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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1796 of 2024

Suraj Dhamagaya S/o Shri Tirathnath Dhamgaya, Aged About 25 Years
R/o Village-Sitalizor, Police Station-Devbhoh, District- Gariyaband
(C.G.) Prersently R/o Village-Parkaalkasa, Police Station-Dondi,
District- Bload (C.G.)

... Appellant(s)

versus

State of Chhattisgarh Through Station In Charge, Police Station-Dondi,
District- Balod (C.G.)

...Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Mr. K. Rohan, Advocate.
For Respondent/State	:	Mr. Saumya Rai, Deputy Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

30.07.2026

1. Heard Mr. K. Rohan, learned counsel for the appellant. Also heard Mr. Saumya Rai, learned Deputy Government Advocate, appearing for the State/respondent.

2. Although the matter is listed today for hearing on I.A. No. 2 of 2024, an application for suspension of sentence and grant of bail, considering that the appellant has been in custody since 29.03.2020 and with the consent of learned counsel for the parties, the appeal is taken up for final hearing.

3. The present criminal appeal has been preferred by the appellant under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “BNSS”), assailing the impugned judgment of conviction and order of sentence dated 12.12.2023 passed by the learned Additional District & Sessions Judge, Fast Track Special Court (FTSC) and Special Judge under the POCSO Act, Balod, District Balod (C.G.) (for short, “the learned trial Court”) in Special Sessions Case No. 43 of 2020, whereby the appellant has been convicted and sentenced as follows:

Conviction under Section		Sentence
Section 6 of the Protection of Children from Sexual Offences Act, 2012 (<i>for short, ‘POCSO Act’</i>)		Rigorous imprisonment (<i>for short, ‘R.I.’</i>) for 20 years and fine of Rs.2000/-, to default of payment of fine, 01 year R.I. more.

4. The facts of the prosecution case, in brief, are that on 28.03.2020, the father of the victim (PW-2) appeared before Police Station Dondi and lodged a written report stating that he is a resident of Balod and has five daughters. The victim (PW-1), who is his fifth daughter, was studying in Class IX and was aged about 14 years and 10 months. It was alleged that about five to six months prior thereto, the appellant,

Suraj Dhamgaya, who is his son-in-law, knowing fully well that the victim was a minor, enticed and induced her and established forcible sexual intercourse with her. As a result thereof, the victim became pregnant.

5. On the basis of the aforesaid written report lodged by the father of the victim, First Information Report (FIR) (Ex. P/7) was registered at Police Station Dondi against the appellant for the offences punishable under Section 376 of the Indian Penal Code, 1860 (IPC) and Sections 4 and 5(j)(ii) read with Section 6 of the POCSO Act.

6. Upon completion of the investigation, finding sufficient material indicating the commission of the aforesaid offences by the appellant, the Investigating Agency of Police Station Dondi filed a charge-sheet before the competent Court on 22.05.2020 for the offences punishable under Section 376 of the IPC and Sections 4 and 5(j)(ii) read with Section 6 of the POCSO Act.

7. The learned trial Court framed charges against the appellant for the offences punishable under Section 376(2)(f), (j) and (n) of the IPC and Section 5(d) and (l) read with Section 6 of the POCSO Act. The charges were read over and explained to the appellant, who denied the same, pleaded not guilty, and claimed to be tried.

8. In order to bring home the charges against the appellant, the prosecution examined 09 witnesses and exhibited 32 documents. The statement of the appellant was recorded under Section 313 of the Cr.P.C., wherein he denied all the incriminating circumstances appearing against him in the prosecution evidence, claimed false

implication, and pleaded innocence.

9. Upon due appreciation of the oral and documentary evidence available on record, the learned trial Court convicted and sentenced the appellant as mentioned in paragraph 3 of the impugned judgment. Aggrieved thereby, the appellant has preferred the present appeal.

10. Learned counsel appearing for the appellant submits that the impugned judgment of conviction and order of sentence passed by the learned trial Court are contrary to the evidence available on record and the settled principles governing appreciation of evidence in criminal trials and, therefore, deserve to be set aside. It is contended that the conviction has been founded substantially on the testimony of the victim, which is neither wholly reliable nor free from material inconsistencies and, therefore, could not have been made the sole basis for recording conviction. It is further submitted that the learned trial Court has held the victim to be 14 years, 5 months and 2 days of age on the date of the alleged incident solely on the basis of the Admission and Discharge Register (Article A-C), wherein her date of birth is recorded as 23.05.2005. However, the said entry has not been proved in the manner known to law. The Head Master (PW-5), in his cross-examination, admitted that he was neither the author of the relevant entry nor was he aware of the source or basis on which the victim's date of birth came to be entered in the school register. It is argued that, in the absence of proof regarding the foundational facts relating to the said entry, the school register could not have been

treated as conclusive proof of the victim's age. It is further submitted that the victim herself made inconsistent statements regarding her date of birth in her examination-in-chief by first stating it to be 23.05.2005 and thereafter stating it as 23.05.2000. Learned counsel further submits that the father (PW-2) and mother (PW-3) of the victim have also stated that the victim's date of birth is 23.05.2000. In such circumstances, it is contended that the learned trial Court committed a manifest error in placing implicit reliance upon the school record while ignoring the inconsistencies in the oral evidence as well as the admission of PW-5, thereby rendering its finding regarding the age of the victim legally unsustainable.

11. Learned counsel for the appellant further contended that the prosecution evidence suffers from material inconsistencies which create a serious doubt about the prosecution story. Inviting the attention of this Court to paragraph 6 of the cross-examination of the victim (PW-1), it is submitted that she stated that she delivered a male child on 23.06.2020 and further stated that the father of the child was one "Sarju". She also deposed that she did not know who Sarju was and that he had come from Punjab. According to the learned counsel, this part of the testimony assumes significance in the facts and circumstances of the present case and has not been properly appreciated by the learned trial Court. It is further contended that although the prosecution has relied upon the DNA Report (Ex.P/32) to establish the biological relationship between the appellant and the child born to the victim, the prosecution has failed to establish an unbroken chain of custody of the biological samples. It is

submitted that the prosecution has not adduced satisfactory evidence to demonstrate that the samples were collected, sealed, preserved, transported and examined in accordance with the prescribed procedure. In the absence of proof regarding the integrity of the samples throughout the process, the evidentiary value of the DNA report becomes doubtful. In support of the aforesaid submission, learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in ***Kattavellai @ Devakar v. State of Tamil Nadu***, reported in ***2025 SCC OnLine SC 1439***, wherein, in paragraph 44 of the judgment, the Hon'ble Supreme Court emphasized the necessity of maintaining a proper and documented chain of custody in respect of DNA samples and directed that a Chain of Custody Register should invariably accompany the DNA evidence during trial. The Hon'ble Supreme Court further observed that any omission to maintain or produce such record must be satisfactorily explained by the prosecution, failing which the credibility and evidentiary value of the DNA evidence may stand seriously impaired. It is, therefore, submitted that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt and that the appellant is entitled to the benefit of doubt. Accordingly, it is prayed that the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted of all the charges levelled against him.

12. *Per contra*, learned State counsel opposes the submissions advanced on behalf of the appellant and supports the impugned judgment. It is submitted that the learned trial Court has rightly

appreciated the oral as well as documentary evidence available on record. Learned State counsel submits that the prosecution has successfully established that the victim was below 18 years of age on the date of the incident on the basis of the Admission and Discharge Register, which records her date of birth as 23.05.2005. It is contended that the testimony of PW-5 proves the school record and merely because he was not the author of the relevant entry or was unaware of the basis of the entry, the same would not render the school record inadmissible or unreliable. It is further submitted that the testimony of the victim is natural, cogent and trustworthy and is duly corroborated by the medical evidence, the FSL report as well as the DNA Report (Ex.P/32), which conclusively establishes the biological relationship between the appellant and the child born to the victim. According to the learned State counsel, the prosecution has proved all the essential ingredients of the offences beyond reasonable doubt and the minor inconsistencies pointed out by the defence are not of such a nature as to affect the core of the prosecution case. It is, therefore, prayed that the appeal, being devoid of merit, deserves to be dismissed.

13. We have heard learned counsel for the parties, considered their rival submissions advanced herein-above and carefully perused the original records of the learned trial Court.

14. The first question that arises for consideration is whether the prosecution has been able to establish beyond reasonable doubt that, on the date of the incident, i.e., 25.10.2019, the victim was below 18

years of age and, therefore, a "child" within the meaning of the POCSO Act.

15. The victim (PW-1), in her examination-in-chief, initially stated that her date of birth is 23.05.2005. Thereafter, in the course of the same deposition, she stated that her date of birth is 23.05.2000. Thus, her testimony regarding her date of birth is not free from inconsistency.

16. PW-5 (Head Master) produced and proved the original Admission and Discharge Register (Article A-C). He deposed that the victim's name is entered at Serial No. 983 and her date of birth is recorded therein as 23.05.2005. During his cross-examination, he admitted that he was neither the author of the relevant entry nor had he made the entry relating to the victim's date of birth. He further stated that he was not aware of the basis on which the victim's date of birth came to be recorded in the Admission and Discharge Register.

17. PW-2, the father of the victim, during his cross-examination, stated that he was not aware that the victim's date of birth was recorded as 23.05.2005 in her Class VII marksheet. However, he admitted that he had never submitted any application before any competent authority or the police seeking correction of the victim's date of birth recorded as 23.05.2005 in the marksheet or in any other document relating to her age.

18. PW-3, the mother of the victim, during her cross-examination denied the suggestion that the victim's date of birth was 23.05.2005. She further stated that she was not aware that the victim's date of birth

was recorded as 23.05.2005 in all her official documents.

19. In *Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263*, the Hon'ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows:

“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 aforesaid 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.”

20. In view of the foregoing discussion and the principles laid down by the Hon'ble Supreme Court in **Jarnail Singh** (supra), this Court is of the considered opinion that although the oral evidence regarding the date of birth of the victim is not entirely consistent, the documentary evidence produced by the prosecution assumes greater evidentiary value. The Admission and Discharge Register (Article A-C), duly produced by PW-5, records the victim's date of birth as 23.05.2005. Though PW-5 admitted that he was not the author of the relevant entry and was unaware of the basis on which the date of birth came to be recorded, PW-2, the father of the victim, admitted in his cross-examination that despite the educational records consistently recording the victim's date of birth as 23.05.2005, no steps were ever taken by him before any competent authority for correction of the said entry. In view of the law laid down in **Jarnail Singh** (supra), the school record deserves precedence over the inconsistent oral testimony. Accordingly, this Court holds that the prosecution has successfully established that the victim was below eighteen years of age on the date of the incident and was, therefore, a "child" within the meaning of Section 2(1)(d) of the POCSO Act.

21. The next question that arises for consideration is whether the

prosecution has been able to establish beyond reasonable doubt that the appellant committed penetrative sexual assault upon the victim.

22. In order to prove the aforesaid charge, the prosecution has principally relied upon the testimony of the victim (PW-1), the medical evidence of PW-4 and PW-7, the evidence of the Investigating Officer (PW-8) and the scientific evidence in the form of the DNA Report (Ex.P/32).

23. The victim (PW-1) deposed that the appellant is her brother-in-law, being the husband of her elder sister. She stated that on the date of the incident, her parents had gone to village Dhaneli for the treatment of her elder sister, leaving her alone at home. According to her, during their absence, the appellant came to the house and caught hold of her despite her resistance. She further stated that when her abdomen started enlarging, her father took her to the Government Hospital at Charama, where she was informed that she was pregnant. She also deposed that she consented to her medical examination and identified the consent memo (Ex.P/1). According to her, the spot map (Ex.P/3) and the spot panchnama (Ex.P/4) were prepared in her presence. She further stated that on 10.02.2021, she, her newborn child and the appellant appeared before the learned trial Court for collection of blood samples for DNA examination. However, during the course of her deposition, the victim stated that she had given birth to a male child on 23.06.2020 and named one "Sarju", who had come from Punjab, as the father of the child. As the said statement was inconsistent with the

prosecution case, the Public Prosecutor sought permission to put leading questions. In response thereto, the victim admitted that the appellant had established physical relations with her on more than one occasion, due to which she became pregnant. Nevertheless, when it was specifically suggested to her that the father of the child was the appellant Suraj and not Sarju, she did not furnish any answer.

24. During her cross-examination, the victim accepted the defence suggestion that one Sarju Jat had come to her village from Punjab for work, that she was acquainted with him and liked him, and that they had physical relations. She further stated that after Sarju left the village, her menstrual cycle stopped and she informed her mother when she experienced abdominal pain. Significantly, she also accepted the defence suggestion that the appellant had never committed any sexual act with her. Thus, the testimony of the victim is not entirely consistent and contains material departures from the prosecution case. The evidentiary value of her testimony, therefore, requires to be appreciated in the light of the medical and scientific evidence available on record.

25. PW-4 (Dr. Sujata), who medically examined the victim on 28.03.2020, deposed that on external examination she found no injuries, abrasions or scratch marks on the body of the victim. The secondary sexual characteristics of the victim were fully developed. As per the history narrated by the victim, she had been subjected to sexual intercourse twice about five months prior to the examination. On abdominal examination, the victim was found to be carrying a

pregnancy of approximately 24 weeks. On internal examination, no fresh injuries, abrasions, bleeding or inflammation were noticed; however, the hymen was found to be ruptured. She prepared two vaginal slides, sealed them and handed them over to the accompanying police constable for forensic examination. She opined that no definite opinion regarding recent sexual intercourse could be expressed without the report of the chemical examination. Subsequently, upon receipt of the requisition, she furnished her final opinion (Ex.P/15-A) recommending forensic examination of the vaginal slides. Nothing material could be elicited in her cross-examination to discredit the medical findings recorded by her.

26. PW-7 (Dr. A.A. Rastogi), who examined the appellant on 29.03.2020, deposed that the appellant possessed fully developed secondary sexual characteristics and that his genital organs were normally developed. In his opinion, the appellant was physically capable of performing sexual intercourse. His testimony has remained substantially unshaken in cross-examination.

27. PW-8 (Inspector Anil Kumar Thakur), the Investigating Officer, deposed that he registered the FIR (Ex.P/7) on the basis of the written complaint lodged by the father of the victim. During the course of investigation, he caused the medical examination of the victim and the appellant to be conducted, seized the vaginal slides and other relevant articles, recorded the statements of the witnesses and completed the remaining investigative formalities. He further deposed that blood

samples of the victim, her newborn child and the appellant were collected and forwarded through the Superintendent of Police to the State Forensic Science Laboratory, Raipur, for DNA profiling. Upon completion of the examination, the DNA Report (Ex.P/32) was received and formed part of the record. Despite extensive cross-examination, no material procedural irregularity in the investigation could be brought on record.

28. The prosecution has also relied upon the DNA Report (Ex.P/32). The report records that the DNA profile generated from the blood sample of the victim matched the maternal genetic markers of the newborn child and that the DNA profile generated from the blood sample of the appellant matched the corresponding paternal genetic markers of the child. On the basis of the genetic analysis, the report concludes that the victim and the appellant are the biological parents of the child born to the victim.

29. Learned counsel for the appellant has assailed the evidentiary value of the DNA report by contending that the prosecution has failed to establish an unbroken chain of custody of the biological samples and has placed reliance upon the decision of the Hon'ble Supreme Court in ***Kattavellai @ Devakar*** (supra). We have carefully considered the aforesaid submission. The evidence of PW-8 demonstrates that the biological samples were collected during the course of investigation and forwarded to the State Forensic Science Laboratory through the prescribed channel. Apart from a general challenge to the DNA report,

the defence has neither brought on record any material to suggest that the samples were tampered with, substituted or contaminated nor has any expert evidence been adduced to discredit the scientific analysis. Mere absence of a specific challenge regarding the manner of handling the samples, without any material indicating prejudice or tampering, would not be sufficient to discard an otherwise reliable scientific report.

30. The Hon'ble Supreme Court in ***Mukesh and Another v. State (NCT of Delhi) and Others***, reported in ***(2017) 6 SCC 1***, has extensively considered the evidentiary value of DNA profiling in paragraphs 211 to 228 and has held that DNA evidence is a scientifically accurate and highly reliable means of establishing identity. Their Lordships have further observed that, where the sampling process is proper and there is no evidence of tampering or lack of quality control, a DNA report deserves due acceptance. The relevant observations are reproduced hereinbelow:

“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 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 States*⁸⁷, 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. 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. Poshni 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 resorted to this procedure of getting the DNA test or analysis and matching of semen of the

appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.

223. *In Surendra Koli v. State of 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 Maharashtra*⁹⁸, 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 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."*

31. From the testimony of the victim (PW-1), the medical evidence of PW-4, the evidence of the Investigating Officer (PW-8), and the DNA Report (Ex.P/32), it stands established that the victim gave birth to a male child and that the appellant is the biological father of the said child. The medical evidence establishes that the victim was carrying a pregnancy of about twenty-four weeks when she was medically

examined, and the DNA Report scientifically establishes the biological relationship between the appellant, the victim and the child. The defence has not adduced any expert evidence nor produced any scientific material to discredit the DNA Report. Mere suggestions put during cross-examination are insufficient to rebut the scientific evidence brought on record.

32. In the Indian society refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the *sine qua non* for conviction in a rape case. The observations of Vivian Bose, J. in ***Rameshwar v. The State of Rajasthan***, reported in **(AIR 1952 SC 54)** were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity

of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge....”

33. 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 Court, therefore, shoulders 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 victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the victim 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 victim 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 molestation. This position was highlighted in ***State of Punjab v. Gurmeet Singh***, reported in **(1996) 2 SCC 384**.

34. A victim of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the victim. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the victim it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the victim must necessarily depend on the facts and circumstances of each case. But, if a victim is an adult and of full understanding the Court is entitled to base a conviction on her

evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the victim does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

35. The Hon'ble Supreme Court in the matter of ***Ranjit Hazarika v. State of Assam***, reported in ***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.

36. The Hon'ble Supreme Court in the matter of ***Rai Sandeep @ Deenu v. State of NCT of Delhi***, reported in ***(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.”

37. Applying the aforesaid principles to the facts of the present case, this Court finds that although certain inconsistencies have emerged in the testimony of the victim (PW-1), particularly regarding the identity of the biological father of the child and the role attributed to the appellant during different stages of her examination, such inconsistencies cannot be appreciated in isolation. The testimony of the victim has to be assessed in the backdrop of the entire evidence available on record. The medical evidence establishes that the victim was carrying a pregnancy of approximately twenty-four weeks at the time of her medical examination and subsequently gave birth to a male child. More importantly, the DNA Report (Ex.P/32) conclusively establishes that the appellant is the biological father of the child born to the victim. The defence has neither adduced any expert evidence nor produced any scientific material to discredit the DNA Report. Mere suggestions put during cross-examination, unsupported by any substantive evidence, are insufficient to dislodge the evidentiary value of the scientific evidence placed on record.

38. The submission advanced on behalf of the appellant regarding the admissibility and reliability of the DNA Report on the ground that the prosecution failed to establish an unbroken chain of custody has also been duly considered. However, except for raising a general objection during the course of arguments, no material has been brought on record

to demonstrate that the biological samples were tampered with, contaminated or substituted at any stage. The Investigating Officer (PW-8) has categorically deposed that the blood samples of the victim, the appellant and the newborn child were collected and forwarded to the State Forensic Science Laboratory, Raipur, for DNA examination, pursuant to which the DNA Report (Ex.P/32) was received. Nothing material could be elicited during his cross-examination so as to indicate any procedural irregularity affecting the integrity of the samples. Consequently, in the absence of any material suggesting compromise of the biological samples, this Court finds no reason to discard the DNA Report merely on speculative or hypothetical grounds. The decision of the Hon'ble Supreme Court in ***Kattavellai @ Devakar*** (supra), relied upon by the learned counsel for the appellant, is distinguishable on facts, as no circumstance has been brought on record in the present case to indicate any break in the chain of custody or any possibility of tampering with the biological samples.

39. Once it stands scientifically established that the appellant is the biological father of the child born to the victim, the burden shifts upon him to furnish a plausible explanation regarding the circumstances under which the victim conceived the child. Except for a bald denial in his statement recorded under Section 313 of the Cr.P.C., the appellant has offered no explanation whatsoever. Such unexplained silence assumes significance in the peculiar facts and circumstances of the present case, particularly when the scientific evidence directly connects him with the child born to the victim. The medical evidence, coupled with

the DNA Report, therefore, furnishes reliable and independent corroboration to the prosecution case and clearly establishes that the appellant had sexual intercourse with the victim.

40. This Court has already held that the prosecution has successfully established that the victim was below eighteen years of age on the date of the incident. Once the minority of the victim and the factum of sexual intercourse between the appellant and the victim stand proved through reliable medical and scientific evidence, the offence squarely falls within the ambit of Sections 5 and 6 of the POCSO Act. In view of the statutory scheme of the POCSO Act, the consent of the victim, if any, is legally immaterial. Upon an overall appreciation of the oral, documentary, medical and scientific evidence available on record, this Court is satisfied that the prosecution has proved the guilt of the appellant beyond reasonable doubt. The findings recorded by the learned trial Court are based upon proper appreciation of the evidence and do not suffer from any perversity, illegality or material irregularity warranting interference by this Court in exercise of appellate jurisdiction.

41. Consequently, the appeal, being devoid of merit, deserves to be and is accordingly **dismissed**. The judgment of conviction and order of sentence passed by the learned trial Court is hereby affirmed.

42. It is stated at the Bar that the appellant is presently in jail. He shall continue to undergo the remaining part of the sentence awarded to him.

43. In view of the disposal of the present appeal on merits, I.A. No.2 of 2024, filed on behalf of the appellant for suspension of sentence and

grant of bail, no longer survives for consideration and stands **disposed of** accordingly.

44. The Registry is directed to transmit the original record to the concerned trial Court for necessary information and compliance. The Registry shall also send a certified copy of this judgment to the Superintendent of the Jail concerned, where the appellant is undergoing sentence, for service upon the appellant, informing him that he is at liberty to challenge the present judgment before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Headnote

A DNA report cannot be ignored merely on the basis of a bald plea of a break in the chain of custody, unsupported by any evidence of tampering.