

In Special Atrocities Case No. 8 of 2013, the present appellants were convicted for the offences punishable under Section 376 of the Indian Penal Code ordering rigorous imprisonment of 10 years and fine of Rs. 20,000/-, in default, to suffer further imprisonment for six months. Accused No. 1 Sunil Appa Lakade, Accused No. 2 Ismail Shahanur Mulla and accused No. 3 Komalbai Tanaji Konale were also convicted for the offences punishable under sections 506 read with section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of

Rs. 2,000/-, in default, to suffer further imprisonment of three months. Accused No. 2 Ismail and accused No. 3 Komalbai were also convicted for the offences punishable under sections 109 read with section 376 of Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and fine of Rs. 3,000/-, in default, to suffer further rigorous imprisonment for four months. The accused were acquitted of the offences punishable under sections 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The said conviction was passed by the learned Special Judge, against which present appeals are preferred. The appeals are already admitted and posted for final hearing.

3. It is at this stage, the prosecution has moved an application claiming to be one under section 391 of Code of Criminal Procedure seeking permission of the Court to place on record the D.N.A. report received from Directorate, Forensic Science Laboratory. The report is dated 5<sup>th</sup> October 2015.

4. The D.N.A. report is in relation to the child that was begotten by the victim-prosecutrix out of crime of rape. The D.N.A. report speaks of matching of D.N.A. with one of the appellant herein

original accused. In this background, the present application is moved by the prosecution seeking permission to place on record the said document.

5. The learned A. P. P. in support of the present application, would urge that, it is in the interest of justice, the Court is required to permit the evidence to be brought on record, particularly in the background of serious charge of rape against appellants. He would then submit that, the view as is taken by this Court in the matter of **Bhosale Dairy & ors. Vs. Suresh s/o Ladharam J. Patel & anr.** reported in **2015 ALL MR (CRI) 728** is required to be appreciated and relied upon for permitting the prosecution to place on record the report. No prejudice will be caused to the appellants-accused..

6. While opposing the prayer, learned Counsel for the appellants-accused would submit that the provisions of section 391 of Code of Criminal Procedure is an exception to the general procedure as is provided under Code of Criminal Procedure. According to them, it is not open for the prosecution to rely upon such piece of evidence by taking shelter of section 391 of Code of Criminal Procedure which was not part of original investigation papers and the appellants had no opportunity to meet such evidence. The learned Counsel for the appellants relied upon the judgments of

this Court in the matters of **State of Maharashtra Vs. Sandesh Alias Sainath Kailas Abhang** reported in **2012 ALL MR (Cri.) 528**, **State through P.I. Vs. Naresh Shigaonkar & ors.** reported in **2013 ALL MR (Cri.) 1291** and **Mamatadevi Prafullakumar Bhansali Vs. Vijaykumar Mamraj Agrawal** reported in **2008(1) Bom. C.R. (Cri.) 459**.

7. The sum and substance of the argument of the learned Counsel for the appellants is that, in case if the permission is granted under section 391 of the Code of Criminal Procedure by the Court, the same is required to be analysed having regard to the object of the said section which in any case cannot be stretched to the extent of permitting the prosecution to fill in lacuna.

8. Having bestowed my thought to the submissions made, it is required to be noted that, in the present case the appellants are convicted for the offence punishable under section 376 of Indian Penal Code. It is in this background, the prosecution conducted D.N.A. test and D.N.A. test was found to be positive in the matter of birth given to a child by a victim and matches with that of one of the accused. So far as the above referred evidence is concerned, in my opinion, the same goes to the root of the matter so as to ascertain and establish the prosecution case so as to bring home guilt of the culprits. The parties to the appeal including that of appellants, in my

opinion, may seek appropriate remedy in relation to the nature or degree to the extent to which such evidence could be relied upon by this Court in the appellate jurisdiction.

9. Mr. Mukhedkar, learned Counsel for the appellant was right in inviting attention of this Court to the provisions of section 293(4) (e), wherein it provided that the report of certain Government Scientific Experts need not be proved and are to be accepted as it is. However, even if the report is to be accepted, the remedy, if any to the appellants in the matter of questioning the procedure to be followed while getting such report is always open for question at the behest of the appellants and appropriate remedy for the same is available to the appellants.

10. In the above referred background, having regard to the fact that the Apex Court has time and again expressed that the offence punishable under section 376 of Indian Penal Code is to be viewed seriously and the Court should be more sensitive in such cases, in my opinion, the D.N.A. report as is sought to be placed on record under the provisions of section 391 of Code of Criminal Procedure cannot be inferred to be permitting prosecution to fill in lacuna as appropriate opportunity and remedy is available to the appellants.

11. As such, the application, in my opinion, need to be allowed and is allowed accordingly.

**[ N.W. SAMBRE, J. ]**

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