

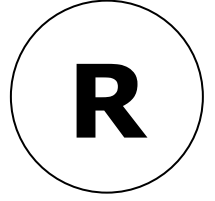
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MAY, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL APPEAL NO.535/2012



BETWEEN:

SRI. MURALI,
S/O GOW THIMMAPPA,
AGED ABOUT 25 YEARS,
PERMANENT RESIDENT OF
BIDDALAPURA VILLAGE,
CHANNARAYAPATNA HOBLI,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT,
BENGALURU.

... APPELLANT

(BY SRI. C.R.GOPALASWAMY, SENIOR COUNSEL FOR
SRI. BHARGAV G., ADVOCATE)

AND:

STATE BY CHANNARAYAPATNA POLICE,
DEVANAHALLI TALUK,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU.

... RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2)
OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF
CONVICTION AND SENTENCE DATED 19.04.2012 PASSED BY
THE PO, FTC, DEVANAHALLI IN S.C.NO.159/2011 CONVICTING
THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE
UNDER SECTION 306 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.04.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for the appellant and the learned Additional SPP appearing for the respondent State.

2. The factual matrix of the case of the prosecution is that the appellant was the native of Kolar District and a distant relative of P.W.4 Narasimhappa. The appellant had gone to P.W.4's place in search of employment and requested him to accommodate him in his house. In this regard, he requested P.W.6 Byrappa who happened to be the husband of P.W.5 and daughter of P.W.4 to influence P.W.4 to accommodate him. Accordingly, P.W.4 had accommodated the appellant in his house for the last one and half years. It is alleged that during his stay in his house, he developed intimacy with his daughter which resulted in the pregnancy of six months. In order to avoid from getting married, he abetted the daughter of P.W.4 to commit suicide saying that he would also commit suicide and he has given a tablet which was used as pesticide and accordingly the

victim consumed the tablet on 27.03.2010 at about 4.00 p.m. When she was suffering by consuming the said tablet, the same was noticed by P.W.5 Kumari Kavitha, who happened to be the elder sister of the deceased and took her to the local hospital with the help of others and thereafter she was shifted to Bowring Hospital and while taking treatment, the victim re-gained conscious and disclosed that the accused is the cause for her pregnancy. The said statement was made in the presence of the witnesses and got confirmed the same by securing another tablet, which was kept in the house on the disclosure made by the victim and hence the case was registered and investigation was conducted and filed the charge-sheet against the appellant/accused. The accused did not plead guilty and hence the prosecution mainly relied upon the evidence of P.W.1 to P.W.13 and got marked the documents at Exs.P.1 to 8(d) and M.O.1 was marked and Exs.D.1 and 2 was confronted. The Trial Court having assessed the material available on record, comes to the conclusion that at the instance of the accused only the victim took the extreme step of committing suicide and accepted the evidence of the witnesses, medical evidence and expert evidence and convicted the accused for the offence punishable under

Section 306 of IPC and imposed sentence of five years with fine of Rs.3,000/- and in default, imposed two months simple imprisonment.

3. Being aggrieved by the said judgment of conviction and sentence, the present appeal is filed before this Court.

4. The main contention of the learned counsel for the appellant is that the victim fell down after consuming the tablet. Till then, none of the prosecution witnesses were aware of the allegations made against the accused. It is contended that the medical records are also clear that the victim was unconscious when she was brought to the hospital and records are not disclosing that she had re-gained conscious. But the evidence of P.W.4 is that the victim re-gained conscious in the midnight and stated that the accused had given poisonous tablet and abetted her to commit suicide and that he assured that he will also commit suicide. But these facts neither appear in the medical records nor stated before the doctors. Only on the basis of the statement of P.W.4, the Trial Court comes to the conclusion that the accused had abetted her to commit suicide. It is contended that she was pregnant of six months and there is no material

before the Court that as a result of illicit relationship, she became pregnant. The entire prosecution story is related to the instances subsequent to the death. It is very strange to hold that though their daughter was pregnant of six months, P.W.4 and P.W.5 were keeping quiet without enquiring anything either with the victim or with the accused person before the incident. The medical records clearly stated that the death is due to respiratory failure as a result of consumption of aluminium phosphate.

5. The learned counsel for the appellant would contend that after having re-scrutinized the evidence, it is very clear that the prosecution failed to bring the case within the purview of offence punishable under Section 306 of IPC. The learned counsel contend that Ex.P.1 complaint is given by the sister of the deceased P.W.1 and P.W.3 is the brother of the deceased and the prosecution relies upon the evidence of P.W.8 and his evidence not connects the accused. The learned counsel contend that Ex.P.2 also not supports the case of the prosecution regarding recovery of the tablet. P.W.11 is the FSL Officer, P.W.13 is the doctor and P.W.12 is the Investigating Officer who conducted the investigation. The learned counsel contend that

no complaint was given till her pregnancy was reported. The medical evidence also not supports the case of the prosecution. There is no material to connect the accused that he made the victim pregnant. The mahazar is clear that two pieces are found and there is no report of DNA and discrepancy is found in the evidence of the prosecution witnesses and hence the appellant is entitled for acquittal.

6. The learned counsel for the appellant in support of his arguments relied upon the judgment of the Apex Court in the case of **CHOTKAU v. STATE OF UTTAR PRADESH** reported in **(2023) 6 SCC 742** and brought to the notice of this Court paragraph No.80, wherein discussion was made that Section 53A of Cr.P.C. is not mandatory and relied upon paragraph No.54 of the judgment of the Apex Court in the case of **RAJENDRA PRALHADRAO WASNIK v. STATE OF MAHARASHTRA** reported in **(2019) 12 SCC 460**, wherein it is held that the failure of the prosecution to produce DNA evidence, warranted an adverse inference to be drawn and extracted paragraph No.54 wherein it is held that where DNA profiling has not been done or it is held back from the Trial Court, an adverse consequence would follow for the prosecution.

7. The learned counsel also relied upon the judgment of the Apex Court in the case of **Rajendra Pralhadrao Wasnik** (supra) and brought to the notice of this Court paragraph No.79, wherein discussion was made that indeed, no material or evidence was placed before the Courts to arrive at any conclusion in this regard one way or the other and for whatever it is worth on the facts of this case. The prosecution was remiss in not producing the available DNA evidence and the failure to produce material evidence must lead to an adverse presumption against the prosecution and in favour of the appellant for the purposes of sentencing.

8. The learned counsel also relied upon the judgment of the Apex Court in the case of **KRISHAN KUMAR MALIK v. STATE OF HARYANA** reported in **(2011) 7 SCC 130** and brought to the notice of this Court paragraph Nos.44 and 46, wherein discussion was made that it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in Cr.P.C., the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of

semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences and held that conviction of the appellant cannot be upheld.

9. The learned counsel also relied upon the judgment of the Bombay High Court in the case of **GANESH PRALHAD SONTAKKE v. STATE OF MAHARASHTRA THROUGH PSO PS MOUDA** reported in **2018 SCC Online Bom 1795** and brought to the notice of this Court paragraph No.12, wherein discussion was made that in the statement made by the appellant under Section 313 of Cr.P.C., it was specifically stated that the prosecutrix P.W.1 had lived with the said maternal cousin for five to six months and that she was pregnant from him. In this situation, it was incumbent upon the Investigating Officer to have conducted DNA test of the girl child born to the prosecutrix P.W.1. It was stated in the evidence of the prosecutrix P.W.1 that after the girl child was born in Government Hospital at Kamthi, she had gifted that child to a couple. Thus, it has come on record that a girl child was born, who was available for conducting DNA test to ascertain paternity of the child. When it was the specific case of the appellant that he had not committed

sexual intercourse with the prosecutrix P.W.1 and when a defence was raised that she was pregnant from Vishnu S/o Ambadas her maternal cousin, it was necessary for the Investigating Officer to have conducted DNA test to ascertain the truth in the matter. But, he failed to do so. When specifically asked in the cross-examination, the Investigating Officer P.W.7 simply stated that he did not find it necessary to conduct DNA test.

10. The learned counsel referring these judgments would contend that in the absence of any DNA test, there cannot be any conviction of the appellant and hence it requires interference of this Court.

11. Per contra, the learned Additional SPP appearing for the respondent State would contend that the material available before the Court is clear that P.W.1 and P.W.3 admitted the victim to the hospital. It is their case that at around 6.00 p.m. the victim was lying unconscious. It is the evidence of P.W.1 and P.W.3 that the accused failed to marry the victim when she became pregnant. The learned counsel brought to the notice of this Court that P.W.8 had seen that the accused went with tablet

to the house of the victim and he was there in the house of the victim till 4.30 p.m. and also victim stated before her relatives and doctor that she took one tablet and kept one tablet in a particular place and the same was seized by drawing mahazar in terms of Ex.P.2. The disclosure statement of the victim is also corroborated by the evidence of the witnesses. The learned counsel contend that the evidence of P.W.1 to P.W.4 and P.W.8 supports the case of the prosecution and corroborates with each other. The victim made the statement in the hospital when she re-gained conscious and the evidence of P.W.4 is clear with regard to the making of statement. The learned counsel contend that in order to bring the accused within the ambit of Section 306 of IPC, there was no animosity and nothing is elicited in the cross-examination of all these witnesses that they were having any animosity against the accused. The learned counsel contend that the post mortem report shows that she was pregnant and the lapses on the part of the Investigating Officer in not conducting the DNA test will not come in the way of coming to the conclusion that the accused was responsible for her pregnancy and he abetted her to commit suicide. P.W.8 is the neighbourer who witnessed the visit made by the accused to the

house of the victim before consuming the tablet and the same is connecting the role of the accused in abetting the victim to take the extreme step.

12. In reply to the arguments of the learned Additional SPP, the learned counsel for the appellant would contend that P.W.8 is the relative and the same is admitted in the cross-examination. The evidence of P.W.3 is clear that the accused was not in the vicinity from last three days. When such being the case, there cannot be any conviction against the appellant and hence it requires interference of this Court.

13. Having hearing the learned counsel for the appellant and the learned Additional SPP appearing for the respondent State and having taken note of the principles laid down in the judgments referred supra by the learned counsel for the appellant, the points that arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in convicting the accused for the offence punishable under Section 306 of IPC and whether this Court can exercise the appellate

jurisdiction and set aside the judgment of conviction and sentence?

(ii) What order?

Point No.(i):

14. Having heard the respective learned counsel for the parties, this Court has to take note of the material available on record, analyse and re-appreciate both oral and documentary evidence available on record.

15. The factual matrix of the case of the prosecution is that the accused was staying in the house of the victim since the father of the victim i.e., P.W.4 had accommodated him when he was in search of employment and he developed intimacy with the victim. As a result, the victim became pregnant of six months and he abetted the victim to take the extreme step of committing suicide by providing tablet to consume the same, which has resulted in the death of the victim. The accused did not plead guilty and hence trial was conducted. The prosecution mainly relied upon the evidence of P.W.1, who is none other than the sister of the victim. P.W.1 reiterates with regard to the accused came and stayed in the house of P.W.4. It is her evidence that her sister became pregnant of six months and the

same was disclosed on enquiry with the sister and she disclosed that the accused was responsible for the same. It is her evidence that two poisonous tablets were given to the victim by the accused and he assured that he is also going to commit suicide by consuming the tablet after going to his room and that statement was made before her death. It is also her evidence that the victim was taken to Budigere PHC and thereafter taken to Bengaluru Bowring hospital in an ambulance and she regained conscious at around 12.30 a.m. in the midnight and when she was asked why she took the extreme step she revealed the same. The next day at around 9.30 a.m. the victim passed away and she has given the complaint in terms of Ex.P.1 and the police conducted inquest and also conducted mahazar in terms of Ex.P.2 and seized the tablet. She was subjected to cross-examination.

16. In the cross-examination, it is elicited that the accused in relation would be the brother. It is elicited that her father's house and uncle's house are situated by the side of each other. It is suggested that she was having animosity against the accused and was intending to send him out from the house and hence conspired and lodged the complaint and the said

suggestion was denied. It is elicited that the victim lost conscious at around 6.30 p.m. and when she was taken to the hospital it was around 7.30 p.m. It is elicited that when the victim re-gained conscious at around 12.00 a.m. in the midnight, at that time, herself, her brother Murthy, her uncle Ramappa and another uncle Jayanth were there and no other persons were there. She admits that the complaint was written by Jayanth, her uncle. She admits that at the time of drawing mahazar, there were six persons and she herself, Muninarayanappa, Subramanya and Anjanappa had signed the same. The mahazar was drawn in between 11.00 a.m. to 12.30 p.m. and she does not know the contents of the mahazar. Herself and her brother Murthy brought and produced M.O.1 tablet before the police and the tablet was in two pieces. It is suggested that she has not narrated in the complaint about giving of tablet by the accused and the same was denied. It is suggested that someone else was responsible for the victim's pregnancy and a false case was registered and the said suggestion was denied. It is elicited that the doctor has noted the disclosure statement of the victim.

17. P.W.2 Ramappa is the uncle of the victim and he reiterated that the accused was staying in the house of the victim and came to know that she became pregnant and she was taken to the hospital and she re-gained conscious and she disclosed about the accused. The accused was there in the house on the day of consuming of the tablet and thereafter he left the house. The victim informed that the accused brought four tablets and he gave two tablets to her and other two tablets he kept in the house. This witness was subjected to cross-examination.

18. In the cross-examination, he admits the relationship between the accused and the victim. He admits that he is having a daughter by name Sumithramma and she was given in marriage to one Manjunath and one Diwakar is brother of Manjunath and he does carpentry work. It is suggested that Diwakar was staying in his house and the same was denied. He says that he came to know that the victim had consumed the tablet and was taken to the hospital. He says that when she re-gained conscious at around 12.00 in the midnight, he himself, P.W.1, Murthy, Jayanth and Narasimhappa were there and she

disclosed that she consumed one tablet and another was kept inside the vessel.

19. P.W.3 is the brother of the deceased. He says that the accused was staying in the house of P.W.4. The victim is her uncle's daughter and when he came near the house of the deceased at around 6.00 p.m., she was lying unconscious and both himself and P.W.1 tried to lift her, but she was not having conscious and immediately they took her to the PHC Nalluru and the doctor having examined her directed to take her to the Bowring Hospital and accordingly they took her to Bowring Hospital. He reiterated that at around 12.00 in the midnight she re-gained conscious and disclosed that the accused was responsible for her pregnancy. She disclosed that she consumed one tablet and another tablet was kept in the slab of the kitchen and the same was covered with vessel. Immediately he called one Shivu and asked him to search for the tablet and he found the tablet and confirmed the same and she died on the next day. He was subjected to cross-examination.

20. In the cross-examination, he admits that the accused was his sister's husband's sister's son and also admits

that his uncle Ramappa is having a daughter by name Sumithra. He says that he came to know about the incident at around 7.00 p.m. and when she re-gained conscious in Bowring Hospital at 12.00 in the midnight, he himself, Munirathnamma, Jayanth, Ramappa, Kavitha, Byrappa and Anjanappa were there. He reiterated that the victim disclosed that the accused gave two tablets to her and told that he would consume other two tablets. When a suggestion was made that no such statement was made, the same was denied. It is suggested that he has not made any statement before the police that when she re-gained conscious, he himself, Munirathna, Jayanth, Anjanappa and doctor were there and the same was denied.

21. P.W.4 is the father of the victim and he reiterates that the accused was accommodated in his house. He says that he came to know about the victim was vomiting and lying in front of the house and she was unconscious and she was pregnant and taken to the hospital. She disclosed about consuming one tablet and keeping another tablet underneath the vessel in the kitchen and the accused is responsible for her death. In the cross-examination, he says that on the date of shifting her to the hospital, he did not accompany her, but he

went to the hospital on the next day. It is suggested that his son Murthy did not disclose anything about the disclosure statement made by the deceased and the said suggestion was denied. It is suggested that he used to consume alcohol and the same was questioned by the accused and hence there was a quarrel between him and the accused and the same was denied.

22. P.W.5 Kavitha is the sister of the victim and she says that she requested P.W.4 to accommodate the accused in the house of P.W.4. She says that she went and spoke to the victim at around 7.30 a.m. in the next morning and she disclosed that the accused was responsible for her pregnancy. In the cross-examination, she admits that the accused is the sister's son of her husband. She admits that she came to know about consuming of tablet in the previous day through her sister Munirathna. She admits that the victim did not disclose before her, but she came to know about the same through P.W.1.

23. The other witness is P.W.6 and he speaks about requesting P.W.4 to accommodate the accused in the house of P.W.4. It is suggested that he did not request P.W.4 for accommodation and the same was denied.

24. P.W.7 is the witness to Ex.P.2 drawing of mahazar and he says that he does not know the contents of Ex.P.2. He admits that four to five persons were present at the time of drawing mahazar. He says that at the time of conducting mahazar, tablet was seized and admits that M.O.1 tablet was having more pieces. A suggestion was made that the same was not seized and the same was denied. He says that M.O.1 was found near the kitchen underneath the vessel.

25. P.W.8 is the witness who speaks about taking the victim to the hospital. He says that the victim re-gained conscious in the midnight and gave the statement that the accused did not agree to marry her and he advised the victim to consume tablet and also he is also going to consume the tablet. He says that he called and confirmed that the tablet was kept underneath the vessel. This witness was subjected to cross-examination.

26. In the cross-examination, he says that he saw the accused in the house of the victim and the distance between his house and the victim house is about 30 feet. He says that he was not aware of the contents of the box. It is suggested that

he was not in the house and no such box was given to the victim and the same was denied. He says that at the same day at around 8.30 p.m. he went to Budigere.

27. The other witness is P.W.9 Police Constable who apprehended and produced the accused. P.W.10 is the woman Police Constable and she gave the report in terms of Ex.P.5.

28. P.W.11 is the FSL official, who examined the seized articles and gave the report. He found that article Nos.1, 2, 3 and 5 contained phosphate iodine, but not found in article No.4 and he gave the report in terms of Ex.P.6. In the cross-examination, he admits that he cannot tell the percentage of aluminium phosphate found in his report.

29. The other witness is P.W.12 PSI, who conducted the investigation and instructed H.C.525 to go and record the statement of the victim and he informed that the victim passed away and could not record the statement. He says that P.W.1 came and lodged the complaint in terms of Ex.P.1. Ex.P.7 was drawn and Ex.P.3 inquest panchanama was also drawn. He speaks about the seizure of tablet in terms of Ex.P.2 and the accused was apprehended and produced before him and also

obtained FSL report, post mortem report and charge sheet is filed. He was subjected to cross-examination. In the cross-examination, he admits that he received the information at 6.30 a.m. from the hospital and could not record the statement of the victim. He says that when the mahazar was conducted, he had seized two cut pieces of the tablet. The witness spoke about the victim re-gained conscious at around 12.30 in the midnight and recorded the statement of P.W.4 and he disclosed re-gaining of conscious and also recorded the statement of the witness.

30. The other witness is P.W.13 doctor. He says that he subjected the body of the victim for post mortem from 3.30 p.m. to 4.30 p.m. and found 60 ml. yellow colour liquid in the stomach and it was smelling and he found a baby of 6½ months and collected the viscera and sent the same for examination and given the post mortem report in terms of Ex.P.8 and identified his signature as Ex.P.8(d). The cause of death is on account of saving of the poisonous substance of aluminium phosphate. This witness was subjected to cross-examination.

31. In the cross-examination, it is stated that by mistake it is mentioned as UDR, but the same was CR and the seized

tablet was not produced before him. He says that he cannot tell for long a person will be alive if aluminium phosphate is consumed and the same depends upon the quantum taken. In the FSL report, the percentage is also not mentioned.

32. Having heard the respective counsel and also on perusal of the material available on record, the charges levelled against the accused is that he abetted the offence of Section 306 of IPC and that he made the victim pregnant and he declined to marry her and gave her poisonous two tablets to commit suicide and he also assured that he is also going to die by consuming the remaining two tablets, which led the victim to take the extreme step of committing suicide. P.W.1 sister of the victim and P.W.3 brother of the victim shifted the victim to the hospital when they found that she was lying in front of the house after consuming the tablet and she was unconscious at that time. But she re-gained conscious in the midnight. The evidence of P.W.2, uncle of the victim, is also similar and he was very much present at the time when the victim re-gained conscious and so also P.W.4 father of the victim. P.W.5 and P.W.6 deposed before the Court about requesting P.W.4 to accommodate the accused in the house of P.W.4. It is the evidence of P.W.7 that the

remaining tablet was seized from the house of the victim on the information given by the victim. The consistent evidence of P.Ws.1, 2 and 3 is that the deceased herself revealed that the accused was responsible for her pregnancy. It is important to note that it is the case of the defence that the victim did not regain conscious and manipulation was made with regard to disclosing of the same.

33. In the cross-examination of P.W.1 regarding disclosure that the victim made the statement, nothing is elicited and she categorically deposed before the Court who were all present at the time of disclosure of the same. A suggestion was made in the cross-examination that P.W.1 was having grudge against the accused and with an intention to drive out the accused, a false complaint is registered and the same was denied. It is the evidence of P.W.1 that the complaint was written by her uncle Jayanth and at the time of conducting mahazar i.e., recovery of another tablet, there were six persons at the spot and she herself, her brother Muninarayanappa, Subramanya and Anjanappa have signed the same and mahazar was drawn from 11.00 a.m. to 12.30 p.m., but does not know the contents of the mahazar. The evidence of P.W.2 is also

consistent with regard to the presence of the witnesses when the victim disclosed the name of the accused, who is responsible for her pregnancy and categorically deposed that P.W.1, himself, Murthy, Jayanth and Narasimhappa were there at the time of disclosure of the same.

34. P.W.3 also says regarding disclosure stating that the victim revealed that she had kept the remaining tablet in the slab underneath the vessel in the kitchen. The evidence of P.W.7 is very clear with regard to recovery of remaining tablet in the house of the victim and spot mahazar was conducted in terms of Ex.P.2 and recovery was made. In the cross-examination, P.W.7 categorically says that at the time of drawing mahazar, four to five persons were there and mahazar was drawn in between 11.00 a.m. to 11.45 a.m. and found the tablet M.O.1 and the tablet was having more pieces and full tablet was not seized and the same was found in the kitchen underneath the vessel. Hence, the evidence of P.Ws.1 to 3 and 7 is clear that the tablet was recovered in the presence of the witnesses. It is important to note that P.W.8 says that he came to know about the incident at 8.30 p.m. through the brother of the victim i.e., P.W.3 and he called and informed about going to

take her to Bengaluru Bowring Hospital and he accompanied them. P.W.8 also says that disclosure of providing of two tablets to the victim and consuming of the tablet and got it confirmed the same by making the phone call through Muninarayana and the same was found in the place in which the victim revealed the same was kept. He also says that he had witnessed the visit of the accused to the house of the victim on the same day at around 4.00 p.m. on 27.03.2010 and he left the house at around 4.30 p.m. and in the cross-examination, nothing is elicited with regard to the said evidence.

35. The other witness P.W.11 is the one who conducted the FSL examination and gave the report in terms of Ex.P.6 and found the phosphate iodine in article Nos.1, 2, 3 and 5 and not found in article No.4. In the cross-examination, except eliciting that percentage of aluminium phosphate found was not mentioned in the certificate, nothing is elicited. P.W.12 is the one who conducted the investigation and received the complaint and also drawn the mahazar in Exs.P.2 and 3. In the cross-examination, he says that he received the information at around 6.30 a.m. and investigated the matter and found two tablets when the mahazar was conducted and witnesses were also

present and took the signature and pasted the signature on the seized article. Except eliciting that the statement Ex.D1 was not made, nothing is elicited in the cross-examination of P.W.12. Having considered the evidence of P.W.13 doctor, who conducted the post mortem, he categorically deposed before the Court that he found smell in the stomach and given the post mortem report in terms of Ex.P.8 and viscera was also collected and he cannot tell the exact timings for bleeding of death when the aluminum phosphate was consumed.

36. The main contention of the learned counsel for the appellant is that there is no medical evidence that the victim was pregnant and the same cannot be accepted for the reason that the evidence of the doctor who conducted the post mortem is clear that he found 6½ months baby. Hence, it is clear that she was pregnant and medical evidence also spoken by P.W.13 and nothing is disputed in the cross-examination that she was not pregnant. No doubt, there was no any DNA report, but the evidence of the witnesses is consistent i.e., P.Ws.1, 2, 3 and 8 that the deceased disclosed the name of the accused and apart from that, the evidence of the recovery witness P.W.7 is also very clear that on the disclosure of the victim only, the tablet

was recovered and the same was subjected to FSL. The FSL report is also clear that M.O.1 tablet, which was seized contains aluminium phosphate and the same was also found in the dead body of the victim. Hence, the very contention of the learned counsel for the appellant that he has been falsely implicated in the case and she was having affair with another person cannot be accepted. The very recovery of tablet corroborates with the evidence of the prosecution witnesses and only on the disclosure of the same that she had kept the same in the kitchen, remaining tablet was recovered. The evidence of P.W.7 is consistent about the recovery and medical evidence clearly disclose that she was pregnant. The fact that P.W.5 and P.W.6 deposed that on their request only P.W.4 accommodated the accused and the fact that the accused was residing in the house of the victim on the ground of employment was not disputed throughout in the cross-examination of the witnesses. When such being the case, even in the absence of DNA evidence, the learned counsel for the appellant cannot find fault with the findings of the Trial Court.

37. The learned counsel for the appellant relied upon the judgment of the Apex Court in the case of **Chotkau** (supra) and

brought to the notice of this Court paragraph No.80 wherein, paragraph No.54 of the judgment of the Apex Court in the case of **Rajendra Pralhadrao Wasnik** (supra) was extracted, wherein it is held that we are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved, but we are certainly of the view that where DNA profiling has not been done or it is held back from the Trial Court, an adverse consequence would follow for the prosecution. In the case on hand, not held back the DNA test, but no DNA test was conducted.

38. The learned counsel for the appellant also relied upon the judgment of the Apex Court in the case of **Rajendra Pralhadrao Wasnik** (supra), wherein in paragraph No.79 it is held that the prosecution was remiss in not producing the available DNA evidence and the failure to produce material evidence must lead to an adverse presumption against the prosecution and in favour of the appellant for the purposes of sentencing. But in the case on hand, the question of non-production of DNA evidence does not arise since no DNA was conducted. Hence, both the judgments will not come to the aid of the appellant.

39. The learned counsel for the appellant also relied upon the judgment of the Apex Court in the case of **Krishan Kumar Malik** (supra) wherein in paragraph Nos.44 and 46 it is held that it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. In the case on hand, only for the lapses on the part of the Investigating Officer not conducting the DNA, will not come to the aid of the appellant, since the evidence of P.Ws.1, 2, 3 and 7 is consistent regarding disclosure of the name of the accused as well as recovery of the tablet on the disclosure statement of the victim. P.W.8 deposed before the Court about the visit made by the accused to the house of the victim on the date of incident and hence the very contention of the learned counsel for the appellant cannot be accepted.

40. The learned counsel also relied upon judgment of the Bombay High Court in the case of **Ganesh Pralhad Sontakke** (supra) wherein in paragraph No.12 discussion was made that in the statement made by the appellant under Section 313 of Cr.P.C., it was specifically stated that the prosecutrix P.W.1 had lived with the said maternal cousin for five to six months and that she was pregnant from him. In this situation, it was

incumbent upon the Investigating Officer to have conducted DNA test of the girl child born to the prosecutrix P.W.1. It was stated in the evidence of the prosecutrix P.W.1 that after the girl child was born in Government Hospital at Kamthi, she had gifted that child to a couple. But in the case on hand, the child was no more and not conducted the DNA to ascertain the truth in the matter.

41. I have already pointed out that the evidence of the prosecution witnesses is consistent that the accused only was responsible for the pregnancy of the victim and that the accused was staying in the house of the victim, which led to her pregnancy and also handing over of the tablet to the victim, recovery and disclosure statement of the victim that the accused only gave the tablet and she kept the remaining tablet in the kitchen and the same was recovered after confirming the same by making a phone call to one Shivu and he also got confirmed that the same is available and the mahazar was conducted in the presence of the witnesses. P.W.7 deposed that the tablet was recovered and he was present at that time and all these material discloses the very act of the accused in making her pregnant and he only supplied the tablet and she has consumed the same.

The tablet, which was recovered and the material found in the stomach of the victim is one and the same. When such linking evidence is available before the Court, it is very clear that there is a proximity to the cause of the death of the victim and also the role played by the accused and hence I do not find any error committed by the Trial Court in convicting the accused for the offence punishable under Section 306 of IPC.

42. This Court would like to rely upon the judgment of the Apex Court in the case of **VEERENDRA v. STATE OF M.P.** reported in **(2022) 8 SCC 668**, wherein it is held that, lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the cause of criminal justice would become the victim. The Apex Court in its judgment in the case of **SAMBHUBHAI RAISANGHBHAI PADHIYAR v. STATE OF GUJARAT** reported in **(2025) 2 SCC 399** also reiterated the same by relying upon the judgment of the Apex Court in the case of **Veerendra** (supra).

43. This Court would also like to rely upon the judgment of the Apex Court in the case of **STATE OF H.P. v. ASHA RAM** reported in **(2005) 13 SCC 766**, wherein it is held that, it is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The Kerala High Court in its judgment in the case of **ROYSON v. STATE OF KERALA** reported in **2017 SCC ONLINE KER 22694** also reiterated the same by relying upon the judgment of the Apex Court in the case of **Asha Ram** (supra). Hence, I answer the point in the negative.

Point No.(ii):

44. In view of the discussions made above, I pass the following:

ORDER

The appeal is dismissed.

**Sd/-
(H.P. SANDESH)
JUDGE**

MD