

<b>PCP(Post Coital Period)</b>	<b>Positive</b>	<b>Negative</b>	<b>Yet to be verified with FISH</b>
1 day	86	11	3
2 days	39	9	0
3 days	21	10	0
4 days	35	13	2
5 days	40	19	8
6 days	19	13	1
7 days	51	18	10
8 days	12	15	9
9 days	18	10	1
10 days	41	24	7
11 days	6	5	2
12 days	15	6	4
13 days	16	3	1
14 days	12	5	2
15 days	37	22	11
16 days	6	4	2
17 days	6	3	1
18 days	3	3	1
19 days	3	1	1
20 days	7	12	7
21 days	3	2	1
22 days	0	2	0
23 days	3	1	2
24 days	1	2	0
25 days	2	3	0
26 days	1	1	0
27 days	1	2	1
29 days	1	0	0
30 days	8	6	4
31 days	1	1	0
32 days	1	0	0
35 days	0	1	0
60 days	1	1	0



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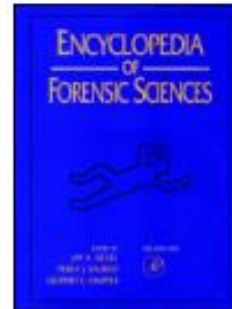
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## ENCYCLOPEDIA OF FORENSIC SCIENCES, THREE-VOLUME SET, 1-3

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##### Edited By

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##### Description

The **Encyclopedia of Forensic Sciences** is the first resource to provide comprehensive coverage of the core theories, methods, techniques, and applications employed by forensic scientists. One of the more pressing concerns in forensic science is the collection of evidence from the crime scene and its relevance to the forensic analysis carried out in the laboratory. The **Encyclopedia** will serve to inform both the crime scene worker and the laboratory worker of their protocols, procedures, and limitations. The more than 200 articles contained in the **Encyclopedia** form a repository of core information that will be of use to instructors, students, and professionals in the criminology, legal, and law enforcement communities.

##### Audience

Forensic science laboratories, police departments, academic libraries, law firms and law school libraries, academic departments teaching forensics, government agencies, and public libraries.

##### Contents

CONTENTS: Accident Investigation (a) Aircraft. Accident Investigation (b) Motor vehicle (including biomechanics of injuries). Accident Investigation (c) Rail. Accident Investigation (d) Reconstruction. Accident Investigation (e) Airbag related injuries and deaths. Accident Investigation (f) Determination of cause. Accident Investigation (g) Driver versus passenger in motor vehicle collisions. Accident

identification and/or the individualization of semen must be solubilized and extracted for analysis. Presumptive testing for semen helps to confirm the sampling location as a potentially positive site. The two commonly used presumptive tests for semen are both colorometrics. The Florence test identifies the presence of choline and the Brentamine test detects acid phosphatase. Both of these assays are qualitative.

#### Confirmatory testing

Confirmatory testing for semen involves solubilization of evidence material followed by appropriate vortexing and centrifugation, which yields a supernatant and a cell pellet. The cell pellet is used primarily to detect spermatozoa and for DNA analysis. The supernatant portion is most helpful to detect noncellular markers in semen when sperm are not detected and to develop genetic profiling or grouping.

**Spermatozoa** Identification of one or more intact spermatozoa is conclusive proof of the presence of semen and hence affirms sexual contact. The condition and collection site of the sperm may be very helpful in defining the time interval between deposition and collection (also known as the postcoital interval or PCI).

**Motile sperm** The forensic medical examiner has the unique opportunity to observe motile sperm collected from the victim during the evidentiary exam. Recovery of motile sperm has only been reported from samples taken from the vagina or cervix. The technique requires the preparation of a 'wet mount' slide (vaginal or cervical swab sample placed on a slide with a drop of saline plus a cover slip) and examined with a phase-contrast microscope. The maximum reported recovery times are shown in **Table 2**.

**Nonmotile sperm** Although nonmotile but morphologically intact spermatozoa may be seen on the wet mount slide performed during the forensic medical examination, the identification of nonmotile sperm is usually based on the stained smears prepared by the forensic laboratory from the evidence swabs. Commonly employed staining methods include Oppitz (Christmas-tree-stain), hematoxylin and eosin (H & E) and Papanicolaou (pap smear). The slides are

usually evaluated by plain light microscopy at 400 $\times$ . Some laboratories score the concentration of spermatozoa seen. This is usually reported as a range from 'few' (less than five sperm per field) to '4+' (many in every field). If the sample has been contaminated by other bodily fluids (saliva, vaginal secretions, etc.), epithelial cells and cellular debris may make the identification of spermatozoa more problematic. Selective degradation of epithelial cells and debris may be accomplished by treating the cell extract with a mixture of proteinase K and sodium dodecyl sulfate before staining and microscopic examination.

Table 2 summarizes the maximum reported recovery times for motile and nonmotile sperm collected from various anatomic locations. These 'record' times were compiled from multiple published studies and represent a variety of methodologies. Recent investigators have been able to compare sperm concentrations (few to 4+) found on the stained smears to the time since offense to refine estimates of probable postcoital interval.

A number of factors may influence the recovery of spermatozoa. Because the number of sperm collected per swab may be very low, most authorities suggest obtaining multiple swabs from the same site to maximize recovery and thus provide more forensic material for analysis. Victim position following the assault plays an important role in the amount of vaginal spermatozoa available for sampling. Gravity drainage creates significant loss of vaginal evidence if the victim is upright after deposition. Conversely, if the victim remains recumbent following the act, recovery is likely to be greater. This has been a legitimate criticism against comparing volunteer studies (more likely recumbent) to casework studies (more often upright). If only a small number of sperm are recovered from the vagina, the possibility of sperm deposition from a contaminated object (e.g. finger) must be considered as an alternative explanation to penile penetration.

The detection of sperm on anal swabs must be interpreted cautiously. Recovery of anal sperm from a male sodomy victim or from a female sodomy victim without any detectable vaginal sperm is consistent with anal sexual contact. Difficulty arises when the female victim has both vaginal and anal sperm. Drainage of vaginal material may contami-

**Table 2** Maximum reported recovery times for spermatozoa collected from body cavities in living sexual assault victims

	Vagina	Cervix	Mouth	Rectum	Anus
Motile sperm	6-28 h	3-7.5 days	—	—	—
Nonmotile sperm	14 h to 10 days	7.5-19 days	2-31 h	4-113 h	2-44 h

## RTI REQUEST DETAILS

Registration No. :	LNJPN/R/2019/80002	Date of Receipt :	02/05/2019
Transferred From :	Directorate of Forensic Science Services on 02/05/2019 With Reference Number : DIRFS/R/2019/50052		
Remarks :	Information sought may be available in your dept		
Type of Receipt :	Electronically Transferred from Other Public Authority	Language of Request :	English
Name :	Harsh Gupta	Gender :	Male
Address :	206 b sector, vivekanand colony, ujjain, Pin:456010		
State :	Madhya Pradesh	Country :	India
Phone No. :	Details not provided	Mobile No. :	+91-9171856013
Email :	hg.harshgupt@gmail.com		
Status(Rural/Urban) :	Rural	Education Status :	Above Graduate
Letter No. :	Details not provided	Letter Date :	Details not provided
Is Requester Below Poverty Line ? :	No	Citizenship Status :	Indian
Amount Paid :	0 (RTI fee is received by Directorate of Forensic Science Services (original recipient) )	Mode of Payment :	Payment Gateway
Request Pertains to :	Information Sought : After intercourse between the male and the female, till how much time sperm of male will be identifiable or present inside the female vagina. Please provide the 3 certified copies of the records mentioning above in forensic department. It is related to my life and for justice so please provide me with in 48 hours		
Original RTI Text :	After intercourse between the male and the female, till how much time sperm of male will be identifiable or present inside the female vagina. Please provide the 3 certified copies of the records mentioning above in forensic department. It is related to my life and for justice so please provide me with in 48 hours		
<input type="button" value="Print"/> <input type="button" value="Save"/> <input type="button" value="Close"/>			

NICFS	
Dy. No. REL	1696
10 MAY 2019	RTI is forwarded online for n/a, pl.
Director	
DIG	
40	

N. Chetan

A.O.

Sejvan Kumar  
09/05/2019

## Forensic Evidence in Drug Facilitated Sexual Assault (DFSA)

- There has been an increase in the use of some drugs to render a person incapacitated and more susceptible to sexual assault. Some of these drugs are available over-the-counter.
  - If a patient complaint of sexual assault or displays the following indicators, **Proper collection, preservation, and analysis of physical evidence is essential to the successful investigation and prosecution of sexual assault cases**
  - Dizziness
  - Drowsiness
  - Impaired judgment
  - Severe intoxication, feeling more intoxicated than usual after consuming alcohol, or feeling intoxicated after consuming a non-alcoholic drink
  - Confusion
  - Impaired motor skills
  - Slurred speech
  - Reduced inhibition
  - Memory loss, including “snapshots” or “cameo memories,” possibly after consuming an alcoholic beverage
  - Absent, inside-out, disheveled, or unfamiliar clothing
  - Temporary paralysis or lack of body control
  - Waking up feeling “strange” or fuzzy, or in a strange or different location without knowing how she/he got there
  - A “feeling” that someone had sex with her/him, but inability to recall the incident
  - If patient or accompanying person believes the patient was drugged
- 
- ✓ **Understanding the pharmacokinetic parameters of a drug** – that is understanding the body’s effect on ingested drugs – allows one to appreciate the preferred specimen(s) for toxicology testing in cases of DFSA.
  - ✓ After drugs are orally ingested, they must be absorbed into the bloodstream to be effective.
  - ✓ This requires the drug to cross cellular membranes in the stomach and small intestine.
  - ✓ Once absorbed, the drug is carried throughout the body by means of the blood vasculature.
  - ✓ As it moves through the body, the drug will leave the bloodstream

- (distribution) and interact with cellular receptors in tissues.
- ✓ In DFSA cases, the drug's primary site of action is the central nervous system.
  - ✓ It is here, in the brain, that most of these drugs will interact with receptors to disrupt the brain's normal function, resulting in the drug's effect on the body (pharmacodynamics).
  - ✓ The bloodstream is also responsible for carrying drugs to the liver. The liver is a very important organ as it contains enzymes that metabolize most drugs.
  - ✓ The biotransformation of drugs usually results in alternate forms (**metabolites**) that are more hydrophilic, or water soluble, than the original drugs. This leads to the final stages of pharmacokinetics – excretion and elimination of drugs.
  - ✓ Once a drug becomes hydrophilic, it is readily passed from the blood into urine via the kidneys.
  - ✓ A function of the kidneys is to concentrate urine by returning most of the aqueous portion back to the blood. Thus, the drugs and any polar metabolites become highly concentrated in the urine.

## COLLECTION OF SPECIMENS FOR TOXICOLOGICAL ANALYSES

- ✓ Since most drugs and metabolites are present at higher concentrations in the urine, toxicologists can detect their presence for longer periods of time, urine should always be considered the specimen of choice for toxicological testing.
- ✓ As it is **impossible** to reliably predict exactly how long a drug or its metabolite will remain at detectable levels in urine, it is essential that efforts be made to collect the first available urine specimen from the victim.
- ✓ When there has been a substantial delay in the collection of a urine specimen, the likelihood of detecting the presence of a commonly encountered DFSA drug or metabolite decreases dramatically, however, urine specimen should be collected up

- ✓ to 96 hours post-ingestion, not after the victim wakes up.
- ✓ Most of the common DFSA drugs will no longer be detectable at 96 hours, some with longer half-lives may still be.
- ✓ Every time the victim urinates, evidence of drug consumption is essentially lost.
- ✓ It is important that the victim be instructed not to urinate until the specimen can be collected.
- ✓ In circumstances where the victim cannot wait until the sexual assault examination, then he/she should collect the urine themselves in a clean container and take it with him/her to the examination.
- ✓ Then, during the examination, a second urine specimen can be obtained and the results of the two specimens compared.
- ✓ It is recommended that at least **100 mL** of urine be collected in a standard urine collection cup.
- ✓ This volume of urine allows for a very comprehensive, sensitive toxicological analysis to be performed.
- ✓ If the victim cannot produce **100 mL** of urine, then collect what he/she can produce or take a second collection when they can produce more urine.
- ✓ It is not advisable to have the victim drink a large quantity of water to generate this urine as this may render a more diluted sample than would normally be produced.
- ✓ Instead, allowing the body to naturally produce the urine will likely yield the most useful result.
- ✓ Once collected, there is **no need to add a preservative** to the urine specimen.
- ✓ No research studies exist that suggest a significant loss of drugs in urine samples due to lack of preservatives. However, as with all biological specimens, it is important that the urine be maintained in a refrigerated or frozen condition.
- ✓ This will prevent putrefaction of the specimen which may interfere with certain toxicological assays or prevent the detection of certain

drugs.

## COLLECTION OF BLOOD SPECIMENS FOR TOXICOLOGICAL ANALYSES

- ✓ Blood specimens are also useful to forensic toxicologists, especially when the victim of a DFSA is able to report the crime shortly after the drugging.
- ✓ In general, blood should only be collected during the first 24 hours after the drugs were suspected to have been ingested. After 24 hours, most DFSA drugs and metabolites are no longer at detectable levels in the blood.
- ✓ Blood (10-30 ml) for toxicological testing should be collected into gray-stoppered tubes (containing sodium fluoride (preservative) and potassium oxalate (anticoagulant

## COLLECTION OF HAIR FOR TOXICOLOGICAL ANALYSES

- ✓ Consideration should be made to routinely collect hair in these cases, especially when there has been a substantial delay in reporting the crime.
- ✓ There are numerous instances where hair has shown a history of drug use. Human hair grows at a rate of approximately 1/2 inch (~1 centimeter) per month. If the victim has short hair or there is a delay of months in collection of the hair sample, evidence of the drugging may have been removed with his/her last hair cut.
- ✓ It takes one to two weeks for drugs to begin to appear in the hair above the scalp.
- ✓ Hair should be cut by isolating a 1/4 – 1/2-inch section of head hair from the victim using rubber bands, ensuring that the end closest to the scalp is clearly marked. The hair should be cut close to the scalp and placed into a paper envelope.
- ✓

## ADDITIONAL SPECIMENS THAT MAY BE USEFUL FOR TOXICOLOGICAL ANALYSES

- ✓ Nausea and vomiting are common symptoms of many of the drugs

related to DFSA.

- ✓ These drugs take time to completely absorb into the bloodstream after ingestion.
- ✓ When a victim **vomits** shortly after ingestion of a drug, the substance may not have had an opportunity to completely absorb into the bloodstream.
- ✓ Thus, the vomitus may contain a significant amount of the drugging agent, so collection and analysis of this specimen should be assessed in these cases.
- ✓ If the vomitus has dried prior to collection, the article that contains the vomitus should be submitted to the laboratory for testing.
- ✓ If it has not dried, it should be carefully transferred into a clean container, such as a urine collection cup.
- ✓ There are other stains that may be discovered in these cases that should be collected for toxicological testing.
- ✓ Occasionally, the victim may release her bladder and a urine stain may be present on bedding materials or clothing.
- ✓ Also, there may be stains on items as a result of vaginal or rectal bleeding. If these stains are large enough, these items may also be analyzed for many of the same drugs and metabolites that would be found in a traditional urine or blood specimen.
- ✓ Items such as suspected recreational drugs or prescription medications; bottles, cups, or cans; used condoms; or sexual stimulation devices.
- ✓ The importance of each of these will vary from case to case, but it is best to initially collect, preserve, and store these items for later testing, if necessary.

## **COLLECTION OF PILLS, TABLETS, OR SUSPECTED DRUGS**

- ✓ It is important to search for pills and tablets that may have been used.
- ✓ Typically, the perpetrator will choose to use a drug or drugs readily available to him.
- ✓ If he belongs to a gym or frequents “rave” parties, then one should take extra care to look for GHB or GBL containers.

- ✓ If the perpetrator suffers from depression, then one should look for sedative antidepressants such as amitriptyline or desipramine.
- ✓ If he/she has a family member that takes sleeping pills, then one should search for benzodiazepines or related drugs.
- ✓ When submitting pills and tablets to the laboratory, they should remain in their original containers, if present.
- ✓ Alternatively, medications may be sealed in a plastic bag prior to submission to the laboratory.
- ✓ One of the most overlooked drugs at a crime scene is GHB. Since it is typically dissolved in water and is colorless, it may be stored in water bottles or may be colored and stored in sports drink bottles.
- ✓ It may also appear as a cleaning product, health drink, eyedrop solution, or even hair spray.
- ✓ All liquids should be tightly capped and double-sealed in plastic bags. Excessive heat should be avoided when storing these samples.

## COLLECTION OF CUPS, CANS, CONTAINERS, DISHES, ETC.

- ✓ Drugs used to commit DFSA have been administered to a victim in almost every conceivable manner.
- ✓ While delivery through a beverage in a cup, glass, can, or bottle is the classic example, these drugs have also been administered in food or through voluntary ingestion by the victim.
- ✓ Occasionally, a search of the crime scene may reveal evidentiary items such as a cup, can, or bottle that the victim believes the drug was delivered in.
- ✓ Analysis of remaining liquid or residue in these containers may reveal the drugging agent used.
- ✓ The evidence should be collected in such a manner as to preserve its original condition.
- ✓ If some liquid remains in the container, it should be documented and then transferred to a sterile container that can be tightly sealed.
- ✓ Both the container and the liquid should be chemically analyzed for the presence of common DFSA drugs.

- ✓ Dried residues that remain in a cup or bottle should also be documented before packaging, and submitted.
- ✓ Suspect food should be frozen to prevent spoilage.
- ✓ It is good practice to obtain a control sample of any food or beverage that is believed to have been spiked.

## COLLECTION OF CONDOMS AND SEXUAL DEVICES FOR CHEMICAL EXAMINATIONS

- ✓ While analyses for DNA and hairs are usually the most important examinations done on condoms or sexual devices, chemical examination of this evidence may occasionally provide useful information as well.
- ✓ Condoms discovered at a crime scene may contain spermicide and lubricants that can be compared to condoms found in the possession of a suspect. Additionally, latex additives may allow for a more unique comparison to be made.
- ✓ Lubricants are often used to sodomize victims in sexual assaults. These lubricants may consist of petroleum jelly, lotion, or oils.
- ✓ When traces of lubricant are discovered on a sexual device or swabs from the sexual assault examination, chemical comparison to a suspect lubricant can exclude or include it as a source.
- ✓ Condoms and sexual devices should be placed in paper bags and appropriately sealed.
- ✓ Visible lubricant on these devices may be swabbed and placed into small, paper envelopes.
- ✓ If such swabs are taken, be certain to include control swabs in a separate envelope.
- ✓ Occasionally, the investigation may be enhanced through determination of the use of a spermicide.

## OTHER EVIDENCE IMPORTANT TO DFSA CASES

- ✓ While every DFSA case is different with its own peculiarities, a commonality among many of these cases is the suspect's desire to

- photograph or videotape the victim during the assault.
- ✓ The photographs and video can prove to be very important evidence documenting the scene and the victim's condition during the assault.
  - ✓ Other important evidence that may be uncovered during the execution of a search include pornographic magazines, newspaper articles, books on pharmacology, sexually explicit literature, or other items that provide information about DFSA.
  - ✓ The Internet has provided the free exchange of information like we have never before seen.
  - ✓ Unfortunately, this exchange of information has included tips on committing criminal actions.
  - ✓ DFSA owes its popularity in part to the Internet.
  - ✓ There are numerous sites that provide information about the drugs that can be used to commit this crime, how to administer them without being detected, where to buy the drugs, and even how to make them at home.
  - ✓ When faced with a DFSA case, it may prove beneficial to seize the suspect's computer to determine if he/she has taken an interest in DFSA by looking at their Internet browser's "favorites" or "bookmarks" as well as the historical account of websites visited prior to the assault.

## Summary

- ✓ Much of the evidence collected from victims and scenes of DFSA is the same as that collected from non-DFSA cases.
- ✓ The introduction of drugs as a weapon to commit sexual assault requires the investigator to collect a urine specimen from the victim as soon as possible.
- ✓ Also, it is important that an investigation of the suspect begin immediately.
- ✓ One goal of this type of investigation should be to determine likely drug candidates that may have been used to cause the symptoms described by the victim.
- ✓ This allows the toxicologist to initially focus on these drugs instead of looking for a "needle in a haystack."

- ✓ Investigators involved in the collection of DNA evidence should use common sense and not allow such collections to intimidate them.
- ✓ By following the proper procedures, valuable evidence can be obtained in a safe manner.
- ✓ It is important that crime scene investigators are aware of the field tests that can be done to assure the proper collection and submission of DNA evidence.
- ✓ The accuracy by which these tasks are performed may determine whether or not justice will be served.

Vikram Singh v. State of Haryana - CRA-D-364-1998 [2006] RD-P&H 3930 (10 July 2006)

Crl.Appeal No.364-DB of 1998

## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 26.5.2006

Vikram Singh ...AppellantversusState of Haryana ... Respondent

CORAM:-Hon'bleMr.JusticeMehtab Singh Gill.Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.R.S.Ghai, Sr.AdvocatewithMr.BipanGhai and Mr.VinodGhai, Advocates for the appellant.

Mr.R.D.Sharma, DAG, Haryana withMr.S.S.Dhaliwal, Advocate.

UMA NATH SINGH, J.

This common judgment shall also dispose of the connected matters being (i) Crl.Appeal No.400-DB of 1998 (Surender Singh versus State of Haryana), (ii) Crl.Appeal No.505-SB of 1998 (Yadvinder Singh versus State of Haryana), (iii) Crl.Appeal No.520-SB of 1998 (Manjit Kaur versus State of Haryana), and (iv) Crl.Revision No.1142 of 1998 (PhoolKishanKundu versus Vikram Singh and others), as all these cases arise out of the impugned judgment of conviction and sentence passed in Sessions case (No.27 of 1996) by learned Sessions Judge, Kurukshetra on 5.6.1998.

Vide the said judgment, accused-appellants Vikram Singh and Surender Singh have been held guilty of offences under Sections 449/34, 376(g), 302/34 and 392 IPC read with Section 397 IPC, whereas accused appellants Yadvinder Singh and Manjit Kaur, brother-in-law and sister of accused Surender Singh, have been convicted under Section 411 IPC. Appellants Vikram Singh and Surender Singh have been found to have committed: (a) house trespass by entering into the dwelling house of Smt.UshaKundu for commission of murder, (b) gang rape on the person of the deceased, (c) murder by intentionally causing death of Prof. Smt.UshaKundu, aged 52 years, in the premises of the Kurukshetra University, and (d) robbery as a result of causing death with deadly weapon during commission of theft of house-hold articles, jewelleryes and other valuables in furtherance of the common intention, and, thus, they have been each sentenced to undergo RI for ten years with a fine of Rs.250/-, in default of payment of fine, to undergo further RI for one month on the first count; ten years' RI with a fine of Rs.250/-, in default of payment of fine, to undergo further RI for one month on the second count; imprisonment for life with a fine of Rs.250/-, in default of payment of fine, to undergo further RI for one month on the third count; and RI for seven years with a fine of Rs.250/-, in default of payment of fine, to undergo further RI for one month on the fourth count.

However, other two appellants Yadvinder Singh and Manjit Kaur, who were only held guilty of offence under Section 411 IPC have been sentenced to RI for one and half years each.

The prosecution case is based on a statement (Ex.PQ) of PhoolKishanKundu (PW25) made on 20.2.1996 at 6.15 PM to Inspector Rattan Singh (PW32). Pursuant to the said statement, an FIR (Ex.PQ/2) was registered at 6.25 PM on that day initially under Section 460 IPC. An special report pursuant thereto was sent to the Chief Judicial Magistrate the same day at 9.25 PM. PW25 narrated that he was running a stationery shop in the University market. His elder brother Dr.C.L.Kundu was the Vice Chancellor of Shimla University, and his wife, deceased Usha Kundu, was Professor in Regional Engineering College, Kurukshetra University. On 16.2.1996, the deceased told him that she would be visiting her son Sanjay Kundu, an IPS Officer, on Shivratri day. A day before 20.2.1996, at about 7.00 PM, he visited the House No.F-2, University Campus, Kurukshetra, of his deceased sister-in-law and found it locked. He gathered an impression that she would have gone out somewhere as she was supposed to return on the next day of her visit to her son. He went around the house and returned home. On 20.2.1996, he visited the house at 1.30 PM being accompanied by ShibankishanKaul, his first cousin (mother's sister's son) but the house was found locked. He again went around the house, however, found the chairs lying in the varandah. He thought that since chairs were lying outside, Smt.UshaKundu would have returned home after visiting her son.

They stayed for about 10-15 minutes in the varandah. Thereafter, they went to the Regional Engineering College, the place of her employment, to enquire about her whereabouts. They were told that it was a holiday. He then made a telephonic call to his brother Dr.C.L.Kundu at Shimla (husband of the deceased) to find out about the deceased. He also made a telephonic call to the residence of Shri Sanjay Kundu at Chandigarh, and then, came to know that he (Shri Sanjay Kundu-son of the deceased) had gone to Bombay with his children. He also made two-three calls to Jammu but no one lifted the receiver. Thereafter, he went to his shop. At about 4.30 PM, he came to know that one D.S.Yadav had opened the lock of the house and found that the dead body of deceased Usha Kundu was lying inside the house. The complainant, therefore, rushed to the spot, and saw that the dead body of Smt. Usha Kundu was lying in the corridor and her articles were scattered.

The almirah of the bed room, which contained the valuables like ornaments, cash, important articles and papers etc., was also lying open. The keys of the almirah used to be in custody of deceased Usha Kundu. Raj Kumar, a domestic help of the deceased, had seen her last on 18.2.1996 at 7.30 PM. As per report, some unknown culprits having forced entry into the house in the intervening night of 18/19.2.1996 murdered the deceased by causing injuries. They had committed robbery and taken away ornaments, cash and other important articles, and then they had locked the house from the outside. The statement was read over to him, which he found to be correct. As the Inspector prima facie found the commission of offence under Section 460 IPC, he recorded a ruqa as such and sent the original copy to the Police Station through HC Sat Pal for registration of an FIR. The FIR was registered by ASI Baldev Singh and copies thereof were sent to the Illaqa Magistrate, SP and DSP through Constable Anil Kumar. The I.O. Rattan Singh started the inquest at 4.30 PM on 20.2.1996 and in the inquest report (Ex.PA/1) noted the age of the deceased about 52 years. He also noticed the presence of rigor mortis and the following injuries on the body of the deceased:-

- "1. There is a mark of injury towards the right side of nose.
2. There is blueish injury mark towards left side of neck.
3. There is a deep mark of injury in the abdomen towards left side of belly.
4. There is a deep mark of injury towards left side of the flank.
5. There is a deep mark of injury towards left side of the ribs.
6. There is a mark of deep cut on the left elbow.
7. Blood stained injury near left ear. Crl.Appeal No.364-DB of 1998 5
8. Cut injury mark on upper and lower lip.
9. Injury mark on the left leg.

10. Injury on the right ankle. Blood after oozing out from abdomen, left flank, left ribs, elbow and left ear is clotted. The injuries appear to have been caused with sharp edged weapon. There is a blueish injury mark on the neck towards right."

The apparent cause of death, according to the I.O., was the injuries caused with a sharp edged weapon. After recording of the statements (Ex.PQ) of the complainant (PW25) and his son Vinay Kundu during the inquest proceedings, Investigating Officer Rattan Singh (PW32) sent a VT message to call the dog squad, crime team, Fingerprint Expert and a Photographer. The sniffer dog brought by Constable Jai Parkash from Ambala did not come out of the house and returned after taking a round thereof. Pawan Kumar (PW9), Photographer, took 12 photographs of the dead body from different angles/sides as per direction.

***Dr.K.P.SinghKushwaha (PW2), FSL, Madhuban, Karnal, arrived with his team and a Fingerprint Expert. They scanned the scene of occurrence thoroughly and carefully.***

The Investigating Officer also prepared a site plan of the scene of occurrence. The site plan indicated the position of the dead body and also the locations of blood stains at different places. However, the blood stains could not be lifted. He also completed the proceedings under Section 174 Cr.P.C. and filled up the Form No.25.35 (B). He recorded a statement of complainant PhoolKishanKundu (PW25) under Section 175 Cr.P.C. Complainant PhoolKishanKundu reiterated his earlier statement (Ex.PQ) and further stated that the death of Smt.UshaKundu was caused due to injuries caused with sharp edged weapons by some unknown persons, after entering into her house in order to commit theft. Some valuable articles, including jewelleryes, were found to have been stolen away and the house had been locked from the outside. He identified the dead body. He was read over the statement, which he found to be correct. Another such statement recorded under Section 175 Cr.P.C.was that of VinayKundu son of PhoolKishanKundu. He also reiterated the statement of his father as such. However, he has added that his uncle (husband of the deceased) was working as the Vice Chancellor of Shima University and her deceased aunt was living alone in the house. He also identified the dead body. Thereafter, the dead body was sent for post- mortem examination with an application and the inquest report.

Dr.S.N.Bansal (PW1), Medical Officer, L.N.J.P.Hospital, Kurukshetra, along with Dr.D.S.Saini, S.M.O., Dr.K.K.Chawla, M.O. and Dr.SushmaSaini, lady M.O., conducted the post-mortem on the dead body at 9.00 AM on 21.2.1996. Apart from Dr.S.N.Bansal (PW1), the prosecution has examined 32 more witnesses, as the entire prosecution case is based on the circumstantial evidence. The defence side has also examined 8 defence witnesses to counter the prosecution case.

- ***The other prosecution witnesses so examined are Dr.K.P.S.Kushwaha (PW2).***
- ***He inspected the scene of occurrence in the presence of the Investigating Officer in the intervening night of 20/21.2.1996.***
- ***Dr.Hans Raj Aggarwal (PW3 FSL, Madhuban, Karnal had received 4 sealed parcels on 12.4.1996. Dr.S.K.Nagpal (PW4).***
- ***He had received certain parcels for examination.***
- ***Dr.M.K.Goel(PW5) proved his reports (Ex.PC and Ex.PC/1 to Ex.PC/4).***

- *He had also received certain parcels for examination.*
- Dr.G.D.Mittal (PW6) was the Medical Officer, L.N.J.P. Hospital, Kurukshetra.
- He had taken 10 ml. blood from the person of accused- appellants Vikram Singh and Surender Singh each, with the permission of the Tehsildar.
- Constable Sudeep Kumar (PW7) prepared a scaled site plan (Ex.PM) of the scene of occurrence being Kothi No.F-2, Kurukshetra University, Kurukshetra. He prepared the site plan at the instance of PhoolKishanKundu (PW25) and Vinay Kundu and on the direction of the Station House Officer, Police Station City, Thanesar. He also prepared the site plan with correct marginal notes (Ex.PN) of Kothi No.E-16, Kurukshetra University, Kurukshetra, allotted to the father of accused Vikram Singh.

He has withstood a rigorous cross-examination. Parveen Kumar (PW8) was a Dry-cleaner. His shop was known as Ashoka Dry-cleaning. He brought the relevant record of his shop. According to him, on 29.2.1996, accused Surender Singh visited his shop along with a coat (Ex.P46) and handed over the same to him for dry cleaning. Accused Vikram Singh also came to his shop on that date, i.e., 29.2.1996 with a jacket (Ex.P47). While handing over the jacket for dry-cleaning, accused Vikram Singh told that the jacket contained a stain of beetal (Pan). He had issued two slips in respect of both the clothes, being Ex.P48 and Ex.P49. Pawan Kumar (PW9) was the Photographer. On 20.2.1996 at about 9.30 PM under the direction of the police, he took the photographs of the dead body (Ex.P-50 to Ex.P62) and their negatives are Ex.P63 to Ex.P75. He also took the photographs of three fellows of different shoes. Smt.Kamlesh Sharma (PW10) was the Clerk- cum-Cashier of State Bank of India, RECK Branch, Kurukshetra

University, Kurukshetra. She submitted the record of bank account of deceased Smt.UshaKundu. Account No.188-2 stood in the joint names of the deceased and her husband Prof.C.L.Kundu. Her evidence was relevant inasmuch as the pass books of the deceased and her family members had been found to be one of the items seized from the accused. That apart, Indira Vikas Patras, cheque books and driving licence of deceased Usha Kundu had also been seized. Malkiyat Singh (PW11) was produced in the witness box to show that he had sold his plot at Kurukshetra in the month of August, 1995, to Dalip Singh, father of accused Surender Singh, for a consideration of Rs.50,000/-. Baldev Singh (PW12) is the Assistant Sub Inspector of Police. He had formally registered the FIR (Ex.PQ/2) on receipt of ruqa (Ex.PQ).

- On 2.3.1996, he had also got accused Vikram Singh and Surender Singh, medico legally examined by the Medical Officers of L.N.J.P.Hospital, Kurukshetra.
- Suresh Kumar Goel (PW13) was a Financier and Transporter of Bhiwani. He knew Sanjay Kundu (IPS), son of the deceased. Being a local businessman, he used to visit all District Officers and, thus, he had met Shri Sanjay Kundu. On 29.2.1996 at about 2.00 PM, maternal uncle of accused Vikram Singh, namely, Rattan Singh, with accused Surender Singh and Vikram Singh, had come to him. He knew Rattan Singh for the past about 4-5 years. Rattan Singh had told him that the accused had committed murder of Usha Kundu at Kurukshetra and the accused be produced before the police. Accused Vikram Singh confessed the date, time and manner of commission of offence before him.He also stated that he was accompanied by Surender Singh, who gave a kirpan blow to the deceased.
- He also confessed that both of them had committed rape upon the deceased.

He further confessed to have caused knife injury to the deceased. Since this witness was unwell, he told them that he could accompany them only on 2.3.1996, because he was suffering from some heart problem. He with Rattan Singh went to Kurukshetra on 2.3.1996 but came to know that the accused had already been arrested on 1.3.1996. Thereafter, they came across the police party and this witness gave his statement to the police. Laxmi Kant Sharma (PW14) was a Teacher in BhagwanParsu Ram High School, Kurukshetra. He was a resident of ChakravartiMohalla, Kurukshetra. On 18.2.1996 at about 9.30 PM, he was taking tea at the Dhaba of one Madan Bhatia in front of Gate No.3 of the University. Both the accused were seen present in the Dhaba and they had finished their meals. They appeared to be under the influence of liquor. This witness over heard the accused making plan to commit theft in the house of the deceased. Raj Kumar (PW15) was engaged as a Peon in the University and he was attached with Prof. C.L.Kundu, husband of the deceased. He used to work at their residence in the morning and evening hours, after the office hours. He while accompanying Dr.RajenderYadav had come to the residence of the deceased. On the instructions of Shri Yadav, this witness peeped through the ventilator and saw that the articles of the house were lying scattered and then the house of the deceased was broken open. Mrs.SushmaLall (PW16) was the Class teacher Incharge of 11<sup>th</sup>Class, Section A, wherein accused Vikram Singh was her student.According to the attendance register brought by her in the Court, accused Vikram Singh had absented from the class between 16.2.1996 and 29.2.1996. She had marked his absence.

- **Dr.RahulGarg (PW17) medico legally examined accused Vikram Singh and Surender Singh and found that there was nothing to suggest that they were incapable of doing sexual intercourse.**

Rajinder Yadav (PW18) had received a telephonic message from Prof. C.L.Kundu at Shimla, husband of the deceased, on 20.2.1996.He met deceased Usha Kundu on 14.2.1996, when she had told him that she would be going to Jammu on or about 16.2.1996. On being told by Prof.C.L.Kundu that she had not visited Jammu and further on being requested, this witness started search of the deceased. He had also summoned Peon Raj Kumar. Raj Kumar, on peeing through the corridor, had informed him that the deceased was lying there. Then PhoolKishanKundu and the police arrived there at about 4.30 PM. He had broken open the door of the house on the instruction of ShriC.L.Kundu, over telephone. HC Ram Parkash (PW19) tendered his evidence on affidavit (Ex.PZ). So is the case with Constable Anil Kumar (PW20). His affidavit is Ex.PAA. Similarly, Constable Shiv Ram (PW21) also tendered his evidence on affidavit (Ex.PBB). The affidavit of Constable BhagwanDass (PW22) is Ex.PCC.HC Dharam Pal (PW23) was posted on 23.2.1996 at Police Station City, Thanesar. He also tendered his evidence on affidavit (Ex.PDD). He was the sole Head Constable of the Police Station City, Thanesar. During his absence on leave, one Ram Parkash was working in his place. On his return from leave on 23.2.1996, the case property was handed over to him.ConstableBaltej Singh (PW24) also tendered his evidence on affidavit (Ex.PEE). He had gone to the FSL, Madhuban, to bring the result of the analysis. PhoolKishanKundu (PW25) is the real brother of the husband of the deceased. He is the author of the FIR and is also a witness to the inquest and other proceedings. Sanjay Kundu (PW26) is the son of the deceased.He being an IPS Officer was posted as ADC to the Governor, Haryana, on 20.2.1996. C.L.Kundu (PW27) is the husband of the deceased. SI JagdishChander (PW28) was associated with the investigation by the Investigating Officer, Inspector Rattan Singh. HC Sat Pal (PW29) had accompanied the police party on 20.2.1996 at about 4.45 PM to the official residence of the deceased. HC Jagdev Singh (PW30) was posted at Police Station City, Thanesar in March, 1996 and in his presence, Inspector Sewa Singh had interrogated accused Vikram Singh on 11.3.1996. The accused had made a disclosure statement. Again on 12.3.1996, Inspector Sewa Singh had interrogated both the accused, Vikram Singh and SurenderSingh.Ultimately, pursuant to the disclosure statements made by the accused, some incriminating articles were recovered. Inspector Sewa Singh (PW31) was posted as District Inspector, Kurukshetra in March, 1996. As there was a death in the family of Inspector Rattan Singh, he had been handed over the investigation. Inspector Rattan Singh (PW32) was posted as Station House Office, Police Station City, Thanesar, on 20.2.1996,

- ***when the dead body of the deceased was recovered from her official residence. Ram Niwas (PW33) had accompanied K.P.S.Kushwaha on 20.2.1996, to the scene of crime.***
- ***He had taken certain photographs of the scene of crime, being Exs.P7 to P9, P13, P15, P16, P19 and P20.***

Dr. S.N.Bansal (PW1) has stated in his evidence that the information furnished by the police (obviously as per inquest) was that the death had resulted from the injuries caused with a sharp edged weapon. Post-mortem staining was present on the back. Rigor mortis was partly present in both the knee joints and toes but was absent in neck, upper limbs and hip joints. Both the hands were partially clinched. The clothes were blood stained at different places. He has noticed the following injuries:-

"1. There was reddish contusion around mouth covering both upper and lower lips, on right side, it had two projections, 2 cms long and 1 cm in breadth. Width of the contusion was varying from 1 cm x 2 cms on the inner side of both lips. There were reddish abrasions and contusions. This contusion was also extending to both alae nasi of nose. There was infiltration of blood in the contusion.

2. Two reddish contusions, one on each side of bridge of nose, 2 cms x 1 cm on right side and 2 x 0.75 cm on left side. Infiltration of blood was present in the underlying tissues.

3. An incised wound 1.2 cms x 0.3 cm on the left side of face, 3 cms in front of left ear. It was subcutaneous tissue deep. Clotted blood was present.

4. Two reddish contusions with abrasions on right side of neck, size was 3 cms x 1 cm medially and 2.5 cms x 1 cm laterally. These were transverse and 2 cms above the clavicle. Infiltration of blood was present in the underlying tissues.

5. An incised wound 3 cms x 1 cm in front of left side of chest, 7 cms from the mid line in the 7th inter-coastal space. It was vertically placed and was muscle deep. Both ends were clean cut. Clotted blood was present.

6. A reddish brown contusion 0.75 cm in diameter on the front of left side of chest, 1 cm below injury No.5. Infiltration of blood was present in the tissues.

7. An incised wound 4.5 cm x 1 cm on the left side of abdomen at the level of anterior axillary line, vertical, 7 cms below injury No.6. A tag of omentum was protruding out of this injury. Both the ends were clean cut.

8. An incised wound 4.5 cms x 1.7 cms on the left side of abdomen, 1 cm medially to anterior superior iliac spine. A loop of small gut was coming out of this injury. Both the ends of the wound were clear cut.

9. An abrasion 2 cms x 1 cm on the upper part of left leg on tibia tubercosity.

10. An abrasion 3.5 cms x 1 cm, vertical, on the lateral aspect of right knee.

11. An incised wound 8.5 cms x 1 cm on the back of left elbow, transverse, muscle deep. Clotted blood was present. Corresponding to injury Nos.5, 7 and 8, there were corresponding cut in the maxi and there was also corresponding cut in the sweater against injury Nos.5, 7 and 11. Cranium and spine Skull and vertebrae were healthy. Membrane, brain and spinal cord were healthy. Thorax Walls, ribs and cartilage, were healthy except the injuries described above. Rest of the organs in the

thorax were healthy. Heart was empty on both sides. Abdomen Abdominal wall has slight patch of greenish colour on both iliac fossae. Foul smell was coming out on opening the abdomen. Peritoneum- the peritoneal cavity was full of dark coloured blood and blood clots. There was also semi-digested food material in upper part.

Mouth, Pharynx and Oesophagus Mouth was as described above and rests were healthy. Stomach contained semi-digested food material. Food particles were not recognizable. Stomach had two cuts, one on left lateral wall and another on anterior aspect of right side. On left lateral side, there was cut 1.5 cm long and on right anterior side, it was 1 cm long. Small intestine contained chyle and gases. There was an incised wound 1 cm long in the small gut and 0.75 cm long cut in the mesentery, where clotted blood was present. Large intestine contained fecal matter and foul smelling gases, showed early putrefaction changes. Liver was healthy, pale showed early putrefaction changes over its superior surface. Spleen- there was 2 cms long cut on its lower part. Clotted blood was present near the injured part. Size of the spleen was normal. Kidneys were healthy and pale. Bladder was healthy and pale and it contained 30 to 50 ml. of urine. Organs of Generation Perineal hair were scanty, which were cut and sent for chemical analysis. Labia majora and labia minora were healthy.

- There was whitish discharge present in and around vulva, which were taken on two swabs and sent for chemical analysis.
- The vagina admitted two fingers easily. Hymen was present only in tags.

No fresh injury was seen. (Emphasis supplied). On per vaginal examination, cervix was backward, uterus was antero-verted. It was of multi-para size. Fornices were free. Two slides were prepared from posterior fornices and sent for chemical examination. "In the opinion of the Board of Doctors, cause of death was shock and haemorrhage as a result of the injuries described herein-above.

The injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. The opinion of rape was to be given after receiving the report of the FSL. According to the Doctors, the probable time between the injuries and the death was within 2 hours and between the death and the post-mortem was within 36 to 72 hours. The Doctor (PW1) has clarified that the post-mortem was conducted on the request letter of the police (Ex.PA), sent along with inquest proceedings papers (Exs.PA/1 to PA/4) and carbon copy of the FIR (Ex.PA/5). PW1 has proved the post-mortem report (Ex.PA/6). He also proved diagram (Ex.PA/7), showing the location of the injuries. He has stated that on 1.5.1996, on the request of the police (Ex.PB), a Board of Doctors (consisting of four doctors) had gone through the chemical examiner's report (Ex.PC). They noticed presence of human semen on glass slides, having taken the smear from posterior fornix and swabs from vagina and perineal hair. The Board of Doctors opined that the sexual intercourse was committed on the deceased. They gave a report (Ex.PB/1), duly signed by PW1, Dr.D.S.Saini, Dr.S.Saini and Dr.K.K.Chawla. The Board of Doctors had also opined that the injury Nos.3, 5 and 11 mentioned in the post-mortem report dated 21.2.1996, were possible from the weapons of offence, while injury Nos.7 and 8 could be caused with knife. The team of Doctors further opined on a police request (Ex.PE) that injury Nos.1, 2 and 4 were possible as a result of attempt to smother with the help of hands. Injury Nos.9 and 10 could result from dragging of the body. Injury No.6 could result from the handle of the kirpan. The Doctor has clarified that Ex.P6, a weapon of offence, could be called a dagger as well as a knife. According to him, injury Nos.3, 5 and 11 may be possible with any knife, having sharp edges, even with a kitchen knife. He has clarified that no police officer ever came to him for obtaining his opinion in respect of the injuries, before 1.5.1996. He denied any influence of the police. He has also stated that the vagina was moist due to whitish discharge, although no injury was noticed on any of the thighs near the private parts. The team of Doctors could not detect any injury in, on or near the private parts. However, they had noticed three injuries on the face.

## ***The Doctor has reiterated that the semen was present in the perineal hair.***

In his cross-examination, the Doctor has described the weapons of offence, as kirpan (Ex.P5) and knife (Ex.P6). They were not similar in shape. The knife (Ex.P6) was straight, whereas, the kirpan (Ex.P5) was curved. The width of the blades was also not similar. He has denied the defence suggestion that the injuries noticed, in the opinion of the Doctors (Ex.PD/1 and Ex.PE/1), were not possible from kirpan (Ex.P5) and knife (Ex.P6). The Doctor has further clarified that injury Nos.3 and 11 could be caused with any of these weapons. According to him, dagger (Ex.P6) is sharp on both the sides with a sharp point. He has also stated that kirpan (Ex.P5) is sharp on one side only and the other side is blunt. He has further clarified that injury Nos.5, 7 and 8 have been caused in a thrusting manner. These injuries could be caused with the weapons, having sharp edges on both sides, like Ex.P6. The Doctor has clarified that though the death could have occurred between 36 to 72 hours of the post-mortem but the time duration would not mean that the rigor mortis could not have been present on the dead body. He has further clarified that rigor mortis remains present upto 48 hours but it is not a hard rule, as the occurrence took place in the month of February. We have heard learned counsel for the parties and perused the record.

- ***Learned counsel for the appellants amongst other contentions submitted that the report of the DNA test placed on file as Ex.DLL, Ex.DLL/1 and Ex.DLL/2 showed that the DNA recovered from all the exhibits had originated from different individuals.***
- ***This is also evident from the evidence of DW8, Dr.G.V.Rao. Secondly, it was also contended that finger prints of the appellants were not compared by Gurmej Singh (DW1), who had inspected the spot and found the finger prints on three items.***
- ***Thirdly, the conviction of the appellants was based only on circumstantial evidence.***
- ***One of such circumstances is the foot prints noticed on a leather bag allegedly found lying at the spot by Dr.K.P.S.Kushwaha (PW2).***
- ***The impressions were faint and partial.***
- ***Though the bag was picked up and taken to the laboratory but it was not duly sealed at the spot, nor was a seizure memo in respect thereof prepared, nor a witness to the seizure was cited.***

- ***The bag was returned to the police station unsealed on 23.2.1996.***

***The bag was then sent to Dr.S.K.Nagpal (PW4), who, later on, submitted his report (Ex.PJ) and concluded that the foot prints found on the bag could be that of shoes allegedly recovered from the accused-appellants at the time of their arrest.***

- ***According to learned counsel, the opinion as such does not appear to be conclusive in nature and was of no use to the prosecution.***

The next circumstance is the evidence of Laxmi Kant Sharma (PW14), a teacher, who, on 18.2.1996, had over heard the accused sitting at a tea Dhaba of Madan Bhatia of 3<sup>rd</sup> gate of the University at 9.30 PM, and planning to commit theft in the house of the deceased. However, the evidence of this witness was recorded only on 3.3.1996 and he did not inform any one about their plan. Hence, the evidence of this witness should not be placed reliance. The third circumstance is the evidence of Rajinder Yadav (PW18). Shri C.L.Kundu, husband of the deceased, had phoned this witness on 20.2.1996 to find out as to why his telephone calls were not being attended by the deceased. He had asked Raj Kumar (PW15) to peep into the room of the deceased and then had broken open the door by removing the lock. On 18.2.1996, he had also seen appellants near the Teachers Club in the University. However, he disclosed this fact only on 1.3.1996 after the accused-appellants were arrested. This witness has admitted that Dr.C.L.Kundu (PW27) was his guide in his Phd. He had further not told the factum of seeing the assailants between 20.2.1996 and 1.3.1996, hence, his evidence is also said to be unreliable. The fourth circumstance is the extra judicial confession made by accused-appellants Vikram Singh and Surender Singh on 29.2.1996 before Suresh Kumar Goel (PW13). This witness is a resident of Bhiwani, whereas the occurrence took place at Kurukshetra. He stated that Rattan Singh, being the maternal uncle of accused Vikram Singh, had come to him on 29.2.1996 at Bhiwani at 2.00 PM along with both the appellants/assailants. He had enquired separately from both the appellants about the incident and they had confessed before him that on the intervening night of 18.2.1996 and 19.2.1996 at 10.30 PM, they had committed rape on the deceased and then had also murdered her with knife and kirpan. They further confessed to have committed theft of scooter and other articles. However, this witness being a heart patient could not produce them immediately as he was to be medically checked up on 1.3.1996. On 2.3.1996, he came to the house of accused-appellant Vikram Singh at Kurukshetra with Rattan Singh and thus came to know that the said two appellants had already been arrested on 1.3.1996. Notwithstanding the information, this witness is challenged to have not shown his prior acquaintance with Rattan Singh, who is a resident of a place situated at a distance of 30 kms. from Bhiwani. This witness has stated that he met the police on 2.3.1996 by chance and having seen the police, he stopped the Inspector, who was again not known to him, and narrated the factum of extra judicial confession. This witness knew Shri Sanjay Kundu, the son of the deceased and also an IPS Officer, since he was posted as S.P., Bhiwani, in the year 1995. He had met him on 10-15 occasions in connection with various works. It is contended that this witness had earlier also appeared as a witness in a murder case. Hence, in this background, it is submitted that he is not a reliable witness. Yet another circumstance is the recovery of jewellery and other articles from the appellants. According to learned counsels, the appellants were the residents of Kurukshetra and accused-appellant Vikram Singh resided within the University Campus, hence, there was no occasion for them to have suddenly appeared at Gate No.2 of the University at 10.15 AM on 1.3.1996, carrying all the articles in bags on their shoulders. Inspector Rattan Singh (PW32)

with police party met them in front of the University and unexpectedly Sanjay Kundu (PW26) also appeared there. That is how the accused-appellants were arrested. On search of their bags, amongst other things, a tea pot, a sugar pot, a milk pot, a kettle, A.C. Adapter, registration certificate, a telephone, driving licence, cheque book, pass books, KisanVikasPatra, and certain jewellerys were recovered. According to learned counsel, looking at the items recovered said to be carried by the accused-appellants in their bags, the recovery itself appears to be unbelievable and manipulated. That apart, the explanation given by Sanjay Kundu, an IPS officer (PW26), for his sudden presence at the time of arrest and the recovery also appears to be improbable, inasmuch as he has stated that he had gone for a walk at about 10.00 AM. The next circumstance is the recovery of a knife (Ex.P6) from accused-appellant Vikram Singh and a kirpan (Ex.P5) from accused-appellant SurenderSingh. The appellants were arrested on 1.3.1996 by Inspector Rattan Singh (PW32). He interrogated accused Vikram Singh on 2.3.1996, who made a disclosure statement about the concealment of knife on the eastern side of Bhakra Canal. The same day, accused-appellant Surender Singh was also interrogated and he also disclosed that he had kept concealed a kirpan and a lighter inside his residential house, but no recovery could be effected. On 11.3.1996, accused-appellant Vikram Singh was again interrogated and he disclosed that he had kept the knife concealed in bushes and the same was also got recovered by him the same day. The alleged recovery of kirpan from accused Surender Singh was made on 8.3.1996. However, there was no explanation as to why accused-appellant Vikram Singh was interrogated the second time and as to why no attempts were made to get the alleged weapons recovered on 2.3.1996 or 8.3.1996 or 11.3.1996. Further, it is also submitted that no independent witness was joined at the time of interrogation or the recovery of weapons. Even the Serologist report does not give a definite opinion as regards the presence of human blood on the weapons of offence.

On the other hand, learned counsel for the State and the complainant during the course of reply laid emphasis on the circumstances, like murder of the deceased inside her house; opportunity and planning to commit the crime, including the circumstances of last seen and over-hearing of the planning; motive to commit the crime; absconding of the accused after crime; scientific evidence with regard to trespassing of the appellants into the house of the deceased and connecting them with the offence; recovery of stolen articles; identification of such articles by Sanjay Kundu (PW26) and C.L.Kundu (PW27); recovery of weapons of offence at the instance of the accused, the evidence to connect the weapons of offence with the accused; recovery of key from accused Surender Singh (by which the main gate of the house of the deceased was locked); extra judicial confessions, and some other relevant circumstances.

On a careful consideration of the rival submissions, we notice that undisputedly the murder of the deceased, Smt.UshaKundu, took place inside her house No.F-2, Kurukshetra University Campus, Kurukshetra, on the intervening night of 18/19.2.1996.

- **It is also established that the accused committed robbery in the house; rape on the deceased, and also her murder.**

The relevant pieces of evidence on this point are the statements of Raj Kumar (PW15), RajinderYadav (PW18), PhoolKishanKundu (P25), Sanjay Kundu (PW26) and C.L.Kundu (PW27). Further, accused Vikram Singh resided in the adjacent house No.E-9 allotted to his father. Though, accused Surender Singh was a resident of Didar Nagar, Kurukshetra but he was an associate of accused-Vikram Singh. He had also faced trials in theft cases, vide Exs.DEE, DFF, DGG, DHH, DJJ and DKK. Other accused YadvinderSingh is the sister's husband of accused-Surender Singh (other than Manjit Kaur), and accused Manjit Kaur is the sister of accused Surender Singh. It also appears that the accused-appellants had opportunity to commit the offence and they planned to do so. The accused-appellants knew that Smt.UshaKundu was living alone in her house as her husband ShriC.L.Kundu had taken over as the Vice Chancellor of Himachal University at Shimla on 12.1.1996. The accused were over-heard planning at a Dhaba, known as MadanDhaba situated opposite Gate No.3 of Kurukshetra University on the night of 18.2.1996 at 9.30 PM. The evidence led by the prosecution in this regard is that of Laxmi Kant Sharma, a teacher (PW14). Both the accused thereafter left the Dhaba and headed towards Gate No.3 of the University, which also leads to the scene of occurrence, being House No.F-2. Accused-appellant Vikram Singh, who was staying in the vicinity of the deceased, was aware that the deceased was living alone with a lot of valuable

articles and jewellery. Thus, there was a motive, an opportunity and also a planning to commit the offence. PW14, Laxmi Kant Sharma, at that time, did not disclose the conversation he had overheard between the two accused to any one else, as he did not know the deceased, Mrs. Usha Kundu. It was only after the arrest of accused-appellants on 1.3.1996 and thereafter on their interrogation on 2.3.1996 that the statements of Madan Gopal Bhatia, Dhaba owner, and this witness, Laxmi Kant Sharma (PW14), were recorded. Further, this witness, being the Proprietor of Parsu Ram High School, also appears to be a respectable person. He also stands corroborated in material particulars by Rajinder Yadav (PW18), who had likewise seen both the accused on the same night at about 10.00 PM near the Teachers Club in the University Campus. They were proceeding at that time on a road leading to the scene of occurrence, i.e., House No.F-2. He has reiterated his stand in his cross-examination. Rajinder Yadav (PW18) is a natural witness, being a Lecturer in the University and also a resident of the University Campus. As regards the motive, it is clearly established from the recovery of the stolen articles that initially the accused had the motive to commit theft by criminally trespassing into the dwelling house of the deceased but in the process of committing that offence, they committed heinous offences of murdering a helpless middle-aged lady, after committing raping on her and, thus, also the offence of robbery. That apart, there is another incriminating circumstance against the accused, inasmuch as, they had absconded after committing the offences. Accused-appellant Vikram Singh had remained absent from his school for the purpose of planning the commission of crime and had also absconded thereafter from 16.2.1996 to 29.2.1996. This is found proved from the evidence of Sushma Lal (PW16), a teacher in the school, where accused-appellant Vikram Singh was studying. She was the Incharge Class Teacher of his class and also knew the accused. She used to take the roll call of his class and produced the attendance register for the month of February, 1996, in the Court. His Roll No. was 43. The register disclosed the absence of accused Vikram Singh between 16.2.1996 and 29.2.1996. Accused-appellants Vikram Singh and Surender Singh were, however, arrested on 1.3.1996, whereas date of occurrence is the intervening night of 18/19.2.1996. Smt. Sushma Lal (PW16) has stated the entire facts on oath. Thus, there was a clear planning and motive to commit the offence. As argued by learned counsel for the complainant, this circumstance finds support from the observations of Hon'ble the Apex Court in the judgment reported in 1972 Cr.L.J. 7 (Udhaipal Singh versus State of U.P.), which on reproduction, read as under:-

"In cases where only circumstantial evidence is available at the outset, one normally starts looking for motive and opportunity to commit the crime. If the evidence shows that the accused have a strong enough motive, had the opportunity of committing the crime and the established circumstances on the record considered along with explanation, if any, of the accused exclude reasonable possibility of anyone else being the real culprits then the chain of evidence can be considered to be so complete so as to show that within all probabilities, the crime must have been committed by the accused and he may be held guilty."

- ***As regards the scientific evidence with regard to the trespassing into House No.F-2, the scientists from Forensic Science Laboratory, Madhuban, were immediately called through radio message.***

***They inspected the scene of occurrence and collected scientific evidence.***

- ***Dr.K.P.S.Kushwaha (PW2), noticed faint and partial shoe impressions on the floor vide photograph (P13). Its negative is Ex.P14.***

- *He also noticed a trail of blood showing that the body was dragged out of the drawing room after inflicting the injuries.*
- *This is shown in the photographs (Exs.P-15 and P- 16). Their negatives are Exs.P-17 and P-18.*
- *That apart, one leather bag lying on the floor also had faint and partial shoe impressions as per photographs (Exs.P-19 and P-20). Their negatives are Exs.P-21 and P-22.*
- *The bag was taken to the laboratory for taking a detailed photograph.*
- *Tracing of shoe impression from the floor was also made. The entire exercise was completed on the intervening night of 20/21.2.1996.*
- *The bag was returned to the Police Station, Thanesar, on 23.2.1996, after fixing transparent tape on the surface.*
- *It was done immediately before collecting other evidence from the spot.*
- *Although the foot prints were taken on the intervening night of 20/21.2.1996, but the shoes, being Ex.P40/1-2 and Ex.P41/1-2, were seized from the accused on the date of their arrest, i.e., 1.3.1996.*
- *Thus, there was no chance of tampering with and padding out by the Investigating Officer.*
- *Tracings and the foot prints collected during the intervening night of 20/21.2.1996, tallied with the shoes taken into possession on the arrest of accused-appellants on 1.3.1996.*

- *Photographer, Ram Niwas (PW33) also proved the photographs taken by him.*
- *Dr.Hans Raj Aggarwal (PW3), made trial cuts on the maxi (Ex.P1) of deceased, with the weapons recovered from accused (knife-Ex.P6) and (kirpan-Ex.P5).*
- *Trial cuts were compared with the crime cuts and after microscopic examination, it was found that these two weapons had been used in the commission of offence.*
- *The reports of Dr.Hans Raj Aggarwal (PW3) are Exs.PH, PH/1 and PH/2.*
- *S.K.Nagpal (PW4), has categorically said in his cross-examination that Exs.P37 and P38 are the foot prints of the shoes (Exs.P40/1 and P40/2), taken out of Parcel No.13 and Exs.P36 and P39 are the foot prints of the shoes (Exs.P41/1 and P41/2), taken out of Parcel No.14.*
- *The report submitted by this witness is Ex.PJ.*
- *Thus, it appears that accused-appellants trespassed into the house of the deceased and committed the crime.*
- *Moreover, in judgment reported in AIR 1997 SC 2960 (Mohammad Aman etc. versus State of Rajasthan), Hon'ble the Apex Court has held that foot prints identification is not a fully developed science but it can be used to reinforce other evidence.*
- *In the present case, there is nothing to discard the foot prints because it was directly taken by the Scientists of the FSL,*

***Madhuban, from the scene of occurrence and there was absolutely no scope for its being tempered with.***

- ***Thus, the identity of the accused persons also stands established.***

We have also carefully examined the circumstances, like (i) recovery of stolen articles, (ii) their identification by Sanjay Kundu (PW26) and C.L.Kundu (PW27); (iii) recovery of weapons of offence and recovery of the key from accused-appellant Surender Singh, by which the main gate of House No.F-2 was locked after committing the offence; and (iv) the arrest of accused-appellants Vikram Singh and Surender Singh, as under the pressure of the police, they were trying to remove the stolen articles from the University Campus area. We have noticed that the recovery of the stolen articles was made on the date of their arrest, i.e., 1.3.1996, and these items were identified by Sanjay Kundu (PW26) and C.L.Kundu (PW27) before an Executive Magistrate/Tehsildar on 5.4.1996. This circumstance against the accused clinches the case of the prosecution. The weapons of offence, namely, kirpan (Ex.5) and knife (Ex.P6), were recovered from accused Surender Singh and Vikram Singh on 8.3.1996 and 11.3.1996, respectively. They had made their disclosure statements before Inspector Rattan Singh (PW32) vide Exs.POO and PNN, respectively.

Dr.S.N.Bansal (PW1) had opined after examining the weapons of offence that Injury Nos.3, 5 and 11 mentioned in the post mortem report No.51/96 dated 21.2.1996 were possible with both these weapons, while injury Nos.7 and 8 were possible with knife (Ex.P6). He has further mentioned that Injury No.6 could result with the handle of kirpan (Ex.P5).

- ***That apart, the weapons were found to have blood stains but due to insufficient quantity of blood, the blood group could not be determined.***
- ***The cut marks on maxi (Ex.P1) were made by the two recovered weapons, i.e., kirpan (Ex.P5) and knife (Ex.P6), as per the evidence of Dr.Hans Raj Aggarwal (PW3).***
- ***Thus, the weapons recovered from accused-appellants were used in committing the offence.***

The recovery of key (Ex.P164) from accused-appellant Surender Singh of the lock (Ex.P99), which they had put on the outer door of House No.F-2 after committing the offence, further fortifies the conclusion of their complicity in the crime. That apart, the accused did not lay any claim over the property or articles and they also failed to give any reasonable explanation for their being in possession of the stolen articles. This also leads to the inference of guilt of the accused alone.

- ***As regards the evidence of Dr.G.V.Rao (DW8) on the question of DNA test for the purpose of establishing the identity of the accused***

- *it appears that the semen slides and the swabs along with two under-wears of these two accused were sent for DNA testing.*
- *DNA report (Ex.DLL, Ex.DLL/1, Ex.DLL/2) was not produced before the Court for placing reliance by the prosecution, as the report was not signed by this witness, nor did it bear the seal of the institution.*
- *Dr.G.V.Rao (DW8) has only signed the forwarding letter and not the report.*
- *He explained that he did not think it necessary to sign the report.*
- *That apart, he has also admitted that he did not have the letter of authorisation (to receive, examine and opine) at that time with him.*
- *He has further stated that this fact is also not mentioned by him in his report (Ex.DLL).*
- *Thus, it is relevant to note that the samples were sent to another person but strangely enough the report was submitted by Dr.G.V.Rao.*
- *Further, the samples were taken in February, 1996, and they were examined by the FSL, Hyderabad, in December, 1996.*
- *This is further corroborated by the fact that DNA samples of the blood of accused-appellants Vikram Singh and Surender Singh did not tally with their own DNA samples of their seminal stains.*
- *Our finding as such also gets support from para 3.2 (Sample Preservation) of the book 'DNA in Forensic Science' by*

***J.Robertson, A.M.Ross& L.A. Burgoyne, wherein the methods of preservation have been mentioned as under:-***

***"(1) The safest and simplest procedure for preserving samples is freezing.***

***2. The best temperature to store biological materials for an unlimited period is at -70 degree C or over liquid nitrogen.***

***(3) For a period in the range of a few weeks it can be stored at -2 degree C preferably in frost free freezer.***

***(4) After a sample has been frozen, it should not be thawed and frozen repeatedly since this will promote cell breakage and facilitate DNA degradation."***

As regards the extra judicial confession, accused Vikram Singh along with accused Surender Singh went to Rattan Singh, the maternal uncle of accused Vikram Singh. Rattan Singh took them to Suresh Kumar Goel (PW13) of Bhiwani on 29.2.1996 at 2.00 PM. Suresh Kumar Goel (PW13) is running his business of finance and also owns a transport company at Bhiwani. Both the accused separately and individually confessed before him to have committed the offence of theft and murder before this witness. They were to be produced before the police on 2.3.1996 because PW13 had to go to his Doctor on 1.3.1996 for examination of heart problem. However, on 2.3.1996 when Rattan Singh and Suresh Kumar Goel (PW13) came to Kurukshetra for producing the accused and went to accused-appellant Vikram Singh's house in Kurukshetra University, they were told that both the accused had already been arrested by the police on 1.3.1996. But, they met the police party at 4/4.30 PM near the crossing of the Courts and Suresh Kumar Goel (PW13) got his statement recorded. It has come in the evidence of PW13 that he knew Rattan Singh, the maternal uncle of accused Vikram Singh, for the last 4-5 years. In his cross- examination, this witness has clarified that he had been going to the village of Rattan Singh (Village Gopi) after every 20/25 days and that he had been visiting Attar Singh of Village Gopi and had met Rattan Singh there. Hence, this witness appears to be worthy of reliance. Further, the relationship of Rattan Singh as the maternal uncle of accused-appellant Vikram Singh is also not denied. Moreover, the accused side has produced 8 defence witnesses from Rajasthan, Hyderabad and Haryana, but has not dared to produce the real uncle Rattan Singh of accused Vikram Singh to impeach the credibility of the extra judicial confession. This itself goes to show that the extra judicial confession made before PW13 is trustworthy, honest and reliable. Besides, there was no prior enmity between the accused side and the complainant side for false implication of the accused. Even the father of accused-appellant Vikram Singh, namely, Hoshiar Singh and C.L.Kundu, husband of the deceased, knew each other for the last 10 years. They both were Professors in the Kurukshetra University and were living in the vicinity. Their relationship was cordial. This fact is also supported by the fact that on the appointment of ShriC.L.Kundu as the Vice Chancellor of the Himachal University, Shimla, on 12.1.1996, ShriHoshiar Singh, father of accused Vikram Singh wrote a letter to ShriC.L.Kundu, congratulating him. ShriC.L.Kundu in turn had extended an invitation to ShriHoshiar Singh on 19.1.1996 to act as an expert member of the selection committee in the subject of Public Administration in the Himachal University, Shimla. In reply thereto, ShriHoshiar Singh had written a letter (Ex.PUUU) to C.L.Kundu dated 22.1.1996, conveying his thanks and also accepted the invitation to participate in the selection committee meeting on 28.2.1996 at 11.00 AM. These facts are elaborately discussed in the trial Court's judgment (para Nos.57 and 58), therefore, there was no motive for false implication. Had it been a case of false implication, ShriHoshiar Singh would have approached the higher authorities but nothing was done. Further, ShriC.L.Kundu, husband of the deceased, who was the Vice Chancellor, and Shri Sanjay Kundu, his son,

who was an IPS Officer, would not have falsely implicated the accused and let the real culprits get away, particularly in the background of cordial relationship between the two families. On the question of unexplained possession, judgment of Hon'ble the Apex Court reported in AIR 1978 SC 522 (Baiju versus State of M.P.), and on the point of identification, the judgments as reported in (a) AIR 1997 SC 2835 (Kailash and others versus State of U.P.), and (b) 1997 Cr.L.J. 534 (State of M.P. Versus Mukand alias Kundu Mishra) also apply in the facts and circumstances of this case. Thus, the chain of circumstances, as set out above, is complete and each circumstance is found to be individually proved, so is the chain. Furthermore, the recovery of gold ring (Ex.P183) from the possession of accused Manjit Kaur which she failed to explain, establishes the charge levelled against her. Similarly, a gold chain (Ex.P182) was recovered from accused Yadvinder Singh at the time of his arrest, which was identified by the family members of deceased as belonging to them. Thus, accused Manjit Kaur and Yadvinder Singh have been rightly held guilty of committing offence under Section 411 IPC.

- ***Hence, we do not find any merits in these criminal appeals, namely,***
- ***(i) Crl.Appeal 364-DB of 1998 (Vikram Singh versus State of Haryana),***
- ***(ii) Crl.Appeal No.400-DB of 1998 (Surender Singh versus State of Haryana),***
- ***(iii) Crl.Appeal No.505-SB of 1998 (Yadvinder Singh versus State of Haryana), and***
- ***(iv) Crl. Appeal No.520-SB of 1998 (Manjit Kaur versus State of Haryana), and, thus, the same are hereby dismissed.***

As regards Crl.Revision No.1142 of 1998 (PhoolKishanKundu versus Vikram Singh and others), for enhancement of sentence, in view of the fact that the offence was committed way back on 18/19.2.1996, it would not be expedient in the interest of justice to convert the sentence of life imprisonment into that of death. Hence, the same is also dismissed.

Resultantly, the impugned judgment is affirmed.

( UMA NATH SINGH )

JUDGE

May 26,2006 ( MEHTAB S.GILL )

pk JUDGE

Whether to be referred to Reporter? Yes/No

## **FAILURE TO IDENTIFY ACCUSED FROM SEMEN ON SLIDE**

### **HIGH COURT MADRAS**

- Victim was a married woman raped by 4 persons on 27/06/1997.
- Medico legal examination conducted on 29/06/1997, **one vaginal smear on slide and pubic hair were taken.**
- All the accused were arrested and potency test was conducted on 01/07/1997. All were found potent.
- On 04/07/1997, petitioners (Accused) filled application u/s 54 CrPC for taking **Blood and Semen sample** and send the same to Director **Molecular Biological Research Institute**, Hyderabad to conduct DNA test and compare the same with that of vaginal smear.
- On 15/07/1997, counter application was filed by Victim that the accused have already been medically examined and declared potent, hence prayer for collection of the samples is not reasonable.
- Learned magistrate sent requisition to Regional Forensic Science Lab, Thanjavur, to know whether DNA test could be possible as requested by the petitioner (Accused)
- **Reply from FSL stated that Vaginal Smear taken after 2 days of the rape may not be a true representative sample of seminal residues and may not be useful biological specimen for reliable analysis.**
- **Accordingly, magistrate dismissed the application of the accused stating that test is not possible and would not give fruitful result. Further, the presence of semen on the vaginal part need not be a must, since mere penetrative would amount to rape.**

**PRAYER FOR COLLECTION OF THE SAMPLES OF BLOOD FOR ANALYSIS  
BY GOVERNMENT AND PRIVATE EXPERT**

## HIGH COURT GUJARAT

- The accused filed review petition in the high court for seeking permission to engage Forensic DNA Examiner of their own choice and also for directing the investigating agency to see that the expert team in government lab as well as DNA expert team engaged by them should jointly conduct the DNA test.
- The petitioner also prayed that at the time of taking blood samples for conducting DNA test, the DNA examiner engaged by them may be permitted to collect the samples simultaneously for conducting DNA test and to give their independent opinion.
- The counsel engaged by the petitioner pleaded that if a proper care is not taken while drawing the blood sample and testing the same along with crime exhibits, the testing material from crime exhibits may vanish because of its smallness and use in testing processes and the accused may not get a chance to rebut the finding through re-testing, if they so desire in their defence.
- The counsel also pleaded that there should not be any objection on the part of respondent (state) in permitting the accused to engage their own expert for the entire process.
- The counsel expressed apprehension that if sample is not collected and/or analyzed properly along with crime exhibits, the same could not be recalled into question and accused had to face trial.
- Therefore, they should at least be permitted to observe the process of drawing of sample from the accused body and the process of examination in the forensic science laboratory at least from outside of a window glass.
- It is true that the high profile test is considered irrefutable proof of identification and therefore, it is necessary to establish standard of analysis and accuracy in the level of **Statistical Calculations**.
- The laboratory performing such test should be submitted to Double Blind Test in which neither the Lab, nor the technician know what the samples are to ensure that they are working with acceptable quality control.
- The counsel also quoted some part of a book published by Pearson Education having heading “Understanding Biotechnology” from chapter 10 titled “Forensic DNA” where in author has stated that “Considering the DNA analysis is a powerful identification technique it should be used carefully. The sensitivity level of many DNA test is so high the cells from technician hand or from sneeze could contaminate the sample. Therefore,

care in the collection, custody and manipulation by the biological sample is of great importance for the validity of this analysis. Finally, human beings can make mistakes. Technician can mislabel a flask, change codes, change names and so on due to many possible errors. Many laboratory use double reading in each step of analysis. They also save part of sample for possible re- analysis. Procedure used for collection, storage and transportation of sample used in the standard serology will suffice well for samples used in DNA testing. Care should be taken to seal and label samples properly to ensure the future integrity and identification of the samples”

- Expressing apprehension of vanishing the entire crime exhibit it is argued that where there is no scope of duplicate tests of a particular crime exhibit, the prayer of the petitioner of being innocuous, should be accepted and petitioner may be permitted to keep their DNA forensic examiner present right from the stage of collection of blood sample till the test analysis is performed.
- The learned PP strongly resisted the submission by defense counsel and pointed out that there is no scope of error, and the apprehension expressed by the defense is w.r.t. methods earlier adopted by FSL because in earlier years RFLP technology was used. At present the latest PCR based technology for STR analysis is used so the apprehension expressed by the defense counsel is only relevant if any earlier or outdated technology is sought to be adopted for analysis or test in the present case.
- All the methods/kits (instruments etc) used are well validity for forensic identification purpose and in the present case the analysis which is the latest one ie STR is to be applied. The STR technique is latest one and is human specific, fast and easy to standardize. The technique is automated which ensures better accuracy and reproducibility. The interpretation of the result is also quite simple and all activities are being done and observed mainly by computers. Therefore, possible chances of error are eliminated.
- **The court did not accept the plea of the petitioner to appoint an independent observer while conducting the DNA test in FSL saying that it would demoralize the scientists working there. The court also informed that expert who give their opinion are covered under 293 CrPC and their reports are also authentic. If an independent expert is allowed in one case, there would be requests from many cases examined by FSLs which interfere with their output.**

## HIGH COURT MADRAS -2005

Issue involved:

Prayer for re-examination from another laboratory after receiving DNA record from state FSL.

- Husband (Petitioner) married the respondent on 19/11/1995.
- A female child was born to the couple on 24/08/1996 and second female child was born to the couple on 18/04/1999, for which the husband denied the paternity.
- He said, the wife did not return to matrimonial house after the first child was born, so the second child is not his and she might have developed illicit relations with some other person.
- On grounds of adultery husband filed for divorce.

Denying the averments, the wife filed counter statement contending that both babies were born to the petitioner/husband.

- A report was submitted by state FSL confirming the paternity ie the second child was also of the petitioner.
- The husband filed another application to determine the parentage of the second female child. According to him the earlier DNA report confirming the paternity was obtained by the wife influencing the scientific experts through one of her relatives, who is working in the Forensic Science Department.
- According to the husband, if that report is taken into consideration, his contention in the main petition would be negative. Hence, husband filed application to take three blood samples of wife, child and his and send to three different centers ie CCMB, CDFD and CFSL, Kolkata.

State FSL had conducted elaborate DNA test and an elaborate report was furnished. On the basis of DNA test report, the scientific Expert has given his opinion that “the cumulative probability of paternity of the alleged father Mr. Sakthivel for being the father of the child Archana is 99.9207%. the cumulative chance of Exclusion of any random man from paternity of the child Archana is 99.99999988%”. The opinion is supported by the comprehensive analysis of the results. The well-considered analysis and the report there on can not be doubted by accepting the contention raised by the

husband that the result was obtained by influencing the scientific experts in FSL. In any event, the DNA test is the only piece of evidence in support of the paternity of the child.

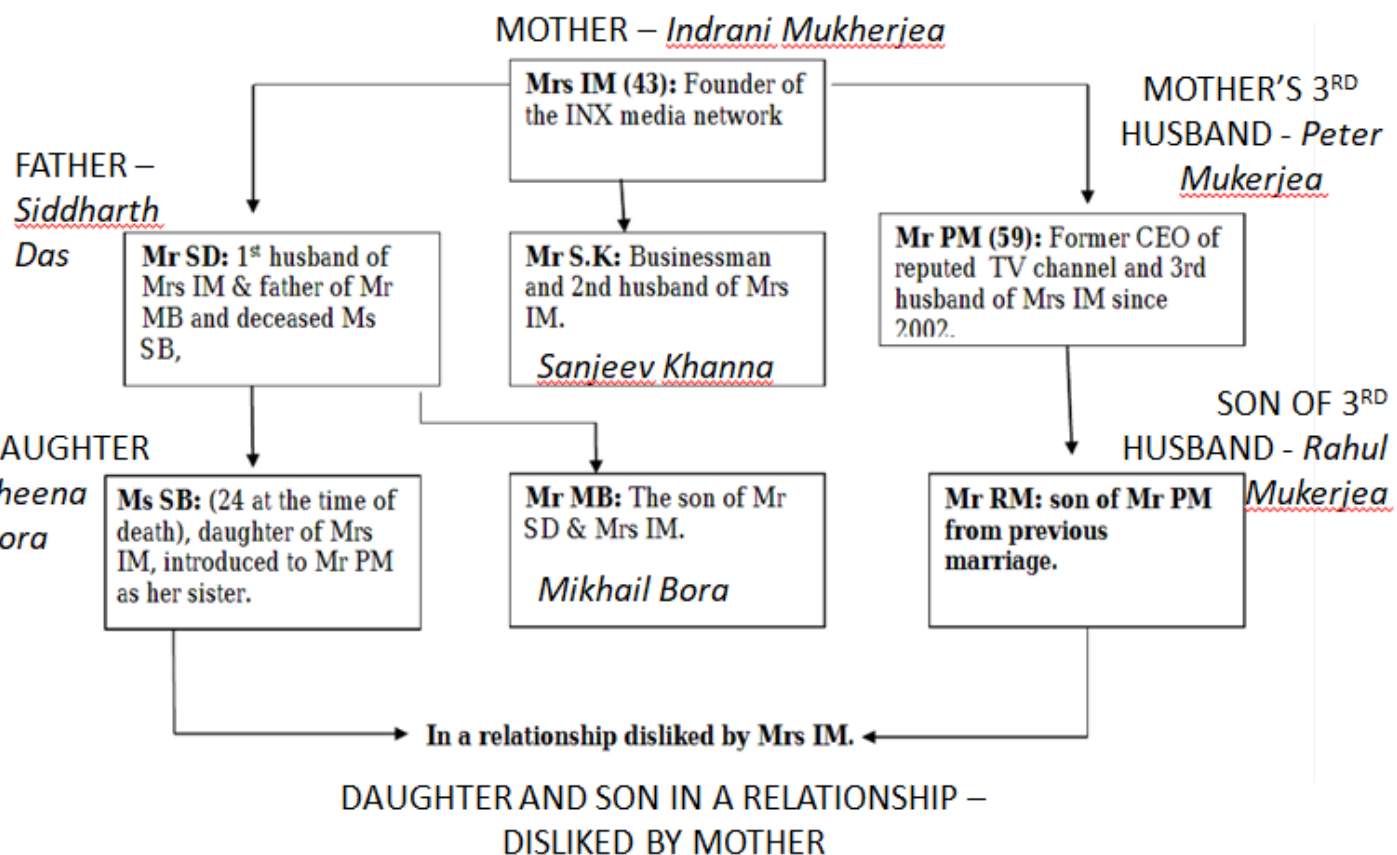
If the samples are sent to three different places, three different reports might lead to confusion. The petitioner cannot seek to send blood samples for DNA test for the second time which would lead to unhealthy practice where the parties would be repeatedly seeking to send the samples till they get a favorable report. Such request of the husband to send the blood sample of the spouse for DNA test for the second time cannot be acceded to.

### **Tandoor Murder Case -1995**

- This is the **first case in India** where DNA fingerprinting was used for investigation.
- Former Congress worker Mrs. Naina Sahni was shot dead by her husband Sushil Sharma as he suspected Naina of having an extramarital relationship with Matloob Karim (Matloob and Naina were classmates and fellow Congress workers)
- On 2<sup>nd</sup> July 1995, Sushil came home and saw Naina talking on the phone and consuming alcohol.
- Sushil redialed the phone to find Matloob on the other end. Enraged, he fired three shots from his licensed revolver. While one bullet pierced through Naina's head, the other hit her in the neck. The third bullet missed her and hit the air conditioner.
- Naina died on the spot. Later he bundled the body of Naina into his Maruti car and stuffed it in the tandoor (oven) of the restaurant called Bagiya and tried to dispose it off with the restaurant manager, Keshav Kumar.
- During postmortem, doctors detected two bullets in head and neck region, opined cause of death due to firearm injuries.
- The police seized his revolver and blood-stained clothes and sent them to the Lodhi Road Forensic Laboratory.
- *Charred remains of a body in the tandoor kitchen and blood samples of Naina's parents, Mr Harbhajan Singh and Mrs Jaswant Kaur, and sent them to Hyderabad for DNA test.*
- *DNA from muscle pieces attached to her charred bone were compared with that of her parents and sister. It was established that the burnt body in tandoor was of Mrs Naina Sahni.*
- **May 9, 1996:** Trial court frames charges under section 302 (murder), 120-B (criminal conspiracy) and 201 (destruction of evidence) against five persons.

- **January 1999:** Court records evidence in the case.
- **November 3, 2003:** Court convicts Sharma.
- **November 7, 2003:** Sharma sentenced to death and Keshav gets seven years rigorous imprisonment.
- **December 2003:** Sharma moves Delhi High Court challenging trial court judgment.
- **February 19, 2007:** Delhi High Court upholds death sentence to Sharma.
- **October 7, 2013:** While pronouncing the verdict in this murder case, the Supreme Court stated that the chronology of events would indicate that the accused and the accused alone had committed this brutal murder. Justice Ranjana Prakash Desai while pronouncing the verdict said it is not a crime against society, but it is a crime committed by the accused due to strained personal relationship with his wife.
- **Final Verdict:**  
*On 8 October 2018, Sharma was sentenced to life imprisonment by the Supreme Court.*

## Sheena Bora Case-2012



DATE	SEQUENCE
April 24, 2012	Ms Sheena Bora takes a leave of absence from work at Mumbai Metro and sends a resignation letter to her employer. She is not heard since then.
May 23, 2012	Police finds a decomposed body after villagers at Gagode in Pen tehsil, Maharashtra, complaint of foul odour.
August 21, 2015	MrShyamwarRai , <b>Driver</b> is arrested following the seizure of a 7.63-bore pistol from him.
August 26, 2015	MrsIndraniopened up that Ms Sheena was her daughter from a previous marriage and not sister as maintained.
August 27, 2015	<ul style="list-style-type: none"> <li>• MrSanjeevKhanna, a Kolkata based businessman and ex-husband ofIndrani was arrested From Kolkata.</li> <li>• The driver confessed that he murdered Sheena and disposed of her body, on the direction of his masters.</li> </ul>
Aug 28, 2015	MrSanjeevKhannaconfessed to his "complicity in the crime." He had earlier said that, the body of Sheena was lying next to him in a car in which they were travelling together in Mumbai on April 24, 2012.
Aug 29, 2015	Maharashtra Police has ordered a probe into why the Raigad Police did not register an Accidental Death Report (ADR) after they found a burnt corpse, suspected to be of Sheena, in 2012.

### Statements

Driver	Discloses that he, Indrani and MrSanjeev Khanna together strangulated Sheena inside a car on April 24, 2012. The car with the body inside is parked in garage till the next day when the body is burnt and dumped.

brother	Says he knows the “exact reason” for which his sister was murdered and reveals that Ms Sheena was MrsIndrani’s daughter and not sister as had been made public.
MrsIndraniMukerjea	Accepts that Sheena was her daughter.
Indrani’s Husband – Peter Mukherjea	Says he never knew Sheena was Indrani’s daughter but knew that she was in a relationship with MrRahul , and that Indrani disapproved the relationship.

## Evidence

- From the place Sheena Bora’s body was dumped, the police recovered some bones, a skull and a suitcase.
- Forensic Experts were not able to extract DNA from the molars but from long piece of femur bone.
- The DNA profiles were checked and re-checked thrice using different approaches to weed out any error.
- Usually, after being burned and being left in the open to environmental degradation, it’s not easy to determine the DNA but one of the experts explained how due to location and weather condition, the DNA sample survived otherwise if the DNA was contaminated, the acquired result would be incomplete.
- The skull found was estimated to be of a female aged 22-25 years.
- Height estimate from the long bone (femur) was between 153-160 cm.
- DNA markers were found to be matching between Sheena and Indrani confirming the relationship.

### Four Steps for DNA testing-

- **FIRST DAY:** Part of Femur(thighbone) of the skeletal remains was crushed. Bone cells were separated by chemically treating them to remove calcium. Calcium interferes with DNA testing (takes24hours)
- **SECOND DAY:** Nuclear DNA was extracted separately from bone and bloodcells of IndraniMukerjea (takes24hours)
- **THIRD DAY:** DNA profiles of bones and blood were obtained
- **FOURTH DAY:** Fifteen DNA markers for the bone and blood samples were compared.

- Fifteen universally specified DNA markers on the bone of the unknown sample and the blood sample of Indrani matched.
- The sixteenth marker is Amelogenin, which determines the sex of the sample.

### **PriyadarshiniMattoo Case – 1996**

- 25-year-old law student who was found raped and murdered at her house in New Delhi on 23 January 1996.
- On 17 October 2006, the Delhi High Court found Santosh Kumar Singh guilty on both counts of rape and murder and on 30 October of the same year sentenced him to death.
- On 6 October 2010, the Supreme Court of India commuted the death sentence to life imprisonment. Santosh Kumar Singh, the son of a Police Inspector-General, had earlier been acquitted by a trial court in 1999, and the High Court decision was widely perceived in India as a landmark reversal.
- This decision went in favor because the facts were not presented correctly in the lower court

#### **Trial Court Judgment**

- Delivering the ironical and widely criticized judgment in the trial court proceedings in 1999, the Additional Sessions Judge. G.P. Thareja said of Santosh, that though he knew that "he is the man who committed the crime," he was forced to acquit him, giving him the benefit of doubt.
- In a 450-page judgment the judge came down heavily on the role of Delhi Police; "There has been particular inaction by Delhi Police", he said, while commenting that the accused's father may have used his official position to influence the agencies. "The influence of the father has been there in the matter and there was deliberate inaction" (at the time his father was second in command of the police forces in Delhi).
- The judge added that the **CBI fabricated the DNA test in the rape case as it was not obtained in accordance with the judicial procedure and could not therefore be admitted in evidence in view of Section 45 of the Indian Evidence Act.**
- The "state had failed to bring home the charge of rape against the accused", and while indicting Santosh as "the man who committed the crime", the judge was constrained to acquit him, because of "the benefit of doubt".

#### **High Court Appeal**

- On 31 August 2006, six years after the initial appeal by CBI, justices RS Sodhi and PK Bhasin took up the case on a day-to-day hearing basis, which is extremely rare in India. Judgment was reached within 42 days which is quite unprecedented.
- “ The trial judge acquitted the accused amazingly taking a perverse approach. It murdered justice and shocked judicial conscience.”
- In particular, **the verdict held that there were no lacunae in the DNA testing, and that the combination of the forensic and circumstantial evidence was clinching.** However, the bench agreed with the trial's court observation that police were reluctant to act on repeated complaints of harassment and stalking against Singh as his father was the senior IPS officer (now retired) Director-General of Police J.P. Singh.

### **Death penalty**

- **As recommended by the Central Bureau of Investigation the death penalty was awarded to Santosh Singh on 30 October 2006.**
- Pronouncing its verdict, the court said the mitigating circumstances under which leniency was begged for Santosh was not enough and the brutal rape and murder does fall in the bracket of "rarest of rare" cases. Santosh was sitting just five-feet away from the jam-packed court. The court had convicted Santosh of the crime earlier that month.
- The two-judge bench, comprising Justice R. S. Sodhi and Justice P. K. Bhasin, heard both sides before pronouncing the verdict. **The court said Santosh Singh had been given many chances to reform by the police when Priyadarshini had complained that he was stalking her. However, he didn't mend his ways and eventually raped and killed her.**
- **"In spite of repeated warnings by the police and his undertakings to them, he went about committing the most ghastly act.** The act itself sent ripples in society and showed how insecure a citizen can get against this kind of a person," the Bench remarked.

### **Supreme Court appeal**

- 19 February 2007. Santosh Singh appealed against the death penalty sentence.
- The defense lawyers of the **accused Santosh Singh questioned the validity of the DNA report, one of the main causes for which he was given the benefit of doubt in the Trial court.**

- In October 2010, the Supreme Court upheld the conviction of Santosh Kumar Singh but reduced the death sentence to life imprisonment.

## DNA testing mandatory in all rape cases, says court

New Delhi, Sun Jan 29 2012

Noting that DNA testing should be made mandatory in all sexual assault cases, a Delhi court sentenced five persons to life imprisonment for abducting and gangraping a mentally-challenged minor.

- Even though guidelines for the collection of DNA samples from rape victims were included in the Code of Criminal Procedure (CrPC) over five years ago, the procedure is still not being followed by many city hospitals and forensic labs.
- The court noted that many still opt for the old method of blood grouping, which makes it hard for investigators to establish the liability of the accused as more than 25 per cent of the population may have the same group of blood and semen.
- "It has therefore become necessary for investigating agencies and also for the State to ensure that in cases of sexual assault, particularly those involving gangrape, or where the identity of the accused is not known to the victim, or where the victim is a child, **DNA profiling is made mandatory.**
- I am hopeful that with due intervention of senior officers of State and Police, the **existing scientific technology** shall be put to its best utilization, so as to ensure that the guilty are not let off and the innocent do not suffer," **Additional Sessions Judge Kamini Lau** said.
- The court's observations were made while sentencing Mukesh, PrabhansYadav, Deepak, Ravinder Kumar and Rajeev, who were held guilty of kidnapping and raping a minor.
- ASJ Lau imposed a fine of Rs 27,000 on each of the five convicts, and directed the government to give the victim a compensation of Rs 1 lakh.

**India lacking DNA evidence in crimes against women** December 28, 2017

Even five years after Delhi's Nirbhayagangrape case that shook the nation, crimes against women continue to be on the rise and convictions remain dismally low.

- According to NCRB, last year saw the conviction rate in crimes against women fall to 18.9 percent - the lowest in a decade.
- Moreover, only one in every four rape cases resulted in conviction.
- "Between 2012 and 2014, Delhi Police registered 31,446 cases for crime against women but less than 150 convictions were made(0.477%). Criminals are not scared anymore. This needs to change. There is a dire need to strengthen investigative and forensic infrastructure in the city," said chairperson, Delhi Commission for Women, Swati Maliwal.
- While DNA evidence was key in proving the guilt of Nirbhaya's perpetrators beyond doubt, majority of the victims in cases of rape and violence against women continue to be denied scientific investigations based on DNA forensics.
- Internationally, DNA forensics is used as a standard operating procedure in crimes against women.
- However, not enough DNA is being 'collected', 'tested' and 'compared' in crime scenes in India, which amounts to poor conviction, very high pendency rate and resulting huge backlogs.
- United Kingdom, has over 60,000 DNA tests completed for crime scenes annually, while in India, with a population thirteen times greater, crime labs are able to complete only 7,500 cases annually.
- "Across the world, it has been found that perpetrators are much more likely to plead guilty when DNA forensics are used, and the convictions are much higher than without DNA forensics, saving the court and the police time and resources," said president, Gordon Thomas Honeywell-Governmental Affairs, Tim Schellberg.
- Addressing the issue , in a move to create a wider public opinion, ShakthiVahini, an NGO fighting crime against women and children, organized a daylong forum on strengthening investigative procedures for sexual assault and rape cases in India.

- The panel discussed crucial forensic techniques which are missing with investigative agencies, **lack of proper training in handling evidence**, compulsory collection of DNA evidence in sexual assault cases against women and underfunded forensic labs.
- "If India has to send a strong message to criminals and instill in them the fear of law, we have to ensure that evidence collection is strengthened. Crime scenes must be protected, crucial evidences collected, scientifically examined and analysed.
- We need to realise that DNA profiling offers one of the most reliable forensic tools in solving cases of sexual assault and rape," said senior advocate at Supreme Court and president of Shakti Vahni, Ravi Kant.
- Section 164A of the Indian Code of Criminal Procedure mandates collection of human material from the victim for forensic testing.
- In several instances, the courts have also ordered for DNA testing to arrive at a judgement, particularly in cases of rape.
- However, considering the high crime rate, low conviction rate and prolonged trials, it appears that DNA testing is being carried out in only a small number of cases. As a result, rape and murder offenders are escaping conviction and the innocent are being wrongly punished.
- **"Fair and competent investigation in a criminal case is the backbone of criminal justice in any society. Collection of DNA evidence is equally important from the perspective of the prosecution and the defence.**
- Hence, collection of DNA evidence, in appropriate cases can be said to be following Article 21 of the Constitution of India which guarantees to every person the fundamental right to life and liberty,"( senior advocatet Delhi High Court, VivekSood.)