



2026:CGHC:17148-DB  
AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 277 of 2024**

Dipankar Vishwas S/o Mr. Hirendra Vishwas Aged About 31 Years R/o  
Borgaon, Keshkal, P.S. Keshkal, District : Kondagaon, Chhattisgarh

**--- Appellant(s)**

**versus**

State Of Chhattisgarh Through Station House Officer Of Police Station  
Keshkal, District : Kondagaon, Chhattisgarh

**--- Respondent(s)**

**CRA No. 280 of 2024**

Lenkat Vijay Kishore S/o Mr. Prabhuram Aged About 40 Years Resident  
Of Jamgaon, P.S. Keshkal, District Kondagaon (C.G.)

**---Appellant(s)**

**Versus**

State Of Chhattisgarh Through Station House Officer Of Police Station  
Keshkal, District Kondagoan (C.G.)

**--- Respondent(s)**

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For Appellant(s) : Mr. Raza Ali, Advocate.

For Respondent/State : Mr. Shailendra Sharma, Panel Lawyer.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

**15/04/2026**

1. These two criminal appeals arise out of the same incident and the same FIR, but by different sessions trials; however, the trial of the case was concluded together before the learned trial court, and a common judgment has been passed, therefore, both these appeals are being heard and decided together.
2. The Criminal Appeal No. 277 of 2024 has been filed by the appellant, **Dipankar Vishwas**, against the impugned judgment of conviction and sentence dated 14.12.2023 passed by the learned Special Judge, SC/ST (PA) Act, 1989, Kondagaon, District Kondagaon in Special Criminal Case No. SC/ST (PA) Act 1989, No. 6/2021, whereby the appellant Dipankar Vishwas has been convicted and sentenced in the following manner:-

Conviction	Sentence
Under Section 342 of IPC	06 months RI and fine of Rs. 100/-, in default of payment undergo R.I. for 01 month.
Under Section 384 of IPC	01 year RI and fine of Rs. 100/-, in default of payment undergo RI for 1 month.
Under Section 506 of IPC	06 months RI and fine of Rs. 50/-, in default of payment undergo RI for 15 days.
Under Section 376(D) of IPC	20 year RI and fine of Rs. 1000/-, in default of payment undergo RI for 1 year
Under Section 66(E) of the Information Technology Act,	02 years RI and fine of Rs. 10000/- in default of payment

2000.	undergo RI of 04 months.
Under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.	Life imprisonment & fine of Rs. 1000/- in default of payment RI for 01 year.
Under Section 3(2)(va) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989.	RI for 06 months and fine of Rs. 50/- in default of payment RI for 15 days.

3. The Criminal Appeal No. 280 of 2024 filed by the appellant- **Lenkat Vijay Kishore** against the impugned judgment of conviction and sentenced dated 14.12.2023 passed by learned Special Judge, SC/ST (PA) Act, 1989, Kondagaon, District Kondagaon in Sessions Case No. 47/2021, whereby the appellant- Lenkat Vijay Kishore has been convicted and sentenced in the following manner:

Conviction	Sentence
Under Section 342 of IPC	06 months RI and fine of Rs. 100/-, in default of payment undergo RI for 01 month.
Under Section 384 of IPC	01 year RI and fine of Rs. 100/- in default of payment undergo RI for 01 month.
Under Section 506 of IPC	06 months RI and fine of Rs. 50/-, in default of payment undergo RI for 15 days.
Under Section 376(D) of IPC	20 year RI and fine of Rs. 1000/-, in default of payment under RI 01 year.
Under Section 66(E) of the Information Technology Act, 2000.	02 years RI and fine of Rs. 10000/- in default of payment undergo RI of 04 months.

4. The brief facts of the case are that on 08.02.2021, at about 08:00 pm, the victim called her friend in the house of her another friend

and when they were chatting, at about 01:00 am in the night, the neighbour/accused persons prepared a video and thereafter, knocked the door and extorted that if they will not them the money they will get the video viral. Her friend transferred Rs. 50,000/- into the bank account of the accused Dipankar Vishwas, and thereafter, they forced her friend (P.W. 6) to go away from the place and took her inside the room and committed rape upon her one after another. Her friend came back along with police officers, and they took them to the police station. On the written complaint Ex.P/2 made by the victim PW-3, the FIR of Crime No. 15/2021 (Ex.P/3) at Police Station Keshkal, District Kondagaon has been registered against the accused persons Dipankar Vishwas and Venkat Vijay Kishore for the offence under Sections 342, 376-D and 384 of the IPC.

5. The victim was sent for her medical examination to the Community Health Centre, Farasgaon, District Kondagaon, where she was medically examined by PW-7 Dr. Jyotirmay Prabhawati, who gave her report Ex.P/6. While medically examining the victim, the doctor noticed injury on her private part, hymen absent, congestion of the vagina, tear present. She gave a provisional opinion that, according to history, physical and genital examination, there are signs suggestive of recent forceful penetration of the vagina; however, slides of her vaginal and anal swab were prepared, sealed and handed over to the police for their FSL examination. Spot map Ex.P/5 was prepared by the

Police, and Ex.P/22 was prepared by the Patwari. The underwear of the victim was seized vide seizure memo Ex.P/7. The social status certificate of the victim Ex.P/8 has also been seized vide seizure memo Ex.P/9. Statement under Section 164 of the Cr.P.C. of the victim (Ex.P/10) has also been recorded by the learned Judicial Magistrate First Class, Kondagaon. The transaction details through the mobile phone of PW-6, a friend of the victim, have also been obtained, which are Ex.P/13 and Ex.P/14.

6. The accused persons were arrested on 09.02.2021 and they too have been sent for their medical examination to Community Health Centre, Keshkal where they have been medically examined by PW-8, Dr. Manjul Ghodheshwar who after medical examination of the appellant Lenkat Vijay Kishore gave his report Ex.P/16 and with respect to the medical examination of the accused Dipankar Vishwas gave his report Ex.P/17. While medically examining both these accused persons, the doctor has not noticed any external injuries on their bodies and found them capable of performing sexual intercourse. From the appellant Dipankar Vishwas, one mobile phone has been seized vide seizure memo Ex. P/25, his underwear has been seized vide seizure memo Ex.P/27. From Lenkat Vijay Kishore, one mobile phone has been seized vide seizure memo Ex.P/26, and his underwear has been seized vide seizure Ex.P/28. Rs. 50,000/- cash has also been seized after withdrawing it from SBI, Bank

Keshkal branch, from his bank account vide seizure memo Ex.P/29. The underwear seized from the appellants was sent to the doctor for its query report, who gave its query report Ex.P19 and Ex.P/20, and advised its chemical examination for confirmation of the presence of semen.

7. The pubic hair, vaginal slides, anal slides, and underwear of the victim, and the underwear of the accused persons were sent for their FSL examination to the Regional FSL, Jagdalpur, from where the report Ex.P/34 has been received. According to the FSL report, except for the pubic hair of the victim, semen and human sperm were found on all the other sent articles. The police have also sent the blood samples of the victim as well as the accused persons for their DNA test with the consent of the victim as well as the accused persons, and their consent letter is Ex.P/38, Ex.P/39 and Ex.P/40. The blood sample of the victim, accused persons Dipankar Vishwas and Lenkat Vijay Kishore, for the DNA test was collected by the doctor at Medical College Hospital, Jagdalpur, which has been seized vide seizure memo Ex.P/42. The blood samples and the seized articles in which semen and sperm were found in the FSL report were duly sent to State FSL, Raipur, along with the memo of Superintendent of Police, Kondagaon Ex.P/66, which was received by the State FSL, Raipur and the police obtained an acknowledgement Ex.P/67. Along with the memo dated 25.08.2021 Ex.P/68 the police obtained the DNA report Ex.P/69 to Ex.P/73 whereby the

DNA profile of the semen found on the underwear of the accused persons were matched with the vaginal swab, anal swab, and vaginal smear of the victim, further the DNA profile of blood samples of the victim and accused persons were also matched the CDR and CAF of the mobile phone seized from the accused persons were also obtained by the Police from its service provider company along with the certificate under Section 65-B of the Indian Evidence Act, 1872 which are Ex.P/75 to Ex.P/79 and the deleted data from the mobile phones have been retrieved and kept it pen drive by the cyber laboratory of Chhattisgarh Police, Naya Raipur and their examination report is Ex.P/78.

8. Statement of the witnesses under Section 161 of the Cr.P.C. have been recorded and charge-sheet was filed against the accused Dipankar Vishwas before the learned trial Court for the offence under Section 342, 376-D and 384 of IPC and Section 3 (2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short' SC/ST Act') and Section 66E of the Information Technology Act, 2000 ( in short' IT Act'). Since the accused Lenkat Vijay Kishore belong of Scheduled Tribes community, the charge-sheet against him was filed before the learned Judicial Magistrate First Class, Keshkal, District Kondagaon, for the offence under Sections 342, 376-D and 384 of IPC and Section 66E of the IT Act. The case against the accused Lenkat Vijay Kishore was committed to the Court of learned Sessions Judge, Kondagaon, however, vide order dated

02.08.2021, passed by the learned Sessions Judge, Kondagaon, the case against the accused Lenkat Vijay Kishore was transferred to the learned trial Court where the charge-sheet against the accused Dipankar Vishwas was filed and thereafter, trial against both the accused persons were conducted jointly. On the basis of the charge-sheet filed against the accused Dipankar Vishwas, the Special Sessions Case No. 06/2021, was registered, and after committal of the case against the accused Lenkat Vijay Kishore, the Sessions Case No. 47/2021, was registered, and then the trial of both cases was carried out jointly.

9. The learned trial Court framed charge against the accused Dipankar Vishwas for the offences under Sections 342, 384, 506, 376-D of the IPC, Section 3(2)(v) and 3(2)(va) of the SC/ST Act, and Section 66E of the IT Act, whereas the charge against the accused Lenkat Vijay Kishore has been framed by the learned trial court of the offence under Section 342, 384, 506 and 376-D of the IPC and Section 66E of the IT Act. The accused persons denied the charge and claimed trial.
10. In order to prove the charge against the appellant, the prosecution has examined as many as 20 witnesses. Statement of the accused persons under Section 313 of Cr.P.C. has also been recorded in which they denied the circumstances that appear against them, pleaded innocence and submitted that they have been falsely implicated in the offence. In support of their

defence, one defence witness, DW-1, has been examined by them.

11. After appreciation of oral as well as documentary evidence led by the parties, the learned trial Court has convicted the accused persons and sentenced them as mentioned in the earlier part of this judgment. Hence, these appeals.
12. Mr. Raja Ali, learned counsel appearing in both these appeals for the respective appellants, would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses, which cannot be the basis to convict the accused persons for the offence in question. The alleged place of the incident has adjoining houses of others; however, none of the neighbours has heard any noise or alarm from the victim or her friend. When her friend was allegedly threatened by the accused person and forced to leave the place, he would have taken immediate help from the people of the vicinity to save the victim, but he did not do so, which itself creates a serious doubt on the prosecution's case. Presence of the victim along with her friend in the house of her another friend who was not there that too at about 01:00 am in the night, clearly shows that she herself was engaged in suspicious activities. There is no video retrieved from the mobile phone of the accused persons, as alleged by the victim. The evidence with respect to the money transaction is not sufficient to connect the accused persons with the offence in

question, and all that has been framed by the prosecution is only to implicate the accused in the alleged offence. The conduct of the victim and her friend is suspicious as they have not raised any alarm, and there is no sign of any protest found on the body of the victim when she was medically examined by the doctor.

13. He would further submit that the medical and scientific evidence of FSL and DNA reports are only an opinion of the subject expert; however, that itself is not sufficient to hold the accused persons guilty of the offence in question. There are material inconsistencies in the evidence of prosecution witnesses, and there are various components that are missing from the circumstances; thus, the conviction and sentence against the accused person cannot be sustained. By allowing their appeals, the accused person may be acquitted.
14. On the other hand, learned counsel appearing for the State opposes in his submissions made by learned counsel for the accused persons and has submitted that the prosecution has proved its case beyond a reasonable doubt. But for minor omissions or contradictions, the evidence of prosecution witnesses is fully reliable and sufficient to hold the accused persons guilty of the offence. The prompt and named FIR has been registered against the accused persons. Injuries have been found on the private part of the victim, and in the FSL report, semen and sperm were found on the vaginal slides of the victim. Further, the DNA report duly confirmed the involvement of the

accused persons in the offence in question. The injuries found on the body of the victim, medical and scientific from FSL and DNA laboratory, corroborate each other with the allegations levelled by the victim. Further, from the data extracted from the mobile phone of the accused persons and their bank details, the transfer of an amount of Rs. 50,000/- from the bank account of the friend of the victim through UPI mode has also been proved by the bank account details as well as cyber reports. All these evidences are duly and closely connected to the accused persons towards their guilt, which has been rightly considered by the learned trial Court and holds them guilty of the alleged offence. The accused persons could not extend the evidence available against them in their 313 Cr.P.C. statement; therefore, in view of sufficient and overwhelming evidence available against the accused persons, their conviction and sentence are justified, and their appeals are liable to be dismissed.

15. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
16. PW-3 is the victim of the offence and is 23 years of age at the time of the incident. She stated in her evidence that she knew the appellants by their names and faces. PW-6 is her friend who used to come to her house in the course of his ongoing work on the construction of drainage in the vicinity. During his work, a conversation between them was started. She asked the PW-6 to come to Keshkal as she also had to go to Keshkal for her own

work and she asked to come to the house of another friend, PW-2. She took the keys of the house of PW-2, who had gone to a birthday party, and she had gone to his house alone. At about 11:30 at night, her friend PW-6 came to the main road and made a telephonic call to her. She asked the accused, Dipankar Vishwas, to help and asked him to drop her off at the place where her friend was waiting. The accused Dipankar Vishwas left her with her friend PW-6 and came back. She accompanied her friend PW-6 and came back to the house of PW-2 in his car. At 01:00 am, when they were chatting in the room, the accused Dipankar Vishwas prepared a video from the window and bolted the door from the outside. He called his friend Lenkat Vijay Kishore and thereafter called them outside for the room. When they came out of the room, they demanded money and stated that they had prepared a video and if they did not them Rs. 50,000/-, they would get the video viral. Her friend PW-6 transferred Rs. 50,000/- through phone-pay of his mobile phone to the bank account of Dipankar Vishwas. Thereafter, the accused persons forced her friend, PW-6, to go away from the place and dragged her inside the room, and Dipankar Vishwas committed rape upon her. Thereafter, the other accused, Lenkat Vijay Kishore, also committed rape upon her. Somehow, she was able to message her friend PW-6, "help me", and then her friend PW-6 came back along with 4 – 5 police officers, and they took all of them to Police Station Keshkal. She made her written

complaint to the police, which is Ex.P/2 and then police proceedings were started. She was sent for her medical examination to CHC, Farasgaon and other police proceedings were conducted. In cross-examination, she admitted that she had a telephonic conversation with her friend PW-6. She voluntarily stated that PW-6 is a contractor and with respect to his work of contractor-ship, she had a telephonic call with him. She admitted that on the date of the incident, up to 11:30 pm, she had a normal conversation with her friend PW-6. She also admitted that PW-2 is also her friend. She had gone to the house of her friend PW-2 at 08:00 pm, which is situated at a distance of about 150 meters from the national highway. She further admitted that before leaving her house, she informed her parents that she was going to Keshkal for her work. She also admitted that she asked her friend PW-2 to manage a room there. She further admitted that her friend PW-6 was unknown about her stay in the night at Keshkal. She was also cross-examined with respect to her 164 Cr.P.C. statement; however, she answered that at the time of recording of her 164 Cr.P.C. statement, her mental condition was not good, and she had contracted some part of her 164 Cr.P.C. statement. From perusal of her evidence, it transpires that the contradiction with her 164 Cr.P.C is with respect to the affairs of the day; however, the substantive allegation of gang rape by the accused person remains intact. In further cross-examination, she admitted that her friend PW-2 had introduced her to the accused

Dipankar Vishwas. She also showed her ignorance about any commercial transaction between her friend PW-6 and the accused persons. From her evidence, the allegation of preparing a video, the threat given by the accused persons to extort money from them, transfer of Rs. 50,000/- through phone-pay mode by her friend PW-6 to the bank account of the accused Dipankar Vishwas and thereafter commission of rape by them one after another have been duly substantiated by the victim in her evidence. Even, it is not the specific defence of the accused persons that they have not committed any offence of rape, and they have been falsely implicated by the victim for any oblique motive. The sequence of the incident, as narrated by the victim, does not appear to be against the normal course of their conduct. The discrepancies in her evidence are trivial in nature, which does not affect the substantive allegation levelled by her against the accused persons.

17. The evidence of the victim (PW-3) inspires confidence and forms the base of the prosecution's case. It is well settled that the testimony of a victim of sexual assault stands on a higher pedestal and, if found reliable, requires no corroboration as a matter of law. The core of the testimony of PW-3 remains intact and is further corroborated by PW-2 and PW-6, who have supported the circumstances leading to the incident as well as the conduct of the accused persons. In "***Appabhai and Another vs. State of Gujarat***" 1988 (Supp) SCC 241, the Hon'ble

Supreme Court held that the sole testimony of the victim, if trustworthy, is sufficient to base a conviction. In para 13 of its judgment, it has been held that:-

“The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses may go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

18. In the case of **“State of Himanchal Pradesh v. Sanjay Kumar”**, 2017 (2) SCC 51, it has been held that the sole statement of the victim can be the sole basis for conviction unless cogent reasons exist for the court to be hesitant in believing her statement. It has been observed that:-

“30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which the testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary,

when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long-lasting effects on such victims.

**31.** After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless which necessitate looking for there are compelling corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence

which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See *Bhupinder Sharma v. State of H.P.*2). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

19. In the present case, the victim, PW-3, has consistently deposed about the preparation of the video, the threat to make it viral, extortion of Rs. 50,000/-, and commission of gang rape by both the appellants. Minor inconsistencies pointed out by the defence relate only to peripheral aspects and do not go to the root of the prosecution’s case. As observed in “**State of U.P. v. M.K. Anthony**” 1985 (1) SCC 505, trivial discrepancies which do not shake the basic version of the prosecution are to be ignored. In para 10, it has been held that:-

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is un-doubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation

of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

20. Further in the case of “**Mukesh and Another vs. State (NCT of Delhi) and Others**”, 2017 (6) SCC 1, the Hon’ble Supreme Court has held that:-

“**392.** Courts should not attach undue importance to discrepancies, where the contradictions sought to be brought up from the evidence of the prosecutrix are immaterial and of no consequence. Minor variations in the testimony of

the witnesses are often the hallmark of truth of the testimony. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Due to efflux of time, there are bound to be minor contradictions/discrepancies in the statement of the prosecutrix but such minor discrepancies and inconsistencies are only natural since when truth is sought to be projected through human, there are bound to be certain inherent contradictions. But as held in *Om Prakash v. State of U.P.*<sup>214</sup>, the court should examine the broader probabilities of a case.”

21. PW-2, the friend of the victim in whose house the alleged incident was committed, has stated in his evidence that he is well acquainted with the accused persons and the victim. A day before the date of the incident, the victim made a telephone call to him and asked for the keys of his room. On the date of the incident, at about 04 -05 pm, the victim came there, and he took her to his room. He bought food for her from the bus stand, and after leaving her in the room, he left the place and went to an engagement function of the sister of his friend. He also asked the accused Dipankar Vishwas, to assist her if she would require any help. At about 09:10 pm, he had a telephone call with the victim, and she informed him that her friend had come. The next morning at about 08:00 am, he made a telephonic call to the victim, but her mobile was found switched off. When he was on the way, he had a telephone call with the victim, and she called him to the police station Keshkal, and when he went there, she informed him about the incident. In cross-examination, nothing could be extracted from this witness so that the case of the prosecution

could be disbelieved. It is not in dispute that the alleged incident took place in the room of this witness, P.W. 2.

22. P.W. 6 is the person with whom the victim was chatting in the room of P.W. 2 on the date of the incident. P.W. 6, a friend of the victim, stated in his evidence that during his work of contractorship, he met with the victim. The father of the victim was the supervisor of his work. They exchanged their mobile numbers and had a conversation. The victim called her at Keshkal on 08-02-2021, at the house of another friend. With the help of the accused Dipankar Vishwas, she came to the place where he was waiting for her. When they were chatting, the accused Dipankar bolted the door of the room from the outside. Thereafter, he threatened them that they are doing bad work there and he will call the police. He took the amount from his purse and demanded more money, and then he returned the cash to him and asked him to withdraw the amount from the ATM. He transferred Rs. 25,000/-, 25,000/- two times through Phone-Pay to the bank account of Dipankar. After some time, he called another accused, Lenkat Vijay Kishore. Thereafter, they forced him to go away from there and assured him that the victim would be safe with them. He left the place and waited in his car near Goldi Dhaba. After some time, he received a message on his mobile phone from the victim, "Save me" and "इन लोगों ने मेरे साथ गलत काम किया है". Thereafter, he had gone to the Keshkal police station and came back along with police personnel. They found

both the accused persons with the victim in the room, and then the victim disclosed the incident. The police personnel took them to the police station at about 4.00 a.m. The victim lodged a written report there, and then the police proceedings were started. In cross-examination, he admitted that the victim is his friend. He met with the victim 2-3 times. He also admitted that he and the victim were chatting, and the accused threatened them that he would call the people of the vicinity. He also admitted that he can ask for help from local residents. He did not know the P.W. 2. He further stated that he was under distress, therefore, he could not call the police through the helpline number. He denied that he was having love affair with the victim. From the evidence of this witness also, the defence could not elicit any material to discredit his evidence. His evidence is also corroborative with the evidence of victim P.W. 3 and her other friend P.W. 2.

23. P.W. 1 is the Assistant Sub Inspector of Police, posted at the police station, Kondagaon. He stated in his evidence that on the date of the incident, he was on patrolling duty. He received a message from the police station that he had to proceed to the place of the incident and then he along with P.W. 6, went there at the place of the incident. When he opened the door of the room, he saw a girl and two boys there, who are the present accused persons. The girl was crying. P.W. 6 had informed about the incident of preparing their video and the transfer of an amount of Rs. 50,000/- to Bengali doctor. He took them to the police station

and handed them over to the Station House Officer. Though for some part of his statement, he was turned hostile, but in his cross-examination, he remained firm in saying that as and when they opened the door, he found the girl and the accused persons inside the room.

24. P.W. 5 is the Assistant Sub Inspector of police and is posted at the police station Keshkal. He stated in his evidence that on the date of the incident, he was with P.W. 1 in patrolling duty. On receiving information from the police station, they proceeded towards the place of the incident along with P.W. 6. He informed them about the incident of the preparation of the video and transfer of Rs. 50,000/- through Phone-Pay. When they reached on the spot, they found the girl and the accused persons and thereafter, they took them to the police station. The girl was crying at that time. In cross-examination, he too remained firm about the presence of the victim and the accused persons in the room, and the girl was crying, they took them to the police station and corroborated the evidence of P.W. 1 and also the other witnesses.
25. After lodging of the FIR, the victim was sent for her medical examination to CHC, Farasgaon. She was being medically examined by P.W. 7, Dr. Jyotirmay Prabhawati. She stated in her evidence that she medically examined the victim on 09.02.2021. At the time of her medical examination, she disclosed the incident, which she had written in her medical report. She does

not find any external injuries on her body. On internal examination, she found redness in her private part and injury there. Her hymen was absent, and laceration was present. She prepared two slides of her vaginal swab, two slides of anal swab, two slides of vaginal smear and vaginal washing. The same were sealed and handed over to the police. After her medical examination, she gave her report, Ex. P-6. She also gave her query report, Ex. P-15. She admitted in her cross-examination that she could not say as to with whom the victim made physical relationship. Nothing in her cross examination which discredit the injuries found on the private part of the victim. Preparation of vaginal slides is also not under challenge in her cross-examination. From the evidence of the doctor, who medically examined the victim, the allegation of sexual intercourse is found corroboration with that of the evidence of the victim and other witnesses that the victim and both accused persons were found inside the room, where the victim suffered sexual abuse by the accused persons.

26. P.W. 8, Dr. Tejeshwar Netam, medically examined the accused persons and gave reports Ex. P-16 and P-17. He stated in his evidence that on 09.02.2021, he medically examined the accused Lenkat Vijay Kishore at about 01:50 pm. He did not notice any external injuries on his body; however, smegma was found absent on his penis. He found him capable of performing sexual intercourse. Likewise, on medical examination of the accused

Dipankar Vishwas, he did not find any external injuries; however, smegma was absent on his penis also. He was also found to be capable of performing sexual intercourse. The underwear of the accused persons has also been examined by him, and he referred them to FSL and proved Ex. P-19, P-20 and P-21. Nothing has been asked by the defence in his cross-examination. The significant aspect of his evidence is that the incident is said to have occurred in the intervening night of 08.02.2021 and 09.02.2021, and the accused persons were medically examined by the doctor on 09.02.2021 at about 01:50 pm and 02:00 pm, i.e. within 24 hours of the alleged time of the incident. The doctor has found that smegma was absent on the penis of the accused persons.

27. P.W. 11 is the Dy. Superintendent of Police and the investigating officer, who conducted part of the investigation. He stated in his evidence that he recorded the statement of the witnesses as per their disclosure. He sent the pubic hair, Vaginal swab slide, vaginal swab slide, anal swab slide, vaginal smear slide, vaginal washing, her underwear, the underwear of the accused Dipankar and Lenkat Vijay Kishore to the FSL for its examination. After its examination, he received the FSL report Ex. P-34. In the FSL report, except for the pubic hair of the victim, semen and sperms were found in all other samples. He also sent the request letter Ex. P-37, to JMFC, Kondagaon, for the blood sample of the victim and the accused persons for the DNA test. He also obtained

consent Ex. P-38, P-39, P-40 and P-41 from the accused Dipankar Vishwas, the victim, the accused Lenkat Vijay Kishore and the brother of the victim, respectively. Dr. Gyanendra Kumar, P.W. 20, has taken blood sample from the person concerned, and he seized the said blood samples vide seizure memo Ex. P-42. He also sought the necessary information and bank account statement from the SBI, Keshkal branch, with respect to the money transfer of Rs. 50,000/- through Phone-Pay by P.W. 6. The said amount was transferred by Dipankar Vishwas to the bank account of Lenkat Vijay Kishore through Phone-Pay, and he also sought necessary information about the same from the bank. The bank account statements are annexed to the case. he further stated that he also sent a memo Ex. P-53, for the recovery of the deleted video from the mobile phone of Dipankar Vishwas, which was prepared on the date of the incident, along with a query about whether the said video was prepared from the mobile phone of Dipankar Vishwas, and to keep the video safe. From the bank statement, he found that the amount of Rs. 50,000/- was transferred from the mobile phone of Dipankar Vishwas to the mobile phone of Lenkat Vijay Kishore. He also proved various memos written to FSL, cyber cell, bank, and also to the service provider company of mobile phone, etc. in his cross-examination, the defence could not extract any material to disbelieve his evidence. He, being the investigating officer, proved his part in

the investigation and the document prepared by him during the investigation.

28. P.W. 12 is the lady constable, posted at the police station Keshkal. She stated in her evidence that she has taken the victim to CHC, Farasgaon, for her medical examination. The doctor has given her 07 sealed packets after the medical examination of the victim, which has been given to the Sub-Inspector, and the seizure memo is Ex. P-55. She also submitted supplementary challan before the learned trial Court against the accused persons of Crime No. 15/2021, registered at the police station Keshkal. The IG police, Bastar Range, granted permission (Ex. P-65) to file a supplementary challan. She also stated about the seizure of 09 packets containing the material sent to FSL, which is Ex. P-36. She also stated about the documents annexed with the supplementary challan, which are the FSL report, DNA report, report of the cyber cell, etc. In cross-examination, she admitted that she had filed two supplementary challans in the case.
29. P.W. 14 is the Inspector of police and is posted at the police station, Keshkal. He stated in his evidence that he arrested the accused persons on 09.02.2021. He issued the notice Ex. P-12 for submission of bank transaction details of the relevant bank transaction between him and Dipankar Vishwas. He sent the accused persons for their medical examination to CHC, Keshkal and their underwear for the query report. He also seized Rs. 50,000/- cash from the accused Lenkat Vijay Kishore, which was

withdrawn from his bank account, vide seizure memo Ex. P-29. He also seized a mobile phone from the accused Dipankar Vishwas and another mobile phone from Lenkat Vijay Kishore, and seizure memos are Ex. P-25 and P-26. He also seized the sealed packets of pubic hair of the victim, her vaginal slides and her underwear, vide seizure memo Ex. P-55. The underwear of the accused persons has also been seized by him vide seizure memo Ex. P-58 and P-59. He also proved that a notice Ex. P-60 was issued by him to P.W. 6 for giving bank account details about the transfer of Rs. 50,000/-. In the said document, Ex. P-60, Dipankar Vishwas has disclosed that the amount transferred in his bank account on 09.02.2021, has been transferred in the bank account of Lenkat Vijay Kishore, through Phone-Pay mode. He also seized the social status certificate (Ex. P-8) of the victim vide seizure memo Ex. P-9. In cross-examination, he admitted that in the arrest memo of the accused persons and in the seizure memos, he had not mentioned the time and serial numbers of currency notes have not been mentioned. The discrepancies brought by the defence in his evidence are trivial in nature and do not affect the prosecution's case. The timing of the arrest and the serial numbers of the currency notes do not have any vital significance in the facts and circumstances of the case. The timing of sending the accused persons for their medical examination may have some significance, but they were sent on 09.02.2021 itself, and the doctor examined them at about 01:50

pm and 02:00 pm, which is within 24 hours of the alleged time of the incident, and found no smegma on their penis. Therefore, no benefit can be extended to the defence by the cross-examination of this witness.

30. P.W. 17 is the lady Sub-Inspector of police and was posted at the police station, Farasgaon. She was being called to the police station Keshkal, where the victim had given her a written report, Ex. P-2. Based on the written complaint, she registered the FIR, Ex. P-3 against the accused persons Dipankar Vishwas and Lenkat Vijay Kishore. She prepared the spot map Ex. P-5 and sent the victim to CHC Farasgaon for her medical examination, after obtaining her consent. She also seized the underwear of the victim vide seizure memo Ex. P-7 and sent it for query report from the doctor. In cross-examination, she stood on her part of the investigation, which she did, and nothing could be brought by the defence to disbelieve her evidence.
31. P.W. 19 is the Police Constable and brother of the victim. He stated in his evidence that on 09.02.2021, he received a mobile call, and then he went to the police station Keshkal along with his parents. They were informed about the incident committed by the accused persons against the victim. After declaring him hostile, he admitted that the victim had informed him about the incident of rape by the accused persons. In cross-examination, he admitted to taking the blood sample of the victim and the accused persons

in his presence. There is no cross-examination on the point that the victim has not disclosed any incident to him.

32. P.W. 20, Dr. Gyanendra Kumar, was the Assistant Professor, posted at the Medical College, Jagdalpur. He had taken blood samples of the victim and the accused persons, duly sealed it and handed them over to the police for their DNA test.
33. The other witness, P.W. 4, who is the father of the victim, did not disclose any relevant fact except for the seizure of certain articles. P.W. 9 is the Patwari, who prepared the spot map Ex. P-22. P.W. 10 is the driver and witness to the seizure memo Ex. P-25 to P-29. The other witnesses, P.W. 13, P.W. 15, P.W. 16, and P.W. 18, are witnesses to the procedure of investigation.
34. The accused persons have examined one defence witness, who was the landlady of the house where the incident took place. She stated in her evidence that Dipankar Vishwas is her neighbour. The victim came to the room of another tenant. All the rooms are adjacent. She asked the victim about the reason for visiting there, and she disclosed that she came there along with her sister and brother-in-law. In cross-examination, she admitted that she has a good relationship with the accused, Lenkat Vijay Kishore. She admitted that she did not know anything about the incident. On the date of the incident, she was having headache and went to sleep early.
35. From the material produced by the prosecution and the evidence of the victim P.W. 3, and other witnesses, in the present case, it

can be safely held that the victim is a sterling witness, as has been observed by the Hon'ble Supreme Court in the case of **"Santosh Prasad alias Santosh Kumar vs. State of Bihar"**, 2020 (3) SCC 443. In para 5.4.2, it has been held that:-

**"5.4.2.** In Rai Sandeep<sup>3</sup>, this Court had an occasion to consider who can be said to be a "sterling witness". In para 22, it is observed and held as under: (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well

as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

36. The Supreme Court in the matter of **Ranjit Hazarika v. State of Assam**, AIR 1998 SC 635 has held that the evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.
37. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi**, 2012 (8) SCC 21 held as under:-

"In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the

statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

38. The medical and scientific evidence lend strong corroboration to the ocular version. PW-7, the examining doctor, noticed injuries on the private parts of the victim, including laceration and congestion, suggestive of recent forceful sexual intercourse. The

FSL report (Ex. P-34) confirmed the presence of semen and sperm on the vaginal and other samples, and the DNA reports (Ex. P-69 to P-73) conclusively matched the biological material of the appellants with the samples obtained from the victim. Such a conclusive forensic linkage significantly strengthens the prosecution's case. In the case of "**Mukesh**" (supra), the Supreme Court emphasized that DNA evidence is a scientifically accurate and reliable means of establishing guilt. They have considered in detail the scientific valuation of the DNA report in paragraphs 211 to 228, which are as under:-

**211.** DNA is the abbreviation of deoxyribonucleic 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 Phillips, L.J. in R. v. Doheny-55, 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 Phillips, L.J.:

"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 Deen<sup>86</sup> (transcript: 21-12-1993), 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*<sup>87</sup>, 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* stating thus: (SCC OnLine US SC)

"Although the Fry 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 summarised by Blackmun, J., as follows: (Daubert case, SCC OnLine US SC)

"To summarise: "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<sup>89</sup>, Roberts, C.J. of the Supreme Court of United States, while referring to the DNA test, stated as follows: (SCC OnLine US SC)

"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 recognised 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.

\* \* \*

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 regularised 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 53-A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53-A

relates to the examination of a person accused of rape by a medical practitioner.

**217.** Similarly, under Section 164-A 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 a must. Section 53-A sub-section (2) as well as Section 164-A sub-section (2) are to the following effect:

**"53-A. 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.

\* \* \*

**164-A. 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 v. Poshi Ram* observed: (SCC p. 316, para 10)

"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 A.P.* 91, a two-Judge Bench had explained as to what is DNA in the following manner: (SCC pp. 617-18, paras 41-42)

"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. State2*, 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: (*Santosh Kumar case2*, SCC p. 772, para 71)

"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*. 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 v. John David94*, 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 subjected to DNA test. From the DNA, the identification of the deceased was proved.

Para 60 of the decision is reproduced below: (SCC p. 528)

"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 PW 1 and Baby Ponnusamy was found in the recovered parts of the body and that therefore they should belong to the only missing son of PW 1."

**222.** In *Krishan Kumar Malik v. State of Harvana*<sup>95</sup>, 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 CrPC, it has become necessary for the prosecution to go in for DNA test in prosecutrix, this Court held that after the incorporation of Section 53-A in such type of cases. The relevant paragraph is reproduced below: (SCC p. 140. para 44)

"44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f 23-6-2006, 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 restored 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 U.P.*<sup>96</sup>, 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: (*Surendra Koli case*<sup>96</sup>, SCC p. 84)

"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 *Mohd. Ajmal Amir Kasab v. State of Maharashtra*<sup>98</sup>, the accused was awarded death sentence on charges of killing large number of innocent persons on 26-11-2008 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: (SCC p. 125, para 333)"

333. It is seen above that among the articles recovered from Kuber were a number of blankets, shawis 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 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 U.P.*<sup>99</sup>, 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: (SCC p. 133, para 67)

"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 M.P.* 100, 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: (SCC pp. 357-58, para 8)

"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 the appellant's semen spots. The hair which were found near the place of occurrence were found to be that of the appellant."

**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.”

39. Further, the absence of smegma on the private parts of the accused persons, noticed within 24 hours of the incident, is a relevant incriminating circumstance, as held in “**State of Maharashtra v. Chandraprakash Kewalchand Jain**” 1990 (1) SCC 550, indicating recent sexual activity.
40. The prosecution has also proved the element of extortion and the surrounding circumstances through cogent evidence. PW-6 has categorically stated about the transfer of Rs. 50,000/- through Phone-Pay to the account of appellant Dipankar Vishwas, which is duly supported by bank records (Ex. P-13, P-14) and further corroborated by the investigation of PW-11 and PW-14. The recovery of the said amount from the account of co-accused Lenkat Vijay Kishore establishes the money trail. The presence of both accused, along with the victim inside the room, as stated by PW-1 and PW-5, immediately after the incident, is a crucial circumstance forming part of the chain of evidence. The defence argument regarding the absence of alarm or conduct of the victim is untenable in view of the settled legal position that different individuals react differently to trauma.
41. In the case of “**Babasaheb Apparao Patil vs. State of Maharashtra, 2008** (17) SCC 425, the Hon’ble Supreme Court has observed that:-

“**19.** .....The post-event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed

as a model by everyone witnessing such event. Different persons would react differently on seeing any serious crime and their behaviour and conduct e would, therefore, be different. (See Rammi v. State of M.P.3, SCC p. 654, para 8.).....

42. It is also necessary to quote here the observation made by the Hon'ble Supreme Court with respect to the impact of the offence of rape upon the victim. In the case of "**State of Punjab v. Gurmit Singh**" 1996 (2) SCC 384, it has been observed that:-

**21.** Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

43. Further, in the case of “**Prahlad and Another vs. State of Haryana**”, 2015 (8) SCC 688, the Hon’ble Supreme Court has observed that:-

“17. It has to be borne in mind that an offence of rape is basically an assault on the human rights of a victim. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. Everyone in any civilised society has to show respect for the other individual and no individual has any right to invade on physical frame of another in any manner. It is not only an offence but such an act creates a scar in the marrows of the mind of the victim. Anyone who indulges in a crime of such nature not only does he violate the penal provision of IPC but also the right of equality, right of individual identity and in the ultimate eventuality an important aspect of rule of law which is a constitutional commitment. The Constitution of India, an organic document, confers rights. It does not condescend or confer any allowance or grant. It recognises rights and the rights are strongly entrenched in the constitutional framework, its ethos and philosophy, subject to certain limitations. Dignity of every citizen flows from the fundamental precepts of the equality clause engrafted under Article 14 and right to life under Article 21 of the Constitution, for they are the "fons juris" of our Constitution. The said rights are constitutionally secured.

18. Therefore, regard being had to the gravity of the offence, reduction of sentence indicating any imaginary special reason would be an anathema to the very concept of rule of law. The perpetrators of the crime must realise that when they indulge in such an offence, they really create a concavity in the dignity and bodily integrity of an individual which is recognised, assured and affirmed by the very essence of Article 21 of the Constitution.”

44. In the case of “**Vijay alias Chinees vs. State of Madhya Pradesh**” (2010) 8 SCC 191, the Hon’ble Supreme Court

unequivocally held that the mere absence of injuries on the person of a victim in a case of gang rape cannot be construed as indicative of consent. The Hon'ble Supreme Court recognized that lack of physical resistance or visible marks of violence does not necessarily imply willingness, particularly in circumstances where the victim may be overpowered, threatened, or placed in fear for her life or safety. It was emphasized that consent must be a voluntary and unequivocal agreement, and its existence must be assessed from the overall facts and circumstances rather than inferred from the absence of injuries. Therefore, the defence cannot rely solely on the non-existence of bodily injuries to argue consent, as such an approach would be contrary to the principles laid down by the Court and would undermine the dignity of the victim.

45. The conviction of the appellant Dipankar Vishwas is also under Sections 3(2) (v) and 3(2)(va) of the SC/St Act. It is not disputed by the accused Dipankar that the victim is a member of the Scheduled Tribe community, and he is not a member of the Scheduled Tribe community. The document Ex. P-8, i.e. the social status certificate of the victim issued by the competent authority, duly proved that the victim is a member of the Scheduled Tribe community. Section 3(2)(v) and 3(2)(va) clearly provide that if the offence is committed knowing that such a person is a member of a Scheduled Tribe, he shall be punished. In the present case, in paragraph 2 of the evidence of the victim,

P.W. 3, she stated that when she accompanied Dipankar Vishwas, on the way, he asked her name, and then she disclosed to him her name and surname. She further deposed that she informed him that she is a member of the Scheduled Tribe. This part of her evidence could not be rebutted in her cross-examination by the accused Dipankar Vishwas. The learned trial Court also considered in para 39 of its judgment that the accused Dipankar Vishwas was in knowledge that the victim belonged to the Scheduled Tribe community. Therefore, we do not find any scope for interference in the conviction and sentence of the appellant Dipankar Vishwas for the offence under Section 3(2)(v) and 3(2)(va) of the SC/ST Act.

46. In view of the aforesaid analysis, this Court finds that the prosecution has successfully established the guilt of the appellants beyond reasonable doubt. The evidence of the victim (P.W. 3) is cogent, credible and duly corroborated by medical, scientific and circumstantial evidence. The findings recorded by the learned trial Court are based on proper appreciation of evidence and do not suffer from perversity or illegality. Consequently, the impugned judgment of conviction and sentence dated 14.12.2023 warrants no interference.
47. Accordingly, both Criminal Appeals, being devoid of merit, are hereby **dismissed**.
48. The appellants are reported to be in jail. They shall serve the entire sentence as awarded by the learned trial Court. They are

entitled to set off the period already undergone during the trial and during the pendency of this appeal.

49. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
50. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-  
**(Ravindra Kumar Agrawal)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice

**Headnote**

The DNA report, being scientifically accurate, can be accepted as sufficient proof of the involvement of the accused in the offence of rape with the victim unless it is absolutely tainted for non-acceptance of the same, particularly when the other circumstances, like injuries found on the body of the victim and the FSL report regarding the presence of semen in the vaginal slides of the victim, have duly corroborated the allegation and are sufficient to base the conviction of the accused.