



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 353 OF 2021

Dilkhush s/o Eknath Shrigiriwar

Aged about 29 yrs. Occ. Labour,

R/o Kelzar, Tahsil Mul,

District - Chandrapur

... APPELLANT

(In jail)

// VERSUS //

The State of Maharashtra,

Through Police Station Officer,

Police Station Mul,

Tahsil Mul, District- Chandrapur

... RESPONDENT

Mr R.M. Daga, Advocate for appellant.

Ms Hemlata Dhande, APP for respondent/State.

CORAM : G. A. SANAP, J.

DATE : 19.08.2024

JUDGMENT:

1. In this appeal, the challenge is to the judgment and order dated 24.12.2020, passed by the learned Additional Sessions Judge, Chandrapur, whereby the learned Sessions Judge convicted the accused of the offences punishable under Section 376(2)(j) and 376(2)(l) of the Indian Penal Code (for

short, "I.P.C.") and sentenced him to suffer rigorous imprisonment for 14 years and to pay a fine of Rs.2,000/- and in default to further undergo simple imprisonment for one year.

2. Background facts:-

The informant is the mother of the victim girl. The mother of the victim girl lodged the report on 22.11.2016 at Police Station Mul, District Chandrapur, regarding the rape of her mentally disabled daughter. It is stated that the informant and the victim are residing together. The informant used to leave home at 10.00 a.m. every day for work and return in the evening. The victim girl used to be at home. It is stated that few months, prior to the lodging of report, the informant observed that the victim had not got her period in the months of August, September and October. On 02.11.2016, the informant took the victim to Government Hospital, Mul, for examination. The doctor after conducting urine test of the victim told the informant that the victim was pregnant. The

informant inquired about the matter with the victim but on account of her mental condition she was not in a position to relate the incident. The informant, being busy in earning a hand to mouth existence and being alone, did not immediately approach the police.

3. In the report, it is further stated that after some time, as the physical conditions of the victim's, pregnancy started becoming more pronounced and the victim was unmarried, the informant started fearing for her daughter's health. The informant again took her to Government Hospital. Dr. Patil examined her and again told the informant that the victim was pregnant. The doctor suggested her to go to the police as the victim was unmarried. The informant ultimately went to the police and lodged the report of rape on her daughter and her pregnancy. In the report, the informant stated that various persons namely, Warlu Mankar, Pintu Raipure, Dilkhush Shrigiriwar used to come to her house, talk

to the victim and even provide eatables to the victim in her absence. The informant stated in the report that one out of them, was the culprit. On the basis of this report, crime bearing No.619/2016 was registered against the three persons upon whom the informant had expressed her suspicion.

4. Based on this report, the wheels of the investigation were put into motion. The victim girl was sent to the General Hospital, Chandrapur for examination. After her examination at Government Hospital Chandrapur she was referred to Government Medical Collage and Hospital Nagpur on 29.11.2016. In the Government Hospital, Nagpur, the doctor noticed that the victim was a case of missed abortion. During her examination the victim passed a clot of size 3 cm x 5 cm. It was sealed, labeled and handed over to the police. The blood sample of the victim for DNA analysis was collected. The said clot and blood sample was sent to C.A., Nagpur for analysis. The investigating Officer, after obtaining the order from the

Judicial Magistrate First Class, Mul carried the suspects to the hospital for collection of their blood samples. Their blood samples for DNA analysis were collected by Medical Officer at Sub District Hospital, Mul. The samples of the victim and the samples of the accused were sent to CA, Nagpur for analysis. CA Nagpur, on analysis of the samples opined that the appellant /accused and victim are the biological parents of the product of the conception of the victim. The report is dated 04.02.2017. The appellant/accused was arrested in this crime. The investigation revealed the involvement of the accused in the crime and which ultimately led to the filing of the charge-sheet against the accused.

5. Learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty. His defence is of false implication in the case. The prosecution examined 15 witnesses to bring home the guilt of the accused. The learned Judge, on consideration of the evidence, held the

accused guilty and sentenced him as above. Being aggrieved by the judgment and order, the appellant has come before the Court in appeal.

6. I have heard learned Advocate for the appellant and learned APP for the State. Perused the record and proceedings.

7. Learned Advocate for the appellant submitted that there is no direct evidence to establish the involvement of the accused and to prove the charge against the accused. Learned Advocate took me through the evidence of the informant and the paternal uncle of the victim and submitted that their evidence is hardly of any help to establish the involvement of the accused in the crime of rape on the victim. Learned Advocate submitted that the evidence adduced by the prosecution to prove the mental disability of the victim is not reliable. Learned Advocate submitted that the DNA report is the only piece of evidence relied upon by the learned Judge to

convict and sentence the accused. Learned Advocate took me through the evidence of the investigating officer as well as evidence of medical officers, who had collected the samples and submitted that there are material discrepancies in their evidence as to the actual collection of the samples, deposit of the samples in the police station and forwarding the samples to the FSL, Nagpur. Learned Advocate submitted that identification form filled by Dr. Bhavika Dhoble (PW-15) at the time of the collection of the samples of the victim would show that sample was collected on two dates namely, 29.11.2016 and 01.12.2016. It is pointed out that no separate identification forms were filled for collection of the separate samples. Learned Advocate submitted that this is a doubtful circumstance. It is submitted that doctor (PW-15) has stated that the samples of the fetus collected on 29.11.2016 was handed over to constable on 29.11.2016 itself. Learned Advocate submitted that evidence of the investigating officer and the evidence of

constable who had accompanied the victim is silent about the custody of the sample from 29.11.2016 to 01.12.2016. Learned Advocate submitted that therefore, there is scope to doubt the manipulation of the samples. It is further submitted that in such a situation, the contamination of the sample, which was not properly stored even for two days, cannot be ruled out. Learned Advocate submitted that therefore, the report of the DNA analysis holding the appellant to be the biological parent of the fetus cannot be made the sole basis of the conviction of the appellant.

8. Learned APP submitted that the chain from the time of collection of sample till the samples were deposited in the FSL, Nagpur has been completely established and therefore, the possibility of manipulation or tampering with the sample has been completely ruled out. Learned APP submitted that evidence of the informant is sufficient to corroborate the case of the prosecution. Learned APP took me through the evidence of

the informant and pointed out that the informant has stated that the accused frequently used to visit her house and provide eatables to the victim. Learned APP submitted that the possibility of false implication in this case has been completely ruled out. Learned APP submitted that the accused-appellant has not placed on record an iota of material to suggest the motive for his false implication by the informant. Learned APP submitted that evidence on record is sufficient to prove that, on the date of the examination, the victim was carrying pregnancy of eight weeks and five days. Learned APP submitted that mother of the informant had otherwise no reason to lodge the report.

9. I have minutely perused the evidence on record. On perusal of the evidence, I am satisfied that the evidence on record is sufficient to prove the guilt of the accused. The evidence on record is sufficient to establish that the appellant is the perpetrator of the heinous crime. PW-1, mother of the

victim, has stated that one Warlu Mankar, Pintu Raipure and Dilkhush Shrigiriwar (accused) used to tease and give her biscuit etc. She has categorically stated that these three persons used to come to her house regularly. In the report at Exh.12 the informant had expressed her suspicion upon these three persons only. In her cross-examination PW-1 has further stated that one time she had caught the accused red-handed when he was hiding in her house. This fact was not stated in the report. However, this answer was given by the witness in the cross examination and therefore, the same cannot be completely glossed over.

10. The mother of the victim, in her evidence, has not attributed any role to the accused or has not stated any categorical instance when she found the appellant involved in any act with the victim. The prosecution has examined paternal uncle of the victim Diwakar Nimgade (PW-2). Paternal uncle of the victim has narrated one incident. However, the incident

narrated by him was not stated by him while recording his statement. Similarly, his statement was recorded after eight days of lodging the report. Learned Judge has discarded and disbelieved the evidence of PW-2. Learned Judge has recorded the reasons. On re-appreciation of the evidence of PW-2 I am satisfied that learned Judge was right in discarding the evidence of PW-2. However, learned Judge has believed the evidence of the mother of the victim. The evidence of the mother of the victim is sufficient to prove that the accused with his two friends frequently used to visit the house of the informant. He used to provide biscuit and other eatables to the victim.

11. PW-1 has stated that the victim is suffering from a mental disability. She has stated this fact in great detail. She has stated that the victim was examined by the doctors in 2007 and on her examination a mental disability certificate was issued. The prosecution, in order to prove this fact has relied upon the medical evidence. The victim was examined by Doctor Shital

Shamkule (PW-6) on 23.11.2016. At the relevant time, PW-6 was attached to General Hospital, Chandrapur. Her qualification has not been challenged. She has categorically stated that, on examination of the victim she found that she was not mentally sound. There is one more witness examined by prosecution to prove this fact, he is Dr. Sachin Bhede (PW-8). PW-8 had examined the victim, being Member of Medical Board in 2007. He has stated that medical board had issued disability certificate to the victim. Disability certificate is at Exh.18. PW-8 has categorically stated that in 2007, he was attached to psychiatry department of the General Hospital, Chandrapur. He has stated that the victim was brought to the General Hospital, Chandrapur. The victim was examined for her intellectual assessment. He has stated that examination of the mental condition of the victim revealed that clinically, the victim's IQ was 30 to 34 and her disability was 90%. PW-8 has categorically stated that he had diagnosed the victim as

suffering from Down's Syndrome with severe mental retardation. All these facts have been mentioned in the disability certificate at Exh.18. Disability certificate at Exh.18 bears signature of PW-8 as well as the signatures of the remaining two members of the Board namely Dr. Sarita Hazare, Resident Medical Doctor and Civil Surgeon, Dr. Dhote.

12. Perusal of his cross-examination would show that his opinion was assailed on the ground that the certificate was issued without keeping the patient under observation for three days as required under the law. Learned Judge has discarded this case sought to be canvased by the Advocate. It is to be noted that for issuance of a disability certificate by medical Board there is no need to keep the patient under observation for any particular period of time. It is not suggested to PW-8 that certificate at Exh.18 was issued without conducting a clinical examination of the victim. Exh.19 is the handicapped certificate. In the handicapped certificate at Exh.19, it has been

clearly opined that the victim is suffering from Down's Syndrome and her disability is 90%. In my view, despite searching cross-examination no iota of material has been brought on record to discard the evidence of medical officer.

13. It is pertinent to mention at this stage that this entire evidence with regard to the mental disability of the victim girl was put to the accused in his 313 Cr.P.C. statement. The accused has admitted that the victim was mentally retarded. The pertinent questions were put to him on the basis of the evidence of PW-1 mother of the victim and her paternal uncle PW-2. The accused, while answering these questions have admitted that the victim was mentally retarded. Perusal of the record would show that learned Judge had summoned the victim for recording her evidence on 23.06.2020. Learned Judge put number of questions to the victim to ascertain competence and capability to understand the questions. Learned Judge has recorded that the victim did not possess the

capacity to understand the questions put to her and to answers them rationally. Learned Judge therefore could not record her evidence. Learned Judge in her order has dealt with this fact in great detail. Learned Judge has recorded that when she questioned the victim in the Court on 23.06.2020 she started crying and started making unintelligible noises.

14. It is undisputed that disability certificate at Exh.18 and 19 had been issued in 2007. It has been stated in the certificate at Exh.18 that she was suffering from a mental disability. Exh.19 clearly shows that she was handicapped and suffering from Down's Syndrome with severe mental retardation. It is to be noted that Down's Syndrome is a condition which occurs due to a genetic disorder. The condition which occurs due to a genetic disorder cannot be cured. Once a person is found to be suffering from Down's Syndrome will not recover during whole life. The said person will carry this syndrome in his/her whole life. In my view,

therefore, the evidence of the medical officer cannot be discarded. It is sufficient to prove that the victim was suffering from a mental disability of 90%. She was handicapped with Down's Syndrome. In this context it would be necessary to consider the medical evidence, C.A. reports and D.N.A. reports.

15. PW-6 has categorically stated that mother of the victim had accompanied the victim. The mother told her that the victim had missed her menstrual periods for four months. She did a urine pregnancy test, which turned out to be positive. PW-6 has stated that the victim was making her abdomen very taut and therefore, the exact height of the uterus could not be ascertained by her during the victim physical examination. She has stated that the victim was carrying pregnancy of about 14 to 16 weeks. PW-6 advised sonography for ascertain the average gestational age and fetus viability. Exh.40 is her report. Her evidence is sufficient to prove that at the time of examination

the victim was carrying pregnancy. She had referred the victim for examination namely sonography. Sonography was conducted by Dr. Ritesh Rane (PW-7). He has stated that while working as a Radiologist attached to General Hospital, Chandrapur, on 25.11.2016 he conducted the victim girl's sonography. He has stated that the victim was referred to him by PW-6. In his cross examination PW-7 has admitted that ultrasound images of the sonography was not available with the charge-sheet. The witness has stated while answering the Court question that for many years necessary equipment for printing the ultrasound images obtained on the USG machine has not been provided to the Government Hospital. In his evidence he has stated that in the sonography of the victim a single fetus without any movement of cardiac activity was observed. It was in her uterus. On the basis of the sonography he opined that it was a case of missed abortion having gestation age of eight weeks and five days. It is to be noted that for the purpose of

ascertaining the pregnancy and also gestation age of the fetus she was referred for sonography. This evidence is an independent evidence. These witnesses PW-6 and PW-7 had no reason to give false opinion or certificate. It is not even suggested to them that for one reason or the other they have given incorrect or false opinion. PW-6 and 7 are expert witnesses. The opinion given by them is on the basis of various tests and clinical examination conducted by them. PW-6 has stated that at the time of examination of the victim on 23.11.2016 she had collected the blood and other samples of the victim. It is evident on perusal of the record that these samples collected on 23.11.2016 had not been forwarded to C.A. by Investigating Officer.

16. Before proceeding to appreciate the evidence of other medical officers and the CA reports, it would be appropriate to consider the evidence of Investigating Officer. Manohar Koreti P.I. (PW-10) has deposed that, on the basis of

the report of the informant crime was registered. He has stated that on the basis of the allegations made in the report he forwarded the victim to Government Hospital at Chandrapur for her medical examination. It is seen that when he initially sent the victim for examination at Government Hospital at Chandrapur he did not prepare any forwarding letter. But the record shows that the victim was examined by Dr. Shital PW-6 on a request made by P.I. Police Station, Mul. PW-6 has categorically deposed that after admission of the victim at General Hospital, Chandrapur she was posted for evacuation i.e. for removing products of conception. She has stated that at that time the victim was high risk patient and therefore, the Anesthetist recommended to refer her to a higher centre. She therefore, filled the necessary referral slip on 28.11.2016 and referred the victim to Government Hospital at Nagpur. Exh. 41 is the referral slip. It has come on record that the victim was admitted in the Government Hospital at Nagpur on

29.11.2016 by the constable attached to Mul Police Station

17. The task before the investigating officer was daunting because the report did not disclose the name of the perpetrator of the crime. The mother of the victim had only suspected the involvement of three persons whose names were stated in the report. The investigating officer therefore, obtained the order from the learned Magistrate and initially sent five suspects on 20.12.2016 for collection of their blood samples. Dr. Ujwal Indurkar (PW-11) has deposed that on 20.12.2016 he was working as Medical Officer at Sub District Hospital, Mul. He has stated that on 20.12.2016 a constable attached to Mul PS had brought five persons alongwith requisition. The requisition is at Exn.60. Those persons had been brought for obtaining their blood samples for conducting DNA Test. He has stated that he took the individual samples of each accused one by one and immediately after taking the samples put the same in tubes and labeled and sealed the same.

He has stated that he filled the identification form of each person separately after collecting the individual sample. The identification forms are at Exh.73-77. It was suggested to this witness that the time of collection of samples mentioned in the identification forms is same and therefore, doctor with certainty could not state that there was no possibility of mixing the samples of these suspects. This witness has categorically stated that he had taken necessary care while collecting, packing and sealing of sample of each and every person. The evidence on record shows that identification form for each accused is separate and independent. The identification forms bear the signatures of the attesting witnesses and signature of PW-11. As far as the identification form of appellant is concerned, it is at Exh.73. It needs to be stated at this stage that since involvement of the remaining suspects was completely ruled out on the basis of DNA report, it would not be necessary to consider the evidence with regard to collection of their samples.

On the date of collection of their samples the suspects were not arrested. I have already observed that the investigation in this crime was a daunting and challenging task for the investigating officer. The investigating officer, on the basis of the available material, was required to zero in on the real perpetrator of the crime. He could not have arrested them on the basis of suspicion. It is further pertinent to mention that the victim was carrying pregnancy therefore, the investigating officer wanted to ascertain the paternity of the fetus of the victim. As far as the samples of these five suspects are concerned, the same were collected on 20.12.2016. The samples were handed over to the constable. The samples were carried to FSL by PW-12 lady police constable Karuna Dupare on 21.12.2016. The samples were collected on 20.12.2016. The forwarding letter to CA, Nagpur is dated 20.12.2016. PW-12 carried the samples to lab on 21.12.2016. The samples had been delivered to the lab on 21.12.2016. Exh. 65 is the invoice challan issued by the clerk

attached to FSL Nagpur. The invoice further shows that five sealed containers were handed over to him. One of the containers was blood sample of the accused. Exh.63 is a duty pass of PW-12 dated 21.12.2016. It is seen that immediately on receipt of the samples by I.O. he prepared the requisition letter on 20.12.2016. It is therefore, evident that there was no delay in forwarding these samples.

18. The next vital and important aspect is with regard to collection of the samples of the victim and forwarding of the samples of victim to the CA Nagpur. It is evident that there is a discrepancy in the record with regard to the collection of two samples of the victim. It is submitted on the basis of these discrepancies that the sample of the fetus collected on 29.11.2016 was handed over to the police on 29.11.2016, itself but the police have failed to explain its custody and the precautions taken to preserve the sample. It is submitted that identification form at Exh.95 would show that second sample

namely a blood sample was collected on 01.12.2016. It is pointed out that the medical officer could not have collected two samples on different dates by using the same identification form.

19. In order to appreciate this submission, it is necessary to consider some of the undisputed facts. The victim was initially admitted in the Government Hospital at Chandrapur. Since Medical Officer at Chandrapur found that she was at high risk she was referred to Government Hospital, at Nagpur. The referral slip is at Exh.41. It is therefore, undisputed that there was no any specific requisition from the police to Government Hospital, Nagpur either for admission of the victim or for medical examination of the victim. It is evident that it was an internal matter of the two hospitals. The Police had no role to play in that matter inasmuch as doctors were required to take the decision. The victim was brought to Government Medical Collage and Hospital at Nagpur on

29.11.2016 by Police constable. Dr. Bhavika Dhoble (PW-15) is the important witness. She has stated that on 29.11.2016 the victim was brought to GMC, Nagpur. She has stated that she had been referred from Government Hospital Chandrapur as an unmarried primigravida with missed abortion and known case of Down's Syndrome. Sonography report was also brought and which was suggestive of missed abortion of eight weeks and five days. PW-15 has stated that during examination the victim had passed a clot of size 3 x 5 cm, which was collected and handed over to WPC and it was sent to FSL, Nagpur on 29.11.2016. She has stated that the clot had been collected in a clean container, labeled and sealed. She has further stated that on the request of PI, Mul police station vide Exh.56 the blood sample of the victim was also collected. Exh.56 the requisition letter is 01.12.2016. Admittedly the blood sample of the victim was collected on 01.12.2016. The police constable who had accompanied the victim from Chandrapur to Nagpur has

not been examined. The doctor has also not stated the name of the constable. This categorical admission by doctor that on 29.11.2016 itself the sample of the clot was handed over to woman police constable, in my view, appears to be on account of some mistake. It is not supported by any evidence and particularly discharge card of the victim at Exh.94. It is submitted that this discrepancy is sufficient to conclude that the procedure followed while collecting the sample was not in accordance with the law. The doubtful circumstances suggest that the custody of the sample for two to three days has not been explained. In my view, this submission cannot be accepted for more than one reason.

20. I have minutely perused the identification form of the victim at Exh.95. It is to be noted that the sample and the identification forms are handed over to the police together. If the sample collected on 29.11.2016 and the identification form had been handed over to woman police constable then there

was no reason for the doctor to use the same form while collecting the blood sample on 01.12.2016. Exh.56 is the requisition letter of the police officer for collection of sample of the fetus as well as blood sample for DNA analysis. This requisition is dated 01.12.2016. If the sample of the fetus had been collected and deposited with the police on 29.11.2016 then there was no reason for the I.O. to request the Medical Officer to collect two samples. I.O. would have made requisition for collection of blood sample only. This is a very important circumstance in favour of the prosecution. Second most important circumstance in favour of the prosecution is the use of same identification form by the medical officer. The use of the same identification form by the medical officer for collection of blood sample on 01.12.2016 would show that neither the sample nor this identification form was handed to WPC on 29.11.2016. The victim was admitted in the hospital. The victim was discharged on 02.12.2016. This sample and

identification form, as can be seen from the attending circumstances was with medical officer. Medical Officer therefore, used the same form for collection of the blood sample on 01.12.2016. It is to be noted that if first sample with identification form had been handed over to WPC then doctor would not have used this identification form while collecting the blood sample on 01.12.2016. The Discharge card is silent about the date of handing over of 1st sample to WPC on 29.11.2016.

21. In this context, it is necessary to consider the requisition letter to the CA by the Investigating Officer for analysis of these two samples. This letter at Exh.57 is dated 01.12.2016. The blood sample of the victim was collected on 01.12.2016. The requisition at Exh. 56 to the Medical Officer was acknowledged by the Medical Officer on 01.12.2016. Doctor did not record on this requisition that sample of the fetus was already handed over to WPC on 29.11.2016. In my

view, this goof up committed by the investigating officer and the medical officer will not enure to the benefit of the accused.

22. The sample was carried to FSL lab by PW-12 on 01.12.2016. Ex.66 is the CA report of the analysis of these two samples. Perusal of this report would show that samples were received on 02.12.2016. The samples were delivered by WPC 1520. It has been stated in the description column that two plastic containers were sealed. Seals were intact and as per copy sent. It is to be noted that these two samples were collected by the Doctor. Doctor has stated that he packed, labeled and sealed the samples. The samples in the same condition had been sent to the CA, Nagpur by the police. There is no suggestion in the cross examination that seals of the samples were tampered with in any manner. Learned Judge has therefore, placed reliance on the DNA report by recording concrete finding that possibility of tampering or manipulation in this case has been completely ruled out.

23. It is not out of place to mention that a sample of the fetus as well as a sample of the accused was analyzed. The victim was opined to be the biological mother of the fetus. As far as the sample of the accused is concerned, it was immediately sent to the lab on the next day. Therefore, even if it is assumed for the sake of argument that on this ground the accused has an arguable point, it cannot be said that it would be sufficient to discard the DNA report. The C.A. has opined that not only the accused but also the victim was also biological parent of the fetus.

24. In this background DNA report at Exh.66 needs appreciation. PW-14 has deposed that at the relevant time she was working as Assistant Chemical Examiner in FSL, Nagpur. She has stated that on 02.12.2016 WPC 1520 of PS Mul had brought and deposited blood sample of the victim and sample of the tissue of the fetus in a sealed condition in her office. She has stated that the original identification form of the victim had

also been submitted together with the samples. She has stated that on 21.12.2016, WPC 1520 of PS Mul had deposited the blood samples of Dilkhush Eknath Shrigiriwar, Talash Rushiji Nimgade, Prasannajit Keshav Mankar, Rushi Sukhaj Nimgade and Shekhar Sudam Nimgade in a sealed condition in their office. She has stated that on 22.12.2016 NPC 696 of PS Mul deposited blood sample of Bhimrao @ Pintu Jankiram Raipure in a sealed condition. PW-14 in detail has deposed about the procedure followed by her for analysis of the samples. She has stated that first she extracted DNA samples from all the submitted blood samples and the tissue of the fetus. She has stated that result of the analysis was that the accused and the victim were found to be the biological parents of the fetus forwarded to her office. In my view, learned Judge was right in placing reliance on this evidence to hold the accused guilty. In my opinion, the evidence adduced by the prosecution is sufficient to prove the involvement of the accused/appellant in

this crime.

25. As far as the evidentiary value of the DNA report is concerned, it would be appropriate to make useful reference to the decision of the Hon'ble Apex Court in *Mukesh and another. vs. State (NCT of Delhi) and others*, reported at *(2017) 6 SCC 1*. The Apex Court has observed that DNA Technology as a part of Forensic Science and Scientific discipline not only provides guidance to investigation but also supplies the Court accurate information about tending features to establish identification of criminals. 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. It is held that the 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. No doubt to doubt the quality control or quality assurance of the DNA report.

26. In the facts and circumstances, I conclude that evidence on record is sufficient to prove the guilt of the accused. The victim on the date of commission of crime was suffering from mental disability. She is 90% mentally retarded. The accused, who is the neighbour of the victim has taken undue advantage of the situation. The victim could not even tell her name. The crime committed by the accused has crossed all the limits of humanity. It was a crime not only against the victim but also against society. The accused, knowing fully well that the victim was mentally retarded, committed such a gruesome crime with her. The crime committed by the accused indicates that in order to satisfy his lust, he took advantage of the mental condition of the victim. The crime is deplorable. Such a crime is bound to shock collective conscious of society. The accused has crossed the bounds of humanity. Learned

Judge has properly appreciated the evidence. I do not see any reason to interfere with the well reason judgment and order. Accordingly, the appeal deserves to be dismissed and it is **dismissed.**

27. The Criminal Appeal stands disposed of. Pending application, if any, stands disposed of.

(G. A. SANAP, J.)