IV. JUDICIAL ATTITUDE TOWARDS EVIDENTIARY VALUE OF DNA IN INDIA

The criminal investigation commences when the police comes to know of the commission of a crime. The Code of Criminal Procedure, 1973 classifies offenses into two groups, cognizable offenses and non-cognizable offenses. Cognizable offenses are generally heinous offenses like murder, rape, kidnapping, etc., whereas non-cognizable offenses are not serious in nature. In case of cognizable offenses, the police have power to start investigation without the order of Magistrate, while in non-cognizable offenses the investigation is started on the order of Magistrate. The police can arrest a person for the commission of cognizable crime without a warrant but cannot do so in case of non-cognizable offenses.

Information given to the police officer with regard to the commission of cognizable crime should be in writing and in case it is given orally, it should be reduced into writing and this report is called the First Information Report. The First Information Report is a very important piece of evidence and its objective is to start the investigation of a case. The functions of the police are detection and investigation of crime, arrest of the offender and the collection of evidence against those who are prosecuted in court of law. While collecting biological evidence in a crime spot for DNA analysis, the investigator should be aware of important issues involved in the identification, collection, transportation and storage of DNA evidence. In case, the DNA evidence is not initially identified it cannot be collected later on. Like that, if the DNA sample is not properly preserved it may become contaminated or destroyed. Properly preserved DNA sample can be tested even after many years. Samples may be taken from the body of suspect either with his own consent or on the basis of an order made by the police officer or by a court order. Samples may also be taken from volunteers with their informed consent. For example, samples are likely to be taken from volunteers where the person is victim of a crime or a relative of a missing person.

The primary function of the police officer is investigation. The other important function of the police officer is in the prosecution of an offender. In the conduct of the prosecution the duty of the police is to place all the relevant
materials before the court of law. While presenting the DNA evidence by the prosecution in trial, the expert witness is required to explain the details of DNA analysis in lay terms and also clear doubts raised by the defense counsel during cross examination. Next, the defense counsel may call the witnesses in favor of the accused in order to prove the innocence of accused and then the prosecution may cross examine the defense witnesses. After the completion of trial, the judiciary is required to evaluate the evidence and frame appropriate directions.

In this chapter, the researcher has analyzed some landmark cases which have already been decided by our Indian Judiciary. For that, the case laws have been divided into 5 categories. They are:

1. Maintenance cases,
2. Rape and Murder cases,
3. Murder cases,
4. Unnatural offenses and Murder case, and
5. Assassination case.

Here, the researcher has analyzed and portrayed how our Indian Judiciary is evaluating DNA technology.

### 4.1. MAINTENANCE CASES

In recent times, the paternity of a child is raised in maintenance cases. The paternity of a child is decided through DNA technology. Since there is no marriage between the parties, the judiciary cannot raise the presumption under Section 112,\(^\text{252}\) of the Indian Evidence Act, 1872. In such a situation, the judiciary resolves the problem through the use of DNA technology to identify the biological relationship of child with the person. Sometimes, the marriage is subsisting but the parties are in separation and the non-access between the husband and wife can be proved through the use of DNA technology. The researcher has analyzed two cases:

1. *Kunhiraman v. Manoj*,

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\(^{252}\) **Section 112: Birth during marriage, conclusive proof of legitimacy** - The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten
4.1.1. Kunhiraman v. Manoj.253

This was the first case relating to the admission of DNA Technology. Based on the false promise of marriage, the respondent Kunhiraman had sexual intercourse with the petitioner’s mother Vilasini. This resulted in her pregnancy. She gave birth to a child, Manoj. Afterwards, Kunhiraman denied all facts and changed his attitude to marry her. So, she filed a maintenance claim for his child under Section 125 of the Criminal Procedure Code, 1973 before the Chief Judicial Magistrate, Thalassery.

In the absence of a legal marriage between Vilasini and Kunhiraman, the Court found it difficult to apply Section 112 of the Indian Evidence Act, 1872. Therefore, the Court found that the legitimacy of the child Manoj could be established only through scientific evidence. For that the Court ordered for DNA test to Manoj, Kunhiraman and Vilasini. The DNA test was conducted by the Centre for Cellular and Molecular Biology (CCMB), Hyderabad. The report of DNA test confirms Kunhiraman and Vilasini were the biological parents of Manoj.

At the time of trial, Kunhiraman raised objection by stating that the DNA test conducted in western countries was foolproof. However, the test conducted by the Centre for Cellular and Molecular Biology (CCMB) was not foolproof because the process and techniques developed by CCMB were in their own way and do not have the reliability available for the test in the western countries. Therefore, court permitted the parties to examine the expert witness. The senior scientist Dr. Lalji Singh was called.

Dr. Lalji Singh in his chief examination briefly explained the DNA typing technique and the detailed the procedures followed by him while conducting the DNA test for that particular case. He claimed that the process that he had followed in this case was recognized and the scientific community also accepted the papers published by him on the subject. Regarding his experience he stated that he had experience in molecular biology since 1976 and he had worked for thirteen years in the University of Edinburgh. When he was cross-examined, he admitted that there were certain differences between the method propounded by the CCMB and

DNA fingerprinting technique conducted by other countries. The statement given by him was that there are some differences between the method propounded by me and DNA fingerprinting technique. The only difference is in the probe. There are so many probes. Jeffery’s probe is patented. There is no law passed so far recognizing this test in our country. There are certain formulated standards. The standard is not prescribed by any other authority. In United States several private institutions conduct this test. In India there are no other such institutions. The Centre for Cellular and Molecular Biology is the authority. If precautions are taken there would be better results. If the test is not properly conducted there is possibility of erring.\textsuperscript{254}

The Court again appointed another expert to get a second opinion regarding the reliability of the technique and the capacity of the scientist who conducted the test. For that, the Court examined Dr. Umadathanm, the medico-legal advisor to the Kerala Police. He produced certain scientific articles on DNA fingerprinting to show that the technique was a valid one. Relevant portion of his deposition was as follows:\textsuperscript{255}

‘DNA profile study is considered as conclusive method for determining the paternity and maternity of an individual. Except in the case of identical twins possibility of the persons having the same DNA pattern is impossible. Dr. Lalji Singh is a competent molecular biologist. He has conducted a lot of scientific studies and research in the field of DNA profile test and he is an authority on the subject. I have with me photocopies of some articles reported in various scientific journals. So in my opinion the test result is conclusive. A standard procedure is seemed adopted in this case.’\textsuperscript{256}

After hearing the scientific testimonials of two expert witnesses, the Chief Judicial Magistrate came to the conclusion on the admissibility of the novel DNA evidence as follows:

‘The evidence of Expert is admissible under Section 45 of the Indian Evidence Act. So also, the grounds on which the opinion is arrived at are also relevant under section 51 of the Indian Evidence Act. Dr. Lalji Singh (PW4) is an expert in the matter of Molecular Biology and the evidence tendered by him is quite convincing and I have no reason why it should not be accepted. Just like the opinion of a Chemical Analyst or like the opinion of Finger Print Expert, opinion of Dr. Lalji Singh (PW4) who is also an expert in the matter of Cellular and

\textsuperscript{254} Borrowed from Dinkar, V. R, Justice in Genes (Evidential Facts of Forensic DNA Fingerprinting), Asia Law House, Hyderabad, 1\textsuperscript{st} Edition 2008, P.166-167

\textsuperscript{255} Id

\textsuperscript{256} Id
Molecular Biology is also acceptable. For the reasons stated above I accept the expert report (Exp. P5) and come to the indubitable conclusion that the respondent is the biological father of the petitioner.\textsuperscript{257}

The revision petition was filed by the respondent Kunkiraman before the Kerala High Court against the order of the trial court. Kerala High Court confirmed the findings of the Lower Court and ruled that,

‘I am of the view that the result of DNA test by itself could be taken as conclusive in deciding paternity.’\textsuperscript{258}

When both the parties are married, the court will follow Section 112 of Indian Evidence Act, 1872. In this case, the parties are not married but they have a physical relationship. Owing to such relationship, the child was born. The court relies on DNA technology in order to protect the victim as well as the child. In this critical situation, the court follows the scientific expert opinion under Section 45 of the Indian Evidence Act, 1872. Here, the DNA technology protects the victim and the innocent child.

4.1.2. \textit{Nandlal Wasudeo Badwaik v. Lata Nandlal Wasudeo Badwaik and Anr.}\textsuperscript{259}

The facts of the case were that the petitioner Nandlal Wasudeo Badwaik and the respondent Lata Nandlal Wasudeo Badwaik got married on 1990. The wife pleaded that a girl child was born out of the said wedlock. But, the husband denied the paternity of the girl child. The husband specifically pleaded that his wife left the matrimonial home since 1991. But, she did not return and thereafter, he had no access to her when the child was begotten. So, he requested for DNA test.

The Magistrate Court denied the claim of petitioner to apply for DNA test. Instead, it accepted the plea of wife and granted maintenance to the wife and her girl child. The Magistrate Court gave a judgment based on the presumption laid down under Section 112 of the Evidence Act, 1872.

The husband filed a revision petition before the High Court against the order of Magistrate Court. The High Court confirmed the order of Magistrate Court.

\textsuperscript{257} \textit{Borrowed from} Dinkar, V. R, \textit{Justice in Genes (Evidential Facts of Forensic DNA Fingerprinting)}, Asia Law House, Hyderabad, 1\textsuperscript{st} Edition 2008, P.166-167

\textsuperscript{258} 1991 (2) K.L.T. 190; \textit{Borrowed from} http://indiankanoon.org/doc/115193/, P.4

\textsuperscript{259} (2014) 2 SCC 576
Aggrieved by the said order, Husband preferred a Special Leave Petition before the Supreme Court and Leave was granted. At the husband’s request Supreme Court had ordered DNA test of the appellant along with the child to determine her fatherhood. The test proved that he had no biological relationship with the girl child. By the said report, the respondent/wife had not been satisfied. So, she requested for re-test. At the request of the respondent/wife the Supreme Court again ordered for re-test. Both the tests supported the man’s claim. The apex court held that the appellant (man) was not the biological father of the girl-child. The DNA test report proved husband’s plea that he had no access to the wife when the child was begotten and therefore the court said it could not coerce the appellant to bear the fatherhood of a child when the scientific reports prove to the contrary. Thus the husband was relieved of the burden of paying maintenance to the child. The Apex Court justifies the admissibility of DNA test report and observed that,260

‘Section 112 of Evidence Act, 1872, birth during marriage, conclusive proof of legitimacy.- The fact that any person who born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.’261

‘From the plain reading of the aforesaid, it is evident that a child born during the continuance of a valid marriage shall be conclusive proof that the child is a legitimate child of the man to whom the lady giving birth is married. The provision makes the legitimacy of the child to be a conclusive proof, if the conditions aforesaid are satisfied. It can be denied only if it is shown that the parties to the marriage have no access to each other at any time when the child could have been begotten.’262

‘Here, in the present case, the wife had pleaded that the husband had access to her and, in fact, the child was born in the said wedlock, but the husband had specifically pleaded that after his wife left the matrimonial home, she did not return and thereafter, he had no access to her. The wife has admitted that she had left the matrimonial home but again joined her husband. Unfortunately, none of the courts below have given any finding with regard to this plea of the husband that he had or had not any access to his wife at the time when the child could have been begotten.’263

260 (2014) 2 SCC 576
261 Id, (Para 14), P.585
262 Id
263 Id, (Para 15), P.585
‘The 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 has been established and no finding 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 has been recorded. Admittedly, the child has been born during the continuance of a valid marriage. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that respondent No. 2 is the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstance, which would give way to the other is a complex question posed before us.’

‘We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 rises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. 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 our 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 latter must prevail over the former.’

‘We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption.

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

264 Supra note 259, (Para 16), P.585-586
265 Id, (Para 17), P.586
266 Id, (Para 18), P.586
267 Id, (Para 19), P.586
Based on the above judgment, it is clear that in case of contradiction between Section 112 (Presumption of legitimacy) and Section 45 of the Indian Evidence Act, 1872, Section 45 will prevail over Section 112 of Indian Evidence Act, 1872.

4.2. RAPE AND MURDER CASES

After the advent of DNA technology, the accused is easily identified in rape and murder cases. In rape cases, the biological samples recovered from the victim can be used as a strong circumstantial evidence to prove the guilt of the accused among the other circumstances. In some cases, the victim may become pregnant. The sample collected from the foetus may be compared to the sample collected from the accused through DNA technology. It clearly establishes the identity of the accused if he has committed rape. In rape with murder cases, once the prosecution establishes the rape count, they can easily put the offender for murder. On some occasions, the victim may die but she becomes pregnant at the time of his death. The identity of the accused can be revealed through the use of DNA technology by comparing the foetus sample with the suspect if he has really committed. Sometimes, the accused after committing murder in order to escape from the murder charge may have buried the dead body of the deceased. The identification of the dead body can be traced with the help of DNA technology.

Based on discussion, the researcher has analyzed some of the cases involved in rape with murder. These cases are:

- (1) Kamalananda and others v. State of Tamilnadu;
- (2) Santhosh Kumar Singh v. State through CBI;
- (3) Surendra Koli v. State of Uttar Pradesh and Ors;
- (4) Sandeep v. State of Uttar Pradesh;
- (5) State through reference v. Ramnaresh and Ors; and

4.2.1. Kamalananda and Others v. State of Tamilnadu. 268

This case relates to the rape of 13 orphan girls of ashram and murdering a disciple, Ravi who tried to reveal the misdeeds of Swami Premananda and other devotees of ashram. One of the ashram girls lodged a complaint against the

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accused Swami Premananda for rape and sexual harassment. All the victim girls were medically examined. In the medical examination, the thirteen victim girls were found accustomed to sexual intercourse. Among them, one of the victim girls namely Aruljothi, was found pregnant. She requested for termination of her pregnancy. The Court directed the doctors to conduct abortion and to collect the samples of aborted foetus including the blood sample of accused. The DNA report confirmed that Swami Premananda was responsible for the product of conception of aborted foetus beyond reasonable doubt.

The trial court convicted Swami Premananda along with 6 accomplices. The main accused Premananda was awarded double life imprisonment.

An appeal was preferred by the accused and his accomplices before the High Court of Madras. Dismissing the appeal of Swami Premananda and his accomplices, the Hon'ble High Court of Madras, in their order dated 12th December, 2002, had made the following valuable observations:

‘The above criminal proceedings are unique of its kind. It has shown the vulnerability of orphans, especially girls and the need for their protection. It has revealed to what extent persons professing as spiritual gurus could screen their true picture, But for the small step taken by one of the victim girls and the timely help provided to her by the All India Women Democratic Association and "The Indian Express", the whole episode would not have seen the light of the day.’

‘The above case demonstrates the urgent need for updating the scientific investigation techniques and expert’s opinion. Much of the energy spent on gathering oral evidence and their risk of being tampered can be saved. It will help speedy investigation and successful trial. All the advanced countries have made laws for gathering and test-finding D.N.A. We must not lag behind.’

‘We reiterate that investigation and courts must be sensitive, helpful and understanding towards the victims of rape. We must expedite the proceedings at all levels in order to put an end to the agony and the tampering of the victim girls so that they can be restored to normal life. Women police and lady judges should be able to inspire confidence and understanding the victims of such crimes. Therefore, wherever possible, the enquiry, recording and trial in matters concerning rape cases could be entrusted to lady officers and judges. We record our appreciation for the good investigation done in this case and the painstaking work done by the trial court.’

269 Chandradevi v. State of Tamilnadu, 12th December 2002, Available at http://indiankanoon.org/doc/12253/ Para 175, P. 106, viewed on 10/08/2013 at 02.00am

270 Id, (Para 176), P.106

271 Id, (Para 177-178), P.106
Aggrieved by the said judgment, the accused persons preferred an appeal before the Supreme Court. The Supreme Court reiterated the judgment already given by the two lower courts. The appeals are, accordingly, dismissed. Most controversy had been created while presenting DNA evidence before the trial court. The issue had also been raised before the High Court as well as the Supreme Court. The Supreme Court also checked the DNA expert testimony.

Dr. Lalji Singh, a DNA expert stated that after the detailed examination, the result was submitted. The operative portion of the Report is as follows:

‘When D.N.A. Profiles in track 3 (Premananda) was compared with that of track 2 (tissues from the foetus) and track 1 (Aruljothi) it is seen that every band present in track 2 is fully accounted for either being inherited from the mother (track 1) or from the alleged father (track 3). The alleged father Premananda (source of Exhibit A) and the mother Aruljothi (source Exhibit C) are, therefore, the biological parents of the dead foetus (source of Exhibit B).’

Dr. Lalji Singh was subjected to lengthy cross-examination. He has categorically stated that if really there is any contamination, it would result only in non-matching of bands. He has also stated that multilocus/single locus probe have been carried out throughout the world for DNA test.

Regarding Data Base and contamination, Dr. Lalji has stated in cross-examination as under:

‘As far as paternity is concerned, the paternity of the child is determined by identifying which are the bands of maternal and which are paternal. Therefore, comparison of DNA fingerprinting of the child with the mother will identify which are the bands maternally inherited. Elimination of these bands will leave those bands inherited from the child’s to 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 that child and paternity is confirmed. The article published by a Laboratory-CELL MARK, United States is Ex. D. 42.’

The witness further clarified that a laboratory error can produce mismatch but it cannot produce a proper match.

The witness further clarified that when the sample is taken in sterile container following the instructions given by the CCMB scrupulously and there is no possibility of any bacterial of any other infection.

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272 Supra note 268, (Para 59), P.226
273 Id, (Para 60), P.226
274 Id, (Para 61), P.226
275 Id, (Para 62), P.226
276 Id, (Para 62), P.226
The witness further stated that the contamination never results into proper match. It can give rise to exclusion not to positive inclusion. The witness in cross-examination has specifically stated as under:

‘According to me, for paternity test, large scale population Data Base was neither required not even today. When the samples of the parents are not available and when one has to establish the identity of the child based on probability only then Data Base is required. In short, where both the parents are available, no data base is required for paternity testing.' ⁷⁷

Both the trial Court and the High Court have appreciated the evidence of Dr. Lalji Singh.

On behalf of Accused-1, DW-49 Dr. Wilson J. Wall has been examined and the High Court has rejected his evidence on the following grounds: ⁷⁸

1) He is a private consultant.
2) He was requested to undertake a review of the evidence of Dr. Lalji Singh P.W. 59.
3) He had held conferences with the defense counsel both in London and India.
4) He was present in the Court on 28.10.1996 and 29.10.1996 when Dr. Lalji Singh (P.W. 59) was cross-examined by the counsel for A-1.
5) He says “I have been instructed by the counsel for the accused to inform this Honorable Court that if the prosecution wants to repeat this experiment, the accused is prepared to pay the cost of the same”.
6) He admits that the test was conducted at the laboratory called University Diagnostics Laboratory, London and that he had a working arrangement with the above said laboratory, but they are professionally independent. He further says, “I was present in this Court instructing the defense lawyer for cross-examination of Dr. Lalji Singh (P.W. 59). I am not a scientist attached to the University Diagnostics Laboratory, London.

The Supreme Court is of the view that these are good reasons for rejecting the testimony of defense witness.

⁷⁷ Supra note 268, (Para 63), P.226-227
⁷⁸ Id, (Para 65), P.227
The case was decided on the basis of eye witnesses and the expert testimony. Here the DNA technology plays an important role to link the criminal with that of crime in an accurate manner. The courts in India appreciated as well admitted the DNA report as reliable and accurate one.

4.2.2. **Santhosh Kumar Singh v. State through CBI.**

This case was famously known as Priyadarshini Matoo’s case. Priyadarshini was a 25-year old law student, who was found raped and murdered at her house by his senior Santhosh Kumar Singh. The case was handed over to Centre for Bureau of investigation. During investigation, the post-mortem was conducted and the samples were sent for DNA analysis. The post-mortem report ruled out rape. But, the DNA test confirms the rape on victim.

The trial court returned a finding that the evidence led by the Prosecution to substantiate the DNA tests as ‘inadmissible’ and was rejected. After taking into account all the circumstantial and documentary evidence produced by the Prosecution, the trial court on 3rd December 1999 acquitted the accused giving him the benefit of doubt stating that the CBI had failed to correctly produce the evidence and had acted in an unfair manner.

The rejection of DNA tests by the trial court was primarily based on:

(i) The chain of custody of material sent for DNA test shows that there is likelihood of tampering.

(ii) The procedure of the test is not fair and proper nor are the experts competent to carry out the tests.

The trial court also found that shortage of blood was found by the Centre for Cellular and Molecular Biology, Hyderabad and it was indicative of the fact that the vials had been tampered with. Dr. Lalji Singh clarified that the same could have evaporated. Dr. G.V.Rao, CW-1 had deposed that there was smearing of the blood on the material used for sealing, but since the seals were intact there could be no tampering. The court relied on post-mortem report and rejected the DNA report. On this basis, the court acquitted the accused from the charge of rape.

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279 (2010) 9 SCC 747
The CBI filed an appeal before the High Court. The High Court after analyzing all the circumstances held that the Prosecution proved the case beyond any reasonable doubt by unimpeachable evidence. It all led to the conclusion that the accused Santhosh Kumar Singh had committed rape upon the deceased and then murdered her. The circumstantial evidence in the case was absolutely inconsistent and incompatible with the innocence of the accused. Finally, the appeal of the State succeeded. The accused Santhosh Kumar Singh was convicted under Sections 302 and 376 of the Indian Penal Code and sentenced to death.

The High Court reconsidered the report of DNA expert which was rejected by the trial court. Dr. Lalji Singh deposed as a witness in this case. The deposition of Dr. Lalji Singh:

‘DNA test conducted in the present case was an exhaustive DNA fingerprinting test of the exhibits and sample blood of the accused and also that the test was carried out by him and his colleague Dr. G.V. Rao and they came to the conclusion that the semen was present on the underwear of the deceased and also in the vaginal swab and vaginal slide of the deceased and that the DNA profiles of the vaginal swabs/vaginal slides matched with the DNA of the blood of the accused Santhosh Kumar Singh and further that the results of the HLA DQ alpha typing and PCR analysis proved beyond any reasonable doubt that the accused Santhosh Kumar Singh is the source of the vaginal swab, vaginal smeared slides and the semen stain on the underwear of the deceased and, therefore, the rapist of the deceased.’

The Court analyzed the submission of learned counsel for the accused that there is no evidence of rape or sexual intercourse. There is apparent tampering with the exhibits and that proper test has not been conducted while performing the DNA tests and, therefore, the opinion of the experts regarding matching of samples of DNA is neither reliable nor trustworthy. There is no doubt that the post-mortem report had already ruled out rape. Dr. A.K. Sharma who conducted the post-mortem has further opined that the deceased had not been subjected to sexual intercourse.

DNA test was conducted on the vaginal swabs, vaginal slide, and underwear of the deceased, and compared with the blood sample of the accused. The experts came to the conclusion that there was sperm present in the vaginal swabs and the DNA of the sperm matched with the DNA of the accused obtained.

\(^{280}\) Borrowed from http://indiankanoon.org/doc/1290716/, (Para 44)
from his blood sample. Dealing with the question of tampering with the exhibits, it found that there was no possibility of tampering with the exhibits nor had any tampering being done. It was in evidence that the bundle of clothes of the deceased prepared by the doctors at the time of post-mortem examination, the vaginal swabs, and vaginal slide taken at the time of the post-mortem were sealed by the concerned doctor at the ‘Safdarjung Hospital’. The same sealed exhibits were taken to the CCMB, Hyderabad and they were duly sealed on receipt.

The blood sample of the accused was taken at ‘R.M.L. Hospital’ which was kept in ideal conditions, sealed and handed over to Sub Inspector R.S. Shekhawat, who then transported the same to CCMB, Hyderabad. The samples were received at CCMB with seals intact. There is no suggestion to any of the witnesses that the seals were not intact. The authenticity of the seals being intact has been deposed to by Dr. Lalji and Dr. G.V. Rao, the two scientists who conducted the DNA test at CCMB, Hyderabad. The trial court though has held that the possibility of tampering cannot be ruled out has not elaborated as to what is the nature of tampering and its effect. It is found that there is no evidence to show that there was any tampering with the exhibits forwarded neither to CCMB, Hyderabad nor any reason for tampering with the same. The High Court opined that based on all the incidents, the witnesses have neither animus nor will it have advanced the case of the Prosecution in any way by resorting to tampering.

The Court heard the defense counsel argument that the blood of the accused drawn from the hospital was removed during transit or elsewhere and then mingled with the exhibits obtained from the Safdarjung Hospital of the deceased, the vaginal swabs, slide and the underwear of the deceased to bring about a result that would show that the DNA on the exhibits of the deceased and that of the accused matched. The High Court opined that we could not appreciate this argument. It is quite evident that from the vaginal swabs/slide, what was segregated was the sperm which could never have been that of the deceased. It was the sperm that was broken down and DNA extracted from there. The DNA of the sperm matched with the DNA of the blood of the accused. Sprinkling of blood on the vaginal swabs would have no effect whatsoever, even if assuming that this has been done. Therefore, the contention of the learned defense counsel is best rejected. The High Court may also mention here that the counsel for the accused
at no stage of the trial and nor before us challenged that the blood drawn at ‘R.M.L. Hospital’ and conveyed to the CCMB, Hyderabad as not of the accused. This being an undisputed fact, the test conducted to ascertain the DNA of the blood as also the sperm in the vaginal swabs cannot be faulted with. The Court further noted that at no stage did the accused lead any evidence to the contrary nor sought to have an independent DNA test conducted to counter the report of Dr. Lalji and Dr. G.V. Rao.

The High Court clarified that:

‘We now come to circumstance Nos. 9281 which is the finding of the DNA (Deoxyribo Nucleic Acid) test to the effect that in the vaginal swabs and vaginal slides of the deceased and on the underwear which she was found to be wearing at the time of the incident semen of the accused was present. According to the prosecution the DNA test conclusively established the guilt of the accused by itself and the DNA report is sufficient to conclude that the respondent had not only committed rape upon the deceased but had also murdered her. Importance and utility of DNA test is now too well known in criminal as well as civil matters. This test is conducted during investigation of criminal cases mainly in cases of rape and murder like the present one. In rape cases this test is conducted for establishing the presence of semen of a suspect in the vagina of the victim and also on her undergarments etc. DNA test is also very useful for establishing the identity of a dead person whose body is recovered which is not in an identifiable condition because of decomposition etc. DNA test is also carried out to determine the paternity of a child whenever that dispute arises in criminal cases as also in matrimonial disputes.’282

‘Whether the DNA test conducted was proper. It was in evidence of Dr. Lalji that the method used and the test conducted in determining and arriving at the conclusion were done as per standard practise as also per scientific technology suitable for such tests. The trial court has elaborately introduced its learning based on literature which, to a large extent, was never even put to the expert witnesses and even otherwise there was no positive evidence on record to show that the test so conducted by the experts were bad and /or not in keeping with the standard scientific methodology.’283

‘Another interesting argument raised by learned counsel was that the DNA test is reliable to the extent of 99.3 percent which he supported from the evidence of the experts. In other words, he wanted to create a doubt that there is a possibility of the respondent being one amongst 0.7 percent of the persons whose DNA might match. The High Court has given its serious consideration to this aspect as well but found that the possibility is so remote that it need not detain us further. However, the High Court opines that we are not basing our judgment and conclusions merely and solely on the results of the DNA test but have taken other

281 Circumstance No.9-DNA Finger Printing Test conclusively established the guilt of the accused
282 Borrowed fromhttp://indiankanoon.org/doc/1290716, (Para 38), P. 34, at 10/09/2013, 01.40am
283 Id, (Para 48), P.37-38
highly incriminating circumstances into consideration as well. So, the circumstance Nos. 9\textsuperscript{284} is also held in favor of the appellant/Prosecution.\textsuperscript{285}

Aggrieved by the judgment of the High Court, the accused filed an appeal to Supreme Court. The Supreme Court before pronouncing its judgment it analyzed all the circumstances. On 6\textsuperscript{th} October 2010, the Supreme Court upheld the conviction of Santhosh Kumar Singh in Priyadarshini Matoo’s rape and murder case. It, however, reduced the punishment of death sentence to life imprisonment.

While discussing the DNA test, the Supreme Court explained that:

‘We now come to the circumstance with regard to the comparison of the semen stains with the blood taken from the appellant for DNA test. The trial court had found against the Prosecution in this aspect. In this connection, the Supreme Court may emphasize that the court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development.’\textsuperscript{286}

‘Dr. Lalji Singh in his examination-in-chief deposed that he had been involved with the DNA technology ever since the year 1974 and he had returned to India from the U.K. in 1987 and joined the CCMB, Hyderabad and had developed indigenous methods and techniques for DNA finger printing which were now being used in this country. The Supreme Court also sees that the expertise and experience of Dr. Lalji Singh in his field has been recognized by this Court in *Kamalananda and Others v. State of Tamil Nadu*. The Court further noticed that Court Witness - 1 (CW-1) Dr. G.V. Rao was a scientist of equal repute and he had in fact conducted the tests under the supervision of Dr. Lalji Singh. It was not even disputed before us during the course of arguments that these two scientists were persons of eminence and that the laboratory in question was also held in the highest esteem in India.’\textsuperscript{287}

‘The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal 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 been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents that the DNA of the semen stains on the swabs and slides and the underwear of

\textsuperscript{284} Circumstance No.9-DNA Finger Printing Test conclusively established the guilt of the accused
\textsuperscript{285} *Supra* note 282, (Para 49), P.38
\textsuperscript{286} *Supra* note 279, (Para 65), P.771
\textsuperscript{287} *Id*, (Para 66), P.771

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the deceased and the blood samples of the appellant was from a single source and that source was the appellant.288

‘It is significant that not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for the DNA profiling. The trial court has referred to a large number of text books and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court had not been put to the expert witnesses.’289

In arriving at its conclusions the trial court was also influenced by the fact 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, as already indicated above. The Supreme Court is of the opinion that the trial court was in error on this score. The Supreme Court accordingly endorses the conclusions of the High Court on circumstance No.9 (DNA Fingerprinting Test).

Here also, the DNA evidence plays a prominent role to convict the real culprit among other circumstantial evidences mentioned in this case. In a rape and murder case if rape has been proved through DNA technology, the prosecution can easily prove the murder charge against the accused beyond any reasonable doubt.

4.2.3. Sandeep v. State of Uttar Pradesh.290

This case relates to the murder of a girl. Based on the false promise of marriage, the accused had sexual intercourse with the deceased which resulted in her pregnancy. The accused called the deceased to particular place on the day of incidence. The accused extended his promise that he would marry the deceased. On that belief, the deceased went with in car with the accused and his friend. Then, the accused forced the deceased to abort the foetus. The deceased disagreed. They attacked the deceased with blend weapons and acids and planned to throw her in a remote place. The police who were in the patrolling duty noticed the vehicle in an untime and heard the screaming of girl. The police followed the vehicle. Both the accused tried to throw the deceased from the vehicle, and they

288 Id, (Para 67), P.771
289 Id, (Para 68), P.771
290 (2012) 6 SCC 107
were caught by the police. At the time, the deceased made an entire story and she was severely injured. The deceased was taken to hospital and later she died. There were no independent witnesses other than the police personnel. As per the post-mortem report, blunt weapons were used for committing murder. The foetus recovered from the deceased womb was sent for DNA analysis. The DNA analysis confirmed that the accused is the biological father that foetus.

The trial court found the accused persons guilty of offenses under Section 302 read with Section 34, Indian Penal Code and 316 read with Section 34, Indian Penal Code. Ultimately, the trial court convicted and sentenced both the accused persons to death.

Both the accused preferred an appeal before the Allahabad High Court. The High Court confirmed the death penalty given by the trial court for the accused Sandeep and commuted the death sentence of accused Shashi Bhushan into life imprisonment.

Aggrieved by the High Court order both the accused preferred an appeal before the Supreme Court. Based on the evidence on record, the Supreme Court did not find any scope to interfere with the sentence of life and other sentences imposed against the accused Shashi Bhushan. Further, the Supreme Court converted the death sentence into life imprisonment for the main accused Sandeep.

The Supreme Court clarified one of the submission made by the accused that there were serious infirmities in preserving and testing of the sample of the foetus.

The infirmity pointed out was that the sample of the foetus of the child was taken as early as on 17.11.2004 while it was sent for forensic lab only on 25.01.2005 and that since there was a long gap in between, the prosecution ought to have disclosed as to how the samples were properly preserved in order to ensure proper test to be conducted for ascertaining the correctness of its outcome. Though such submission was made with some emphasis, it was not pointed out as to what was the nature of procedure to be followed in regard to the preservation of the samples taken apart from what was followed in taking the samples by the prosecution. It is not in dispute that at the time of post-mortem, when the foetus
was discovered, the same was preserved by taking two samples one in the Formalin solution and the other one by ice preservation. It is borne out by record that there was an FSL report dated 5.1.2005 as per which the SSP of Muzaffarnagar was informed that the foetus which was preserved in Formalin solution was not accepted since laboratory had no standard protocol for extracting the amplifiable DNA of Formalin preserved tissues.

‘Therefore, in the evidence of PW-10 Junior Scientific Officer of Central Forensic Laboratory, Chandigarh, it was brought out that the blood samples of accused Sandeep and the foetus received by him on 25.01.2005 and that necessary test was conducted based on which a report on 13B/1, 13A/2 and 13C/3 were forwarded which confirmed that the accused Sandeep was the biological father of the foetus. He also confirmed in the cross examination that the earlier sample of 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 25.1.2005; the same was preserved in ice separately which they were able to test in their laboratory for finding out the result. It has also come in his evidence that the collection of samples, preservation of samples and transportation of samples if not carefully done, it may affect the result, but in the case on hand the result reported by him was not based on wrong facts.’

‘In the light of the said expert evidence of the Junior Scientific Officer it is too late in the day for the appellant-Sandeep to contend that improper preservation of the foetus would have resulted in a wrong report to the effect that the accused Sandeep was found to be the biological father of the foetus received from the deceased Jyoti. As the said submission is 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, we do not find any substance in the said submission. The circumstance, namely, the report of the DNA in having concluded that accused Sandeep was the biological father of the recovered foetus of Jyoti was one other relevant circumstance to prove the guilt of the said accused.’

Here the DNA evidence plays an important role along with other evidences. Especially, it has been used to prove the motive for making such crime.

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291 Supra note 290, (Para 66), P.133
292 Id, (Para 67), P.133
4.2.4. *State through reference v. Ramsingh and Ors.*

This case relates to rape of young girl in a running bus in 2012 by 6 persons in Delhi. It shocked the whole nation and famously known as Nirbhaya rape case. The victim and her friend went to movie. On their way back to home, they travelled in a bus. The bus was driven by the accused and 5 accomplices. When the bus moved, all the accused raped the victim and severely attacked both the victim and her friend. After the incident, they tried to throw the victim and her friend from the moving bus and tried to kill them. They escaped from the wheels of the vehicle. Both the victim her friend was taken to hospital by the police who were in the patrolling duty on that day. Her friend filed a complaint against all the accused. Later, the victim died. All the accused were arrested. Charge sheet was filed for the offense of rape, murder, unnatural offense and destruction of evidence. The case was committed to Court of Sessions. The prosecution produced 82 witnesses including Medical report and DNA report. One of the accused died during the time of trial. Another one accused was a minor. So, he was tried in Juvenile Court.

The Sessions Court convicted all the four accused to death sentence based on the eye witness and other circumstantial evidences on record.

All the accused preferred an appeal before the Delhi High Court. The Sessions Court also preferred an appeal before the High Court for confirmation of death sentence of all the four accused. The High Court after considering all the evidences found that all the four accused were guilty of rape, murder, unnatural offense, and destruction of evidence. The High Court confirmed the death sentence of all the four accused on 13.03.2014.

On 15.03.2014, the Supreme Court of India stayed the execution of two of the four convicts Mukesh Singh and Gupta to allow them to make their appeal against their conviction on 31.03.2014. This was further extended by the court to the 2nd week of July 2014. On 02.06.2014, the two other convicts, Sharma and Thakur also asked the Supreme Court to stay their execution to allow them to make an appeal of their convictions. On 14-06-2014, the Supreme Court stayed the execution of two accused Sharma and Takur.

In this case, DNA evidence played an important role to reveal the identity of the accused in the rape and the subsequent murder of an innocent girl.

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293 Borrowed from http://en.wikipedia.org/wiki/2012_Delhi_gang_rape at 20/06/2014, 12.30pm
4.2.5.  Rajkumar v. State of Madhya Pradesh.\textsuperscript{294}

This case relates to the rape and murder of young girl by her neighbor. A poor agriculturist couple lived with their four children, the eldest was a 14-year-old girl. Their neighbor, 32-year-old Rajkumar, was addressed as 'Mama' by the children. On 26\textsuperscript{th} December 2012, the couple needed to irrigate their agriculture fields in the night and Rajkumar volunteered to guard the house and children. Around midnight, he raped the eldest girl and strangled her to death. The crime was witnessed by the younger brother. The accused was arrested. The charge sheet was filed and the accused was put to trial. The prosecution produced 7 witnesses. As per the post-mortem report, rape had been committed upon the deceased. The DNA report also confirmed the same. The accused did not produce any evidence instead completely denied his accusation.

The trial court convicted the accused and sentenced him to death under Section 302 and life imprisonment under Section 376 of the Indian Penal Code based on the eye witness and the circumstantial evidences on record.

After pronouncing judgment, the trial court made a reference to the High Court for affirming the death sentence. The appellant, being aggrieved, also preferred an appeal against his conviction and sentence before the High Court. The appeal and the reference were heard together. The High Court affirmed the death sentence and the appeal were dismissed.

Aggrieved by the High Court judgment, the accused preferred an appeal before the Supreme Court. The Supreme Court set aside the death sentence and award life imprisonment for a period of 35 years without any remission.

The Supreme Court before pronouncing its judgment accepted DNA report and stated as follows:

‘We have been taken through the impugned judgments rendered by the High Court as well as the trial court and the evidence on record. In view of the concurrent 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 vagina swab of the prosecutrix and that she died of asphyxia caused by strangulation, we affirm the findings of fact recorded by the courts below.’\textsuperscript{295}

\textsuperscript{294} 2014 5 SCC 353
\textsuperscript{295} \textit{Id}, (Para 16), P.359
Besides the eyewitness of small child, the DNA report played an important role to reveal the identity of the accused involving in the rape of a minor girl. Here, the court appreciated the role of investigation for the completion of case up to Supreme Court within 8 months. The role of Scientific DNA evidence and its helpfulness for an effective investigation and for the speedier justice in rape cases had been clearly established in this case.

4.3. MURDER CASES

DNA technology is very useful in murder cases when all other investigative techniques have failed like interrogation, eyewitnesses, confession, and approvers of the case may sometimes turn hostile. But, the advancement of DNA technology improves an effective investigation. Even the sample collected from the crime scene will help to solve in critical situation if the suspect really commits the crime. The samples which are collected from the crime scene like any blood sample, semen sample, hair roots, or bodily samples compared with the sample of the suspects. The sample will be matched if the suspect has really involved in the commission of such crime. The sample does not match when the person has not involved in the commission of crime. Once the sample is matched we can assure the presence of the accused in the crime scene. In murder cases, the prosecution needs to prove the case beyond reasonable doubt. In that situation, the new scientific DNA technology helps as well as it reduces the burden of prosecution and put the burden on the accused who involves in the commission of crime. Now the advancement of DNA technology proves the criminal cases without any doubt. Nevertheless, it reduces the wrongful arrests. The researcher has analyzed some of the decided murder cases with the help of DNA technology, they are:

(1) Sushil Sharma v. State of N.C.T. of Delhi;
(2) Swamy Saradananda v. State of Karnataka;
(3) Patangi Balrama Venkata Ganesh v. State of Andhra Pradesh;
(4) Inspector of Police Tamil Nadu v. John David;
(5) Munna Kumar Upadhyay Alias Munna Uppdhyay v. State of Andhra Pradesh;
(6) Mohammed Ajmal Mohammed Amir Kasab Alias Abu Majahid v. State of Maharashtra;
(7) Sahib Hussain Alias Sahib Jan v. State of Rajasthan;
(8) Dharam Deo Yadav v. State of Uttar Pradesh;

This was the first criminal case decided with the help of forensic science. This is famously known as Naina Sahni murder case. In this case Shusil Sharma murdered his wife at home by firing bullets. He killed his wife believing that she had her love affair with her classmate and fellow congress worker Matloob Karim. After murdering his wife Sharma took her body in his car to the Bagiya restaurant, where he and his worker Keshav Kumar attempted to burn her in a tandoor. Police arrested Keshav Kumar, Sushil Sharma and three other persons. While arresting Sushil Sharma, Police recovered Sharma’s revolver and blood-stained clothes and sent them to forensic laboratory. They also took blood sample of Sahni’s parents, Harbhajan Singh and Jaswant Kaur. The samples were sent to DNA laboratory. The DNA report confirmed that the charred body is that of Naina Sahni who is the biological offspring of Mr. Harbhajan Singh and Jaswant Kaur.

The learned Additional Sessions Judge after considering the evidence of the witnesses examined during the trial and making a thorough analysis of the same found the accused Sushil Sharma guilty under Sections 302 and 201 Indian Penal code. Accused Keshav Kumar was convicted only for the offense under Section 201 Indian Penal Code for burning the dead body of deceased Naina Sahni. Other three accused persons were acquitted. The learned Additional Sessions Judge awarded death sentence to the accused Sushil Sharma for the offense of murder. Accused Keshav Kumar was awarded sentence of seven years rigorous imprisonment.

The appeal was preferred against the order of trial court. The Sessions Court also preferred a reference for the conformation of death sentence of accused Sushil Sharma before the Delhi High Court. The Court took these two issues jointly.

The High Court has found that the prosecution has established beyond any shadow of doubt and to be sufficient enough to uphold the conviction of the appellant Sushil Sharma. The High Court, therefore, while dismissing the appeal of the convict Sushil Sharma upholds the death penalty awarded to him by the learned trial Court for the offense of murder.

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296 (2014) 4 SCC 317
An appeal was filed by the appellant Sushil Sharma against the order of Delhi High Court in confirming the death sentence awarded to him by the sessions judge. The Supreme Court opines that there is no doubt in the chain of the above circumstances and it is complete and unerringly points to the guilt of the appellant. The established circumstances are capable of giving rise to inference which is inconsistent with any other hypothesis except the guilt of the appellant. The prosecution has, therefore, proved that the appellant alone has committed the murder of the deceased. The Court confirmed the conviction of the accused and commuted the death sentence into life imprisonment for the whole remaining life subject to the remission by the appropriate Government.

This case is based on circumstantial evidence alone. Here, the DNA evidence plays an important role in identifying the charred body of the deceased Naina Sahni. The court considers the DNA evidence as one of the circumstances to prove the guilt of the accused.

4.3.2. Swamy Saradananda Alias Murali v. State of Karnataka.297

In this case, the deceased Shakereh, after getting divorce married the present appellant Saraddananda. She executed a general power of attorney and a will in favor of the accused. After her execution of the will, she was murdered by the appellant Saraddananda in 1991. Later, he buried the deceased in his house. Almost a year after the murder, Shakereh's daughter Sabah Khaleeli, from the first marriage, lodged a complaint with the Bangalore police alleging that her mother was missing since 19 April 1991. No serious effort was made to find out the whereabouts of the deceased. Sabah Khaleeli approached the higher authorities resulting in the investigation of the matter being entrusted to the Central Crime Branch. Apprehending arrest, the appellant Saraddananda obtained anticipatory bail. During the investigation, the appellant confessed that he murdered his wife. The post-mortem was conducted on the dead body. The body parts of the deceased as well as the blood samples of the parents were sent for DNA analysis. DNA

297 (2007) 12 SCC 288
report also confirmed that the dead body was none other than the deceased. Appellant was, thereafter, charged for the commission of murder of his wife.

Before the learned trial Judge, 39 prosecution witnesses were examined. There was no eyewitness to the incidence. The prosecution relied on circumstantial evidence. The learned trial Judge found that the appellant was guilty of commission of offense under Sections 302 and 201 of the Indian Penal Code and sentenced him to death.

The accused preferred an appeal before the High Court. A reference was also made by the learned Judge for the confirmation of death sentence. The High Court affirmed the trial court judgment of conviction and sentence.

The Special Leave Petition was filed before the Supreme Court against the order of High Court. The Supreme Court based on the facts and circumstances commuted the death sentence into life imprisonment.

Here, the identity of dead body was revealed through DNA technology and was played an important role to prove the offense of murder of his wife by the accused husband.

4.3.3. Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh.298

The case was about the murder of Magunta Subbarama Reddy who was a Member of Parliament from Ongole Constituency in the State of Andhra Pradesh. The accused who is a member of Peoples War Group went to the place of deceased with a gun and killed him. The accused also sustained injuries by the deceased gunman. The accused was identified as a person wearing pink shirt. The accused along with the other accused escaped in a white ambassador car and left the pink shirt in that car. On the same day, the Police arrested the accused and recovered gun from him. Police seized the blood stained pink shirt from the abandoned car. This was sent for DNA analysis. Indisputably blood stains on the pink shirt tallied with that of the accused blood sample. The other accused was also arrested.

In the trial court 58 prosecution witnesses were examined, 117 documents were exhibited and 167 material objects were produced. Some documents were

298 (2009) 14 SCC 607
also brought on record on behalf of the defense. Both the accused were found to be guilty by the trial judge and sentenced them to life imprisonment.

Aggrieved by and dissatisfied with the said judgment of conviction and sentence, an appeal was preferred by both the accused before the High Court of Andhra Pradesh. The appeal of main accused, Pantangi Balarama Venkata Ganesh was dismissed. An appeal of other accused was allowed and acquitted him from all the charges.

The accused, Pantangi Balarama Venkata Ganesh preferred an appeal before the Supreme Court against the order of High Court. The State through Central Bureau of Investigation has preferred Criminal Appeal against the judgment of acquittal passed in favor of the other accused Vistaria Prakash. The Supreme Court affirmed the conviction given by the High Court and dismissed both the appeals.

The Supreme Court before pronouncing its judgment discussed the correctness of DNA report that whether the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:- (Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the color of the skin, type of hair, nails and so on. Using this genetic fingerprinting identification of an individual it is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred percent precise, experts’ opinion. There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high-molecular-weight DNA complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. (See Article of Lalji Singh, Centre for Cellular and Molecular Biology, Hyderabad in DNA Profiling and its applications)

But in this case there is nothing to show that such precautions were not taken. Indisputably the evidence of the experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. In cross-examination Dr. G. V. Rao stated as under:-
If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.

‘We are not oblivious of the fact that the experts used the term ‘similar’ and not ‘identical’. For the purpose of this case it may not be of much consequence as this court has not taken into consideration the evidence of DNA Experts alone for the purpose of recording a judgment of conviction. It has been considered along with the other evidence. The prosecution case has been considered as a whole. Cumulative effect of the evidences adduced before the learned trial judge have been taken into consideration for the purpose of arriving at a finding of guilt against the appellant.299

In this case, the presence of the accused in the commission of offense had been revealed through the blood stained shirt left by the accused in the vehicle where they used for commission of murder of Minister of Parliament Subbarama Reddy, Andhra Pradesh. The blood stained shirt was analyzed through DNA technology and this DNA evidence played as one of the evidences for the commission of murder in this present case.

4.3.4. Inspector of Police, Tamil Nadu v. John David.300

This case relates to the murder of Navarasu, a student of Rajah Muthiah Medical College in Annamalai University. The victim Navarasu, was a first-year student of the Rajah Muthiah Medical College in Annamalai University, was murdered on November 6, 1996. His body was dismembered and the body parts were scattered in different parts of Tamil Nadu. They were recovered over the next few days. The deceased father filed a police complaint on November 10, 1996. The next day John David, a senior student at the same college surrendered before the Judicial Magistrate and was taken to judicial custody. He confessed to the murder of Navarasu after a week-long interrogation. According to his confession, the murder took place when he was ragging Navarasu. The doctor who conducted the post-mortem opined that a sharp cutting weapon would have been used for causing injuries and further opined that the recovered body parts are one and same person. The DNA report also confirmed that the blood samples taken from the deceased Navarasu’s father and his wife (mother of Navarasu) compared with that of severed head, torso and limbs and on scientific analysis the DNA

299 Supra note 298, (Para 44), P.618
300 (2011) 5 SCC 509
expert G.V. Rao found that the same gene found in the blood of Ponnusamy (father of Navarasu) and his wife were found in the recovered parts of the body. Therefore, the recovered body parts should belong to the only missing son of Dr. P. K Ponnusamy.

On completion of investigation, the police submitted a charge sheet against the accused for the offenses under Sections 302, 201, 364 and 342 of Indian Penal code. On the basis of charge sheet, charges were framed against the accused. The prosecution in order to establish the guilt of the accused examined several witnesses and exhibited a number of documents including scientific reports.

After hearing arguments advanced by the parties, the Principle Sessions Judge, Cuddalore convicted the accused and sentenced him to undergo imprisonment for life.

The appeal was preferred against the order of Sessions Court, Cudalore before the High Court. The High Court held that the prosecution has failed to prove the guilt of the accused and accordingly the High Court acquitted the accused of all the charges and setting aside the order of conviction passed against the accused.

The Special Leave Petition by the State was directed against the High Court judgment. The Supreme Court held that, in our considered opinion, prosecution has established its case on the basis of strong and cogent circumstantial evidence and that on the basis of the circumstances proved, there cannot be any other possible or plausible view favoring the accused. Accordingly, we set aside the judgment and the order of the High Court and restore the judgment and decision of the trial court.

This case was solely based on circumstantial evidence. The accused decapitated the deceased body parts and put the parts in various places in order to hide the crime committed by him. The identity of recovered parts were compared with the deceased father and mother with the help of DNA technology in order to confirm that whether the person died was his son or not. The DNA evidence was very helpful to identify the deceased as well as it played as one of the evidence to convict the accused.

This case relates to the murder of one whole family. The accused, Chandra Bhusam Upadhyay was working as office peon in Central Railways. The accused was also doing domestic duties for his higher officer Baldevraj Seth’s family. The accused was arrogant by nature and developed an enmity with Smt. Prabha Seth, wife of Baldevraj Seth who was a strict person and demanded better performance of duties by accused. Nearly a week before the occurrence, Smt. Prabha Seth had scolded accused. So, the accused along with 4 accomplices killed the entire family except the elder daughter and burnt them.

The accused was arrested. He also admitted that the offense was committed with the assistance of 4 accomplices. The incriminating articles and other collected materials were also sent for DNA analysis to the laboratory. The identities of the deceased persons were confirmed by DNA test. The investigating officer recorded the statements of number of a witness and obtained the report from the laboratory. Finally, the investigating officer filed the charge sheet before the court of competent jurisdiction. All the accused were committed to the Court of Sessions.

The Sessions Court found all the accused guilty of different offenses and convicted all the five accused. The main accused was sentenced to death, three accused were sentenced to life imprisonment and one accused was sentenced to 3 years imprisonment.

Being aggrieved from the judgment of Sessions Court, all the accused preferred an appeal before the High Court. The High Court acquitted two accused from all charges. However, the High Court affirmed the conviction of the main accused and two other accused. While dealing with the order of sentence, the High Court commuted the death sentence of the main accused into life imprisonment.

Two accused preferred an appeal before the Supreme Court. The Supreme Court dismissed the two appeals.

In this case, the body parts and blood samples collected from the crime scene and the house of the deceased was compared through DNA technology. The

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301 (2012) 6 SCC 174
DNA evidence revealed the identity of the deceased and the blood samples collected from the house was confirmed the presence of accused and his involvement in the murder of whole family.

4.3.6.  **Mohammed Ajmal Mohammed Amir Kasab Alias Abu Mujahid v. State of Maharashtra.**[^1]

Ten terrorists attacked Mumbai on 29.11.2008 and killed one hundred and sixty–six people and injured grievously two hundred and thirty-eight (238) people. The loss of the property resulting from the terrorist attack was assessed at over rupees one hundred and fifty crores (150 crores). Out of ten terrorists, 9 of them died during the police attack. The survived terrorist Mohammed Ajmal Mohammed Amir Kasab was arrested. The accused confessed before the Additional Chief Metropolitan Magistrate.

The charge sheet was filed under Sections 121, 121-A, 122, 120-B read with 302, 302, 302 read with 34 and 302 read with 109 and 120-B of Indian Penal Code, and Section 16 of the Unlawful Activities (Prevention) Act, 1967 against the accused. Then the case was committed to the Court of Sessions. The articles seized from the boat which they used to land to Mumbai linked the accused and his 5 accomplices through DNA Profiling.

The Sessions Court convicted the accused under Sections 121, 121-A, 122 of the Indian Penal Code. The trial court awarded five death sentences to the accused.

The High Court based on the eye witnesses and circumstantial evidences confirmed the death sentences given to the accused by the trial court.

The accused preferred an appeal before the Supreme Court against the order of High Court. The Supreme Court finally held that we are of no option to hold that in the fact of the case the death penalty is the only sentence that can be given to the appellant. We hold accordingly and affirm the convictions and sentences of the appellant passed by the Sessions Court and affirmed by the High Court.

[^1]: 2012 9 SCC 1
In this case also, the DNA evidence played an important role for the identification and for the involvement of the accused in the incidence of waging war against the government of India. The DNA evidence played as one of the circumstantial evidences to prove the case.

4.3.7. Sahib Hussain Alias Sahib Jan v. State of Rajasthan.\textsuperscript{303}

The accused murdered five persons on 27.10.2006. Soon after the incident the accused told one Sathish that he had finished Seema Bhabhi (sister-in-law) and also killed her three children and Munna Mawali. Their talking was overheard by one Zafar at 10.30 p.m. On hearing this, Zafar went towards their house and found all the persons in the family were killed. After seeing this, he ran towards Satish and asked him about the accused. Sathish informed him that he ran towards the Highway after changing the clothes. Thereafter, Zafer filed a written complaint. On the basis of the said information, a case under Section 302 of the Indian Penal Code, 1860 was registered against Sahib Hussain. Post mortem on the dead bodies were also performed. The accused was arrested. On the basis of the information given by the accused, articles were sized from his home. The blood stained articles and the blood stained clothes and chapels were sent for DNA analysis. The report confirmed the prosecution case.

Taking note of circumstantial evidence, the Additional Sessions Judge, convicted the accused for the offense punishable under Section 302 of Indian Penal Code and sentenced him to death.

Aggrieved by the said order, the accused preferred an appeal before the High Court. Death Reference under Section 366 of the Code of Criminal Procedure, 1973 was also preferred by the trial court for confirmation of the death sentence. The High Court disposed of the appeals filed by the appellant-accused by commuting the sentence of death to the imprisonment for life and also made a direction that he shall not be released from the prison unless he serve out at least 20 years of imprisonment including the period already undergone and also he shall not get the benefit of any remission either by the State or by the Government of India on any auspicious occasion.

Aggrieved by the said order, the appellant preferred these appeals from jail by way of special leave petition before the Supreme Court. The Supreme Court

\textsuperscript{303} (2013) 9 SCC 778
agree to the conclusion arrived at by the High Court including the reasons stated therein. The court dismissed both the appeals.

In this case, the blood stained articles collected from the accused were compared with the help of DNA technology. The DNA evidence revealed that the presence of the accused in the commission of murder as well as the blood samples which matched with that of the deceased.

4.3.8. Dharam Deo Yadav v. State of Uttar Pradesh.304

The accused Dharam Deo Yadav was a tourist guide in Varanasi. The deceased Diana came to India in the year 1997. She stayed in Old Vishnu Guest House, Varanasi. She left the guest house on 10.08.1997 and thereafter she was found missing. Her father Allan Jack Routley informed the authorities about the missing of her daughter Diana. The team of police officers was directed to inquire about Diana, but she could not be traced. Finally, the police officers came to know that one Dharam Deo Yadav, a tourist guide had some contacts with Diana. The police team then submitted its report to the Superintendent of Police in Varanasi on 29.04.1998. Allan Jack Routley came to India and filed a written complaint against the Dharam Deo Yadav under Section 366 of Indian Penal Code. The accused was arrested. The accused confessed that he had committed the murder of Diana along with his 3 co-associates. The post-mortem examination was conducted. Later, the skeleton was also identified as that of Diana following DNA test by Dr. G. V. Rao, CDFD, Hyderabad.

The case was committed to Court of Sessions. Charges under Sections 302 read with 34 of IPC, 201 and 394 of IPC were framed against the accused and three others. The accused was further charged under Section 364 IPC.

The trial court acquitted three other accused, but the accused, Dharam Deo Yadav was convicted under Section 302 read with Section 34 of Indian Penal Code and Section 201 of Indian Penal Code. The trial court awarded him death sentence.

The accused filed an appeal before the High Court against the order of trial court. The state also filed an appeal against the order of acquittal passed against

304 (2014) 5 SCC 509
rest of the three accused. The High Court dismissed both the appeals and confirmed the death sentence awarded by the trial court.

The accused preferred an appeal before the Supreme Court of India against the order of High Court. The Supreme Court considered view that both the trial court as well as the High Court have correctly appreciated the oral and documentary evidence in this case and correctly recorded the conviction. The Supreme Court has held that taking into consideration all aspects of this matter, commute the death sentence to life and award 20 years of rigorous imprisonment, over and above the period already undergone by the accused, without any remission.

The Supreme Court before pronouncing judgment has clearly explained the crime scene management and the importance of forensic science that,

‘Crime scene has to be scientifically dealt with without any error. In criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the Investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime. Investigating Officer may be guarded against potential contamination of physical evidence which can grow at the crime scene during collection, packing and forwarding. Proper precaution has to be taken to preserve evidence and also against any attempt to tamper with the material or causing any contamination or damage.’

‘Criminal Judicial System in this country is at cross-roads, many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. Investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practises and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc., whereas forensic evidence is free from those infirmities. Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen

305 Supra note 304, (Para 27), P.526
their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence. We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasizing the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.  

Then, the Supreme Court accepted the validity of expert opinions—postmortem report and the examination of body remains, and the DNA report and held that,

“We have already referred to the evidence of Dr. C.B. Tripathi (PW20), who conducted the post-mortem examination. PW 21, 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 and femur and humerus bones of skeleton. PW21 deposed that he was satisfied regarding authenticity of the seal and its intactness. PW21, Dr. G.V. Rao adopted the test known as Short Tandem Space Repeats (S.T.R.) analysis, which is stated to be a conclusive test, produces results even on degraded biological samples. Fingerprinting analysis was carried out by STR analysis and on perusal of STR profile of the source (Allan Jack Routley) with the sources of femur and humerus bones of Diana, it was concluded that the source of Allan Jack Routely is biologically related to the sources of femur and humerus bones.”

“We are in this case concerned with the acceptability of the DNA report, the author of which Dr. G.V. Rao (PW21) was the Chief of DNA Printing Lab, Centre for D.N.A. Fingerprinting and Diagnostics (CDFD), Hyderabad. The qualifications or expertise of Dr. G.V. Rao (PW21) was never in doubt. The method he adopted for DNA testing was STR analysis. Post-mortem examination of the body remains (skeleton) of Diana was conducted by Dr. C.B. Tripathi, Professor and Head of Department of Forensic Medical I.M.S., B.H.U., Varanasi. For DNA analysis, one femur and one humerus bones were preserved so as to compare with blood samples of Allen Jack Routley. In cases where skeleton is left, the bones and teeth make a very important source of DNA. Teeth, as often noticed is an excellent source of DNA, as it forms a natural barrier against exogenous DNA contamination and are resistant to environmental assaults. The blood sample of the father of Diana 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. Dr. G. V. Rao (PW21), as already indicated, conducted the DNA Isolation test on the basis of samples of blood of Routley and femur and humerus bones of skeleton and submitted his report dated 28.10.1998. DNA Fingerprinting analysis was carried out by STR analysis and on comparison of STR profile of Routley. When DNA profile of sample found at the scene of crime matches with DNA profile of the father, it can be concluded that both the samples are biologically the same.”

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306 Id., (Para 30), P.526-527
307 Id., (Para 33), P.527
308 Supra note 304, (Para 35), P.527
'The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. The most important role of DNA profile is in the identification, such as an individual and his blood relations such as mother, father, brother, and so on. Successful identification of skeleton remains can also be performed by DNA profiling. DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to 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. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory. Close relatives have more genes in common than individuals and various procedures have been proposed for dealing with a possibility that true source of forensic DNA is of close relative. So far as this case is concerned, the DNA sample got from the skeleton matched with the blood sample of the father of the deceased and all the sampling and testing have been done by experts whose scientific knowledge and experience have not been doubted in these proceedings. We have, therefore, no reason to discard the evidence of the post-mortem report (PW19), the examination of body remains by the superimposition test (PW20) and the DNA report (PW21). Prosecution has, therefore, succeeded in showing that the skeleton recovered from the house of the accused was that of Diana daughter of Allen Jack Routley and it was none other than the accused, who had strangulated Diana to death and buried the dead body in his house.'

The Supreme Court has appreciated the scientific evidence and has highlighted the importance of forensic scientific evidence. Even though the time lapsed, the DNA could not be changed. In this case, the forensic scientific evidence i.e the DNA test has played an important role to identify the deceased Diana in an accurate manner.

4.4. UNNATURAL OFFENSES AND MURDER CASE

Nowadays, unnatural offenses are committed against the children. The accused after committing such an unnatural offense killed the child to escape from the penal clutches of law. But, DNA technology reveals the real culprit who has

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309 Supra note 304, (Para 36), P.527
involved in such a heinous crime. The researcher has analyzed one such case law in this aspect.

4.4.1. **Anil Alias Anthony Arikswamy Joseph v. State of Maharashtra**.\(^{310}\)

The case is concerned with a gruesome murder of a minor boy aged 10 years after subjecting him to carnal intercourse and then strangulating him to death. The post-mortem report confirmed the offense. Immediately, the accused was arrested. The accused was sent for medical examination and the blood sample was taken. The blood sample of the accused, samples collected from the anal smear of the deceased during post-mortem and the half pant (Barmuda Pant) of the accused which contains semen stains were sent to Forensic Science Laboratory, Mumbai for DNA analysis. The DNA report matched. The DNA reports were submitted as Ext. 35 and Ext. 38.

After completing the investigation, the police filed charge sheet against the accused for offenses punishable under Sections 302, 377 and 201 IPC. On the side of the prosecution, fourteen witnesses were examined and the documentary evidences were brought on record and on the side of the defense, none was examined.

The Principal District and Sessions Judge, Nagpur convicted the accused for the offense punishable under Section 302 IPC and sentenced him to death and for the offense punishable under Section 377 IPC, he was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine. The accused was also convicted for the offense punishable under Section 201 IPC and was sentenced to suffer rigorous imprisonment for 3 years.

The Sessions Court filed a reference before the High Court for confirmation of death sentence. The accused also preferred an appeal before the High Court. The High Court heard both the Appeal and the confirmation of death sentence on 10.08.2011 and the Bench noticed that the DNA profile blood sample and semen sample were not brought before the trial court. Further, it was noticed that the Assistant Chemical Analyzer of Forensic Science Laboratory, Mumbai, had given detailed evidence in respect of the contents of Ext.35. She stated that

\(^{310}\) \((2014) 4 SCC 69\)
she had occasion to compare DNA of blood sample of the accused with Ext.1 (semen stains on half pant) and Ext.5 (anal smear of the deceased) and the DNA samples were matching. Assistant Chemical Analyzer of Forensic Science Laboratory, Mumbai, submitted Ext. 38 report. Ext. 38, it was noticed that any comparison was disclosed as stated by the Assistant Chemical Analyzer of Forensic Science Laboratory, Mumbai, which was done in FSL at Mumbai. Considering the serious nature of the offense and considering the fact that the whole case against the accused was based on circumstantial evidence, the Court felt that it would be necessary to recall the Assistant Chemical Analyzer of Forensic Science Laboratory, Mumbai and record her further examination-in-chief with reference to her report in respect of the DNA profile of the accused, that too with reference to her evidence of her examination-in-chief on 25.09.2009.

The Bench, therefore, remitted the case to the trial court for production of additional evidence. The learned Sessions Judge shall comply with this order within 30 days from the date of receipt of this order and shall certify the additional evidence to this Court immediately thereof. The Sessions Court, after recording the additional evidence, as ordered, forwarded the same to the High Court. The appeal was then heard by the High Court on 10.10.2011 along with the confirmation case and the additional evidence recorded. The High Court, after appreciating the oral and documentary evidence and arguments advanced by the counsel on either side, confirmed the death sentence noticing the brutal and grotesque manner in which the crime was committed. The High Court held that the young boy of tender age was subjected to unnatural sex for the satisfaction of the lust of the accused which, according to the High Court, falls under the category of rarest of the rare cases. The High Court, therefore, dismissed the appeal and confirmed the death sentence.

The accused filed an appeal before the Supreme Court against the judgment of High Court. The Supreme Court after examination of all the evidences on record sentenced him a further period of thirty years, without remission, in addition to the sentence already undergone, rather than death sentence.
The counsel appeared for the accused raised a doubt about DNA test. The Supreme Court before pronouncing its judgment analyzed the DNA report clearly as follows:

The Assistant Chemical Analyzer, Forensic Science Lab, Kalina, Mumbai stated that she had received the parcels from the Regional Forensic Science Laboratory, Nagpur on 24.1.2008 and she started the analysis on the same day. She stated that Exh.1 is a DNA profile of the accused and Exh.5 anal smear is of the deceased, which gave mixed profile. Further, it is stated that the profile obtained from Exh.1 semen stains matches with the profile obtained from Exh.5 anal smear and also Exh.4 blood stains gauze collected from the deceased. She stated that she conducted two tests, one nuclear Short Tandem Repeats (STR) and Y Short Tandem Repeats (YSTR). The Assistant Chemical Analyzer, Forensic Science Lab (PW5), in her report, stated that she obtained blood samples of the accused and matched the profile obtained from that blood with the profile of Exhs.1 and 5 and that the profiles were matching. The Assistant Chemical Analyzer, Forensic Science Lab, as already indicated, was recalled after the matter was remitted to the trial Court for getting further evidence and she repeated that she had analyzed the blood sample of the accused for DNA profiling and it matched with the sample, which was sent as Exh.1 i.e. semen stain cutting from the half pant. She accordingly issued a report as Exh.38.

The Medical Officer attached to Mayo Hospital, Nagpur was examined to prove that he had received the requisition from the police for taking blood samples, pubic hair, nails and semen of the accused which was handed over to the police. Two police officers who transported the samples 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. Ongoing through the evidence of the doctor who conducted post-mortem and the assistant chemical analyzer read with evidence of the Medical Officer attached to Mayo Hospital, Nagpur and the police officers who transported and submitted the sample, we are of the view 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.
In this case, the unnatural offense which was committed by the accused against the child had clearly been established by DNA evidence and Medical evidence.

4.5. ASSASSINATION CASE

In assassination cases, the identity of the accused as well as victim can be identified through the use of DNA technology.


This is famously known as Rajiv Gandhi Assassination case. Rajiv Gandhi, who was a former Prime Minister of India, was killed by a suicide bomber. The prime culprit was killed herself and consequently, most material evidences were destroyed in the massive explosion. Moreover, dead bodies of the victim as well as of the assassin were dismembered beyond recognition. DNA tests helped in matching dismembered parts of the bodies of the victim and assassin.

A charge of conspiracy for offenses under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act, 1946, and the Indian Wireless Telegraphy Act, 1933 was laid against 41 persons, 12 of whom were already dead having committed suicide and three absconded. Prosecution examined 288 witnesses and produced numerous documents and material objects. Statements of all the accused were recorded under Section 313 of the Code of Criminal Procedure (Code). They denied their involvement. The trial court found them guilty of the offenses charged against them. The trial court convicted twenty-six accused persons and convicted them to death penalty.

Aggrieved by the said judgment, all the accused persons preferred an appeal before the Supreme Court. Supreme Court upheld conviction of all and confirmed capital sentence for four of the accused, modifying the punishment to imprisonment for life and other terms for the rest.

On 18th February, 2014, Supreme Court commuted the death sentence of three of the accused. The very next day of the Supreme Court judgment, Tamil

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311 1991 SCC (3) 87
Nadu government ordered to release them. The central government opposed and went for Supreme Court. The Supreme Court restrained the release of three accused by the state government of Tamil Nadu.

In this case DNA evidence was used as one of the circumstantial evidence to link the criminal with a crime as well as to identify the victim and accused.

DNA technology in United Kingdom and United States of America is discussed in the next chapter.