

GAHC010090912022



2026:GAU-AS:14164-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./86/2022

FORIZUL RAHMAN AND 2 ORS.
S/O AMINUL SK
RESIDENT OF SALBARI
PS AND DIST KOKRAJHAR, BTAD, ASSAM, 783350

2: NASIBUL ALI SK
S/O HAMIDUR SHEIKH
RESIDENT OF SALBARI
PS AND DIST KOKRAJHAR
BTAD
ASSAM
783350

3: MUZAMMEL SK.
S/O LATE TOHIRUDDIN SK.
RESIDENT OF SALBARI
PS AND DIST KOKRAJHAR
BTAD
ASSAM
78335

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SRI BIBHISON RABHA
S/O GHORA RABHA
RESIDENT OF ABHAYAKUTI
PS AND DIST KOKRAJHAR
BTAD
ASSAM 78334

Advocate for the Petitioner : MR. N J DUTTA, MR. I U CHOWDHURY, MR. A AHMED, MR. A

M AHMED,MR H R A CHOUDHURY,MR A ISLAM,MR F HAQUE,MR. S K M ALOMGIR,MR. N AHMED

Advocate for the Respondent : PP, ASSAM, MR A W AMAN (r-2),MR. J ABBAS (r-2),MR. SURAJIT DAS (r-2),MR S A BARBHUYAN (r-2),MR SARFRAZ NAWAZ (r-2)

Linked Case : Death Sentence Ref./1/2022

THE STATE OF ASSAM
XXX

VERSUS

FORIZUL RAHMAN AND 2 ORS.
S/O AMINUL SK.
VILL-SALBARI
P.S. AND DIST-KOKRAJHAR

2:NASIBUL ALI SK
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S/O LT TOHIRUDDIN SK
VILL-SALBARI
P.S. AND DIST-KOKRAJHAR

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant(s)/Petitioner(s): Mr. Azad Ahmed, Mr. A.M.

Ahmed, and Mr. Arif Ahmed,
Advocates, in Crl.A. No.
86/2022.

:Ms. B. Bhuyan, Senior
Advocate/Additional Public

Prosecutor, Assam, assisted by
Ms. R. Saloi, Advocate, in
Death Sentence Ref.
No.1/2022.

For the Respondent(s)

: Ms. B. Bhuyan, Senior
Advocate/Additional Public
Prosecutor, Assam, assisted by
Ms. R. Saloi, Advocate for
Respondent No. 1 in
Crl.A.No.86/2022.

Mr. Sarfraz Nawaz, Advocate
for respondent No. 2 in Crl.A.
No. 86/2022.

Mr. Azad Ahmed, Mr. A.M.
Ahmed, and Mr. Arif Ahmed,
Advocates for the
respondents in Death
Sentence Ref. No.1/2022.

Date on which judgment is reserved: **10.09.2026**

Date of pronouncement of judgment:

Whether the pronouncement is of the
operative part of the judgment : NA

Whether the full judgment has been

Pronounced

: Yes

JUDGMENT & ORDER (CAV)

(A.D.Choudhury, J)

1. The Criminal Appeal No. 86/2022 and Death Sentence Reference No. 01/2022 arise out of Judgment and Sentence dated 08.04.2022, passed by the learned Special Judge (POCSO), Kokrajhar in connection with Special Case No.32/2021, convicting the appellants under sections 376D/376DA/376A/120B/302 IPC read with Section 6 of the POCSO Act read with Section 3(1)(w)(i) & 3(2)(v) of the SC-ST Prevention of Atrocities Act, 1989 inter alia awarding death sentence to the accused persons.

2. Since both the Reference and Appeal arise from the same judgment, they are taken up together for disposal by this common judgment and order.

3. The genesis of the prosecution case is that on 11.06.2021, two minor girls (hereinafter referred to as V-1 & V-2), aged about 14 & 16 years respectively, both from the same family, were found hanging from a

tree inside the Singimari jungle

4. Receiving such information from PW-27, Nazir Ali, the Village headman of Salbari village, the police swung into action; first, registered Kokrajhar PS GD No.376 dated 11.06.2021, and then rushed to the place of occurrence; examined the people present there and in presence of the witnesses (local people), the dead bodies were brought down from the tree, taken to Kokrajhar police station for further formalities; an unnatural death case being Kokrajhar PS UD Case No.22/2021 dated 11.06.2021 was registered.

5. The inquest of the dead bodies was conducted by the Executive Magistrate, Kokrajhar, on 12.06.2021 at the Kokrajhar PS campus. The dead bodies were sent for a post-mortem to RNB Civil Hospital, Kokrajhar. However, the doctors at the said hospital referred the dead bodies to Fakhruddin Ali Ahmed Medical College and Hospital, Kokrajhar (Barpeta) for post-mortem, as the said hospital did not have the requisite technical facilities to examine all the points requested by the investigating authorities.

Thereafter, a post-mortem was performed at FAAMCH, Barpeta, by a team of doctors under videography on 12.06.2021.

6. In the meantime, PW-1 lodged a formal ejahar at the Kokrajhar PS on 12.06.2021, inter alia alleging that when the family members returned from their paddy fields, the two victims, who were alone at home, were missing and therefore they immediately searched for the girls in the neighboring village. Then somebody informed them that bodies were found in the tree.

Accordingly, Kokrajhar PS Case No. 440/2021 under sections 120B/302 IPC was registered, and an investigation was carried out.

During the course of the investigation, the I/O visited the place of occurrence; tower dumps from the mobile towers in the locality were requested, and suspected phone numbers were collected. It was also learned during the investigation that one Hanif Sheikh was residing in a cowshed near the residence of the victim

and on suspicion, Hanif Sheikh was picked up. Upon analysis of the tower dump of the suspected mobiles, it was revealed that the informant's phone had incoming and outgoing messages on the day of the incident; however, those messages had been deleted.

The corresponding number from which the messages were received was associated with A3. Based on such information, A3 was picked up, and during interrogation, he allegedly revealed the whole scene of the crime and narrated how he, along with A1 and A2, raped the two victims; strangled both and hanged them from a tree to present it as a case of suicide.

Based on this information, both A1 and A2 were picked up and allegedly confessed to the crime.

7. Taking note of the gravity of the offense, a Special Investigating Team (SIT) was constituted, headed by the Additional Superintendent of Police (Hqrs), Kokrajhar.

8. During post-mortem examination, vaginal swabs of both the victims, their inner garments, hanging

knots, and foreign materials collected were sent to the Directorate of Forensic Sciences (DFS) for DNA profiling and examination. Blood samples, semen, pubic hair, and hair from the head of the arrested accused, i.e., A1, A2 & A3, were also collected, observing all the formalities, and sent for examination and comparison with the samples of the deceased girls.

9. The post-mortem report disclosed that both the deceased had been subjected to rape and murder. As per the post-mortem report, the deceased were subjected to forceful vaginal and anal sexual intercourse, and clear signs of strangulation were also visible. The DNA profiling of accused A1, A2, and A3 was matched with the DNA profiling of vaginal and anal swabs collected from the victim girls.

10. Accordingly, the investigating authority concluded that the accused persons had committed rape of the deceased minor girls and strangled them to death and later on, hanged their bodies from the tree.

11. The other suspected accused, namely Hanif

Sheikh, Jahanur Islam, Sankardev Barman and Atap Ali, though arrested, were not sent for trial for want of evidence.

12. During the investigation, the statements of the witnesses were recorded; the statements of the accused persons under Section 164 Cr.P.C. were also recorded.

13. Having found overwhelming incriminating material against the accused persons, the Investigating Officer filed the charge-sheet under Sections 120B/302/376A/376D/376DA IPC, read with Section 6 of the POCSO Act, 2012, read with Section 3(1)(w)/3(2)(v) of the SC/ST Prevention of Atrocities Act, 1989 after the completion of the investigation.

14. The charges under Sections 120B/ 302/ 376A /376D /376DA IPC, read with Section 6 of the POCSO Act, 2012, read with Section 3(1)(w)/3(2)(v) of the SC/ST Prevention of Atrocities Act, 1989 were framed against the accused persons, to which the accused persons pleaded not guilty and claimed to be

tried; and accordingly, the trial proceeded.

15. To establish the charges, the prosecution examined 38 (thirty-eight) witnesses. The defense adduced no evidence. The statements of the accused under Section 313 Cr.P.C. were recorded, and the accused denied any involvement in the crime.

16. The learned trial court, upon appreciation of the evidence, convicted the accused person, and the impugned sentence of death was passed.

17. Hence, the present appeal and reference.

18. We have heard Mr. Azad Ahmed, learned Advocate, assisted by Mr. Arif Ahmed, learned Advocate for the appellant in Criminal Appeal No. 86/2022. We have also heard Ms. B. Bhuyan, learned Senior Advocate/Additional Public Prosecutor, assisted by Ms. R. Saloi, learned Advocate for the respondent/State, in Criminal Appeal No. 86/2022, and Mr. Sarfaraz Nawaz, learned Advocate for the informant/respondent No.2.

19. Mr. Azad Ahmed, learned counsel for the

appellants, argues that the prosecution case rests entirely on circumstantial evidence and there is no eyewitness to the occurrence and the evidence of PW-4 and PW-5 only discloses the presence of the appellants in the general vicinity and does not establish that they were with the victim or that they were last seen together.

The learned counsel for the appellant primarily assails the DNA evidence. According to him, the prosecution has failed to establish the integrity of the biological samples from the stage of collection till their examination. In this regard, he places reliance on the evidence of PW-10, PW-14 and PW-16 regarding degradation and possible contamination of DNA samples and to the fact that several exhibits yielded fragmented DNA which could not be amplified.

It is further submitted that the evidence regarding collection and preservation of the blood and semen samples suffer from procedural deficiencies. He emphasizes the evidence of PW-14, more particularly the cross-examination.

As regards the CDR and tower location evidence, the learned counsel argues that such evidence cannot establish the appellants' physical presence at the place of occurrence.

Regarding the alleged confession of the appellants, it is submitted that such confessions are inadmissible in law being recorded during police custody.

In Conclusion, Mr. Ahmed submits that the circumstances projected by the prosecution do not form a complete chain excluding the possibility of innocence and that the appellants are entitled to the benefit of doubt.

On sentence, it is submitted that even assuming conviction is sustained, the case does not justify extreme penalty of death.

20. Per contra, Ms. B Bhuyan, learned Senior Advocate/ Additional Public Prosecutor, supporting the conviction, argues that the medical evidence establishes homicidal death by manual strangulation as well as forcible sexual intercourse and that the DNA evidence

provides the scientific link between the appellants and the sexual assault.

21. The learned Additional Public Prosecutor also submits that the objection regarding contamination and preservation is only a possibility and that PW-16 never stated that the samples actually examined were contaminated or substituted.

Referring to the specific DNA matches recorded in the forensic and medical reports, and the surrounding circumstances, the learned Additional Public Prosecutor submits that the prosecution has established its case beyond all reasonable doubt.

22. Mr. Sarfaraz Nawaz, learned counsel for the Informant/respondent No.2, while supporting the prosecution case, argues that in the present case, the evidence must be considered as a whole, rather than by isolating individual circumstances.

The learned counsel argues that the starting point of the case is not merely the discovery of two dead bodies; rather, the medical evidence establishes that the two

minor girls were subjected to forcible sexual intercourse and were thereafter manually strangled. The subsequent hanging of the bodies was therefore part of an attempt to make the homicidal death appear otherwise.

It is further argued that the most compelling circumstance is the DNA evidence. While drawing attention to the fact that the forensic report does not merely state that some DNA material was similar to that of the appellants, it is argued that it also identifies the sources of each exhibit and records specific matches. The vaginal swab of V1 with the semen and blood profiles of accused appellant Nasibul Ali Sk; her anal and anal swab with the corresponding profiles of accused appellant Muzammel Sk; and the vaginal swab of V2 with the corresponding profile of Forizul Rahman establish beyond reasonable doubt that the accused appellants are the perpetrators of the crime.

According to him the significance of these findings becomes apparent when they are read with medical evidence. Medical evidence establishes sexual assault;

the DNA evidence identifies the biological contribution of the respective accused person, argues Mr. Nawaz.

The learned Counsel further argues that the forensic evidence provides precisely the link that is ordinarily difficult to establish in a case where there is no eyewitness to the actual assault.

As regards the defense challenge to DNA evidence, it is argued that such challenge is based on hypothetical possibilities, inasmuch as, though PW-16 accepted that contamination or degradation can affect DNA analysis, he did not state that the samples in the present case were contaminated, substituted or wrongly examined.

The learned counsel has also emphasized the evidence of PW-4 and PW-5, who saw all three accused persons in the Singimari jungle during the relevant period. According to him, the prosecution has proved the circumstances.

On the question of sentence, the learned counsel submitted that the offense concerns the rape and murder of two minor girls and has caused immeasurable

suffering to their family. The manner in which bodies were subsequently hanged, aggravates the offense. It is submitted that the court, while considering the reference, must give due weight to the rights and sufferings of the victims and their family and to the need for a sentence proportionate to the gravity of the crime.

Mr. Nawaz, learned counsel, concludes his argument by submitting that the conviction recorded by the learned trial court calls for no interference and that reference for confirmation of the death sentence deserves to be considered in the light of the exceptionally grave circumstances of the crime.

23. We have given our anxious consideration to the arguments advanced and the materials available on record.

24. The prosecution case is based on circumstantial evidence, and there is no direct eye witness. The circumstances projected by the prosecution are as follows:

I. The homicidal death of two minor victims

and the medical evidence regarding sexual assault;

II. The presence and movement of the accused person in the vicinity of the place of occurrence;

III. The scientific evidence, particularly the DNA profiling connecting the accused persons with biological materials recovered from the bodies of the deceased;

IV. The evidence regarding contact and the movement of the accused persons as reflected from the call details record (CDR); and

V. The evidence regarding the conduct of the accused persons and the recoveries made during investigation.

25. Now, let this court determine whether these circumstances, individually and cumulatively, establish the appellants' guilt beyond a reasonable doubt.

26. PW-6, PW-7 and PW-8 are projected by the prosecution as witnesses who saw both the girls hanging from a tree.

27. PW-6 is a family member of the deceased

girls. She stated that when she returned from the field at about 3.00 PM, V-2 & V-1 were not at home. She was informed that the girls had gone to fetch the cows. Subsequently, upon receiving information that something had happened in the Singimari jungle, she went there and saw both the girls hanging from a tree.

Thus, her evidence establishes the circumstances of the girls being missing from home and the subsequent discovery of their dead bodies. She is not an eyewitness to the occurrence and does not speak about the identity of the perpetrators.

28. Similarly, PW-7 stated that on being informed by one Bibhison Rabha, he went towards the Singimari forest and found both the victims hanging from a tree. The police were thereafter informed, and the bodies were brought down.

His evidence was also confined to the discovery of the bodies and the events immediately thereafter. He had not witnessed the occurrence.

29. PW-8 similarly stated that after receiving information that the two girls had been found hanging at

Singimari Forest, he went there and saw the bodies. His evidence is thus relevant to the discovery and identification of the deceased. He has no personal knowledge of the occurrence or the manner in which the victims were killed.

30. Thus, the evidence of PW-6, PW-7 and PW-8 establishes the immediate circumstances surrounding the disappearance of the girls and the first discovery of their bodies at Singimari forest. Their evidence is consistent with the prosecution case regarding the discovery of the victims but does not independently connect any of the appellants with the commission of the offense. Their evidentiary value is therefore confined to the surrounding circumstances and the discovery of the bodies.

31. Subsequent investigative events after the discovery of the bodies are projected by the prosecution through PW-38, a Sub-Inspector of police who was posted as the Second Officer at the Kokrajhar PS on the fateful day.

32. He deposed that on receiving information in the evening that two girls had been found hanging at

Singimari forest, he recorded the information in the General Diary and proceeded to the place of occurrence. He reached the place, recovered the dead bodies, and prepared the sketch map of the place of occurrence. On the following day, the FIR was lodged by PW-1, and Kokrajhar P.S. Case No. 440/2021 was registered.

Subsequently, a Special Investigation Team was constituted, and he was inducted as a member thereof. In the course of investigation, he recorded the statements of several witnesses and effected various seizures.

This witness proved the General Diary Extract and the sketch map of the place of occurrence. He also proved the requisitions addressed to the Deputy Commissioner for deputing an Executive Magistrate at the time of collection of blood and semen samples of the accused persons; he proved the case synopsis relating to the exhibits sent to FSL, forwarding letter of Superintendent of Police and the forwarding documents relating to the mobile phones sent for forensic examination.

He further proved the MVI report of the motorcycle used by the accused and his signatures appearing on the

seizure lists relating to the biological samples, wearing apparel, mobile phones, motorcycle and school certificate of the deceased.

33. Therefore, his evidence establishes the various investigative and procedural steps taken after receipt of information regarding the death of the two girls. In particular, it establishes the formal chain of custody for the collection and forwarding of several exhibits, including biological samples and mobile phones, for forensic examination.

The substantive evidentiary value of the biological samples and the results obtained therefrom shall rest upon the evidence of the concerned medical and forensic witnesses and the forensic reports proved by them, which shall be dealt with at a later part of this judgment.

34. In cross-examination, PW-38 admitted certain omissions in the statement of witnesses recorded by him. He stated that PW-1 had not stated before him that Jahanur had informed him about the fact that V-1 and V-2 were hanging from a tree, nor that PW-1 had seen Forizul while proceeding towards Singimari.

He further stated that PW4 had mentioned that, at about 4 pm, he was proceeding towards home with his friend Sumit Koch via Salbari road, whereas PW-8 had not stated before him that Miru Rabha had called him on his mobile phone. He also stated that Salbari was about 500 meters from the place of occurrence and that the residence of the victim was about 1 km away.

These omissions are relevant only to the extent of the appreciation of the particular witnesses concerned and do not, by themselves, affect the core of the prosecution case.

35. The evidence of PW-38 does not constitute direct evidence of the occurrence or independently establish the appellants' participation. His evidence is principally that of an investigating and formal witness, and its importance lies in proving the investigative steps, documents, seizure and forwarding of exhibits.

36. The main thrust of the prosecution is based on the medical evidence and DNA evidence. For that, let us first consider the medical evidence.

PW-11 Dr. Jonathan Terang was one of the doctors who

conducted the post-mortem examinations. His evidence is of considerable significance.

According to this witness, the deaths were caused by asphyxia resulting from anti-mortem manual strangulation and were homicidal in nature. The post-mortem report also disclosed injuries over the neck, including contusions and a fracture of the thyroid cartilage. The ligature marks were attributable to peri-mortem hanging.

The medical evidence thus indicates that the hanging of the bodies was not the cause of death, but occurred in connection with or subsequent to the homicidal act. The same medical evidence discloses injuries in the private parts and the findings suggest recent sexual intercourse.

Vaginal smears were positive for spermatozoa, and medical opinion records forcible vaginal and anal penetration.

The relevant vaginal and anal swabs and articles of clothing were accordingly collected, sealed and forwarded for forensic examination.

It is important to record that the defense has pointed

out in cross-examination that the doctor could not identify the precise material by which the victims were strangled, could not state which victim died first or the exact interval between the two deaths, and accepted that asphyxia can also occur in suicidal hanging.

37. In our opinion, these answers do not dent his substantive opinion regarding the nature of the injuries found on the bodies of the deceased. The opinion that the deaths resulted from ante-mortem manual strangulation and were homicidal remains firm.

38. It is apposite to record here that PW-12, an Assistant Professor of Forensic Medicine at FAAMCH, Barpeta, and PW-13, Professor and Head of the Department at FAAMCH, Barpeta, were also part of the team of doctors who prepared the post-mortem report.

PW-13 affirmed that he along with PW-11, conducted the post-mortem examination of both the deceased. PW-13 also stated that he concurred with the opinions of PW-11 and PW-12. Nothing adverse could be elicited from these two witnesses by the defense.

39. Therefore, the medical evidence establishes

beyond reasonable doubt two important facts: first, that the deaths were homicidal and were caused by manual strangulation; and secondly, that the victims had been subjected to forcible sexual intercourse before death.

40. Then, the next question is whether the prosecution has established beyond a reasonable doubt the identity of the persons responsible for those acts.

41. For that, we now proceed to the prosecution evidence regarding the presence of the accused in the vicinity of the place of occurrence.

42. In this regard, the prosecution relied on evidence of PW-2, PW-4, PW-5 and PW-26.

PW-2 deposed that he saw the two girls proceeding towards the Singimari jungle at about 2.30 pm.

PW-26 also saw both the victims alive on the given day. He stated that they had said that they were going to fetch the cows.

Nothing adverse has been extracted from these two witnesses in their cross-examination, and these witnesses established the movement of the victims

shortly before they disappeared.

PW-4 and PW-5 are the two witnesses who have stated that the accused persons were present in the Singirmari jungle, the place of occurrence.

PW-4 stated that at about 4.00 to 4.30 pm, he saw Nasibul Ali Sk (A-1) and Muzammel Sk (A-2) on a motorcycle and Forizul (A-3) walking in the jungle.

PW5 has provided substantially similar evidence and stated that he did not see anyone else in the jungle at that time.

Both these witnesses subsequently came to know that two girls had been found hanging there.

43. As a note of caution, we record that this evidence, standing alone, would not amount to part of the proof of occurrence. The interval between the victims being seen alive and the accused being seen in the vicinity is not so narrow as to make the theory of intervention by any person impossible.

44. Therefore, we are not treating the evidence from PW-4 and PW-5 as a complete "last seen

circumstance” in itself. However, at the same time, the significance of this evidence lies in the fact that it places all three accused together in the very area where the two victims were subsequently found dead. Therefore, it may support the prosecution as corroborative evidence when considered alongside the scientific evidence.

45. Therefore, let us now proceed to scrutinize the DNA evidence, the circumstance on which the prosecution relies heavily.

46. The prosecution has examined PW-16, Arup Manta, Scientific Officer at the Directorate of Forensic Science, Assam, in this regard.

His evidence establishes that the exhibits received by the laboratory included the vaginal and anal swabs of the two deceased girls and the semen and blood samples obtained from the accused persons.

The report also records the identity of the individual exhibits and their corresponding laboratory numbers.

The forensic report dated 13.08.2021 records that DNA was isolated from the exhibits using the organic extraction method and subjected to a multiplex PCR

reaction for sixteen STR loci, Alleles & Amelogenin, using the AmpFLSTR Identifiler Plus Kit.

The amplified products were analyzed using a *Genetic Analyzer* and *GeneMapper IDX 1.2 software*, recording three specific and significant matches:

I. First, the DNA Profile of exhibit No.3395/21 being, vaginal swab of V1, matches the DNA profile of exhibit Nos. 3393/21 & 3394/21, the semen and blood samples, respectively, of accused Nasibul Ali Sk; and

II. The DNA Profile of exhibit No. 3396/21, being the anal swab of V1, matches the DNA Profile of exhibits No. 3389/21 and 3390/21, the semen and blood samples, respectively, of Muzammel Sk.

III. The DNA Profile of exhibit number 3398/21, being the vaginal swab of V2, matches the DNA Profile of exhibit numbers 3391/21 and 3392/21, the semen and blood samples, respectively, of Forizul Rahman.

47. The importance of this evidence cannot be overstated. We must record that this is not a case where a biological sample has merely been found at the place of occurrence and has been said to be compatible with

an accused.

The report establishes a specific correspondence between the biological material recovered from the bodies of the victims and the reference samples of the individual accused persons.

It is important to note that the forensic report further records that the profiles obtained from the relevant victim swabs did not match the reference samples of the other persons whose samples were examined.

Thus, the report not only provides a positive association but also records the absence of a corresponding profile in the other samples tested.

48. Another important aspect is the strong resemblance between the DNA and medical evidence.

The medical evidence establishes forcible vaginal and anal intercourse, and the injuries resulting from such intercourse are established.

The forensic examination then identifies the biological material recovered from the vaginal and anal swabs with the reference profiles of the accused person.

Thus, DNA evidence supplies the missing identity that the medical evidence, by its nature, could not provide.

49. We are in agreement with the argument of Mr. Ahmed, learned Counsel for the appellant, that a DNA report does not establish every aspect of the prosecution narrative. For instance, the report does not establish by itself the precise sequence of events, the precise time of sexual assault, or the manner in which the victims were killed, nor does it establish merely from the DNA result that each accused participated in every act alleged by the prosecution.

50. However, the value of the report lies in the specific biological links which it establishes. Therefore, those links have to be considered in light of the remaining circumstances.

51. The learned counsel for the appellants has also questioned the reliability of the DNA evidence on the grounds that the samples were improperly collected, preserved, and transmitted.

PW-16 was cross-examined extensively on this aspect. He accepted that biological samples may degrade if they

are not properly preserved and that contamination may affect DNA results. He also noted that certain exhibits in the present case yielded fragmented DNA that could not be amplified.

These answers, however, must be appreciated in their proper context.

52. PW-16 did not state that the particular vaginal or anal swabs which produced the three positive results had in fact been contaminated. He did not state that the reference samples of the accused had been substituted. He did not state that the three positive results recorded in the report were inconclusive.

On the contrary, the report clearly records three positive results without ambiguity. It is also significant that the report does not conceal the limitations encountered during examination. It specifically records that a number of other exhibits were subjected to DNA analysis, but the DNA yield was fragmented and could not be amplified.

The fact that the laboratory reported both successful and unsuccessful examinations does not support the suggestion that the positive findings were simply

assumed or uniformly reported.

53. PW-16 also stated in cross-examination that contamination can produce an erroneous result, but the possibility that a contaminated sample may produce an erroneous result is distinct from evidence that the sample in question was contaminated.

No evidence has been brought to our notice demonstrating actual contamination, substitution or interference with the three samples which yielded positive matches.

54. The defense also relied upon certain answers of PW-10 and PW-14, concerning the quantity and preservation of the samples. Therefore, let us now deal with these two witnesses.

PW-10, Dr. T. K. Barman, the Medical and Health Officer No. 1 at RNB Hospital, Kokrajhar, deposed regarding the collection of blood and semen samples from the accused, Nasibul Ali Sk and Forizul Rahman. He stated that on 11.06.2021, pursuant to a police requisition, the samples were collected in his presence and that of the Executive Magistrate. The samples were marked, preserved in medical vials, and thereafter handed over to

the police for forensic examination. He proved the relevant documents relating to collection and forwarding of the samples.

PW 14, Dr. Nikunja Das, Medical and Health Officer at RNB Hospital, Kokrajhar, similarly deposed regarding the collection of blood and semen samples from the accused Muzammel Sk on 14.06.2021. He stated that 3 ml of blood and 3.8 ml of semen were collected from Muzammel in the presence of Dr. P. P. Barman, MD, Pathology. He proved the police requisition, FSL Identification Form, and the Certificate/Report relating to the collection, packaging and transportation of the samples. He also proved the certificate regarding the capability of Muzammel Sk to perform sexual intercourse.

55. The evidence of these witnesses thus establishes the collection of the reference biological sample from the three accused persons and the steps taken to identify and forward it for forensic examination.

The evidence of PW-10 and PW-14 is relevant to the extent of the reference samples. The ultimate scientific significance of those samples does not rest upon their

opinion but upon the subsequent DNA examination conducted by the Forensic Laboratory and proved through the Expert evidence as discussed hereinabove.

56. The defense has, however, questioned the manner in which the samples were preserved.

PW-10 accepted that the vials were sterile, but the ice container used for preservation was not sterile, and that the requisition did not specify the required sample quantity.

PW-14 also stated that if the glass container were not sterile, contamination could occur. He further stated that although consent of the accused was taken before collection, he could not say whether written consent had been obtained.

57. These answers undoubtedly require consideration while assessing the reliability of DNA evidence. At the same time, neither PW-10 nor PW-14 stated that the particular samples collected from the accused person were actually contaminated. There is no evidence from either witness of substitution, tampering, or interference with the samples.

The evidence speaks only to the possibility of

contamination when proper precautions are not followed. It does not establish that such contamination occurred in the samples which were ultimately examined.

The significance of these witnesses, therefore, lies in establishing the source of the reference sample, whereas the question of whether the profiles obtained from those samples correspond to the biological material recovered from the victim must be determined from the evidence of PW-16 and the DNA report, which we have already analyzed and concluded.

58. The forensic report identified the reference sample as that of the respective accused person and recorded the specific matches with the vaginal and anal swabs of the deceased. We reiterate that no evidence has been brought to our attention demonstrating actual contamination, substitution, or interference with the three samples that yielded positive matches.

59. We therefore find no basis to discard the DNA evidence merely because certain questions were raised regarding the ideal manner of preservation or because the expert fairly accepted the possibility of

degradation or contamination in general.

60. This court has to examine whether such possibilities have been established. However, we found none, even after meticulous scrutiny of the evidence on record, as discussed hereinabove.

61. The prosecution has also relied on call detail records (CDRs), tower location data, and other circumstances.

62. We have considered the evidence of the concerned witnesses. i.e., PW-15.

63. Their evidence makes it clear that a tower location indicates the location of the mobile device connected to a particular tower and does not, by itself, establish the precise location of a person using the device.

64. We therefore do not treat the CDR evidence as establishing the physical presence of the accused at the precise place of occurrence.

65. Its evidentiary value is corroborative. It assumes significance only when considered along with

the oral evidence placing the accused person in the vicinity and, more importantly, the DNA evidence connecting each of the three accused with the biological material recovered from the victims.

66. As regards the alleged confessional statements and recoveries, the evidence discloses that the accused persons were already in police custody when they were taken to the places from which the articles were recovered. The statements, therefore, cannot be used as confessions of guilt. Their evidentiary value, if any, is confined to that portion which is legally admissible under section 27 of the Evidence Act and which distinctly relates to the fact thereby discovered.

67. We have also scrutinized the evidence of other formal witnesses such as PW-20 who witnessed the mobile phone seizure, PW-21 who took the bodies for post-mortem, PW-24 who videographed the crime scene recreation, PW-25 who is witness to the seizure of motorcycle, PW-30 who disclosed that he knew the phone numbers of the accused, PW-32 who accompanied the police and witnessed the seizure of gunny bags, PW-33 who conducted the inquest, PW-34

who was an Assistant Commissioner present at the time of collection of sample, PW-35, the Officer in Charge, Kokrajhar Police Station, PW- 36 the Attached Officer at Kokrajhar who found the dead bodies hanging.

These are formal witnesses who participated in the collection of samples, transportation and identification of dead bodies, inquest and seizure of various articles. Their evidence, taken together, establishes the procedural aspect of the investigation, but none of them witnessed the occurrence or furnished any independent account of the appellants' involvement.

Their evidence, therefore, is considered only to the extent that it corroborates the substantive evidence and proves relevant exhibits and investigative steps.

68. Now, let us consider the established circumstances cumulatively.

69. The two girls were last seen alive during the afternoon of the day of occurrence at around 4/4.30 pm, and their bodies were found hanging inside the Singimari forest.

70. The medical evidence establishes beyond

reasonable doubt that the deaths were homicidal, caused by ante-mortem manual strangulation, and that the victims had been subjected to forcible sexual intercourse.

71. It was also established beyond reasonable doubt that the three accused were seen in the same jungle at around 4/4.30 pm on the same day.

72. Most importantly, the forensic evidence establishes three specific biological links: the vaginal swab of V1 with accused Nasibul Ali Sk, the anal swab of V1 with accused Muzammel Sk, and the vaginal swab of V2 with accused Forizul Rahman.

The significance of the DNA evidence in the present case is that the samples used for comparison were not merely unidentifiable biological traces; the reference samples were the blood and semen samples of the respective accused persons, and the corresponding DNA profiles matched the biological material recovered from the victims. These pieces of evidence do connect the accused persons directly with the sexual assault established by the medical evidence.

73. We are conscious of the settled principle of criminal jurisprudence that, in a case based on circumstantial evidence, each circumstance must be firmly established, and the circumstances, taken cumulatively, must form a complete chain pointing towards the guilt of the accused and be inconsistent with their innocence. A circumstance which merely creates suspicion cannot substitute proof.

74. In the present case, however, the principal incriminating circumstance is not based on suspicion or inference from mere presence; it is the scientifically established biological linkage between the victims and the three accused.

75. The oral evidence regarding the presence of the accused in the jungle and the medical evidence regarding homicidal death and forcible intercourse provide independent circumstances which converge with the forensic findings.

76. The defense's suggestion that another person could have committed the offence does not satisfactorily account for the three specific DNA matches, coupled with the presence of all three accused in the

relevant area. The defence has not suggested any plausible innocent explanation for the presence of the respective accused persons' biological material in the vaginal/anal swabs of the deceased victims.

77. It is also relevant that the prosecution is not seeking to establish the identity of the offenders merely by relying on the accused's presence near the place of occurrence. Such a circumstance is comparatively weak when considered in isolation. The decisive connecting circumstance is the forensic evidence, which is independently supported by medical findings and evidence that the accused persons were in the vicinity.

78. Upon consideration of the evidence as a whole, we are satisfied that the circumstances proved against the appellants form a complete chain. The evidence establishes beyond reasonable doubt that the two victims were subjected to sexual assault and thereafter died homicidal deaths by strangulation and that three appellants are connected with the actual assault through the specific DNA matches recorded in the forensic report. The subsequent hanging of the bodies is consistent with the medical evidence that the

hanging was peri-mortem and was not the cause of death.

79. We now turn to the question of sentence.

The learned Trial Court has imposed the extreme penalty of death.

Since this is a Death Sentence Reference, we also need to determine whether the case falls within the narrow category in which the law permits the death penalty.

We have no doubt, based on the evidence discussed above, that the crime proved against the appellants is extremely grave.

Two minor girls were subjected to sexual assault and thereafter killed by strangulation. The subsequent hanging of their bodies demonstrates an attempt to give the death the appearance of suicide. The nature of the crime is therefore undoubtedly grave.

80. It is well settled in law that the gravity of the crime is only one part of the sentencing exercise; the law requires the court to consider the circumstances of the crime as well as those of the criminal.

The life sentence remains the normal rule and death is an exceptional punishment to be imposed only where the alternative option is unquestionably foreclosed.

81. We have examined the material placed before us from that perspective.

The prosecution has not brought before us any material demonstrating that the appellants are beyond the possibility of reformation or rehabilitation. There is no evidence regarding their conduct in custody, antecedents, family circumstances, age-related circumstances, or other material that would establish that a sentence of imprisonment for life would be wholly inadequate.

We cannot conclude that the possibility of reformation is foreclosed merely by the brutality of the crime.

82. The sentencing exercise must therefore be based upon evidence, not upon conjecture. The material before us does not permit such a conclusion. At the same time, the exceptional gravity of the offense requires that the sentence should adequately reflect the seriousness of the crime.

83. In our view, this is a case where the appropriate balance can be achieved by imposing life imprisonment for the remainder of the appellants' natural lives rather than the death penalty.

84. The Constitution Bench in ***Union of India v. Sriharan @ Murugan***, reported in ***2016-7-SCC-1***, recognizes the Constitutional Court's power to impose a special category of life imprisonment that falls outside the ordinary remission framework. The object is to provide an alternative between ordinary life imprisonment and capital punishment in appropriate cases.

85. The present case is before us in a Death Sentence Reference and Criminal Appeal. This Court, while exercising its appellate and constitutional jurisdiction, is competent to mould the sentence in accordance with the circumstances of the case. The sentence imposed by us shall, however, be subject to the constitutional powers under Article 72 and 161 of the Constitution.

86. Consequently, while affirming the conviction, we set aside the death sentence imposed on

each of the appellants and substitute it with imprisonment for life for the remainder of their natural lives, without ordinary remission or commutation, subject to the constitutional powers under Articles 72 and 161 of the Constitution.

87. For the reasons stated hereinabove, we direct the following:-

I. The conviction of the appellants by the Judgment and Sentence dated **08.04.2022**, passed by the learned Special Judge (POCSO), Kokrajhar, in **Special Case No.32/2021**, is affirmed.

II. The **Death Sentence Reference No. 01/2022** is answered in the negative, and the death sentence is not confirmed.

III. The sentence of death imposed upon the appellants is set aside and substituted by imprisonment for life for the remainder of their natural lives without ordinary remission or commutation, subject to Articles 72 and 161 of the Constitution.

IV. The criminal appeal is accordingly allowed in part to the aforesaid extent.

V. The record of the learned Trial Court be returned forthwith.

JUDGE

CHIEF JUSTICE

Comparing Assistant