

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR**

Judgment Reserved on : 08.02.2023

Judgment Pronounced on : 22.02.2023

[Arising out of judgment dated 03.03.2022, passed in Special Sessions (POCSO) Case No.08 of 2020 (State of Chhattisgarh v. Kishan Lal @ Champa Yadav), by the Court of Additional Sessions Judge (FTSC), District Rajnandgaon(C.G.)]

Criminal Appeal No. 565 of 2022

Kishan Lal @ Champa Yadav, Son of Shri Mahruram, aged about 23 years, Resident of Village Botepar, Police Station Ghumka, District Rajnandgaon (Chhattisgarh)

---- **Appellant**

Versus

State of Chhattisgarh, through Police Station Ghumka, District Rajnandgaon (Chhattisgarh)

---- **Respondent**

For Appellant : Mr. P. Chetan Kumar, Advocate
and Mr. Pramod Ramteke, Advocate

For Respondent-State : Mr. Animesh Tiwari, Deputy A.G.,
Mr. Sudeep Verma, Deputy Govt. Adv.
and Mr. Soumya Rai, Panel Lawyer

For Victim : None though served.

Division Bench

**Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Radhakishan Agrawal**

C.A.V. Judgment**Sanjay K. Agrawal, J**

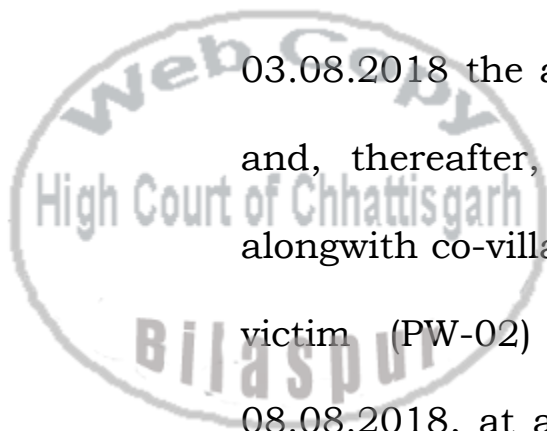
(1) This criminal appeal preferred by the appellant-accused herein under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 03.03.2022, passed by the learned Additional Sessions Judge (FTSC), Rajnandgaon (Chhattisgarh) in Special Sessions (POCSO) Case No.08 of 2020 (*State of Chhattisgarh vs. Kishan Lal @ Champa Yadav*), whereby he has been convicted for offence under Section 376(3) of Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for 20 years with fine of Rs.2,000/- and, in default of payment of fine, additional rigorous imprisonment for one year.

(2) The case of the prosecution, in short, is that between 03.08.2018, at or about 04:00 AM in the morning, to 08.08.2018, at or about 01:00 AM in the night, in the house of the complainant, namely, Roman Lal Verma (PW-01), within the ambit of Police Station Ghumka, the accused-appellant herein abducted minor victim from lawful custody of her father on the pretext of doing marriage and, further on and before 09.08.2018, at Nagpur, committed sexual intercourse with the victim, aged about 15 years 01 month and 14 days,



continuously, due to which she became pregnant and delivered a girl child (baby) and, thereby, committed offences under Sections 366, 376(2)(g) & 376(3) of IPC and also under Section 06 of the Protection of Children from Sexual Offences Act, 2012 (for short the "POCSO Act, 2012").

(3) The further case of the prosecution is that on 08.08.2018, father of the victim, namely, Roman Lal Verma (PW-01) appeared before the police of Police Station Ghumka and submitted a written complaint (Ex.P/01) alleging that on 03.08.2018 the appellant abducted her minor daughter (victim) and, thereafter, on 04.08.2018, Roman Lal Verma (PW-01) alongwith co-villagers, namely, Janak and Narottam brought the victim (PW-02) alongwith the appellant back. Again, on 08.08.2018, at about 01:00 AM in the night, while Roman Lal Verma (PW-01) alongwith other family members were sleeping, his daughter (victim) went missing and upon inquiry he came to know that appellant is also missing from the said date and time. Pursuant to lodging of said report, FIR (Ex.P/02) under Sections 363 & 366 of IPC was registered against the appellant by the police. During the course of investigation, birth certificate of the victim (PW-02) was seized vide Ex.P/07. On 17.01.2020 at about 09:50 AM, the victim (PW-02) was recovered from the possession of the appellant vide recovery panchanam (Ex.P/14) and, on the





same day, victim (PW-02) was sent for medical examination to the District Hospital, Rajnandgaon vide Ex.P/16, which was conducted by Dr. Sweta Kaumarya (PW-05). As per medical report of the victim (Ex.P/12), victim knew accused-appellant and having relationship with him from past 03-04 years. She on her own will and volition had gone to Nagpur with the appellant from 008.08.2018 till 15.01.2020 and, between said period, the appellant and the victim developed consensual sexual relationship with each other, due to which she became pregnant and having a baby girl of about 12 days.

(4) Thereafter, spot map was prepared vide Ex.P/24 and statement of victim under Section 164 of CrPC was recorded vide Ex.P/18. On 21.01.2020, the victim (PW-12) was referred to radiologist for determination of her age, which was conducted Dr. C.N. Sidar (PW-03), who gave its report vide Ex.P/11 and as per x-ray of age verification report (Ex.P/11), the age of the victim is between 16 to 17 years. The accused-appellant was arrested vide Ex.P/19 and sent for medical examination vide Ex.P/13. On 12.02.2020, blood samples of the appellant, the victim and that of her baby girl were taken in sealed covered packet vide Ex.P/06 and by marking it as Article- 1, 2 & 3 respectively the same were handed over to the constable who brought the appellant and the victim alongwith her baby girl



child. Thereafter, on the same day (i.e. on 12.02.2020), the said blood samples were submitted in the the Office of Superintendent of Police, Rajnandgaon for the purpose of DNA test and, ultimately, on the same day, the office of Superintendent of Police, Rajnandgaon sent for aforesaid seized blood samples of the appellant, the victim and that of her baby girl child for DNA profiling/test to the State Forensic Science Laboratory (DNA Unit), Raipur vide Ex.P/21 by marking it as A, B, & C respectively, which was received on 13.02.2020. As per DNA report dated 25.02.2020 (Ex.P/23), it has been opined that the appellant and the victim are biological father and mother of the girl child. Thereafter, statements of witnesses were recorded and, after due investigation, the police filed charge-sheet in the competent court jurisdiction and, thereafter, the case was committed to the Court of Sessions. The appellant/accused abjured his guilt and entered into defence by submitting that he is innocent and has been falsely implicated.

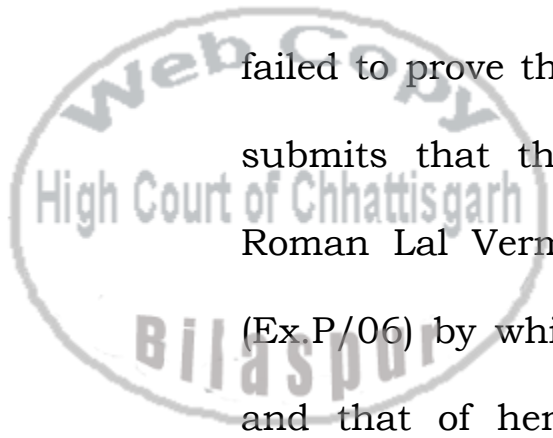
(5) The prosecution in order to prove its case examined as many as 09 witnesses and exhibited 24 documents alongwith 07 articles, whereas the appellant-accused in support of his defence has neither examined any witness nor exhibited any document.

(6) The learned trial Court after appreciating the oral and



documentary evidence available on record proceeded to convict the appellant for offence under Section 376(3) of IPC and sentenced him as mentioned herein-above, against which this appeal has been preferred by the appellant-accused questioning the impugned judgment of conviction and order of sentence.

(7) Mr. P. Chetan Kumar and Mr. Pramod Ramteke, learned counsel appearing for the appellant submit that the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 376(3) of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. He further submits that the complainant/father of the victim, namely, Roman Lal Verma (PW-01), who is witness to seizure memo (Ex.P/06) by which blood samples of the appellant, the victim and that of her baby girl child were seized/collected, have turned hostile by stating that no blood sample has been collected in front of him. Further, there are various discrepancies in collecting and depositing the blood samples. As per medical report (Ex.P/12), it is clearly evident that the victim was the consenting party. She on her own will and volition had gone with the appellant and developed consensual sexual intercourse with him. Victim and her father had not given their consent for medical examination of the private parts of the victim. There is no other evidence available on record to connect





the appellant with the offence in question. As such, merely on the basis of DNA report (Ex.P/23) the appellant cannot be convicted in light of recent decision rendered by the Supreme Court in the matter of **Rahul v. State of Delhi, Ministry of Home Affairs and another**¹. Hence, the present appeal deserves to be allowed in full or in part.

(8) *Per-contra*, Mr. Sudeep Verma, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. The victim was minor on the date of offence. Admittedly, as per the report of radiologist (Ex.P/11), which is duly proved by Dr. C.N. Sidar (PW-03), on 21.01.2020 when victim was examined, she was aged about between 16-17 years. In view of statement of Dr. Sweta Kaumarya (PW-05), who has conducted medical examination of the victim and gave medical report (Ex.P/12), the victim delivered girl child 12 days prior to her examination. Furthermore, as per DNA report (Ex.P/23), it is clear that the appellant and the victim are biological father and mother of the girl child delivered by the victim. Therefore, the learned trial Court has rightly convicted the appellant for offence under Section 376(3) of IPC and the present appeal deserves to

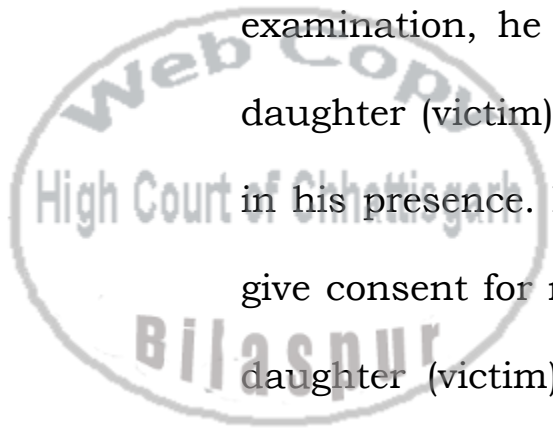
¹ (2023) 1 SCC 83



be dismissed.

(9) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(10) In the instant case, admittedly, complainant/father of the victim- Roman Lal Verma (PW-01) has turned hostile and has not supported the case of the prosecution at all. In his statement before the Court, during the course of cross-examination, he has clearly refuted that blood samples of his daughter (victim) and that of her baby girl child were not taken in his presence. Further, Roman Lal Verma has also refused to give consent for medical examination of the private parts of her daughter (victim). Similarly, victim (PW-02) has not given her consent for medical examination of her private parts, which is clear from medical report (Ex.P/12). She in her statement before the Court has denied that any incident having taken place with her and even she has stated that she has not given any statement that accused-appellant abducted her and committed sexual intercourse with her on the pretext of marriage and had refuted her statement recorded under Section 161 of CrPC before the police vide Ex.P/10. She has also denied that any such blood sample has been taken from her and that of her





baby girl child by the police. Further, the victim, in medical report (Ex.P/12), has clearly stated that she wants to stay alongwith the appellant, as her daughter belongs to him. As such, the father of the victim (PW-01) and victim herself (PW-01) has not supported the case of the prosecution and thus, the conviction of the appellant is totally based on the DNA report (Ex.P/23).

(11) Now the question for consideration would be whether the learned trial Court is justified in convicting the accused-appellant here only on the basis of DNA profiling report (Ex.P/23), in which it has been opined that the appellant and the victim are the biological father and mother of the baby girl child, as there is no other piece of evidence available on record to connect the appellant with the offence in question.

(12) At this stage, it would be appropriate to notice Section 53A of CrPC, which relates to examination of a person accused of rape by medical practitioner as also Section 164A of CrPC, which relates to medical examination of the victim of rape. The legislature, in its wisdom, has inserted Section 53A and Section 164A of the CrPC by the Act 25 of 2005 w.e.f. 23.06.2006 and same are reproduced as under:-

“53A. Examination of a person accused of rape by medical practitioner.- (1) When a person is arrested on a charge of committing an offence of rape or an



attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely;-

- (i) the name and address of the accused and of the person by whom he was brought,
- (ii) the age of the accused,
- (iii) marks of injury, if any, on the person of the accused,
- (iv) the description of material taken from the person of the accused for DNA profiling, and".
- (v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in [Section 173](#) as part of the documents referred to in clause (a) of Sub-Section (5) of that section.

164A. Medical examination of the victim of rape.-

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under



investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:-

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail, (3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in [Section 173](#) as part of the documents referred to in clause (a) of Sub-Section (5) of that section. (7) Nothing in this



section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.”

(13) The scope of DNA test has elaborately been discussed by their Lordships of the Supreme Court in the matter of **Anil alias Anthony Arikswamy Joseph v. State of Maharashtra**² and it has been held in Para- 8 as under:-

"18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory.”

(14) Similarly, in the matter of **Mukesh and another v. State (NCT of Delhi) and others**³ the procedure to be adopted for collecting the samples as well as the precautions which are to be taken for conducting the DNA test has elaborately been discussed by their Lordships of Supreme Court in Para-221 to 228 of the judgment, are reproduced herein for the sake of convenience.

² (2014) 4 SCC 69

³ (2017) 6 SCC 1

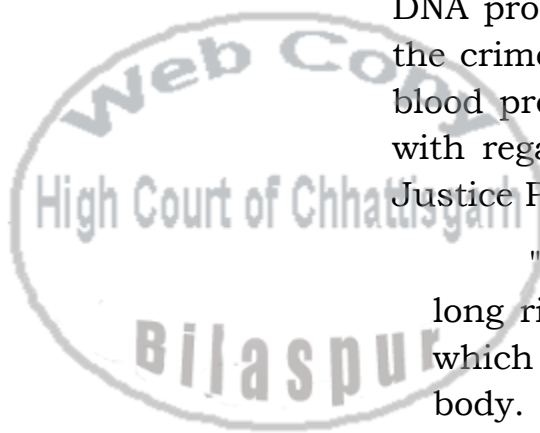


“211. DNA is the abbreviation of Deoxyribo Nucleic Acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behaviour and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix structure which can be compared with a twisted rope 'ladder'.

212. The nature and characteristics of DNA had been succinctly explained by Lord Justice Phillips in *Regina v. Alan James Doheny & Gary Adams, (1997) 1 Cr App R 369 (CA)*. In the above case, the accused were convicted relying on results obtained by comparing DNA profiles obtained from a stain left at the scene of the crime with DNA profiles obtained from a sample of blood provided by the appellant. In the above context, with regard to DNA, the following was stated by Lord Justice Phillips:

"Deoxyribonucleic acid, or DNA, consists of long ribbon-like molecules, the chromosomes, 46 of which lie tightly coiled in nearly every cell of the body. These chromosomes - 23 provided from the mother and 23 from the father at conception, form the genetic blueprint of the body. Different sections of DNA have different identifiable and discrete characteristics. When a criminal leaves a stain of blood or semen at the scene of the crime it may prove possible to extract from that crime stain sufficient sections of DNA to enable a comparison to be made with the same sections extracted from a sample of blood provided by the suspect. This process is complex and we could not hope to describe it more clearly or succinctly than did Lord Taylor C.J. in *R. v. Deen, The Times, 10-01-1994* (transcript: 21-121993), so we shall gratefully adopt his description:

"The process of DNA profiling starts with DNA being extracted from the crime stain and also from a sample taken from the suspect. In





each case the DNA is cut into smaller lengths by specific enzymes. The fragments produced are sorted according to size by a process of electrophoresis. This involves placing the fragments in a gel and drawing them electromagnetically along a track through the gel. The fragments with smaller molecular weight travel further than the heavier ones. The pattern thus created is transferred from the gel onto a membrane. Radioactive DNA probes, taken from elsewhere, which bind with the sequences of most interest in the sample DNA are then applied. After the excess of the DNA probe is washed off, an X-ray film is placed over the membrane to record the band pattern. This produces an auto radiograph which can be photographed. When the crime stain DNA and the sample DNA from the suspect have been run in separate tracks through the gel, the resultant auto-radiographs can be compared. The two DNA profiles can then be said either to match or not."

213. In the United States, in an early case *Frye v. United States*, 54 App DC 46 : 293 F 10103 (1923), it was laid down that scientific evidence is admissible only if the principle on which it is based is substantially established to have general acceptance in the field to which it belonged. The US Supreme Court reversed the above formulation in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 1993 SCC Online US SC 104 stating thus:

"Although the *Frye (supra)* decision itself focused exclusively on "novel" scientific techniques, we do not read the requirements of Rule 702 to apply specially or exclusively to unconventional evidence. Of course, well- established propositions are less likely to be challenged than those that are novel, and they are more handily defended. Indeed, theories that are so firmly established as to have attained the status of scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under Federal Rule of Evidence 201.





* * *

This is not to say that judicial interpretation, as opposed to adjudicative fact finding, does not share basic characteristics of the scientific endeavor:

"The work of a judge is in one sense enduring and in another ephemeral... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine." B.Cardozo, *The nature of the Judicial Process* at pp.178, 179 (1921)."

214. The principle was summarized by Blackmun, J., as follows: [*Daubet (supra)*]

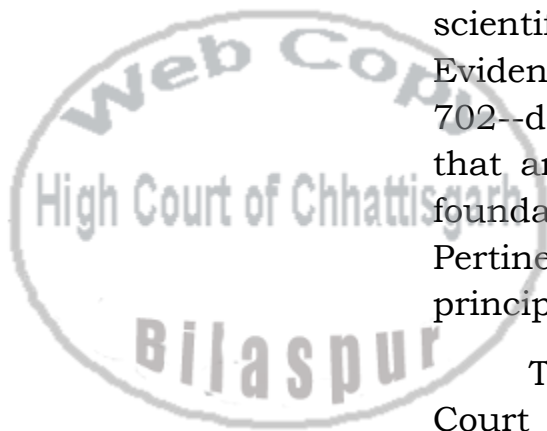
"To summarize: "general acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence--especially Rule 702--do assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

The inquiries of the District Court and the Court of Appeals focused almost exclusively on "general acceptance," as gauged by publication and the decisions of other courts. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion."

After the above judgment, the DNA Test has been frequently applied in the United States of America.

215. In *District Attorney's Office for the Third Judicial District v. Osborne*, 2009 SCC Online US SC 73, Roberts, C.J. of the Supreme Court of United States, while referring to the DNA Test, stated as follows:

"DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and





the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure-usually but not always through legislation.

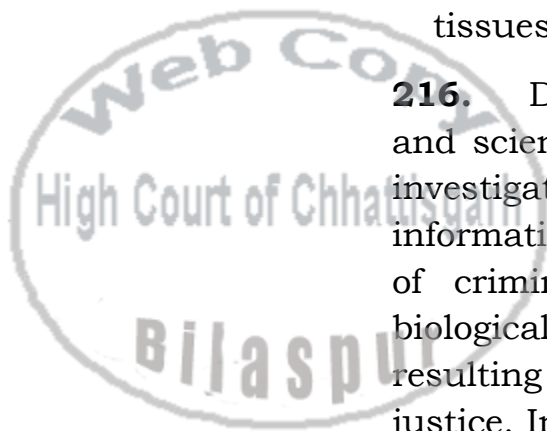
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Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue."

216. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in [the Criminal Procedure Code](#) by the insertion of [Section 53A](#) by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. [Section 53A](#) relates to the examination of a person accused of rape by a medical practitioner.

217. Similarly, under [Section 164A](#) inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must. [Section 53A](#) sub-section (2) as well as [Section 164\(A\)](#) sub-section (2) are to the following effect:

"Section 53A. Examination of person accused of rape by Medical Practitioner.-
(1)





(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

- (i) the name and address of the accused and of the person by whom he was brought,
- (ii) the age of the accused,
- (iii) marks of injury, if any, on the person of the accused,
- (iv) the description of material taken from the person of the accused for DNA profiling, and
- (v) other material particulars in reasonable detail.

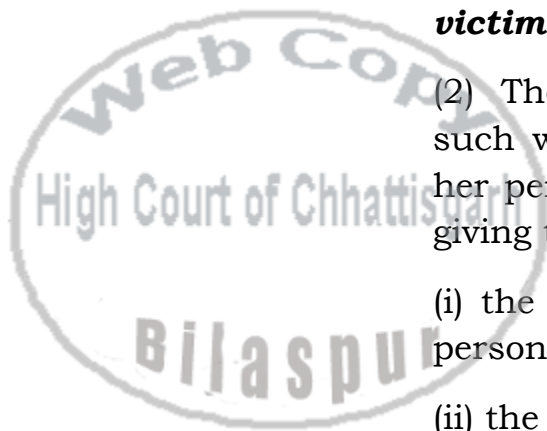
Section 164A. Medical Examination of the victim of rape.- (1)

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:-

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general mental condition of the woman; and
- (vi) other material particulars in reasonable detail."

218. This Court had the occasion to consider various aspects of DNA profiling and DNA reports. K.T. Thomas, J. in *Kamti Devi (Smt.) and another v. Poshi Ram*, (2001) 5 SCC 311 observed: (SCC p. 316, para10)

"10. We may remember that [Section 112](#) of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic





acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. ..."

219. In *Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh*, (2009) 14 SCC 607, a two-Judge Bench had explained as to what is DNA in the following manner:

"41. Submission of Mr Sachar that the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:

"Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting, identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred per cent precise, experts opine."

There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high molecular weight DNA, complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. (See article of Lalji Singh, Centre for Cellular and Molecular Biology, Hyderabad in DNA profiling and its applications.) But in this case there is nothing to show that such precautions were not taken.

42. Indisputably, the evidence of the experts is admissible in evidence in terms of [Section 45](#) of the Evidence Act, 1872. In cross-examination, PW 46 had stated as under:

"If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population."





220. In *Santosh Kumar Singh v. State Through CBI*, (2010) 9 SCC 747, which was a case of a young girl who was raped and murdered, the DNA reports were relied upon by the High Court which were approved by this Court and it was held thus:

"71. We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in *Kamti Devi v. Poshi Ram* (*supra*). In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on Circumstance 9."

221. In *Inspector of Police, Tamil Nadu v. John David*, (2011) 5 SCC 509 a young boy studying in MBBS Course was brutally murdered by his senior. The torso and head were recovered from different places which were identified by the father of the deceased. For confirming the said facts, the blood samples of the father and mother of the deceased were taken which were subject to DNA test. From the DNA, the identification of the deceased was proved. Paragraph 60 of the decision is reproduced below:

"60. ... The said fact was also proved from the DNA test conducted by PW 77. PW 77 had compared the tissues taken from the severed head, torso and limbs and on scientific analysis he has found that the same gene found in the blood of PW1 and Baby Ponnusamy was found in the recovered parts of the body and that therefore they should belong to the only missing son of PW1."

222. In *Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130, in a gang rape case when the prosecution did not conduct DNA test or analysis and matching of semen of the appellant-accused with that found on the undergarments of the prosecutrix, this





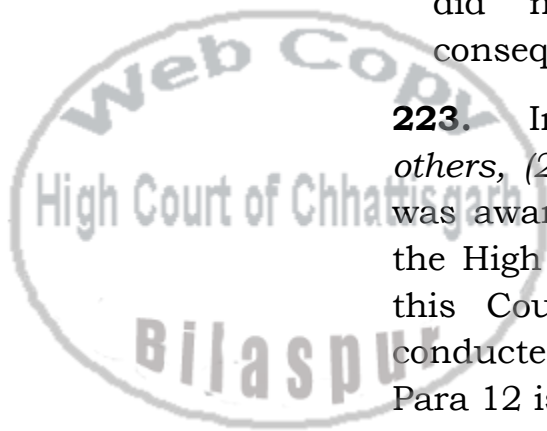
Court held that after the incorporation of Section 53- A in [CrPC](#), it has become necessary for the prosecution to go in for DNA test in such type of cases. The relevant paragraph is reproduced below:

"44. Now, after the incorporation of [Section 53-A](#) in the [Cr.P.C](#) w.e.f 23.06.2006, brought to our notice by the learned counsel for the respondent State, 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 [CrPC](#) 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."

223. In *Surendra Koli v. State of Uttar Pradesh and others*, (2011) 4 SCC 80 the appellant, a serial killer, was awarded death sentence which was confirmed by the High Court. While confirming the death sentence, this Court relied on the result of the DNA test conducted on the part of the body of the deceased girl. Para 12 is reproduced below:-

"12. The DNA test of Rimpa by CDFD, a pioneer institute in Hyderabad matched with that of blood of her parents and brother. The doctors at AIIMS have put the parts of the deceased girls which have been recovered by the doctors of AIIMS together. These bodies have been recovered in the presence of the doctors of AIIMS at the pointing out by the accused Surendra Koli. Thus, recovery is admissible under [Section 27](#) of the Evidence Act."

224. In *Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid v. State of Maharashtra*, (2012) 9 SCC 1, the accused was awarded death sentence on charges of killing large number of innocent persons on 26th November, 2008 at Bombay. The accused with others had come from Pakistan using a boat 'Kuber' and several articles were recovered from 'Kuber'. The stains of sweat, saliva and other bodily secretions on





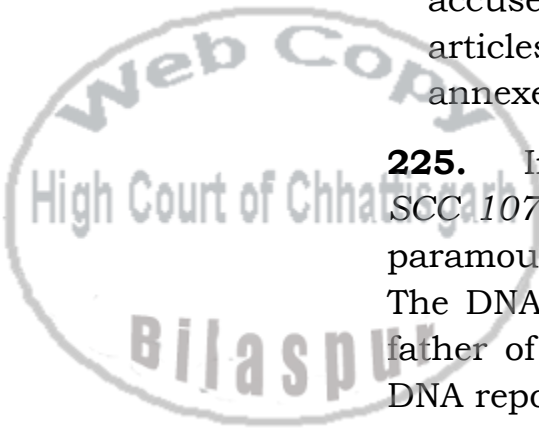
those articles were subjected to DNA test and the DNA test matched with several accused. The Court observed:

"333. It is seen above that among the articles recovered from Kuber were a number of blankets, shawls and many other items of clothing. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA profiling and, excepting Imran Babar (deceased Accused 2), Abdul Rahman Bada (deceased Accused 5), Fahadullah (deceased Accused 7) and Shoaib (deceased Accused 9), the rest of six accused were connected with various articles found and recovered from the Kuber. The appellant's DNA matched the DNA profile from a sweat stain detected on one of the jackets. A chart showing the matching of the DNA of the different accused with DNA profiles from stains on different articles found and recovered from the Kuber is annexed at the end of the judgment as Schedule III."

225. In *Sandeep v. State of Uttar Pradesh*, (2012) 6 SCC 107, the facts related to the murder of pregnant paramour/girlfriend and unborn child of the accused. The DNA report confirmed that the appellant was the father of the unborn child. The Court, relying on the DNA report, stated as follows:

"67. In the light of the said expert evidence of the Junior Scientific Officer it is too late in the day for the appellant Sandeep to contend that improper preservation of the foetus would have resulted in a wrong report to the effect that the accused Sandeep was found to be the biological father of the foetus received from the deceased Jyoti. As the said submission is not supported by any relevant material on record and as the appellant was not able to substantiate the said argument with any other supporting material, we do not find any substance in the said submission. The circumstance, namely, the report of DNA in having concluded that accused Sandeep was the biological father of the recovered foetus of Jyoti was one other relevant circumstance to prove the guilt of the said accused."

226. In *Rajkumar v. State of Madhya Pradesh*,



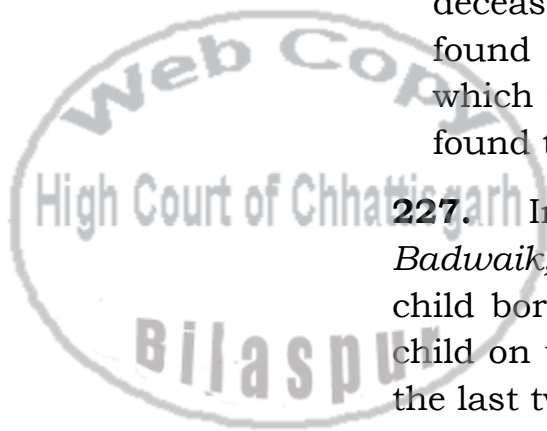


(2014) 5 SCC 353 the Court was dealing with a case of rape and murder of a 14 year old girl. The DNA report established the presence of semen of the appellant in the vaginal swab of the prosecutrix. The conviction was recorded relying on the DNA report. In the said context, the following was stated:

"8. The deceased was 14 years of age and a student in VIth standard which was proved from the school register and the statement of her father Iknis Jojo (PW1). Her age has also been mentioned in the FIR as 14 years. So far as medical evidence is concerned, it was mentioned that the deceased prosecutrix was about 16 years of age. So far as the analysis report of the material sent and the DNA report is concerned, it revealed that semen of the appellant was found on the vaginal swab of the deceased. The clothes of the deceased were also found having appellant's semen spots. The hair which were found near the place of occurrence were found to be that of the appellant."

227. In *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*, (2014) 2 SCC 576 the appellant, father of the child born to his wife, questioned the paternity of the child on the ground that she did not stay with him for the last two years. The Court directed for DNA test. The DNA result opined that the appellant was not the biological father of the child. The Court also had the occasion to consider [Section 112](#) of the Evidence Act which raises a presumption that birth during marriage is conclusive proof of legitimacy. The Court relied on the DNA test holding the DNA test to be scientifically accurate. The pertinent observations are extracted below:

"19. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardised as the marriage between her mother and father was subsisting at the time of her birth, but in view of the





DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Truth must triumph" is the hallmark of justice.

20. As regards the authority of this Court in Kamti Devi, this Court on appreciation of evidence came to the conclusion that the husband had no opportunity whatsoever to have liaison with the wife. There was no DNA test held in the case. In the said background i.e. non-access of the husband to the wife, this Court held that the result of DNA test "is not enough to escape from the conclusiveness of [Section 112](#) of the Act." The judgment has to be understood in the factual scenario of the said case. The said judgment has not held that DNA test is to be ignored. In fact, this Court has taken note of the fact that DNA test is scientifically accurate. We hasten to add that in none of the cases referred to above, this Court confronted with a situation in which a DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child under [Section 112](#) of the Evidence Act. In view of what we have observed above, these judgments in no way advance the case of the respondents."

228. From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non- acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted."

(15) The Supreme Court again in the matter of **Pattu Rajan v. State of Tamil Nadu**⁴ considered the evidentiary value of DNA test in light of the provisions contained in Section 45 of the Indian Evidence Act, 1872 and held in Para-49 & 50 as under:

⁴ (2019) 4 SCC 771



“49. One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in [Section 45](#) of the Indian Evidence Act. Undoubtedly, an expert giving evidence before the Court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the Court in forming its opinion on questions concerning foreign law, science, art, etc., on which the Court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.

50. The role of an expert witness rendering opinion evidence before the Court may be explained by referring to the following observations of this Court in *Ramesh Chandra Agrawal v. Regency Hospital Limited & Ors*:

"16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person.

Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge.

Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of an expert cannot be disputed...”

(16) Recently, in the matter of **Manoj and others vs. State of Madhya Pradesh**⁵ their Lordships of the Supreme Court while highlighting the need to ensure quality testing and lesser

⁵ (2023) (2) SCC 353 : 2002 SCC Online SC 677



possibility of tempering of evidence has elaborately discussed the evidentiary value of the DNA report and laid down the law with regard to DNA Profiling Methodology, Statistical Analysis and Collection & Preservation of Evidence and held in Paras-151 to 158 as under:

“151. During the hearing, an article published by the *Central Forensic Science Laboratory, Kolkata*⁶ was relied upon. The relevant extracts of the article are reproduced below:

"Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with Intercalated proteins. Twenty-three pairs of chromosomes present In each nucleated cells and an individual Inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All Information about Internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases: Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar- phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to Individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies

⁶ DNA Profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007).



than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.

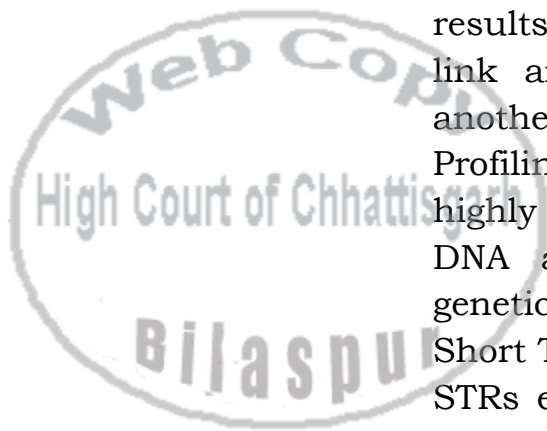
Only 0.1 % of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.

.....

DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA Profiling Is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed Genetic Markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA Profile unique to an Individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y- STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoospermic or vasectomized" male. Cases In which DNA had undergone 40 DNA profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007). environmental stress and biochemical degradation, min ISTRs can be used for over routine STR because of shorter amplicon size.

DNA Profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available In the





laboratory. The analysis principles, however, remain similar, which include:

1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.

In mt DNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:

Statistical Analysis

Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

1) Match: If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.

2) Exclusion: If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.

3) Inconclusive: The data does not support a conclusion. Of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.

In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken into consideration while reporting a match. Paternity of Maternity Indices and Likelihood Ratios are calculated further to support the match.





Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, It will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be Identified, preserved, packed and sent for DNA Profiling.

152. In an earlier judgment, *R v. Dohoney & Adams*, (1997) 1 Cr App Rep 369 (CA), the UK Court of Appeal laid down the following guidelines concerning the procedure for introducing DNA evidence in trials: (1) the scientist should adduce the evidence of the DNA 41 1997 (1) Cr App Rep 369 comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinise the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.

153. The Law Commission of India in its 185th Report on Review of the Indian Evidence Act, 2003, observed as follows:

"DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not 'match', then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the



samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 100,000: This is described as the 'random occurrence ratio' (Phipson 1999).

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law."

154. In *Dharam Deo Yadav v. State of UP*, (2014) 5 SCC 509 this Court discussed the reliability of DNA evidence in a criminal trial, and held as follows:

"36. The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines.....DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory." 42 185th Report, on Review of the Indian Evidence Act, 2003 43 (2015) 5 SCC 509.

155. The US Supreme Court, in *District Attorney's Office for the Third Judicial District v. Osborne* (*supra*) dealt with a post- conviction claim to access evidence, at





the behest of the convict, who wished to prove his innocence, through new DNA techniques. It was observed, in the context of the facts, that

"Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue. DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others."

156. Several decisions of this Court - *Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh*, (2009) 14 SCC 607; *Santosh Kumar Singh v. State*; (2010) 9 SCC 747; *State of Tamil Nadu v. John David*, (2011) 5 SCC 509; *Krishan Kumar Malik v. State of Haryana*; (2011) 7 SCC 130; *Surendra Koli v. State of Uttar Pradesh*; (2011) 4 SCC 80; *Sandeep v. State of Uttar Pradesh*, (2012) 6 SCC 107; *Rajkumar v. State of Madhya Pradesh*, (2014) 5 SCC 353; and *Mukesh (supra)* have dealt with the increasing importance of DNA evidence. This court has also emphasized the need for assuring quality control, about the samples, as well as the technique for testing- in *Anil v. State of Maharashtra*, (2014) 4 SCC 69:

"18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the



quality control and quality procedure in the laboratory."

157. This court, in one of its recent decisions- *Pattu Rajan v. The State of Tamil Nadu*, considered the value and weight to be attached to a DNA report:

"52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

158. This court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance, was to corroborate. This court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case."

(17) Very recently and finally, in the matter of **Rahul** (supra), their Lordships of the Supreme Court (three-Judges Bench), while considering the evidentiary value of DNA evidence and taking note of decision of **Manoj** (supra) held that the DNA evidence is in the nature of opinion evidence like any other opinion evidence, its probative value varies from case to case and held in Para-38 as under:



“38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14.02.2012 and 16.02.2012; and they were sent to CFSL for examination on 27.02.2012. During the period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial Court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.”

(18) In view of aforesaid legal position qua DNA profiling report and its probative value, the prosecution is duty bound to prove the guilt of the accused beyond reasonable doubt and burden is always upon the prosecution to lead evidence by taking all the precautions for proving DNA evidence. It is necessary for the prosecution as the entire process of collecting the blood samples for DNA profiling is controlled and done by the human agencies i.e. doctors and the investigating officers. Every step to preserve the sample from manipulation/contamination has to be proved, as absence of those steps may cause prejudice to the accused. The prosecution is required to put all the positive evidence



regarding the fact that all the precautions have been taken by the doctors as well as by the police officials regarding the preservation of the DNA samples. As held in the matter of **Pattu Rajan** (supra) DNA report is “an opinion” and its probative value varies from case to case. The science of DNA is at a developing stage, as such, it will be risky to solely rely upon the DNA report in absence of any substantive piece of evidence.

(19) In the matter of **Santa Singh v. State of Punjab**⁷, the Supreme Court has held that if there exists a suspicious delay in sending the sealed parcel to the expert, the result is vitiated.

(20) Similarly, in the matter of **Amarjit Singh alias Babbu v. State of Punjab**⁸, the Supreme Court has held that non-sealing of the revolver at the spot was a serious infirmity as the possibility of tampering could not be ruled out and observed in paragraph 7 as under: -

“7. The entire prosecution case, thus, is clouded with number of infirmities which compel this Court not to accept such an unworthy evidence. These infirmities have been brushed aside by the Designated Court by observing that since the model number of the revolver was noted down, the non-sealing of the revolver or the handing over of the same to some other police official or a private person, who has not been examined are of no consequence. We are unable to agree and subscribe to this view in a case of this

⁷ AIR 1956 SC 526

⁸ 1995 Supp (3) SCC 217



nature. The non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. The report of PW 4 that the weapon is capable of being fired is insignificant since it cannot be said with certainty as to what was the condition of the weapon at the time of the recovery, apart from the evidence of PW 4 that he did not test-fire the revolver.”

(21) Thereafter, in the matter of **Mahmood v. State of U.P.**⁹, their Lordships of the Supreme Court have emphasized the need for fair and cautious investigation by holding that there should be fair and cautious investigation and Investigating Officer should rule out possibility of fabrication and his conduct should dispel suspicion. It has been observed in paragraphs 15 & 18 of the report as under: -

“15. Further, the investigator did not take all the necessary precautions which could be taken to eliminate the possibility of fabrication of this evidence, or to dispel suspicion as to its genuineness. Admittedly, he sealed the box with his *own* seal which thereafter remained with him throughout. He did not take the signatures of the witnesses on the parcel containing the *gandasa*. He did not after sealing the parcel entrust his seal to the Sarpanch or any other respectable person of the village. According to the prosecution the fingerprints found on the *gandasa* could possibly be bloodprints and that the blade of the *gandasa* was all smeared with human blood. But this *gandasa* was never sent to the Chemical Examiner or the Serologist. No explanation of the same is forthcoming. This being the case, the contention of Mr. R.K. Garg at the Bar, that the *gandasa*, Ex. 1, or smear of the alleged blood on it was not sent to the Chemical

⁹ (1976) 1 SCC 542



Examiner for fear of the fabrication being detected and exposed, cannot be rejected outright.

18. Secondly, even if it is assumed that the handle of this *gandasa* bore the fingerprints of the appellant, then also it would not inexorably and unmistakably lead to the conclusion that the appellant, and none else was the murderer of Dwarka, unless it was firmly proved further that the fatal injury to the deceased was caused with this weapon. Definite proof of this link was lacking in this case. The missing link could be best supplied by showing that there was blood on this *gandasa*, and that blood was of human origin. But this was not done.”

(22) A Division of the M.P. High Court in the matter of **Vijay Singh v. State of M.P.**¹⁰ held that there is no explanation regarding the period of ten days during which articles were available with the prosecution and due to lack of evidence regarding sealing of the articles in a proper manner and its identification, the seizure of material and consequential report regarding the said article/material cannot be believed.

(23) Now, in light of the aforesaid principles of law laid down by their Lordships of the Supreme Court to ensure handling/safety of samples drawn qua the facts of the present case, the question for consideration by us is whether DNA samples were drawn by the investigating agency during the course of investigation in accordance with law ?

¹⁰ (2004) 4 MPLJ 543

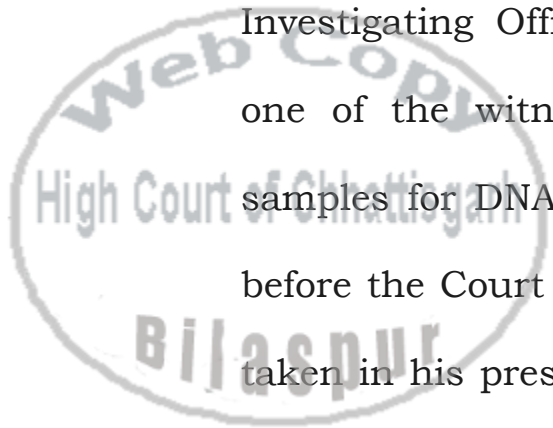


(24) In the instant case, Complainant/father of the victim, namely, Roman Lal Verma (PW-01), in his statement before the Court, firstly in his examination-in-chief has stated that blood samples of the appellant, the victim and her baby girl child were collected and seized vide Ex.P/06 in his presence and, thereafter, in Para-04 of his cross-examination clearly denied that any such blood samples were taken from her daughter (victim) and her baby girl child for DNA profiling and seized vide Ex.P/06 by stating that he has no knowledge about the proceedings with regard to seizure memo (Ex.P/06) and no blood samples were collected and seized vide Ex.P/06 in his presence. Similarly, victim (PW-02) has also denied that any such blood sample was taken from her and her baby girl child. As such, collection of blood samples of the appellant, the victim and her baby girl child vide Ex.P/06 for DNA profiling/test itself has been refused/denied by the father of the victim, namely, Roman Lal Verma (PW-01) and also by victim (PW-02).

(25) It also appears from the record that as per the statement of Investigating Officer, namely, Rajesh Kumar Sahu (PW-08), he submitted application before the learned trial Court on 10.02.2020 (Article-4) seeking permission for DNA test of the appellant, the victim and her baby girl child, which permission was granted by the learned trial Court on the same date. Article-



4 does not show that any opportunity of hearing was granted to the victim before taking their blood samples for DNA test. The Medical Officer, namely, Dr. Amit Kumar Tiwari (PW-06) has also stated before the Court that the blood samples of the victim and her baby girl child, as per the identification forms i.e. Articles- 2 & 3, were handed over to the Constable of Police Station Ghumka. However, the said Constable has not been examined by the prosecution for the reasons best known to them. Further, though Articles- 1, 2 & 3 reflect that Investigating Officer, namely, Rajesh Kumar Sahu (PW-08) is one of the witness to the proceeding of collection of blood samples for DNA test, but in Para-17 of his cross-examination before the Court he has stated that the blood samples were not taken in his presence and he had not gone for conducting DNA profiling/test, but blood samples were produced before him in sealed condition. Further in Para-18 of his cross-examination he stated that he himself gone to Raipur for DNA test. The blood samples were said to have been seized by Rajesh Kumar Sahu (PW-08) on 12.02.2020 at about 12:10 PM on being produced by Constable No.519, namely, Surnedra Ramteke, but said seizure memo does not bear any sample seal, as per the requirement of Para-12 & 13 of the seizure memo (Ex.P/06). Thereafter, on 13.02.2020, the blood samples so collected/seized were





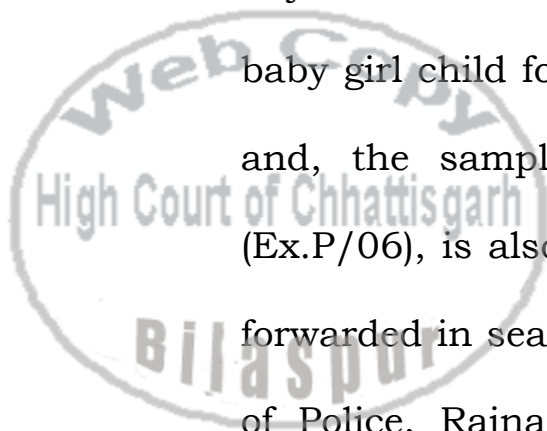
deposited with the FSL, Raipur by the Office of Superintendent of Police, Rajnandgaon by Ex.P/21 and receipt thereof is Ex.P/22. But, there is no document or any other material available on record to show that where the said blood samples were lying/kept for a period of one day i.e. from 12.02.2020 to 13.02.2020 (from collection till depositing with FSL, Raipur) and whether the samples were kept in safe/sealed condition during that period or not, as no documents/no copy of malkhana register has been produced to demonstrate safe custody of seized sample.

(26) Further, the letter of Senior Superintendent of Police, Rajnandgaon (Ex.P/21) would show that the seized blood samples, which were marked as Exhibits- "A", "B" & "C", in sealed conditions were forwarded to the FSL, Raipur through Surendra Ramteke, Constable No.519 for DNA test, but the seizure memo (Ex.P/06) did not bear any such marking on the blood samples (like A, B, & C etc.). As per DNA report (Ex.P/23), the blood samples of the appellant, victim and her baby girl child were seized on 12.02.2020 on being produced by Constable No.519, namely, Surendra Ramteke from District Hospital, Rajnandgaon which were subsequently received by FSL, Raipur through the Investigating Officer- Rajesh Kumar Sahu (PW-08). The DNA report (Ex.P/23) also shows that the



blood samples marked as Articles- A, B & C bore seal of Medical Officer, Government Medical College Hospital, Rajnandgaon, which was intact. However, as observed, there is no sample of seal available on the seizure memo (Ex.P/06).

(27) Keeping in view the aforesaid facts emerging from the procedure of sampling and the oral and documentary evidence available on record, it is quite vivid that first of all the victim (PW-02) and her father/complainant (PW-01) have denied that any such blood samples were taken from the victim and her baby girl child for DNA profiling and it was seized vide Ex.P/06 and, the sample seal, as mentioned in the seizure memo (Ex.P/06), is also missing. As per Ex.P/21, blood samples were forwarded in sealed condition to FSL, Raipur by Superintendent of Police, Rajnandgaon through Constable No.519- Surendra Ramteke, but FSL report (Ex.P/23) would show that the same were received at the laboratory (i.e. FSL, Raipur) by Investigating Officer- Rajesh Kumar Sahu (PW-08) and for the reasons best known to the prosecution, Constable No.519- Surendra Ramteke was not examined. The blood samples were collected on 12.02.2020 vide Ex.P/06, but the same were produced before the FSL, Raipur on 13.02.2020 and there is no document/evidence available on record to show that where the said blood samples were lying/kept for a period of one day i.e.





from 12.02.2020 to 13.02.2020 (from collection till depositing with FSL, Raipur) or whether the samples were kept in safe custody during said period or not and no 'malkhana' register has also been brought on record to substantiate the said aspect. Further, the accused-appellant also in his statement recorded under Section 313 of CrPC before the Court has denied that any such blood sample has been taken from him by the police. As such, the possibility of tampering with the blood samples cannot be ruled out, as the investigator did not take all necessary precautions which could be taken to eliminate the possibility of fabrication and to dispel suspicion as to its genuineness.

(28) Concludingly, it is clearly established after careful analysis of the material available on record that the victim (PW-02) has denied that any sexual assault has been made to her by the appellant herein on the date of offence and the conviction of the appellant is solely based on the DNA evidence, whereas taking of blood samples has been denied by the victim (PW-02), her father (PW-01) and also by the appellant in his statement recorded under Section 313 of CrPC. Furthermore, the seizure memo (Ex.P/06) by which the blood samples were collected and seized does not have any sample seal and, the Constable of Police Station Ghumka, to whom the blood samples were handed over by Dr. Amit Kumar Tiwari (PW-06), has not been examined by



the prosecution nor he has been cited as a prosecution witness. Moreover, as per DNA report (Ex.P/24), the blood samples were produced by Surendra Ramteke (Constable No.519) from the District Hospital, Rajnandgaon, which were subsequently received by the FSL, Raipur from Investigating Officer- Rajesh Kumar Sahu (PW-08). However, the blood samples, marked as Article- "A", "B" & "C" bore seal of Medical Officer, Government Medical College Hospital, Rajnandgaon and there is no 'malkhana' register brought on record by the prosecution to show that the blood samples were kept in safe custody from 12.02.2020 till 13.02.2020. As such, the prosecution has failed to establish that appropriate and proper procedure, which is required to be followed for collection of blood sample till depositing, was followed. Therefore, DNA report (Ex.P/24) comes under the cloud of suspicion and, in absence of any other piece of legal evidence on record, it would be absolutely unsafe to convict the appellant herein by relying upon the said DNA report (Ex.P/24) and the learned trial Court is fully unjustified in convicting the appellant herein on the basis of DNA report (Ex.P/24). Thus, in our considered opinion, the conviction of the appellant deserves to be set aside.

(29) Accordingly, the conviction of the appellant herein passed by the leaned trial Court by impugned judgment of conviction



and order of sentence dated 03.03.2022 for offence punishable under Section 376(3) of IPC as well as the sentence imposed upon him are hereby set aside. He is acquitted of the said charge. Since, the appellant is reported to be in jail since 03.03.2022, we direct he shall be released from jail forthwith, if his custody is not required in any other offence (s).

(30) This criminal appeal is **allowed** to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Radhakishan Agrawal)
Judge



**HEAD NOTE**

The prosecution has to establish that appropriate and proper procedure has been followed for collection of blood sample for DNA profiling by leading evidence/material on record.

अभियोजन को साक्ष्य प्रस्तुत कर/अभिलेख में उपलब्ध सामाग्री द्वारा यह स्थापित करना होगा कि डी.एन.ए. प्रोफाईल परीक्षण हेतु रक्त के नमूने के संग्रहण में समुचित तथा उपयुक्त प्रक्रिया का पालन किया गया है।

