

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRA-S-1519-2022 (O&M)
Date of decision : 11.03.2024**

Surjit Singh alias Suraj

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Satinder Kaur, Advocate
for the appellant.

Mr. R. S. Khaira, DAG, Punjab.

Ms. Suman Bishnoi, Advocate
for the complainant.

MANISHA BATRA, J.

1. Aggrieved by the judgment of conviction and order on quantum of sentence, both dated 30.05.2022, as passed by the learned Additional Sessions Judge, Fast Track Special Court, Moga, in Sessions Case bearing CIS No. SC/152/2020, titled as ***State vs. Surjit Singh @ Suraj***, arising out of FIR No. 128 dated 28.10.2020, under Sections 376, 368, 363, 506 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (*for short 'POCSO Act'*), registered at Police Station Kot Ise Khan, whereby the appellant Surjit Singh @ Suraj had been held guilty, instant appeal has been filed by him. The appellant was held guilty and convicted for commission of offence punishable under Section 4 of the POCSO Act and was sentenced to undergo rigorous imprisonment for a period of 10 years and to

pay a fine of Rs. 10,000/- and in default of payment of fine, he was further sentenced to undergo rigorous imprisonment for a period of 01 year.

2. For the sake of convenience, the parties shall be referred to as per their original nomenclature as given during trial.

3. The brief contours of the case as set up by the prosecution in this case are that on 28.10.2020, on receiving an information regarding admission of the victim 'A' (*name withheld*), daughter of 'J' (*name withheld*) in Civil Hospital, Moga, a police party headed by SI Kulwinder Kaur reached there. Medical *ruqa* and opinion of the doctor as to the fitness of the victim was obtained. Though the victim was opined to be fit to make statement but the statement of her mother 'M' (*name withheld*), who was present along with the victim, had been recorded. She disclosed that on 27.10.2020, the victim had gone missing from her house, when she was alone. the complainant came to know about this fact when she returned home at 05:00 PM. She made inquiries but could only come to know that the victim had left the house at about 12 noon and did not return. She suspected that accused Surjit Singh, who was living in her neighborhood and was keeping an evil eye on the victim, might have taken her away. She alleged that while making search for her daughter, she reached the house of the accused. He was found to be present there alone. On asking, he denied having any knowledge of the whereabouts of the victim. However, the complainant, being suspicious, had started making search for her daughter in the house of the accused and found her while lying hidden under a bed of the house. She was in a perplexed condition. On asking, she disclosed that the accused had called her when she was passing from the street abutting his house and by forcibly taking her to a

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room and stripping of her clothing, he had ravished her. The complainant alleged that the victim had managed to flee in the meantime and she had brought her daughter to the hospital. On the basis of her statement, a case under Section 363, 368, 376 and 506 of IPC read with Section 4 of the POCSO Act was registered. Investigation proceeding were initiated. The victim was medico-legally examined. The statement of the victim was recorded under Section 164 Cr.P.C., wherein she reiterated the allegations as levelled in the FIR. The blood samples, vaginal swabs and clothing of the victim had been sent for forensic/DNA analysis. The accused was arrested on 29.10.2020. His medical examination was also conducted and his blood samples were also sent for DNA profiling. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented against the accused before the concerned Court. The accused was chargesheeted for commission of aforementioned offences.

4. On finding a *prima facie* case for commission of offences punishable under Sections 376, 368, 363, 506 of the IPC and Section 4 of the POCSO Act, 2012, he was chargesheeted accordingly. He pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined as many as 13 witnesses, besides relying upon documentary evidence and thereafter, the public prosecutor had closed the prosecution evidence.

6. In his statement recorded under Section 313 Cr.P.C., the accused abjured his guilt and claimed himself to be innocent. However, no defence evidence had been adduced by him.

7. On appraising the evidence produced on record and after hearing the prosecution as well as learned counsel for the accused, the trial Court acquitted the accused of the charges framed under Sections 363, 368 and 506 of the IPC but held him guilty for commission of offences punishable under Section 376 IPC and Section 4 of the POCSO Act and vide order on quantum of sentence dated 30.05.2022, he was sentenced to rigorous imprisonment for commission of offence punishable under Section 4 of the POCSO Act in the manner as mentioned above.

8. It has been argued by learned counsel for the accused that the impugned judgment and order on quantum of sentence are not sustainable in the eyes of law. The trial Court committed a grave error in holding the accused guilty by ignoring the fact that neither the prosecutrix nor her mother, who were the star witnesses of the case, had supported the version of the prosecution at all and were declared hostile witnesses. He has further argued that no positive evidence had come on record to prove that the victim was below the age of 18 years and was a minor and reliance had wrongly been placed upon a school leaving certificate Ex. PW11/B, which has not been proved in accordance with law as the entries made therein could not be considered to be conclusive proof of age of the victim.

9. The next argument advanced by learned counsel for the accused is that on the basis of the evidence, which had been produced on record, the possibility of tampering with the blood samples of the accused as well as the vaginal swabs of the prosecutrix could not be ruled out. There were material contradictions in the version of the prosecution as well as the testimony of PW-3 Dr. Simrat Kaur Khosa, who conducted the medical examination of the

victim with regard to the particular article, which had been taken for the purpose of detection of seminal stains. The link evidence was highly defective as it has not been proved by the prosecution that the samples so taken were properly documented, collected, packaged and preserved. Not even this, the statements of PW8 and PW12 with regard to the fact as to whether it was the *Salwar* of the victim or the vaginal swabs, which had been handed over for the purpose of forensic examination, were contradictory and, therefore, it has been argued that the DNA report, which was the sole piece of evidence claimed to be incriminating evidence, could not be considered conclusive for fixing the liability of the accused for commission of subject offence.

10. Learned counsel for the accused has also assailed the findings given by the trial Court on the ground that the link evidence connecting the accused with the DNA report was missing and the same has vitiated the entire trial. There is no material to show that the exhibits, which were sent to FSL were kept in proper custody and no tampering was done till the same reached FSL. It is argued that the DNA report has been prepared at the instance of the Investigating Officer and has been manipulated to create false evidence against the accused. The link in the chain of evidence as to the custody of sample itself is broken and tainted and, thus, the DNA result has no value in the eyes of law. With these broad submissions, it has been argued that that the appeal deserves to be allowed; the impugned judgment and order on quantum of sentence are liable to be set aside and the appellant deserves to be acquitted of the charges framed against him.

11. No arguments have been addressed on behalf of the complainant, though her counsel was present during the course of addressing argument.

12. Learned State counsel, however, has vehemently argued that only because of the fact that the victim and her mother i.e. the complainant did not support the prosecution version, was not sufficient to acquit the accused of the crime of committing rape upon the victim as cogent and convincing reasons in the form of DNA report, which is *per se* admissible in evidence, had come on record to show that spermatozoa detected on the vaginal swabs of the victim matched with the DNA blood profiling of the accused. Hence, it has been argued that the present appeal was devoid of any merit and was liable to be dismissed.

13. Due deliberations have been given to the rival contentions as raised by learned counsel for the accused as well as learned counsel for the State, besides going through the trial court's record.

14. With regard to the age of the victim, the trial Court, while relying upon the documents Ex. PW11/A and Ex. PW11/B, had held that she was proved to be born on 05.11.2004 and was a child as on the date of incident i.e. on 27.10.2020. It is well settled proposition of law that the provisions of the POCSO Act, which are applicable for determining the age of a juvenile in conflict with law are equally applicable for determining the age of a child, who is victim of the same crime. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*for short* 'Act, 2015') deals with the question as to the manner in which the age of a person, claiming to be a juvenile in conflict with law, is to be determined. It will be relevant here to reproduce Section 94 of the Act, 2015, which reads as under:

Section 94 : Presumption and determination of age:

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of

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the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

15. The trial Court had observed that the documents Ex. PW11/A and Ex. PW11/B, which were extract of admission register and school leave certificate, proved that the victim was born on 05.11.2004. However, on an overall appraisal of the material placed on record, I am inclined to hold that the prosecution had failed to bring any evidence of conclusive nature on record to prove that the victim was a child. Relevant to mention here is that while appearing as PW1 on 25.08.2021, i.e. within a period of about 11 months from the date of incident, the victim disclosed herself to be 20 years' old. Meaning thereby, according to herself, she was above 18 years of age at the time of incident. Even PW2, who is complainant and mother of the victim,

denied that the victim was about 16 years of age at the time when the incident had taken place.

16. Now the question, which requires consideration is as to whether the documents Ex. PW11/A and Ex. PW11/B can be considered to be conclusive evidence of proving the exact age of the victim ? No doubt as per Section 94(2) of the Act, 2015, for the purpose of determination of age of a juvenile, the date of birth certificate issued by the school or the Matriculation certificate or equivalent certificate from the concerned examination board can be considered as evidence for such purpose. However, the position of law which is equally well settled is that even entries in the school register/school leaving certificate are required to be proved in accordance with law and the standard of proof required in such cases remains the same as in any other civil or criminal case. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in ***Madan Mohan Singh and others vs. Rajni Kant and another : (2010) 9 Supreme Court Cases 209***, wherein it was held that if a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 & 61 of the Evidence Act, by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. Reliance in this context can also be placed upon ***Alamelu and another vs. State represented by Inspector of Police : 2011 (2) SCC 85***, wherein the Hon'ble Supreme Court had observed that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. In that case, the Headmaster, who had issued the transfer

certificate, had not been examined. It was observed that though the certificate was admissible in evidence under Section 35 of the Indian Evidence Act but the admissibility would not be of much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded and that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

17. In the instant case, the documents Ex. PW11/A and Ex. PW11/B were produced by PW11 Satpal Singh, Science Master of the school, wherein the victim studied. He was not the author of either of these documents and had simply produced the same in the Court. Neither the Head Mistress of the school, who had issued certificate Ex. PW11/B, had been examined nor the person/official, who had made entries in admission register Ex. PW11/A, had been produced. In ***Lokesh vs. State of Haryana : 2020(2) RCR (Criminal) 5***, a Division Bench of this Court had observed that the entries made in the official record by an official or person authorized for performance of official duties may be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. Similar position of law was laid down in ***Updesh Kumar and others vs. Prithvi Singh and others : (2001) 1 SCC 524*** and ***State of Bihar vs. Radha Krishna Singh : AIR 1983 SC 684***.

18. In view of the discussion as made above, I am inclined to hold that though Ex. PW11/A, which is extract of the entries made in the admission register of the school of the victim, and Ex. PW11/B, which is school leaving certificate, are part of the official record of the school, however, in the absence of any evidence forthcoming on record to show as to on what basis

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the date of birth of the victim was recorded as 05.11.2004 in these documents, the same would have no evidentiary value as neither the mother of the victim stated that it was she herself, who had disclosed the date of birth of the victim as 05.11.2004 before the school at the time of her admission nor the person, who had made such entry, has been examined to explain the basis of recording the date of birth of the victim in the record of school. In this regard, reliance can be placed upon the observations made by Hon'ble Supreme Court in ***Parag Bhati (Juvenile) through Legal Guardian-Mother Smt. Rajni Bhati vs. State of Uttar Pradesh and another : 2016 (2) RCR (Criminal) 1031***, wherein it was observed by a three judges Bench that for determining the juvenility of an accused, the credibility and/or acceptability of the document like the school leaving certificate would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed. It was observed that an inquiry for determination of the age of accused is permissible when there is any doubt as to the correctness of the date of birth recorded in Matriculation or equivalent certificates. In the absence of any evidence produced on record by the prosecution in terms of Section 35 of the Evidence Act to prove the relevance of the documents Ex. PW11/A and Ex. PW11/B, relied upon by it, these documents cannot be treated to be conclusive proof of the date of birth of the victim and, therefore, it is held that the observations as made by the trial Court to the effect that the victim was proved to be a child based on the above mentioned documents, cannot be sustained and are reversed accordingly.

19. Now let us proceed further and consider the next argument as raised by learned counsel for the accused as to the authenticity of the DNA

test report Ex. PW3/D, as per which, the human semen detected on the vaginal swabs of the victim matched with the DNA blood profiling of the accused. The trial Court had observed that the evidence produced on record proved that the clothing as well as samples of the victim and blood samples of the accused were duly sealed and handed over to concerned officials and were sent to FSL, Mohali for analysis in intact condition and the chain of link evidence was not broken. However, on a careful assessment of the evidence produced on record, I am inclined to hold that the observations as made by the trial Court on this point too are liable to be reversed.

20. Before delving on the aforesaid point, it would be relevant to mention that though undoubtedly, the DNA test report are considered to be reliable scientific methods to determine the question of paternity or sexual assault, but it also cannot be ignored that the DNA report has to be firmly established. In ***Rahul vs. State of Delhi : (2023) 1 SCC 83***, the Hon'ble Supreme Court, while dealing with the question of the veracity of DNA evidence, had referred to the report of Law Commission of India, wherein it was as observed as follows:

“DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not ‘match’, then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA “profile” or “fingerprint” is found. It may be, for example, that the

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relevant profile is found in 1 person in every 100,000: This is described as the 'random occurrence ratio' (Phipson 1999). Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law."

21. In ***Rahul's*** case (supra) itself, the Hon'ble Supreme Court, while referring to several decisions of that Court had emphasized on the need for assuring the quality control about the samples technique for testing in view of the increasing importance of DNA evidence. It was also held that mere exhibition of DNA report did not prove its contents and it was for the prosecution to prove that there was no possibility of tampering with the samples collected. It was also observed that if DNA evidence is not properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirements for admissibility in a Court of law because extremely small samples of DNA can be used as evidence and, therefore, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence as the same can be contaminated when DNA from another source gets mixed with DNA relevant to the case. It was observed that even this can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling. Similar observations were made by Hon'ble Supreme Court in ***Manoj and others vs. State of M.P. : 2022 Live Law (SC) 510.***

22. It will also be important to refer to the observations made by Hon'ble Supreme Court in *Shaktiman vs. State of Maharashtra through Police Station Officer, 2019 SCC Online (Bombay) 139*, wherein it was observed that though the DNA report or scientific method to determine the paternity or sexual assault is firmly established but the only challenge for it can be set up that there occurred tampering with the blood sample of the accused at any stage. If something is on record to show that there was a possibility of tampering with the blood sample of the accused then only there could be some room for suspicion about DNA report. Reliance in this regard can also be placed upon *State of Gujarat vs. Jayantibhai Somabhai Khant : 2015 CrL L.J. 3209* and *Premjibhai Bachubhai Khasiya vs. State of Gujarat : 2009 Cri L.J. 2888*, wherein High Court of Gujarat had observed that if the DNA report is the sole piece of evidence, even if it is positive, cannot conclusively fix the identity of the miscreant. Reliance can also be placed upon *Pattu Rajan v. The State of Tamil Nadu : (2019) 4 SCC 771*, wherein Hon'ble Supreme Court, while considering the value and weight to be attached to a DNA report has observed as under:

“33. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be

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said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.”

23. On applying the above discussed position of law as to the admissibility of DNA evidence to the peculiar facts and circumstances of the present case, it is observed that there are material inconsistencies in the statements of the concerned witnesses with regard to collection and preservation of the samples, which were collected for the purpose of DNA profiling of the victim as well as the accused. PW4-ASI Kulwinder Kaur had conducted part investigation in this case. She deposed about moving an application on 28.10.2020 for getting medical examination of the victim conducted and for taking DNA samples. She further deposed that the clothing of the was produced before her, which was converted into a parcel and was sealed. Her statement remained silent on the point of taking any vaginal swabs of the victim into custody and depositing as well as ensuring its preservation and did not even say that vaginal swabs were taken and remained with the doctor concerned. She did not disclose as to when the clothing so given to her was deposited in the Malkhana by her and on which particular date. Even PW5 Sulakhan Singh, who had joined the investigation along with PW4 on 28.10.2020, did not say that vaginal swabs of the victim were taken into possession and were deposited. Rather, his version was also that the clothing of the victim was produced before the Investigating Officer in his presence and it was converted into parcel. The testimony of PW3-Dr. Simrat Kaur Khosa narrated a different story, as according to her, the vaginal swabs as well as two different samples of the victim were taken for DNA analysis. She also

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remained quiet on the point as to whether these vaginal swabs and blood swabs were handed over by her to any police official at all or were kept in her custody and if so then the same remained preserved till the date, when they were handed over to the police or even on the point that on which particular date, month or year, the same were handed over to the police Strangely, she did not even say that any clothing of the victim had been handed over by her to the police.

24. Then referring to the testimony of PW9-Gurpreet Singh, who was Malkhana Moharrir of the concerned police station. He tendered his affidavit Ex. PW9/A in evidence submitting therein that on 10.12.2020, he handed over a sealed parcel containing clothing of the victim i.e. seminal stained shirt and salwar to the PW12-Constable Harpreet Singh, who had got prepared docket of the same from the office of SSP, Moga and had deposited the same with FSL, Mohali. He made no mention of the fact that when the above said clothing of the victim had been deposited in the Malkhana and by whom and also that the same had remained intact till 10.12.2020. Interestingly, there is no mention at all in his statement of the fact that any parcel containing vaginal swabs of the victim was also deposited in the Malkhana at any point of time, the same had remained intact or even that the same was handed over to any police official by him for the purpose of its forensic examination. Even PW12-Constable Harpreet Singh, in his sworn affidavit Ex. PW12/A, stated that a parcel containing seminal stained clothing of the victim had been handed over to him by the Malkhana Incharge Gurpreet Singh on 10.12.2020 and was deposited by him wit FSL, Mohali on 11.12.2020. No link evidence has come on record to show that the vaginal swabs and blood samples of the victim,

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which were stated to have been taken by PW3-Dr. Simrat Kaur Khosa on 28.10.2020 were either deposited in the Malkhana or remained with PW-3, or the same remained preserved till date when they had reached FSL, Mohali and as to who had taken these vaginal swabs and blood samples and deposited the same with FSL, Mohali.

25. Then PW8-Basant Singh, who had also joined investigation on 28.10.2020, deposed that on 28.10.2020, the clothing of the victim was handed over to the Investigating Officer, which was sealed and converted into a parcel and was taken into possession by the police. Though, he deposed about collecting two parcels from the Medical Officer, Civil Hospital, Moga on 09.11.2020 and handing over them to Malkhana Moharrir of Police Station Kot Ise Khan on the same day and stated that the Malkhana Moharrir had again handed over these parcels along with envelopes to him for depositing the same with FSL and after taking the docket from the office of SSP, Moga, he had deposited the same with FSL, Kharar in an intact condition but not even a single word was uttered by him to the effect that these parcels were containing vaginal swabs and blood samples of the victim. More so, as already discussed, PW9-Gurpreet Singh, who was Malkhana Moharrir, did not say that any such blood samples or vaginal swabs were handed over to him on 09.11.2020 and he had given the same to PW8 Basant Singh for depositing the same with FSL, Kharar. There is not evidence to prove that the vaginal swabs and blood samples so taken by the PW3 were not contaminated or manipulated. It is the duty of the prosecution to prove every step to preserve the sample or manipulation/contamination as the absence of proof of such step will certainly cause a dent in the story of the prosecution. PW3 has also

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remained silent about the procedure, if any, taken by her before and after taking the sample, what to talk about any precaution during the process of obtaining such sample. The Investigating Officer has also not deposed that PW3 had given the blood samples/vaginal swabs in FTA Card and in a sealed cover to him. It was obligatory upon the prosecution to prove by leading positive evidence that every precaution had been taken to keep the blood samples/vaginal swabs of the victim in a safe condition right from obtaining the same till the same were submitted by the police to the authorities FSL concerned for DNA profiling. In the absence of a positive evidence, nothing can be presumed. It was for the prosecution to rule out the possibility of the samples being contaminated or tampered with. In the absence of evidence how the samples were collected as well as the fact that they were properly preserved or not, it will not at all be safe to rely upon the DNA report. As such, the position that emerges is that there is an important break in the chain of link evidence to prove that the vaginal swabs, which were taken by PW3 at the time of conducting medical examination of the victim were the same which were deposited with FSL, Kharar on 10.11.2020 and the same had remained properly collected, packaged and preserved.

26. It is also well settled law that the prosecution is necessarily required to examine the witnesses, who were in the custody of the samples to prove that while in their custody, the seals of the samples had not been tampered with and the same remained preserved. In the absence of the same, the prosecution cannot be held to have brought home the offences against the accused. The blood samples and vaginal swabs of the victim were taken on 28.10.2020. The doctor, who had taken those samples, did not say that the

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same remained with her in an intact condition and the same were properly sealed. She did not even depose about handing over the same to any police official at any point of time. As such the position that emerges is that the chain linking the vaginal swabs and blood samples of the victim, which were deposited in the Malkhana by PW8-Basant Singh is broken one and, therefore, it cannot be stated that the samples, which were deposited on 11.12.2020 before the FSL, Kharar were of the victim and of none else.

27. So far as the blood samples of the accused are concerned, PW13-Dr. Raj Bahadur, who had conducted the medical examination of the accused, deposed about taking his blood samples as well for DNA analysis and sealing the same with his seal and then handing over the same to some police official but his testimony has also remained totally silent on the point as to on which date, month and year, the samples had been handed over to the police. Even PW8-Basant Singh did not say as to the samples, which were handed over to him on 09.11.2020, were the blood samples of the accused or of the victim or of both ? Therefore, the position that emerges is that there is a serious gap in the chain of link evidence and it has totally remained unexplained on the part of the prosecution and due to this fact, the DNA report cannot be said to be having a clinching or high degree of probative value as it has not at all been proved beyond doubt that the vaginal swabs as taken by PW3 as well as blood samples as taken by PW13 were of the victim and accused, respectively, and were the same, which were taken by these doctors and further the same had remained properly packaged and preserved. The trial Court did not take all these points into consideration and, therefore, it is held that the findings as given by the trial Court that the link evidence had been established and proved

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that the accused had committed the act of penetrative sexual assault upon the victim are liable to be reversed.

28. Accordingly, in view of the discussion as made above, the present appeal is allowed. The impugned judgment of conviction and order on quantum of sentence, as passed by the trial Court, are set aside. The appellant is acquitted of the charges framed against him. His bail/surety bonds be discharged.

11.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes