tr>
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<td>State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21</td>
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<td>The DNA test of the dead foetus was conducted</td>
<td>Conviction</td>
</tr>
<tr>
<td>Anil @ Raju Namdev Patil v. Administration of Daman and Diu, Daman and Anr. (24.11.2006 – SC) MANU/SC/8725/20</td>
<td>364A, 302 and 201 of IPC</td>
<td>The report of the DNA test revealed that the remnants were that of deceased</td>
<td>Conviction</td>
</tr>
<tr>
<td>Raghbir Dessai v. State (22.09.2006 – BOMHC) MANU/MH/1090/2006</td>
<td>342 and 376(2)(f) IPC</td>
<td>The Senior Scientific Officer, carried out the DNA test and confirmed that that the accused is the contributor of the semen which was collected by doctor in the form of vaginal swab</td>
<td>Conviction</td>
</tr>
<tr>
<td>Shakti Singh And Another v. State of Rajasthan (29.05.2006 – RAJHC) MANU/RH/0276/2006</td>
<td>302/34, 365, 201 IPC</td>
<td>DNA test of the deceased was conducted and it was accepted by the court</td>
<td>Conviction</td>
</tr>
<tr>
<td>Ajit Barman and Ors. v. State of West Bengal (29.03.2007 – CALHC) MANU/WB/0151/2007</td>
<td>376(2)(g)</td>
<td>Conviction was based on the testimony of the prosecutrix and DNA report</td>
<td>Conviction</td>
</tr>
<tr>
<td>No.</td>
<td>Case</td>
<td>Court</td>
<td>Code</td>
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<tr>
<td>11</td>
<td>Sachin v. State (NCT of Delhi) (13.07.2007 – DELHC)</td>
<td>302, 201 IPC</td>
<td>DNA test was conducted on the dead body</td>
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<td>12</td>
<td>Soundarrajan v. State of Tamil Nadu rep. by The Inspector of Police (25.07.2007 – MADHC)</td>
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<td>13</td>
<td>Subhash Swami Naik v. State of Goa (25.01.2007 – BOMHC)</td>
<td>376(ii)(f) of IPC</td>
<td>Presence of semen stains on the clothes of the victim was a piece of corroborative evidence and this had been confirmed being that of accused by DNA testing</td>
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<td>14</td>
<td>Swamy Shraddananda v. State of Karnataka (2007) 12 SCC 288</td>
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<td>15</td>
<td>Ankush Wadhwa v. State of Rajasthan (20.11.2008 – RAJHC)</td>
<td>302, 363, 201 and 120B of IPC</td>
<td>The Court directed to send the recovered clothes of the deceased to the DNA testing laboratory, Hyderabad, for blood grouping and DNA test but the findings of the said testing were withheld from the court by the prosecution</td>
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<td>N. Hariharan @ Hari and Ors. v. State by the DSP, Metro Wing (21.11.2008 – MADHC)</td>
<td>302, 379, 344, 365, 363, 120(B) IPC</td>
<td>DNA test was conducted</td>
</tr>
<tr>
<td>17</td>
<td>Amin Khan v. State of Rajasthan &amp; Ors. (2009) 3 SCC 776</td>
<td>396 IPC and 3 and 35 of Arms Act, 1959</td>
<td>DNA test was conducted and the report was accepted by the Supreme Court</td>
</tr>
<tr>
<td>No.</td>
<td>Case Details</td>
<td>Relevant Laws</td>
<td>Key Evidence</td>
</tr>
<tr>
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<td>18.</td>
<td>Baphira Kharkongar and Ors. v. State of Meghalaya (15.07.2009 – GUHC)</td>
<td>376(2)(g) of IPC</td>
<td>The extra judicial confession made by accused was found corroborated by medical evidence, DNA evidence and also evidence of concerned witnesses</td>
</tr>
<tr>
<td>19.</td>
<td>Deepti Anil Devasthali and Leena Anil Devasthali v. State of Maharashtra (30.09.2009 – BOMHC)</td>
<td>364A, 419, 465, 468, 328, 342, 187, 120B</td>
<td>DNA test was conducted on the recovered body parts</td>
</tr>
<tr>
<td>20.</td>
<td>Dinesh v. State of Maharashtra (19.12.2009 – BOMHC)</td>
<td>302 and 201 of IPC</td>
<td>DNA test was conducted to identify the dead body of the deceased</td>
</tr>
<tr>
<td>21.</td>
<td>M.A. Antony @ Antappan v. State of Kerala (22.04.2009 – SC)</td>
<td>449, 379, 380, 302, 201 IPC</td>
<td>The DNA evidence was in favour of the accused but the other evidences like fingerprints etc. proved the guilt of the accused</td>
</tr>
<tr>
<td>22.</td>
<td>Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh (2009) 14 SCC 607</td>
<td>302, 120B, 449, 307, 149 and 27(2) of Arms Act</td>
<td>DNA Fingerprint was conducted for the identification of the accused from a pink colour shirt which was recovered from the car used by the accused to escape</td>
</tr>
<tr>
<td>23.</td>
<td>State v Jyotish Prasad and Anr. (10.07.2009 – DELHC)</td>
<td>34, 201, 302, 376(2)(g) and 394 of IPC</td>
<td>DNA test performed provided sufficient evidence to conclude that biological fluid present on sources leaves no doubt that the appellants were involved in rape and murder of the deceased</td>
</tr>
</tbody>
</table>
| No. | Case Description | Relevant sections of IPC | Nature of Evidence | Conviction
|-----|------------------|--------------------------|-------------------|---------------------|
| 24. | Central Bureau of Investigation v. Jagtar Singh Hawara and Balwant Singh | 302 and 307 r/w 120B, section 306/109 of IPC | DNA test was conducted on the parts of the body recovered as the deceased was assassinated using human bomb | Conviction
| 25. | High Court of Karnataka v. Madhu & Ors. | 364, 302, 201 and 34 of IPC | DNA report helped in identifying the dead body of the deceased | Conviction
| 26. | Sanjay Kumar Jain v. State of Delhi | 302 and 304B IPC | DNA report as regards the hair found from the chest of the deceased and hair taken from the scalp of the accused was called for but the report was not filed | Conviction
| 27. | Ms. Priyadarshini Mattoo Murder Case, Santosh Kumar Singh v. State (through CBI) | 302 and 376 of IPC | DNA found in the deceased vagina helped to recognize the appellant/accused as the DNA profile of the semen matched the DNA profile of the appellant’s blood | Conviction
| 28. | Vansha Lakama Gangad (through jail) v. The State of Maharashtra | 302, 201 of IPC | The DNA report indicated that the rib fracture was not ante mortem | Conviction
| 29. | Anbarasu v. The Deputy Superintendent of Police | 201, 302, 364, 392, 449 IPC | DNA test was conducted which was accepted by the court | Conviction
| 30. | Inspector of Police v. John David | 302, 364, 201, 342 IPC | Court accepted the opinions of the experts which were held to be sufficient to sustain conviction of the accused | Conviction
<table>
<thead>
<tr>
<th>No.</th>
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<th>Judgment</th>
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<tr>
<td>31.</td>
<td>Manju Kumar v. State of NCT of Delhi (17.10.2011 – DELHC)</td>
<td>302, 365, 391, 412</td>
<td>The report by the expert indicated that the source &quot;C&quot; i.e. femur bone of the dead body yielded partial DNA profile and thus the result was inconclusive</td>
<td>Conviction</td>
</tr>
<tr>
<td>32.</td>
<td>Mohd. Javed v. The State (Govt. of NCT) (06.04.2011 – DELHC)</td>
<td>120B, 364A, 302 of IPC</td>
<td>After the body was recovered, its identity was established by the family members and also by sampling the blood of the deceased with the blood samples of parent and DNA fingerprinting</td>
<td>Conviction</td>
</tr>
<tr>
<td>33.</td>
<td>Nithari Murder Case Surendra Koli v. State of U.P. &amp; Others (2011) 4 SCC 80</td>
<td>302, 364, 376 IPC</td>
<td>DNA test was conducted and the court explained the reliability of DNA evidence</td>
<td>Conviction</td>
</tr>
<tr>
<td>34.</td>
<td>Pati Ram v. State (Nct of Delhi) (23.09.2011 – DELHC)</td>
<td>302, 364, 201 IPC</td>
<td>Identity of the Skeleton was established by DNA fingerprinting</td>
<td>Conviction</td>
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<tr>
<td>35.</td>
<td>State of H.P. v. Ramesh Kumar and Anr. (10.08.2011 – HPHC)</td>
<td>302, 376 IPC</td>
<td>DNA test corroborated other evidences</td>
<td>Conviction</td>
</tr>
<tr>
<td>36.</td>
<td>Jairnail Singh @ Jailli, s/o Shri Baru Ram v. State of Himachal Pradesh (03.01.2012 – HPHC)</td>
<td>376 IPC</td>
<td>DNA profile obtained from blood sample of prosecutrix matched with DNA profile obtained from the pant of accused</td>
<td>Conviction</td>
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<td>37.</td>
<td>Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra (2012) 9 SCC 1</td>
<td>302, 326 and 506 IPC 25 and 27 of Arms Act</td>
<td>DNA profiling was conducted which connected the accused to the articles found and recovered.</td>
<td>Conviction</td>
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<td>38.</td>
<td>Munna Kumar Upadhyay v. State of Andhra Pradesh (2012) 6 SCC 174</td>
<td>302, 34, 201, 435, 411 IPC</td>
<td>DNA test confirmed that it was deceased family which was burnt in car</td>
<td>Conviction</td>
</tr>
<tr>
<td>39.</td>
<td>Sandeep v. State of Uttar Pradesh (2012) 6 SCC 107</td>
<td>302/34, 316/34 IPC</td>
<td>DNA test was conducted for determining the paternity of the foetus which was found in the womb of the deceased</td>
<td>Conviction</td>
</tr>
<tr>
<td>40.</td>
<td>Vinay Kumar v. State (03.07.2012 – DELHC) MANU/DE/3096/2012</td>
<td>376, 302 and 120B IPC</td>
<td>Injuries on body of deceased, in addition to DNA report that matched with the DNA of appellant No. 1 with biological fluid found on clothes of deceased</td>
<td>Conviction</td>
</tr>
<tr>
<td>41.</td>
<td>Babu v. State of Kerala (11.04.2013 – KERHC) MANU/KE/0434/2013</td>
<td>90, 376 of IPC</td>
<td>DNA test report submitted by Rajiv Gandhi Centre for Bio-Technology will not come within the purview of institutions mention in section 293(4) of CrPC</td>
<td>Acquittal</td>
</tr>
<tr>
<td>42.</td>
<td>In Reference v. Kamlesh @ Ghanti (11.10.2013- MPHC) MANU/MP/2655/2013</td>
<td>366(A), 374, 363, 376(A), 302 IPC</td>
<td>DNA test was conducted and its report was presented in evidence</td>
<td>Conviction</td>
</tr>
<tr>
<td>43.</td>
<td>Katturaja and Vettum Perumal @ Krishnan @ Kitchi v. State (29.10.2013 – MADHC) (MANU/TN/2277/2013)</td>
<td>302/34 and 449 of IPC &amp; 3(2)(v) of SC &amp; ST (Prevention of Atrocities) Act, 1989</td>
<td>The DNA analysis conducted by PW34 disclosed that DNA extracted from M.O. 13 recovered at the instance of the second accused tallied with DNA extracted from the dress materials of D-1.</td>
<td>Acquittal</td>
</tr>
<tr>
<td>No.</td>
<td>Case Name</td>
<td>Date of Judgment</td>
<td>Code(s)</td>
<td>Summary</td>
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<td>44.</td>
<td>Mahanand Naik v. State (07.08.2013 – BOMHC)</td>
<td>MANU/MH/1481/2013</td>
<td>302, 364, 376, 392 and 201 IPC</td>
<td>From the DNA test the expert concluded that the tissue (source Exhibit D) belonged to biological female offspring of the said parents of the aforesaid victim.</td>
</tr>
<tr>
<td>46.</td>
<td>Ram Niwas v. State (27.09.2013 – DELHC)</td>
<td>MANU/DE/3431/2013</td>
<td>365, 302, 404 IPC</td>
<td>DNA test was conducted but could not be relied upon, hence not accepted.</td>
</tr>
<tr>
<td>47.</td>
<td>Ramkisan v. State of Maharashtra (21.02.2013- BOMHC)</td>
<td>MANU/MH/0162/2013</td>
<td>302, 201 IPC</td>
<td>DNA test was conducted but could not be accepted by the court.</td>
</tr>
<tr>
<td>48.</td>
<td>R. Shaji v. State of Kerala (2013) 14 SCC 266</td>
<td>MANU/DE/2302/2013</td>
<td>302, 364, 120B, 201 IPC</td>
<td>The DNA analysis made it clear that the blood samples of the parents of P matched with the DNA of P and the same proved and established the identity of the dead body.</td>
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<tr>
<td>49.</td>
<td>Sahib Hussain v. State of Rajasthan (2013) 9 SCC 778</td>
<td>MANU/DE/3431/2013</td>
<td>302 IPC</td>
<td>The Supreme Court accepted the view of the courts below that the DNA report supported the case of the prosecution.</td>
</tr>
<tr>
<td>50.</td>
<td>Sant Ram @ Sadhu Ram v. The State (31.07.2013 – DELHC)</td>
<td>MANU/DE/2302/2013</td>
<td>376, 506 IPC</td>
<td>DNA test was conducted from the blood samples of the appellant.</td>
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<tr>
<td>51.</td>
<td>Sashi Kumar v. State of Himachal Pradesh (07.01.2013 – HPHC)</td>
<td>MANU/DE/3431/2013</td>
<td>376, 363 and 366 of IPC</td>
<td>DNA report of FSL revealed, that there was no match of</td>
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<tr>
<td>Case Numbers</td>
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<td>Decision</td>
<td>Relevant IPCs/Sections</td>
<td>Key Points</td>
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<td>MANU/HP/0311/2013</td>
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<td>semen found on clothes of prosecutrix with that of accused</td>
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<tr>
<td>52.</td>
<td>Vivek Bithle v. State of M.P. (13.12.2013 – MPHC) MANU/MP/2727/2013</td>
<td>Acquittal</td>
<td>302 IPC</td>
<td>DNA test was conducted but could not be relied upon or accepted</td>
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<td>53.</td>
<td>Abdul Rahaman Kunji v. The State of West Bengal (14.11.2014 – CALHC) MANU/WB/0828/2014 (Abduction case of Khadim owner Partha Roy Barman)</td>
<td>Conviction</td>
<td>364A and 120B of IPC</td>
<td>The police produced the CFSL report relating to the DNA test of the bloodstained clothes found in the Bhoot Bungalow, where the victim was confined. Bloodstains matched with the victim’s blood</td>
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<td>54.</td>
<td>Akhtar v. State of U.P. (28.08.2014 – ALLHC) Manu/UP/2336/2014</td>
<td>Conviction</td>
<td>302, 376, 201 IPC</td>
<td>The complicity of the appellant was established from DNA matching of hair</td>
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<td>55.</td>
<td>Anil v. State of Rajasthan (2014) 4 SCC 69</td>
<td>Conviction</td>
<td>302, 377 and 201 IPC</td>
<td>The court held that DNA test was successfully conducted</td>
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<td>56.</td>
<td>Anmolsingh Swaransingh Jabbal v. The State of Maharashtra (21.03.2014 – BOMHC) MANU/MH/0352/2014</td>
<td>Conviction</td>
<td>302, 201 IPC</td>
<td>DNA test was conducted which was used by the court for pronouncing the judgment</td>
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<td>57.</td>
<td>Champaben v. State of Gujrat (26.03.2014 – GUJHC) MANU/GJ/0402/2014</td>
<td>Acquittal</td>
<td>302 IPC</td>
<td>The DNA test concluded that the accused appellants were the biological parents of the deceased infant</td>
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<td>58.</td>
<td>Dharam Deo Yadav v. State of U.P. (2014) 5 SCC 509</td>
<td>Conviction</td>
<td>302, 34 and 201 IPC</td>
<td>DNA fingerprinting was conducted and the court accepted it and referred to the conclusiveness of the test</td>
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<tr>
<td>Case Number</td>
<td>Description</td>
<td>Key Details</td>
<td>Outcome</td>
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<td>60.</td>
<td>Mahesh Dhanaji Shindhe v. State of Maharastra (2014) 4 SCC 292</td>
<td>Lead to definite and inescapable conclusion that the accused were the perpetrators of the crime</td>
<td>Conviction</td>
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<tr>
<td>61.</td>
<td>Nirbhaya Case, State Through Reference v. Ram Singh &amp; Others (13.03.2014 – DELHC) MANU/DE/0649/2014</td>
<td>DNA fingerprinting was used to identify the deceased persons from their decomposed dead bodies</td>
<td>Conviction</td>
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<tr>
<td>62.</td>
<td>Rajiv Singh v. The State of Bihar (16.05.2014 – PATNAHC) MANU/BH/0143/2014</td>
<td>The decomposed body of the victim was subjected to DNA test</td>
<td>Conviction</td>
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<td>63.</td>
<td>Rajkumar v State of MP (2014) 5 SCC 353</td>
<td>The court accepted the DNA report to identify the accused</td>
<td>Conviction</td>
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<td>64.</td>
<td>Rehenjya Shelya Pawara v. The State of Maharashtra (02.09.2014 – BOMHC) MANU/MH/1555/2014</td>
<td>DNA test was conducted which proved the guilt of the appellant</td>
<td>Conviction</td>
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<td>65.</td>
<td>State by the Inspector of Police v. Manoharan (24.03.2014 – MADHC) MANU/TN/0496/MADHC</td>
<td>The report of the DNA test conducted on the dead bodies of the deceased was accepted by the court</td>
<td>Conviction</td>
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<td>66.</td>
<td>State v. Bharat Kumar (18.09.2014 – DELHC) MANU/DE/2300/2014</td>
<td>DNA test was conducted and accepted</td>
<td>Conviction</td>
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<td></td>
<td>Case Description</td>
<td>Reference</td>
<td>DNA Evidence</td>
<td>Decision</td>
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<td>68.</td>
<td>State v. Ravi Kumar (26.08.2014 – DELHC) MANU/DE/1977/2014</td>
<td>376, 302</td>
<td>DNA extracted from blood and semen matched with samples found on victim’s body</td>
<td>Convicted</td>
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<td>69.</td>
<td>State v. Sujeet Kumar (13.10.2014 – DELHC) MANU/DE/2573/2014</td>
<td>376, 377 IPC</td>
<td>DNA test was conducted which was relied by the court</td>
<td>Conviction</td>
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<tr>
<td>70.</td>
<td>Naina Sahani Tandoor Case Sushil Sharma v. State (N. C. T. of Delhi) (2014) 4 SCC 317</td>
<td>302, 120B, 201 IPC</td>
<td>DNA test was conducted to determine the identity of the charred dead body recovered from the tandoor</td>
<td>Conviction</td>
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<tr>
<td>71.</td>
<td>The State of Maharashtra and Ors. v. Sadashiv Jetappa Kamble and Ors. (08.05.2014 – BOMHC) MANU/MH/2590/2014</td>
<td>376(2)(f), 363, 201 IPC</td>
<td>DNA report was accepted</td>
<td>Convicted</td>
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<td>72.</td>
<td>The State of Maharashtra v. Babasaheb Maruti Kamble (10.07.2014 – BOMHC) MANU/MH/2589/2014</td>
<td>302, 342, 376(2)(f) IPC</td>
<td>DNA report was accepted</td>
<td>Conviction</td>
</tr>
<tr>
<td>73.</td>
<td>The State of Maharashtra v. Sadashiv Jetappa Kamble (08.05.2014 – BOMHC) MANU/MH/2679/2014</td>
<td>201, 302, 363 and 376 IPC</td>
<td>From the evidence of the doctor and other evidence on record, especially the DNA reports, it was proved beyond reasonable doubt by the prosecution that the accused committed rape on the victim girl and thereafter throttled her to death</td>
<td>Conviction</td>
</tr>
<tr>
<td>74.</td>
<td>Gautam Chowdhury v. The State of West Bengal (04.02.2015 – CALHC)</td>
<td>376, 417 of IPC</td>
<td>Complainant by expressing willingness in</td>
<td>Conviction</td>
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<tr>
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<td>Case No. &amp; Year</td>
<td>Offences/ Legislations</td>
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<td>Result of the case</td>
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<td>75.</td>
<td>Kalu Khan v. State of Rajasthan (10.03.2015 – SC) MANU/SC/0440/2015</td>
<td>363, 364, 376(2)(f), 302 and 201 of IPC and sections 3(2)(v) and 3(2)(vi) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989</td>
<td>DNA report clearly indicated the commission of rape and the murder of the deceased</td>
<td>Conviction</td>
</tr>
<tr>
<td>76.</td>
<td>Santosh Namdeo Bhukan v. The State of Maharashtra (12.02.2015 – BOMHC) MANU/MH/0270/2015</td>
<td>201 and 302 of IPC</td>
<td>Viscera of the dead body and other materials were collected and handed over for DNA examination</td>
<td>Conviction</td>
</tr>
</tbody>
</table>

3.6 TABLE OF CASES IN WHICH DNA EVIDENCE WAS USED IN DETERMINING PATERNITY OR MATERNITY

TABLE 3.2

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<tr>
<th>Srl. No.</th>
<th>Case No. &amp; Year</th>
<th>Offences/ Legislations</th>
<th>Fate of the Forensic Report</th>
<th>Result of the case</th>
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<td>77.</td>
<td>Anil Kumar v. Turaka Kondala Rao And Another (13.07.1998 –)</td>
<td>125 CrPC</td>
<td>DNA test concluded that the respondent</td>
<td>Petition was allowed and petitioner was</td>
</tr>
<tr>
<td>No.</td>
<td>Case Details</td>
<td>Act</td>
<td>Summary</td>
<td>Decision</td>
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<td>78.</td>
<td>Dwarika Prasad Satpathy v. Bidyut Prava Dixit And Another (1999) 7 SCC 675</td>
<td>125 CrPC</td>
<td>As the appellant refused to undergo DNA test, such a person was disentitled to dispute paternity</td>
<td>The appeal of the appellant father was dismissed as he refused to undergo the DNA test</td>
</tr>
<tr>
<td>79.</td>
<td>Modi (Smt.) v. Latoor Lal (18.08.2004 – RAJHC) MANU/RH/0106/2004</td>
<td>125 CrPC</td>
<td>DNA test was conducted</td>
<td>The petition was allowed</td>
</tr>
<tr>
<td>80.</td>
<td>Thogorani v. State of Orissa and Ors. (20.07.2004 – ORIHC) MANU/OR/0216/2004</td>
<td>376, 506, 34</td>
<td>IO was directed to collect blood samples from R-3 and two children of petitioner</td>
<td>Petition was allowed</td>
</tr>
<tr>
<td>81.</td>
<td>Geetha v. State of Kerala &amp; Another (17.03.2005 – KERHC) MANU/KE/0077/2005</td>
<td>125 CrPC</td>
<td>DNA Fingerprinting report was accepted by the HC although the expert was not examined</td>
<td>The petition was allowed</td>
</tr>
<tr>
<td>82.</td>
<td>Smt. Didde Sundara Mani and Anr. v. Didde Venkata Subbarao and Anr. (09. 06.2005 – APHC) MANU/AP/0579/2005</td>
<td>112 of the Evidence Act, 1872</td>
<td>In maintenance proceedings, the party disputing the paternity of the child has to prove his ‘non access’ with the mother of the child during the relevant time in order to dispel the presumption under section 112 of IE Act, 1872 and such presumption should have to be displaced by leading strong preponderance of evidence and not by mere</td>
<td>Criminal petition of the appellant was thus allowed</td>
</tr>
<tr>
<td>No.</td>
<td>Case Title</td>
<td>Legal Basis</td>
<td>Court's Decision</td>
<td>Summary</td>
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<td>83.</td>
<td>Nirmaljit Kaur (2) v. State of Punjab &amp; Others (2006) 9 SCC 363</td>
<td>Criminal Writ Petition under Article 32 of the Constitution of India</td>
<td>The Writ Petition was allowed</td>
<td>Filing of petition for determining the paternity by medical tests i.e. DNA, the impugned order was liable to be set aside. Court decided to resolve the dispute by having the DNA test of the petitioner, the child, R-3 and R-5 to determine the maternity of the child.</td>
</tr>
<tr>
<td>84.</td>
<td>Noor Mohd. v. State (NCT of Delhi) and Others (06.10.2006 – DELHC) MANU/DE/9908/2006</td>
<td>226 of the Constitution of India, 364A IPC</td>
<td>The matter was disposed of, and the court directed the child to be sent to SOS Children Village for his welfare and appointed Director of the same institution as the guardian of the child.</td>
<td>As per DNA report, R-7 and his wife were not biological parents of the child.</td>
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<td>85.</td>
<td>Ravichandran v. The Sub Inspector of Police (31.03.2006 – MADHC) MANU/TN/8633/2006</td>
<td>417 IPC</td>
<td>Petition was dismissed. DNA test proved the paternity of the child borne as a result of cheating but section 112 was not applicable as the child was not borne out of the</td>
<td>Trial court passed an order that DNA typing test was must to determine paternity in case of cheating.</td>
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<td>No.</td>
<td>Case Title</td>
<td>Statute</td>
<td>Facts</td>
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<td>86.</td>
<td>Shanmugam v. Samundeeswari and Minor Nithyasree rep. by her mother Samundeeswari (11.10.2006 – MADHC) MANU/TN/6087/2006</td>
<td>125 CrPC</td>
<td>Although application seeking direction for subjecting the child to DNA test was rejected, in the revision it was held that it was a well considered order and finding to determine paternity of the child</td>
<td>The revision petition was allowed</td>
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<td>87.</td>
<td>Anandamay Bag v. State of West Bengal and Anr. (07.05.2007- CALHC) MANU/WB/0219/2007</td>
<td>376 IPC</td>
<td>DNA test to determine paternity of the child was not required since the accusations were under section 376 for rape, so the Court rejected the application under section 311 CrPC as evidence was closed and earlier there was no attempt by the prosecution to hold the DNA test.</td>
<td>The Revisional Application was dismissed</td>
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<td>88.</td>
<td>Ranjeet Sinha @ Ranjeet Prasad Singh v. The State of Bihar and Another (04.10.2007 – PATNAHC)</td>
<td>125 CrPC</td>
<td>Court rejected the prayer for DNA test made by the petitioner, as apparently the purpose of such application was to avoid paying maintenance to hapless wife and child</td>
<td>Petition was dismissed</td>
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<td>89.</td>
<td>Sharik Ammed (Advocate) v. Sunder 125 CrPC, 227 of The</td>
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<td>The matter was directed back to</td>
<td>The petition under section</td>
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<tr>
<th>Case</th>
<th>Parties</th>
<th>Statute</th>
<th>Decision</th>
<th>Supporting Information</th>
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<tr>
<td>Lal (12.03.2007 – CGHC) MANU/CG/0159/2007</td>
<td></td>
<td>Constitution of India</td>
<td>the Family Court with direction to decide issue on the basis of other evidences before passing a direction for DNA test</td>
<td>227 filed by the petitioner was allowed and the matter was remitted back to the family court with direction to decide issue on the basis of other evidences before passing directions for DNA test.</td>
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<td>90.</td>
<td>Mothyukuri Shivakumar alias Chitti Babu v. Mothukuri Narayanamma and Others (01.08.2008 – APHC) MANU/AP/0601/2008</td>
<td>125 CrPC</td>
<td>Court allowed the prayer for DNA test for determining paternity of R-2, the child</td>
<td>Petition of the appellant husband, was dismissed.</td>
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<td>91.</td>
<td>Sabur Hossain Biswas @ Paltu v. The State of West Bengal and Ors. (10.01.2008 – CALHC) MANU/WB/00332008</td>
<td>376, 417 IPC</td>
<td>The trial court’s contention that DNA test would conclusively determine paternity or otherwise of the accused, was rejected by the revisional court. The revisional court opined that DNA test would be of no avail if the rape would be proved by the evidence of prosecutrix and witnesses.</td>
<td>Revisional application was allowed.</td>
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<td>92.</td>
<td>Premasundari and N. Vanathi represented by her mother and guardian</td>
<td>125 CrPC</td>
<td>The respondent father conveniently avoided, to</td>
<td>Petition was allowed.</td>
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<td>S.No.</td>
<td>Case Description</td>
<td>Section/Act</td>
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<td>93.</td>
<td>Babita Devi @ Babali And Others v. The State of Jharkhand (25.04.2011 - JHRHC)</td>
<td>112 Evidence Act</td>
<td>DNA test was allowed to be conducted as requisitioned by the petitioner</td>
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<td>94.</td>
<td>Madharapu Prashu Ram v. Shaik Janibhee (12.06.2012 – APHC)</td>
<td>125 CrPC</td>
<td>Court ordered DNA test</td>
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<td>96.</td>
<td>Bitupan Saikia v. Nipa Saikia &amp; Anr. (07.03.2013 – GUHC)</td>
<td>112 Evidence Act</td>
<td>Court ordered DNA test for determining paternity of the child</td>
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<td>97.</td>
<td>Jayaprakash v. Nisha (21.03.2013 – KERHC)</td>
<td>125 CrPC, 112 Evidence Act</td>
<td>Court ordered for a DNA test</td>
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<td>98.</td>
<td>X v. State and Ors. (22.03.2013 – DELHC)</td>
<td>Section 482 of Medical Termination of Pregnancy Act, 1971, Article 226 and 482 of CrPC, 1973</td>
<td>State allowed the petition for termination of pregnancy and DNA test of the foetus</td>
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<tr>
<td>99.</td>
<td>Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014) 2 SCC 576</td>
<td>125 CrPC</td>
<td>The husband’s plea that he had no access to the wife when the child was begotten was proved by the DNA test</td>
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<td>100.</td>
<td>Riyas v. Haseena (16.07.2014 – KERHC)</td>
<td>125 CrPC, 114 Evidence Act</td>
<td>The father was not consenting for DNA test, hence an adverse inference could</td>
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3.7 CRITICAL ANALYSIS OF THE CASES IN WHICH DNA EVIDENCE WAS USED TO RECORD CONVICTION AND ACQUITTAL

The 1st category cases consisted of murder, rape or murder with rape, dacoity, kidnapping, abduction, etc. where the identity of the victim or the accused was determined by DNA test. Out of 100 cases studied 76 cases fell under this category. Out of 76 cases in 67 cases conviction was recorded using DNA and in 9 cases acquittal was recorded. An in depth study of the cases will reveal that that faulty investigation and fallacy of the prosecution resulted in the acquittal. The Supreme Court observed that presently there is great advancement in scientific investigation on the DNA. The scientific investigation would have unquestionably determined whether the respondent accused was linked with the crime. But in some cases due to the lack of the effective investigation the culpability of the respondent is not determined\(^{118}\). The court also pointed out the fallacy of the prosecution by commenting that after the incorporation of Section 53A in the Criminal Procedure Code, w.e.f. 23.06.2006, it has become necessary for the prosecution to go in for DNA test in such type of cases, which would facilitate the prosecution to prove its case against the accused\(^{119}\).

In the 2nd category of cases the DNA test helped to prove the maternity or paternity of the child. 24 cases have been discussed under this head. In case the party did not consent to undergo DNA test the court held that even reasonable force could be applied on the party to take his blood sample according to the provision of CrPC\(^{120}\). In case the party refused to undergo the DNA test the court took a negative presumption and held that the person in future would be debarred from disputing paternity\(^{121}\).

\(^{118}\) State of Gujrat v. Kishanbhai (2014) 5 SCC 108  
\(^{119}\) Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130  
\(^{120}\) Narayan Dutt Tiwari v. Rohit Shekhar & Another (2012) 12 SCC 554  
\(^{121}\) Dwarika Prasad Satpathy v. Bidyut Prava Dixit And Another (1999) 7 SCC 675
There were cases where the court commented on the relevancy and legal aspects of DNA test and the situations in which it can be conducted. The court discussed the admissibility of DNA profiling technique and held that that DNA profiling technique has been expressly included among various forms of medical examination in amended Explanation to Section 53 CrPC. DNA profile is different from a DNA sample which is usually obtained from bodily substances. Moreover the court opined that “Conducting DNA profiling is not a violation of Fundamental Rights under Article 20(3) of the Constitution of India and 161(2) of CrPC122. Court also gave an explanation of the circumstances when DNA test is required to identify the dead body.123. Hereafter, the cases had been studied chronologically.

The study of the criminal case statistics in which conviction or acquittal was recorded depending on DNA evidence revealed different aspects of such evidence and the stand taken by court in various cases. It is noteworthy that DNA evidence has a dual nature. In criminal cases DNA evidence is treated as corroborative evidence except in rape cases and in determination of maternity or paternity. In cases where rape has been committed the court strongly relies on the DNA evidence and commented that that after the incorporation of Section 53A in the Criminal Procedure Code, w.e.f. 23.06.2006, it has become necessary for the prosecution to go in for DNA test in such type of cases, which would facilitate the prosecution to prove its case against the accused. Prior to 2006, although it was not incorporated in the Code but still the prosecution could have resorted to the procedure of getting the DNA test or analysis and matching the semen of the accused with that found on the materials collected from the prosecutrix to make it a fool proof case. The court was of the view that if the prosecution fails to perform such kind of investigation, they themselves must face the consequences124. The Supreme Court stringently deprecated the prosecuting and investigating agencies for the lapses committed by them by not conducting DNA test, when it was required. In such cases directions were issued for the purposeful and decisive investigation and prosecution. The court ordered that training programme to be fixed within six months to ensure that those persons who handle sensitive matters concerning investigation or prosecution are

122 Selvi v State. Of Karnataka (2010) 7 SCC 263
124 Krishan Kumar Malik v. State of Haryana(2011) 7 SCC 130
fully trained to handle the case. The Home Department of every State Government was advised to formulate procedure for taking action against all erring investigation or prosecution officials or officers. The court had also mandated that the direction should be given effect to within six months. All the Home Secretaries were directed to look into the compliance of the directions and maintain the records for consideration. Nonetheless, there were cases, where the courts recorded convictions in rape cases on the testimony of the prosecutrix, if it was trustworthy. Therefore in rape cases DNA evidence must be placed before the court by the prosecution as a matter of prudence as in most cases it is treated as substantive evidence.

Regarding the relevancy of DNA evidence excluding rape cases, the Supreme Court opined that, DNA examination might result in identifying the remains of the dead victim, still the involvement of the respondent in the commission of the crime has to be established. Some definite evidence has to be established to indicate that the victim had been done to death of which the respondent was aware or must be aware of and also at the proximate time of death the victim and the respondent were last seen together. Even in the absence of corpus delicti, it would be possible to establish a crime if the appropriate materials are made available to the court. This observation of the court proves the corroborative nature of DNA. The circumstance of the ‘last seen together’ is normally taken into consideration for finding the accused guilty of the offence charged with when it is established by prosecution that the time gap between the point of time when the accused and the deceased were found together alive and the deceased was found dead so small that the possibility of any other person being with the deceased could completely be ruled out.

Although DNA test result acts as an corroborative evidence, it has been considered as the blue print of an individual. DNA decides the characteristics of persons such as colour of skin, type of hair, nails etc. The identification of individuals by the aid of DNA test is considered to be hundred percent precise expert opinion by the court,

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127 Concrete evidence of a crime, such as corpse
129 Vansha Lakama Gangad (through jail) v. The State of Maharashtra (05.04.2010-BOMHC) MANU/MH/0319/2010
provided the samples are collected in the proper way maintaining the quality control. The court observed that there is a need of quality control, so precautions are necessary to be taken to ensure preparation of High Molecular Weight DNA, complete digestion of the sample with appropriate enzyme, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. If such chain of quality control is maintained by the expert during investigation, then the expert evidence becomes admissible in accordance with section 45 of the Indian Evidence Act\textsuperscript{130}. The requirement of quality control has been reiterated in different cases where DNA profiling was conducted by experts. In such cases the experts revealed that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having being contaminated or tampered with. In another case, the Supreme Court said that DNA report must be accepted as scientifically accurate and an exact science. An issue was raised by the court below that the semen swabs on the slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with. This issue was countered by the Supreme Court, by considering it as an ‘error’ of the trial court as it was properly explained. In the case under discussion, 20ml blood were taken from the appellant’s body, for DNA profiling and transferred into four vials, each containing 5ml. The vials were also sealed and signed by hospital doctors under whose supervision the blood samples were taken. Although arguments were raised on behalf of the appellant that the blood samples were tampered but it resulted as baseless as the expert who conducted DNA profiling in the CCMB deposed that due to some leakage found in the vials, traces of blood appeared on the material with which the vials were sealed. Only 3ml blood was found in each vial which amounted to total 12ml blood and the loss of 8ml blood was thus accounted for. Even the proper custody was explained by the experts that before handling over the vials to CCMB, blood was stored in a refrigerator in government hospital and therefore there was no possibility of evaporation of blood. In this case itself, the Supreme Court explained the philosophy of the “rarest of rare” principle as it commuted the death sentence of the appellant to life imprisonment.\textsuperscript{131}

\textsuperscript{130} Patangi Balarama Venkata Ganesh v. State of Andhra Pradesh (2009) 14 SCC 607
\textsuperscript{131} Santosh Kumar Singh v. State (through CBI) (2010) 9 SCC 747
The fate of the case not only depends on experts but also the investigating personnel who collect materials from the crime scene. Therefore the sample should be collected, preserved and transported carefully to minimize the resultant error or to make the expert evidence reliable\textsuperscript{132}. Regarding the acceptability of DNA evidence, the Supreme Court reiterated that DNA forms a natural barrier against exogenous DNA contamination and are resistant to environmental assaults when the identity of the deceased is in question and it has to be determined from the bones or the skeleton. In the present case the blood sample of the father of the deceased was taken in accordance with the set up precept and procedure for DNA isolation test and the same was sent along with taken out femur and humerus bones of recovered skeleton to the Centre for D.N.A. Fingerprinting and Diagnostics (CDFD), Ministry of Science and Technology, Government of India, Hyderabad. The court also said that the question regarding whether DNA Tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. Samples of DNA are being used in the Criminal Justice System since more than half a century. Although debate remains over the safeguards which should be required in testing samples and in presenting evidence in Court. DNA profile, is consistently held to be valid and reliable but it depends on the quality control and quality assurance procedures in the laboratory. So far as applicability of DNA evidence in this case, the DNA sample from the skeleton matched with the father and all sampling and testing have been done by experts whose scientific knowledge and experience have not been doubted in these proceedings. Therefore the court had no reason to discard the evidence since the prosecution succeeded in showing that the skeleton recovered from the house was that of the deceased and none other than the accused had strangulated her to death and buried the dead body in the house.

In \textit{Nithari Murder Case}, the court held that the identity of the deceased girl was established by matching DNA extracted from pieces of her body with the DNA extracted from her parents and brother. Such kind of matching can establish identity to a certain degree of probability but not absolute identity of deceased person. There is

\textsuperscript{132} \textit{Sandeep v. State of Uttar Pradesh} (2012) 6 SCC 107
absolutely no discussion in any of the Supreme Court Judgements or High Court Judgments regarding what degree of probability was found in the present case when her DNA was matched with DNA of her parents and her brother, and whether the degree of probability found in the case is judicially acceptable. The court also referred a foreign judgment on DNA fingerprinting of the Supreme Court of Florida and commented as “very lively discussion on DNA fingerprinting”\textsuperscript{133}. In USA, Scientific Working Group on DNA Analysis Methods (SWGDAM) has developed “Interpretation Guidelines for Autosomal STR Typing by forensic DNA Testing Laboratories\textsuperscript{134}”. Hence the DNA evidence was accepted in this case but the degree of probability is yet a matter of concern.

\textbf{3.7.1 Reasons For Acquittal In Cases Using DNA}

In Ramkisan \textit{v. State of Maharashtra}, there was total failure on the part of the prosecution to prove that bones seized from compound of appellant were human bones although DNA test proved that bones were of deceased.\textsuperscript{135} In \textit{State of Karnataka v. M.V. Mahesh}, The Supreme Court opined that even if it proceeded on the basis that the DNA examination resulted in identifying the bones found by the police as that of the deceased, still what had to be established was the involvement of the respondent in the commission of her murder which the State had failed to prove.\textsuperscript{136} In Vivek Bithle’s case although the DNA test was conducted but it could not be relied upon as prosecution failed to prove that weapon seized from deceased’s premises was of appellant.\textsuperscript{137} In Ankush Wadhwa’s case, the Court directed to send the recovered clothes of the deceased to the DNA testing laboratory, Hyderabad, for blood grouping and DNA test but the findings of the said testing were withheld from the court by the prosecution.\textsuperscript{138}

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3.7.2 The Table On The Question Of Recording Conviction Or Acquittal Relating To Cases Where DNA Evidences Were Used Reveals The Following:

i. Out of 76 criminal cases in 67 cases conviction was recorded, which amounts to 88.16%. In other words in 88.16% criminal cases in which DNA evidence was used conviction was recorded.

ii. Out of 76 criminal cases in 9 cases acquittal was recorded, which amounts to 11.84%. Therefore in 11.84% criminal cases in which DNA evidence was used acquittal was recorded.

3.8 CRITICAL ANALYSIS OF THE CASES IN WHICH DNA EVIDENCE WAS USED IN DETERMINING PATERNITY OR MATERNITY

In determination of maternity or paternity DNA evidence were also treated as substantive evidence\(^\text{139}\). The Supreme Court also held that where the purported father denied paternity but refused to undergo DNA Test, such a person was disentitled from disputing paternity\(^\text{140}\). The Kerala High Court differentiated between legitimacy and paternity. The court opined that **DNA test need not be ordered as a matter of routine** in all cases where the legitimacy or paternity of a child is in issue. A distinction had to be drawn between ‘legitimacy’ and ‘paternity’ of the child. Legitimacy can be established by legal presumption, while it is desirable to establish paternity by DNA test, particularly when both parties agree.\(^\text{141}\) 24 cases have been studied, where DNA evidence was used to determine paternity or maternity or both, out of which in 16 cases the petition was allowed or the matter has been decided in favour of the petitioner which amounts to 66%. Different types of cases which has been studied are a)‘Claim for Maintenance’ under section 125 of CrPC where the paternity of the child was in issue, b) ‘Suit for Declaration’ by the son against the putative father\(^\text{142}\), c)‘Criminal Writ Petition’ under Article 32 to issue appropriate order to conduct DNA test for

\(^{139}\) Nirmaljit Kaur (2) v. State of Punjab & Others (2006) 9 SCC 363
\(^{140}\) Dwarika Prasad Satpathy v. Bidyut Prava Dixit And Another (1999) 7 SCC 675
\(^{142}\) Narayan Dutt Tiwari v. Rohit Shekhar & Another (2012) 12 SCC 554
ascertaining the correct identity of the child or direction to the respondents to disclose whereabouts of the child and to deliver custody of the child to the petitioner mother\textsuperscript{143}.

d) ‘Cheating’ under section 417 of IPC, where the complainant was in fact not married to the accused but gave birth to a child\textsuperscript{144}.
e) Writ Petition filed by victim of rape for directions to State, for terminating her pregnancy under section 482 of Medical Termination of Pregnancy Act, 1971 and 482 of CrPC to preserve the foetus for DNA test\textsuperscript{145}.

The current situation regarding the application of DNA test in determining paternity can be summarized from the case of \textit{Muniappan v. Ponni}\textsuperscript{146}. In this case an application was filed by the husband for the dissolution of the marriage as he suspected the paternity of the second son. He also filed an application to direct the blood test upon the second son which was dismissed by the Trial Court on the ground that the marriage is proved and it would intervene into the fundamental rights of the mother. Relying on the case of \textit{Sharda v. Dharmapal}\textsuperscript{147}, the High Court reversed the findings of the Trial Court and observed that directing Blood Test does not violate Fundamental Rights.

The inception for interpretation of applicability of DNA test was first observed in the case of \textit{Goutam Kundu v. State of West Bengal and Another}\textsuperscript{148} where it was observed that DNA test should not be directed as a matter of routine or as a matter of course and no one can be compelled to give blood sample for analysis. \textit{Goutam Kundu’s} case was overruled by the case of \textit{Sharda v. Dharmapal}\textsuperscript{149} where it was held that directing DNA test cannot be held to be violative of one’s right to privacy, and is also not in violation of right of personal liberty under Article 21 of the Constitution. A compilation of the two propositions forwarded by the Supreme Court, results that DNA test should not be directed as a matter of course but in cases of “eminent need” after consideration of pros and cons such test is desirable\textsuperscript{150}. The Court has the power to give directions for DNA test but should exercise such power if the applicant has a strong prima facie case.

\textsuperscript{143} \textit{Nirmaljit Kaur (2) v. State of Punjab & Others} (2006) 9 SCC 363
\textsuperscript{144} \textit{Ravichandran v. The Sub Inspector of Police} (31.03.2006 – DELHC) MANU/TN/8633/2006
\textsuperscript{145} \textit{X v. State and Ors.} (22.03.2013 – DELHC) MANU/DE/0747
\textsuperscript{146} 2011 (2) CTC 635
\textsuperscript{147} 2003 (2) CTC
\textsuperscript{148} 1993 (3) SCC 418
\textsuperscript{149} 2003 (2) CTC 760
\textsuperscript{150} \textit{Banarsi Dass v. Teeku Dutta (Mrs.) and Another} 2005 (3) CTC 227 (SC)
supported by sufficient materials which are presented before the court. Therefore, the Supreme Court did not completely prohibit the power of the court to order for DNA test but the Court was of the view that such direction would not be granted as a routine practice by the courts. If despite the order of the Court, the respondent refuses to submit himself to such test, the court will be entitled to draw an adverse inference against him, on the basis of preponderance of probabilities with available evidence\textsuperscript{151}. In \textit{Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Another}\textsuperscript{152} the appellant was not willing to undergo DNA test, therefore the Supreme Court observed that the appellant would be disentitled to dispute the paternity of the child, which was recorded. On the other hand the adverse inference policy has been reversed now after the incorporation of Section 53A, CrPC, where reasonable force can be used on the accused to collect his blood samples for DNA test. This policy was followed in the case of \textit{Narayan Dutt Tiwari v. Rohit Shekhar & Another}\textsuperscript{153}. In the case of \textit{Dipanwita Roy v. Ronobroto Roy}\textsuperscript{154}, the Supreme Court held that Section 112 of the Evidence Act is not strictly attracted in the present case. As without DNA test it would be impossible for husband to establish the alleged infidelity of the wife, the said test which is the most legitimate and scientifically perfect means, could be used by husband to establish his assertion of infidelity.

Moreover, it has to be remembered that section 112 of the Indian Evidence Act, 1872 was enacted at such time when the modern scientific advancements like DNA test was not into existence and were even not in contemplation of the legislature. Presently, the result of a genuine DNA test is considered to be scientifically accurate. But such accuracy is not enough to escape from the conclusiveness of section 112 of the Act. It means that if the husband and the wife is living together during the time when the child was conceived but the DNA test revealed, that the child was not born to the husband, still the conclusiveness of law will remain unrebutable.\textsuperscript{155} The principle underlying the conclusiveness of section 112 is that apparently although from the point of view of the husband, he might be compelled to bear the fatherhood of a child who might not be his

\textsuperscript{151} \textit{Premasundari and N.Vanathi} (11.11.2010 – MADHC) MANU/TN/3155/2010
\textsuperscript{152} 1999 (7) SCC 675
\textsuperscript{153} (2012) 12 SCC 554
\textsuperscript{154} (2015) 1 SCC 365
\textsuperscript{155} \textit{Kamti Devi (Smt) and Another v. Poshi Ram} 2001 (2) CTC 625 (SC)
child at all but in such case the innocent child would be protected from being bastardized taking into consideration the mother and her spouse were living together during the time of conception156.

Matters of cheating requires special reference as section 112 of the Indian Evidence Act was not applicable to the case as there was no relationship of husband and wife between the complainant and the accused. Naturally, this type of case becomes an easy ground to disown the paternity of the child. Therefore, the court correctly observed that in this type of cases under section 417 of IPC, DNA typing test is mandatory, as there are no other means to determine paternity of the child.

While considering the cases of paternity determination a distinction has to be drawn between ‘legitimacy’ and ‘paternity’ of a child. Legitimacy can be established by legal presumption, while it is desirable to establish paternity by DNA test, particularly when both parties agree157. In maintenance claims under section 125 of CrPC, legitimacy of a child is not primary issue as maintenance can be awarded both for legitimate and illegitimate minor child but paternity is required to be proved.

3.8.1 The Table On Paternity Cases Reveals The Following

Out of 24 cases studied under paternity/maternity, 17 cases were decided in favour of the petitioner. Therefore in 17 cases petitions were allowed which amounts to 70.83%.

In the first case, the appeal was dismissed, as the appellant refused to undergo DNA test158. In the second case the petition was filed by the accused against whom the order for DNA test was recorded by court. Therefore the petition was dismissed as the accused filed the petition against the order of allowance of the petition of the prosecution which granted permission to police to perform DNA typing test on accused as well as complainant and her child159. Thirdly, application for direction for subjecting the child to DNA test was rejected considering the order and finding made by the

156 Babita Devi @ Babali And Others v. The State of Jharkhand (25.04.2011 – JHRHC) MANU/JH/0479/2011
158 Dwarika Prasad Satpathy v. Bidyut Prava Dixit And Another (1999) 7 SCC 675
Supreme Court in *Benarsi Dass v. Teeku Dutta*\(^{160}\), where it was opined that DNA test should not be directed as a matter of course\(^{161}\). Fourthly, the court rejected the revisional application for conduction of the DNA test on the victim of a rape, her child and the accused as the evidence was closed and entire defence was disclosed but earlier there was no attempt by the prosecution to hold the DNA test.\(^{162}\) Fifthly, the petitioner preferred revision and to conduct DNA test against order directing maintenance to opposite party No.2 and her child under section 125 CrPC. The petition was rejected by the court as apparently purpose of filing such application was to avoid payment of maintenance to hapless wife and child. Further, unlike matrimonial proceedings under section 125 strict proof of marriage is not required as it did not finally determine rights and obligations of parties. Therefore, court below had rightly rejected prayer for DNA test. Petition was dismissed.\(^{163}\) Similarly, in the sixth matter, the petition of the putative father was dismissed as the court allowed the respondent mother’s application to undergo DNA test to prove that Respondent 2, the child was born to respondent 1 through petitioner.\(^{164}\) Lastly, in the case of *Narayan Dutt Tiwari v. Rohit Shekhar & Another*, the application of the putative father was dismissed as the court ordered the putative father to undergo DNA test.

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\(^{160}\) 2005 (3) CTC 227 (SC)


\(^{162}\) *Anandamay Bag v. State of West Bengal and Anr.* (07.05.2007 – CALHC) MANU/WB/0219/2007

\(^{163}\) *Ranjeet Sinha @ Ranjeet Prasad Singh v. The State of Bihar and Another* (04.10.2007 – PATNAHC) MANU/BH/0332/2007

\(^{164}\) *Mothyukuri Shivakumar alias Chitti Babu v. Motukuri Narayanamma and Others* (01.08.2008 – APHC) MANU/AP/0601/2008