2026:CGHC:18373-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1057 of 2024

1 - Lakhmuram Baghel S/o Saytu Ram Baghel, Aged About 21 Years, R/o Junawahi, P.S. Bhanpuri, District Bastar (C.G.)

... Appellant

versus

1 - State of Chhattisgarh Through Police Station Bhanpuri, District Bastar (C.G.)

... Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Pravin Kumar Tulsyan and Mr. Karan Kumar Baharani, Advocates.
For State	:	Mr. Sourabh Sahu, Panel Lawyer.

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

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

22-04-2026

1. Learned counsel for the State submits that the notice issued to the father of the victim has been served, however none appears to submit/object the appeal/application for suspension of sentence and grant of bail. Though the matter was listed for orders on I.A. No.01/2024 which is an application for suspension of sentence and grant of bail, however, considering the fact that the appellant is in jail since

30-08-2021, with the consent of parties, the matter has been heard finally.

2. The present Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') against the judgment of conviction and sentence dated 19-03-2024 passed by the learned Additional Session Judge, (F.T.S.C.), POCSO Act, Bastar place Jagdalpur (C.G.) in Special Session Case No. 77/2021, whereby the appellant has been convicted and sentenced in the following manner:-

Conviction	**Sentence**
U/s 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act')	R.I. for 20 years with fine of Rs.2,000/-, in default of payment of fine further R.I. for one year.
U/s 376(3) of the IPC	(Since the appellant has been sentenced R.I. for 20 years with fine of Rs.2,000/-, in default of payment of fine further R.I. for one year for his conviction under 6 of the POCSO Act, no separate sentence has been awarded to him for his conviction under Section Section 376(3) of the IPC)

3. The prosecution case in brief are that, the victim lodged FIR on 30-08-2021 Ex.-P/1 against the appellant with the allegation that in the year 2019 when she was studying in class 7, his neighbour, i.e., the appellant was used to come to her house for watching T.V. At the time when her parents had gone to their work and she was alone in her house he made forceful physical relation with her and threatened her not to disclose the incident to anyone otherwise he will brutally beat her.

Thereafter, he regularly made physical relation with her at bamboo tree plant after threatening her and despite her protest he could stop. When she conceived pregnancy for about 6-7 months her mother took her to the doctor and when her pregnancy was disclosed to her mother she disclosed the incident to her. She gave birth to a female child on 04-12-2020 and the appellant threw her from his house. The victim was sent for her medical examination to Maharani Hospital Jagdalpur where she medically examined by PW-7 Doctor Anjana Bhaskar who gave her report Ex.-P/17. According to the medical report of the victim, the doctor has opined that no definite opinion can be given regarding rape. With respect to her age and date of birth police has seized the mark sheet of Class 8th of the victim, Article 1 vide seizure memo Ex.-P/2. The school register and certificate have also been seized from the school vide seizure memo Ex.-P/14 and after retaining its attested true copy Ex.-P/15C the original school register was returned back to the school. As per the school register Ex.-P/15C and certificate issued by the Head Master of the school, the date of birth of the victim is 17-05-2006. Spot map Ex.-P/4 was prepared by police. The appellant was arrested on 30-08-2021 and he too was sent for his medical examination to Civil Hospital Bhanpuri where he was medically examined by Doctor F.L. Nishad who gave his report Ex.-P/21. According to the MLC report of the appellant he was found to be capable to perform sexual intercourse. After obtaining consent from the appellant and the victim Ex.-P/6 and Ex.-P/7, the blood samples of the appellant was collected at Govt. Medical College Jagdalpur. The blood sample of the newly born child of

the victim and blood sample of the victim were also collected at Govt. Medical College Jagdalpur and all these samples were sent to State FSL DNA Unit, Raipur for DNA test report vide Ex.-P/8, P/9 and P/10 respectively. After its examination the DNA report Ex.-P/32 was sent by the State FSL Raipur, in which the appellant and the victim are found to be biological parents of the newly born child from the victim. The vaginal slides of the victim were sent for its chemical examination to regional FSL Jagdalpur from where the FSL report Ex.-P/29 was received, but no semen and sperms were found on the vaginal slides of the victim. Statement of the witnesses under Section 161 of the Cr.P.C. have been recorded and statement of the victim under Section 164 of the Cr.P.C. has also been recorded and after completion of usual investigation charge sheet was filed against the appellant for the offence under Section 376(2), 506 of the IPC and Section 6 of the POCSO Act before the learned trial Court.

4. The learned trial Court has framed charge against the appellant for the offence under Section 6 of the POCSO Act and 376(3), 506 Part II of the IPC. The appellant denied the charge and claimed trial.

5. In order to prove charge against the appellant, the prosecution has examined as many as 12 witnesses. Statement of the appellant under Section 313 of the Cr.P.C. has also been recorded in which he denied the circumstances that appears against him, pleaded innocence and has submitted that he has been falsely implicated in the offence.

6. After appreciation of the oral as well as documentary evidence led by the prosecution the learned trial Court has convicted the appellant

and sentenced him as mentioned in the earlier part of this judgment. Hence, this appeal.

7. Learned counsel for the appellant would submit that the prosecution has proved its case beyond reasonable doubts. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the appellant for the offence in question. There is no sufficient evidence led by the prosecution with respect to the age and date of birth of the victim. The prosecution has failed to prove that the victim was less than 18 years of age on the date of incident. The school record produced by the prosecution has not been proved in accordance with law. Except the school record there is no other evidence to prove that she was minor and less than 18 years of age. The victim was a major girl and engaged in consensual physical relation with the appellant. She had not disclosed the incident to anyone, even when she conceived pregnancy and she being major girl and consenting party in making physical relation with the appellant, the conviction of the appellant under Section 376(3) and Section 6 of the POCSO Act is bad in law and the same is liable to be set aside.

8. On the other hand, learned counsel for the State opposes the submission made by learned counsel for the appellant and has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omissions or contradictions the evidence of the prosecution witnesses are fully reliable. The age of the victim has been proved by the school records and the said school record has been

proved by the Head Master of the school in whose possession the school record was found. The school record is a statutory document and admissible under Section 35 of the Indian Evidence Act, its authenticity cannot be doubted without any sufficient rebuttal. The appellant failed to rebut the entries made in the school record and therefore, the prosecution has proved that the victim was minor on the date of incident and less than 18 years of age. He would further submit that from the DNA report the appellant is found to be biological father of the newly born child of the victim and being the exact scientific report it cannot be doubted. The appellant has not specifically challenged the authenticity or genuineness of the DNA report and from the said DNA report it has been unerringly proved that the appellant had physical relation with the victim. When the victim was minor and the appellant had physical relation, the offence of rape is made out against the appellant. The victim has categorically deposed in her evidence that despite her protest the appellant threatened her and engaged in making forceful sexual intercourse with her. Therefore, in view of the evidence available on record, the appeal filed by the appellant does not have any merit and the same is liable to be dismissed.

9. We have heard learned counsel for the parties and perused the record of the trial Court.

10. The first and foremost question arises for consideration would be the age of the victim as to whether she was minor on the date of incident or not.

11. As per the FIR lodged by the victim, Ex.-P/1, the initial incident is alleged in the year 2019 at the time when she was studying in Class 7. The prosecution has mainly relied upon the school register Ex.-P/15C and certificate Ex.-P/16 which is sought to be proved by PW-4 who is the Head Master of the school. PW-4, Head Master of the school has stated in his evidence that police has seized the school register vide seizure memo Ex.-P/14 and after retaining its attested true copy Ex.-P/15C the original register was returned back to him. He issued the certificate which is Ex.-P/16. As the school register and the certificate, the date of birth of the victim is 17-05-2006. In cross-examination though he admitted that he was not posted in the school at the time of admission of the victim, but that itself is not sufficient to hold that the entries made in the school register is a wrong entry in view of any extraneous consideration. The victim was admitted in the school on 24-07-2012 in Class 1 and the date of incident is of 2019, one cannot expect that the victim would suffer by any incident and therefore, her date of birth could have been recorded by reducing her age. Entries in the school register with respect to other students and the serial number are in its order and it cannot be said that it is a false entry made in the school register which was prepared after lodging of the report by her.

12. The school register being the statutory document, admissible under Section 35 of the Indian Evidence Act. The admissibility and evidentiary value of the school register have been considered by the Hon‘ble Supreme Court in the matter of **Jarnail Singh v. State of**

Haryana, 2013 (7) SCC 263, the Hon'ble Supreme Court in Para 22 to 24 held that:-

> “22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :
>
> > “12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
> >
> > (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
> >
> > (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –
> >
> > > (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
> > >
> > > (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
> > >
> > > (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for passing

appropriate order in the interest of the juvenile in conflict with law."

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW- PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW – PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3. Satpal (PW4) had proved the certificate Exhibit-PG, as having been made on the basis of the school records indicating, that the prosecutrix VW - PW6, was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view, that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW – PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpal-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW - PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.”

13. The victim PW-1 though has not stated her date of birth, but she stated in her evidence that she is aged about 15 years. In her cross-examination she admitted the possibility of wrong entry of her date of birth in the school record, but in view of the evidence led by the prosecution it cannot be said that any wrong entry have been made in the school record.

14. PW-2 is mother of the victim who has also stated that the victim is presently 16 years of age. In her cross-examination she also shown her ignorance about the date of birth of the victim.

15. PW-3 is father of the victim who has stated in his evidence that the victim is aged about 15 years. In his cross-examination he has been cross-examined on the point that in which year the victim was admitted in the school on which he shown his ignorance. He admitted that all the entries have been made by the school teacher. This witness has not been given any suggestion in cross-examination that he has entered wrong date of birth of the victim in the school record.

16. PW-8 is the Investigating Officer. She has stated in her evidence that she has seized the school register vide seizure memo Ex.-P/14. In her cross-examination the defence could not rebut the seizure of the school register from the school or any manipulation with respect to the date of birth of the victim in it.

17. In view of the aforesaid evidence available in the record, the learned trial Court concluded that the victim was minor and less than 16 years of age on the date of first incident of the year 2019, said

consideration of the learned trial Court is based on the evidence available on record and the same does not suffers from any perversity and we also affirm the said finding.

18. So far as involvement of the appellant in the offence in question is concerned, we again examine the evidence led by the prosecution.

19. The victim PW-1 has stated in her evidence that the appellant made forceful physical relation with her repeatedly. When her periods stopped her mother took her to Bhanpuri Hospital where the doctor informed that she conceived pregnancy for about 6-7 months and then she disclosed that her pregnancy is from appellant side. Thereafter, her parents left her to the house of the appellant and she was residing there. On 04-12-2020 she gave birth to a female child and thereafter, the appellant disowned her and threw her from his house. Thereafter, she lodged the report. In cross-examination the defence could not be able to extract any material to disbelieve her evidence that the appellant has not made any physical relation with her rather the appellant suggested that the victim was in love affair with him and consensually made physical relation with her. Though, she admitted that she was having love affair with the appellant, but considering her age that she was minor and less than 16 years of age she cannot be consented for sexual intercourse particularly when she stated in her evidence that the appellant made forceful physical relation with her.

20. The sexual intercourse by the appellant with the victim, her pregnancy and birth of female child has been proved by the prosecution

by her DNA report Ex.-P/32. The blood samples of the appellant, victim and the newly born child was sent for its DNA report to FSL DNA Unit, Raipur from where the report has been received in which the appellant is found to be biological father of the newly born child of the victim and thus, the intercourse made by the appellant with the victim has been proved.

21. In the case of **Mukesh and Another vs. State (NCT of Delhi) and Others**, 2017 (6) SCC 1, the Hon'ble 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 aperson'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 succintly than did Lord Taylor, C.J. in Deen86 (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 States87, 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 formulationin 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 findine, 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. Osborne89, 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 Harvana95, 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.9%, 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%, 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 Maharashtra98, 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.99, 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 clothesof 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 qualityassurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted."

22. The evidence of PW-2, mother of the victim and PW-3, father of the victim reflects the fact that when they were taken the victim to the hospital they found that she was carrying pregnancy, then the victim informed them that she conceived pregnancy from the appellant side and the appellant committed rape upon her repeatedly when she was found alone in her house and other places. Though PW-2 admitted that they wanted to settle life of the victim with the appellant and tried to convince the family members of the appellant, but that itself cannot be a ground to disbelieve the evidence of the victim that she was suffered forceful sexual intercourse by the appellant.

23. The doctor Anajana Bhaskar PW-7 who medically examined the victim could not found any external injury. The evidence of the doctor is

not having much significance as the victim was medically examined after birth of her child.

24. PW-9 is the villager who was informed about the incident by the father of the victim. He accompanied him to the house of the appellant to convince him to keep her with him. The appellant was agreed to keep her with him and he kept the victim also few days and after birth of the child he disowned her and threw her from his house. Thereafter, they lodged the report.

25. The elder mother of the victim has also been examined as PW-10, but her evidence is also not having much significance as she came to know about the incident from the victim when they came to know about her pregnancy.

26. With respect to the DNA and collecting blood sample, PW-6 Doctor Rammohan Sahare proved the collection of blood sample from the appellant, victim and newly born child and documents Ex.-P/8, P/9 and P/10. He proved that after obtaining consent he had taken the blood sample from the appellant, victim and newly born child, duly sealed and handed over to police for its DNA report. Nothing specific has been extracted from his cross-examination by the defence to disbelieve the collection of blood sample or its sealing.

27. The collection of blood sample, sealing and sending it to the FSL DNA Unit, Raipur does not suffers from any illegality or any irregularity and thus, from every angle the appellant is found to be biological father of the newly born child of the victim.

28. Considering the overall evidence available on record, the age of the victim and also the DNA test report and the manner in which the appellant forcefully committed sexual intercourse with the minor victim, the learned trial Court has rightly convicted the appellant for the alleged offences and sentenced him, in which we do not find any perversity or illegality and as a consequence the appeal filed by the appellant is **dismissed**.

29. The appellant is stated to be in jail since 30-08-2021. He shall serve the entire sentence awarded by the learned trial Court.

30. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentences to serve the same on the appellant informing him that he is 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.

31. Record of the trial Court be sent back along with copy of this judgment.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Aadil

Headnote

Where a DNA test has been conducted following due procedure, with proper sampling and preservation, and there is no material to suggest tempering, contamination, or procedural irregularities, the result thereof carry significant evidentiary value and ought to be accepted. Mere conjectures or unfounded doubts are insufficient to discard DNA test findings. Court must accord due primacy to reliable scientific evidence unless its credibility is substantially dented.