



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.693/2023

Ashish S/o Gangadhar Lonare,  
aged about 32 Yrs., Occu. Vegetable  
Vendor, R/o Bidi Karkhana No.5,  
Nagpur, Tq. and Distt. Nagpur.  
(Presently at Central Prison, Nagpur) ... Appellant

- Versus -

1. State of Maharashtra,  
through Police Station Officer,  
Police Station, Imamwada,  
District Nagpur.
2. X.Y.Z.  
Crime No.9717,  
P.S.O. Imamwada, Nagpur. ... Respondents

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Mr. Sandeep Naresh Singh with Mr. A.M. Chandekar, Advocates for  
the Appellant.

Mr. Ujjwal R. Phasate, A.P.P. for Respondent No.1/State.

Ms. Kirti Wankhede, Advocate (appointed) for Respondent No.2.  
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CORAM: NEERAJ P. DHOTE, J.

DATE OF RESERVING THE JUDGMENT: 6.1.2026.

DATE OF PRONOUNCING THE JUDGMENT: 09.1.2026.

JUDGMENT

This is the Criminal Appeal under Section 374(2) of the Code  
of Criminal Procedure (henceforth referred to as "Cr.PC." for short)  
against the judgment and order dated 20.5.2022, passed by the  
learned Additional Sessions Judge (Fast Track Court), Nagpur in

Special Case No.70/2017 convicting and sentencing the Appellant as follows:-

- a) For the offence punishable under Section 363 of the Indian Penal Code (henceforth referred to as "I.P.C." for short) and sentencing to suffer rigorous imprisonment for 7 years and fine of Rs.2,000/-, in default to pay fine, to undergo rigorous imprisonment for 2 months;
- b) For the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (henceforth referred to as "POCSO Act" for short) and sentencing to suffer rigorous imprisonment for 7 years and fine of Rs.2,000/-, in default to pay fine, to suffer rigorous imprisonment for 2 months;
- c) For the offence punishable under Section 6 of the POCSO Act and sentencing to suffer rigorous imprisonment for 10 years and fine of Rs.5,000/-, in default to pay fine, to suffer rigorous imprisonment for 3 months.

2. The prosecution's case, as revealed from the police report, is as under:-

The informant was residing with his family, comprising wife and 2 minor daughters. The victim was the eldest daughter of the informant. The victim was 12 years old and a 'special child'. The informant used to leave home at 10.30 a.m. The informant noticed that, from last some days, the victim was not present at home in the afternoon and she returns home in the evening with one boy on the motorcycle who drops her near the house. One week prior to lodging the report, the victim was not at home for considerable time and she returned home around 4.30 p.m. He enquired with the

victim and she told that, she had accompanied the Appellant on his motorcycle, who took her to one room, where the Appellant removed her clothes. On 12.1.2017, it was noticed that the Appellant was seen repeatedly roaming around his house on the motorcycle. The registration number of the motorcycle was taken down by the neighbourer. On 13.1.2017 the victim left home at 1.30 p.m. and returned at 4.50 p.m. On enquiry, the victim told that, the Appellant took her to one room and he raped her. The informant lodged the report with the Imamwada Police Station against the Appellant and crime bearing No.0009/2017 came to be registered for the offence punishable under Sections 376(2)(i), 376(2)(j), 376(2)(l), 376(2)(n), 354 and 363 of the I.P.C. and Sections 4, 6, 8 and 12 of the POCSO Act.

The Investigating Officer referred the victim for medical examination. Statement of the victim was recorded. The statement of witnesses were recorded. The Appellant came to be arrested. The clothes of the victim and that of the Appellant came to be seized. The blood samples of the victim and that of the Appellant came to be drawn. The seized articles were sent to the Chemical Analyst. The relevant documents were collected. On completion of investigation, the Appellant came to be chargesheeted. On committal, learned trial Court framed the Charge against the Appellant below Exh.48 for the offence punishable under Sections 363, 354, 376(2)(i), (j), (l) and (n) of the I.P.C. and Sections 4, 6, 8 and 12 of the POCSO Act. The Appellant denied the charge and claimed to be tried.

3. To prove the charge, the prosecution examined following 10 witnesses.

- 1) The victim as PW.1,
- 2) Father of victim who is also the informant as PW.2,
- 3) The Medical Officer who examined the victim as PW.3,
- 4) The Chemical Analyzer as PW.4,
- 5) The owner of the house where the incident took place as PW.5,
- 6) The Policeman who was the Head-Constable at the relevant time and carried the parcels to the Laboratory as PW.6,
- 7) The Station House Officer who recorded the report, registered the crime and conducted the spot-panchanama as PW.7,
- 8) The Panch witness as PW.8,
- 9) The Panch witness as PW.9 and
- 10) The Investigating Officer who conducted the investigation from 14.1.2017 as PW.10.

Through the evidence of the above referred witnesses, the prosecution brought on record the relevant documents. After the prosecution submitted the evidence closure pursis, the learned trial Court recorded the statement of the Appellant under Section 313(1)(b) of the Cr.P.C. The Appellant denied the case and the evidence brought on record by the prosecution. He stated that he was falsely implicated. On appreciating the evidence available on record, the learned trial Court convicted and sentenced the Appellant as above.

4. Heard learned Advocate for the Appellant, learned A.P.P. for the State and learned Advocate for the Respondent No.2/victim.

5. It is submitted by the learned Advocate for the Appellant that, the prosecution failed to prove that the victim was the child at the

relevant time. The medical evidence shows that history was given by the victim's mother. The victim's testimony shows that she was tutored witness and, therefore, her testimony cannot be relied. The report of Chemical Analyzer cannot be relied as the evidence on record shows that there was possibility of tampering with the samples collected for DNA. Considering the overall evidence on record, the conviction and sentence recorded by the learned trial Court against the Appellant be set aside and the appeal be allowed. In support of his submissions, he relied on the following judgments:-

- 1) *Pradip Devidas Dongre V/s. State of Maharashtra, through Police Station Officer, 2019 DGLS (Bom.) 51,*
- 2) *Muskan Shaikh Rashid @ Rafiq and others V/s. State of Maharashtra, 2017 DGLS (Bom.) 490 and*
- 3) *Chandu @ Chandrashekhhar Kesharao Chambhare V/s. State of Maharashtra 2025 DGLS (Bom.) 590.*

6. It is submitted by the learned A.P. P. that, by examining the father of victim and bringing on record the birth certificate, the prosecution proved the date of birth and age of the victim and established that the victim was the child at the relevant time. The identity of the Appellant was established through the testimony of the victim. The vague admission by the victim in respect of her age is of no assistance to the Appellant. The victim was not tutored as can be seen from her testimony. The DNA report are incriminating in nature. The overall evidence on record established the Charge and the learned trial Court has rightly convicted the Appellant and the Appeal be dismissed. In support of his submissions, he relied on the following judgments.

- 1) *State of Rajasthan V/s. Chatra (2025) 8 SCC 613,*
- 2) *Nalin @ Narendra S/o Bhagwan Nitnaware V/s. State of Maharashtra, through the Police Station Officer of Police Station Wadi, Nagpur and another 2025 Supreme (Bom) 1701,*
- 3) *Omkar Dattatraya Dangat V/s. State of Maharashtra 2023 Supreme (Online) (Bom) 2621.*

7. It is submitted by the learned Advocate for the Respondent No.2 victim that, the prosecution proved that the victim was a child at the relevant time. The Appellant was known to the victim. The charge can be proved on the sole testimony of the victim. The DNA report is incriminating in nature. No interference is warranted in the judgment and the Appeal be dismissed.

8. When the charge is for the offence punishable under the penal provisions of the POCSO Act, it is for the prosecution to establish that the victim was a child as defined under Section 2(d) of the POCSO Act. To establish that the victim, at the relevant time, was below 18 years of age and was a child, prosecution relied on the testimony of the father of the victim who is examined as P.W.2. The evidence of this witness nowhere shows that there is a challenge to the aspect that he was the biological father of the victim. His evidence shows that the victim's date of birth was 6.10.2004. His evidence shows that he tendered the birth certificate of the victim and the same was exhibited as Exh.60 by the learned trial Court. Undisputedly, no witness from the office of the Municipal Corporation, which issued the said birth certificate, was examined by the prosecution to prove the authenticity of the said birth certificate (Exh.60). However,

nothing has come in the evidence of this witness that the victim's date of birth was different than the one deposed by this witness. This witness being biological father of the victim, his evidence regarding date of birth assumes importance. The date of birth deposed by this witness before the trial Court find no direct challenge by the defence in the cross-examination. On the basis of this evidence on record, the prosecution proved the date of birth of the victim. Undisputedly, the report was lodged by this witness to the concerned Police Station on 13.1.2017 for the incidences prior to lodging the F.I.R. Considering the date of birth of the victim and the date of lodging of the F.I.R., it is clear that the victim was the child at the relevant time.

9. Though P.W.2, father of the victim, in his evidence deposed that the victim was slow-witted child, his evidence shows that he had not produced any medical certificate in respect of victim's mental condition. The evidence of P.W.10 Investigating Officer shows that he did not get the victim examined in respect of her Intelligent Quotient (IQ). His evidence further shows that there was no certificate by the Psychologist to show the mental illness of the victim. His evidence further shows that while recording the statement, victim understood the questions put to her. In absence of any other material or evidence on record, the evidence of the victims father will not be sufficient to accept that the victim was the slow-witted child.

10. The report is lodged by the father of the victim. He is not an eye witness to any of the incident of sexual assault on the victim. He set the criminal law in motion against the Appellant. However, most of the evidence of the victim's father is an omission. His

evidence shows that he had seen the Appellant wandering near his house. The testimony of the victim shows that her parents came to know that the Appellant used to take round near her house. Her evidence shows that her parents were annoyed due to wandering of the Appellant near their house. This evidence on record shows that victim's father did not like the Appellant's wandering near their house. The evidence of the victim's father show that he gave phone call to the police and had gone to the police station and gave the motorcycle number to the police. His evidence show that before the Appellant was brought to the police station, police had shown the photograph of the Appellant on the mobile and the victim identified the photo. His further evidence shows that the police had shown two to three photographs to the victim, out of which the victim identified the photo of the Appellant. His evidence further shows that the police showed him two photographs at the police station and on the basis of the motorcycle of the Appellant, the address of the Appellant was traced and his photograph was obtained by the police and on it's basis he identified him.

11. The prosecution case largely hinges on the testimony of victim. In State of Rajasthan (supra) the principles in respect appreciation of evidence of the child are laid down. There is no dispute in respect of the said principles. In Nalin @ Narendra (supra) this Court found the testimony of the victim wholly trustworthy and reliable and maintained the conviction recorded by the trial Court therein. Evidence of victim shows that she knew the Appellant. The Appellant used to take her on his two wheeler. The Appellant used to take her at one room and commit sexual intercourse with her. According to

the victim, said act was committed for 5 to 6 times by the Appellant on her. From the cross-examination of the victim, it is clear that most of the evidence of the victim was an omission or improvement, except the evidence in respect of sexual intercourse. It is clear from the cross-examination of the victim that her parents, maternal uncle, paternal aunt and cousin brother accompanied her to the police station. It has come in her cross-examination that when she had gone to the police station, her signatures were taken on one paper and she was not aware what was written on the same. It has come in her cross-examination that her parents instructed her to give statement against the Appellant in the Court and the F.I.R. was read over to her by the parents and she was asked to give such statement in the Court. According to the victim, her family members came to know when she narrated the acts on the part of the Appellant at the police station. If that be so, the possibility of false implication cannot ruled out. These vital aspects in the cross-examination of the victim clearly shows that she deposed under the influence of her parents. This indicates that victim's testimony was not natural and she was tutored by her parents. This being the position, the testimony of the victim itself cannot form the basis to hold that the Charge was proved against the Appellant. It is evident from the testimony of the victim that she cannot be called the witness of sterling quality. This being the evidence of victim, the judgments cited by learned A.P. P. will not be of any assistance for the prosecution.

12. The evidence of P.W.3, Medical Officer, working at the Government Medical College, shows that on 13.1.2017 the victim was brought for medical examination. The mother of the victim gave

the history to him. He examined the victim and found old healed hymenal tear present at 6 O' clock and 4 O' clock position, edges of the hymen were normal and there was no bleeding and rest of the examination was found normal. He opined that the sexual assault could not be ruled out and the final opinion was kept pending till the Forensic Science Laboratory report. The cross-examination of the Medical Officer clearly shows that the vaginal canal as well as vagina of a 12 years old child was delicate and if a fully developed man commits sexual intercourse with said child, the child will receive the injury in the vaginal canal in the nature of 'lacerated wounds' and 'lacerated bruises'. It has clearly come in his evidence that he had not seen any 'lacerated wound' or 'bruise' in the vaginal canal during examination of the victim. It has further come in his evidence that if such injury occurs, it might take some time to heal and it was very difficult to show when the hymen of the victim was teared. His evidence further shows that at the second time of penetration there may be injury to the vaginal canal. His evidence further shows that if the victim is medically examined within 24 hours from the forceful sexual intercourse, the injuries on the vaginal canal can be seen and even if the 'lacerated wounds' and 'bruises' in vaginal canal were caused prior to 10 days of examination, then the evidence of it's healing can be seen. He clearly deposed that he had not seen any injury of 'lacerated wound' and 'lacerated bruise' in the vaginal canal. His evidence shows that his opinion that possibility of sexual assault cannot be ruled out was only based on the hymenal tear and as it was old hymenal tear. It has come in his evidence that there are various reasons for hymenal tear such as playing, cycling, running etc. This medical evidence do not corroborate the prosecution's case in respect

of sexual assault by the Appellant on the victim. Moreover, the history was given to this Medical Officer by the mother of the victim which again creates doubt about the prosecution's case.

13. Another evidence brought on record by the prosecution is DNA report. Much emphasis is given by the learned A.P.P. on the DNA report which is brought on record at Exh.67 in the evidence of P.W.4 Chemical Analyzer. Evidence of this witness shows that he conducted analysis of DNA in the present case. On the analysis, he opined that semen stains of the Appellant were found on the knicker of the victim. It has come in his cross-examination that there was no requisition from the police to provide DNA kit to keep the blood samples and as per his knowledge no DNA kit was provided from the laboratory. He received the samples on 19.8.2017 from the Biological Section and he was unable to state the condition of samples which was received by him. His evidence shows that the samples are required to be preserved in proper condition till they are submitted to the laboratory. It has clearly come in his cross-examination that if the samples are not kept in proper condition, it may affect the result of analysis and he was unaware as to where the samples were kept in the police station prior to its deposit with the laboratory. In his cross-examination he volunteered that he never received the semen samples of the Appellant. This evidence itself is sufficient to discard the DNA report.

14. There cannot be any dispute on the settled legal position in respect of evidentiary value to be given to the DNA report. The prosecution is duty-bound to establish the complete chain of

handling of the samples from its drawing till the analysis is done. On this point, the judgment of Chandu @ Chandrashekhar (supra) cited by the learned Advocate for the Appellant is relevant. The Division Bench of Bombay High Court at Aurangabad in Nivrutti S/o Nagorao Hange V/s. The State of Maharashtra and another 2024 ALL MR (Cri.) 3445 which finds place in the said judgment, considered the decisions of the Hon'ble Supreme Court in respect of DNA report. Relevant observations from the said judgment are reproduced below:-

*“18. Before proceeding to appreciate the submissions it would be appropriate to consider the law laid down by the Apex Court and considered by this Court in a number of cases on the point of admissibility and credibility of CA and DNA reports. The Division Bench of the Bombay High Court at Aurangabad has considered almost all the decisions on this point in the case of Nivrutti S/o. Nagorao Hange .v/s. The State of Maharashtra and another, reported in, 2024 ALL MR (Cri.) 3445. It would be appropriate to reproduce para 17 wherein this issue has been dealt with. It is extracted below:*

*17. Another evidence, upon which, the Prosecution laid emphasis and which weighed heavily with the learned Trial Court to convict the Appellant, is the scientific evidence in the nature of DNA reports. Following Judgments are relied upon by the learned Advocates for the Appellant on this aspect.*

*[I] In Pattu Rajan Vs. The State of Tamil Nadu; MANU/SC/0439/2019:[2019 ALLSCR (Cri.) 1343], it is observed as follows :-*

*“31. Shri Sushil Kumar also argued that a DNA test should have been conducted in order to identify the dead body, and identification merely on the basis of a superimposition test, which is not a tangible piece of evidence, may not be proper.*

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

*32. The role of an expert witness rendering opinion evidence before the Court may be explained by referring to the following observations of this Court in Ramesh Chandra Agrawal v. Regency Hospital Limited and Ors., MANU/SC/1641/2009 : (2009) 9 SCC 709:*

*16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of an expert cannot be disputed....*

*Undoubtedly, it is the duty of an expert witness to assist the Court effectively by furnishing it with the relevant report based on his expertise along with his reasons, so that the Court may form its independent judgment by assessing such materials and reasons furnished by the expert for coming to an appropriate conclusion. Be that as it may, it cannot be forgotten that opinion evidence is advisory in nature, and the Court is not bound by the evidence of the experts. (See The State*

*(Delhi Administration) v. Pali Ram, MANU/SC/ 0189/1978 : (1979) 2 SCC 158; State of H.P. v. Jai Lal and Ors., MANU/SC/0557/1999 : (1999) 7 SCC 280; Baso Prasad and Ors. v. State of Bihar, MANU/SC/8723/2006 : (2006) 13 SCC 65; Ramesh Chandra Agrawal v. Regency Hospital Ltd. And Ors. (supra); Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors., MANU/SC/1416/2009: (2010) 2 SCC (Cri.) 299).*

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

[II] *In Manoj and Others Vs. State of Madhya Pradesh; MANU/SC/0711/2022: [2022 ALL SCR (Cri.) 1177], it is observed as follows :-*

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

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*Collection and Preservation of Evidence*

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

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136. The Law Commission of India in its report, observed as follows :

*DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not 'match', then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1person in every 100,000. This is described as the 'random occurrence ratio' (Phipson 1999).*

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

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

*[III] In Naveen Vs. The State of Madhya Pradesh; MANU/SC/1167/2023: [2023 ALLSCR (Cri.)1955], it is observed as follows:*

*“18. The issue concerning evidentiary value of DNA report has been considered by this Court in a recent judgment reported in the case of Rahul v. State of Delhi, Ministry of Home Affairs and Anr. MANU/SC/1455/2022 : (2023) 1 SCC 83 wherein the following has been held in Paragraphs 36 and 38 as under:*

*36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1) giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the Appellant-Accused. The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged Under Section 45 and like any other opinion evidence, its probative value varies from case to case.*

*38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the Accused and relating to the deceased were seized by the investigating officer on 14-2- 2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012.*

*During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion. (Emphasis supplied)”*

19. In the case of *Manoj and Ors. v. State of M.P.* MANU/SC/0711/2022 :(2023) 2 SCC 353, it was held that if DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence as it can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen even when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches the area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed, and sent for DNA Profiling.

20. In the case of *Anil @ Anthony Arikswamy Joseph v. State of Maharashtra* MANU/SC/0124/2014 : (2014) 4 SCC 69, the following has been held in paragraph 18 as under:

18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a

*tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory". (Emphasis supplied)*

*[IV] In Prakash Nishad Vs. State of Maharashtra; MANU/SC/0613/2023; [2023 ALL SCR (ONLINE) 477], one of the issue for consideration was whether DNA evidence can form the solitary basis in determining the guilt of the Appellant therein and it observed as follows :-*

*"60. We may observe that the Maharashtra Police Manual<sup>1</sup>, when speaking of the integrity of scientific evidence in Appendix XXIV states -*

*The integrity of exhibits and control samples must be safeguarded from the moment of seizure upto the completion of examination in the laboratory. This is best done by immediately packing, sealing and labeling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also.*

*61. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to "Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers - Central Forensic Science*

*Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India*"<sup>2</sup> which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken "Must be submitted in the laboratory without any delay."

62. The document also lays emphasis on the 'chain of custody' being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item."

[V] In *Mukesh and Others Vs. State of NCT of Delhi and Ors.*; MANU/SC/0575/2017: [2017 ALLMR (Cri.) 2448 (S.C.)], it is observed as follows :-

"216 In *Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh* MANU/SC/1306/2009 : (2009) 14 SCC 607, a two-Judge Bench had explained as to what is DNA in the following manner:

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

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

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

*[VI] In Ananda Vs. The State of Maharashtra; MANU/MH/3781/2024, one of the evidence was in the nature of DNA reports and it is observed as under:*

*“39. The question is, based on the DNA reports, whether the conviction and/or sentence passed by the trial court would be sustainable. We have gone through the impugned judgment. The trial court has relied on the evidence of each and every witness. It also relied on the evidence of the medical officer who collected blood of the appellant for DNA analysis, even in breach of protocol in that regard. The reason assigned for relying on the said evidence is that the said witness is uninterested and independent one. Before appreciating the evidence relating to DNA, we must have a look at the guidelines for collection, storage and transportation of the crime-scene DNA samples. Those have been placed on record by learned counsel for the appellant. Item No.10 therein speaks of maintaining the chain of custody. It describes what chain of custody means. Same reads as under:-*

*10. Maintaining the chain of custody:*

- Chain of custody is a process used to maintain and document the chronological history of the evidence.*
- A ‘chain of custody’ document should be maintained which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim’s or suspect’s name and the brief description of the item.*

*Those were the guidelines issued by The Central Forensic Science Laboratory, Chandigarh. PW 18 – Vaishali admitted in cross-examination that the C.F.S.L., Chandigarh and Hyderabad are best in India.”*

15. In the case at hand there is no link evidence to show as to who had drawn the samples, where they were kept and in what condition before submitting to the laboratory. The prosecution examined Panch witness on the point of samples of victim and the accused as PW.9. His evidence shows that police seized samples of the victim and the accused which were brought from the hospital in his presence. However, in the cross-examination he deposed that he did not know who took the samples and who brought the same to the police station, the police did not take the samples in his presence, the samples were kept in the glass container and the police told him that said samples were of the victim and the Appellant. His evidence further shows that while preparation of the panchanama below Exh.116 which was in respect of the bottles, the Appellant was not present and only the victim girl was present. It has come in his cross-examination that the seizure panchanama was prepared in the police station itself and the samples mentioned in the panchanamas were kept on the table in the police station. Though PW.10, the Investigating Officer, deposed that he seized the blood samples and other samples of the victim which were taken by the Medical Officer in presence of two Panchas, there is absolutely no evidence as to who had drawn the samples for DNA. The evidence of PW.6 shows that on 21.1.2017 he carried 20 parcels to the laboratory as per the instructions of his superior. There is absolutely no evidence as required under the law to establish the chain of handling of the DNA

samples. In absence of the link evidence in respect of handling of DNA samples, the evidence available on record is not sufficient to accept the DNA report. With the evidence available on record, the DNA report cannot be accepted and the same is liable to be discarded.

16. The other evidence on record is that of the house owner where the accused had gone to take rest, the evidence of the Panch witness and the evidence of the Carrier. This evidence do not take the case of prosecution any further. As regards the C.A. Reports in respect of articles seized during the course of investigation, those cannot form the basis to uphold the conviction as the evidence of P.W.9 Panch witness shows that the clothes of the victim and that of the accused were kept on the table in the police station and the police informed him that the clothes were seized. Suggestion is given in respect of tampering of the articles. His evidence further shows that the clothes were not in a sealed condition. Suggestions are given by the defence that the articles were tampered and the semens were sprinkled on the clothes of the victim.

17. The re-appreciation of the evidence available on record, as above, result in recording the finding that, the evidence brought on record by the prosecution to prove the charge is not free from doubt. The evidence on record is not concrete and cannot form the basis to uphold the conviction and sentence. The Appellant is therefore entitled for acquittal. As the Appellant has already undergone the sentence and set free from the jail, no orders are required for his release. Hence, the following order:-

ORDER

- i) The appeal is allowed.
- ii) The conviction and sentence recorded by the learned trial Court against the Appellant by the impugned judgment and order for the offence punishable under Section 363 of the I.P.C. and for the offence punishable under Sections 4 and 6 of the POCSO Act is quashed and set aside.
- iii) The Appellant is acquitted of the offence punishable under Section 363 of the I.P.C. and for the offence punishable under Sections 4 and 6 of the POCSO Act.
- iv) Fine amount paid by the Appellant, if any, be refunded to him.
- v) The muddemal articles be dealt with as per the impugned judgment and order.
- vi) The record and proceedings be sent back to the learned trial Court.
- vii) The fees of the learned Advocate appointed for Respondent No.2 is quantified at Rs.10,000/-. Same be paid accordingly by the High Court Legal Services Authority.

(NEERAJ P. DHOTE, J.)