



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 821 OF 2022

Ganesh S/o Shahaji Parkale,
Age : 30 years, Occup. : Agri.,
R/o. Pimpri Ghumari,
Tq: Ashti, Dist. Beed.

...Appellant
[Orig. Accused]

Versus

1. The State of Maharashtra,
Through: The Police Station Officer,
Bhingar Camp Police Station,
Ahmednagar, Dist. Ahmednagar.

2. Victim 'S'

...Respondents

.....
Mr. Ajit B. Chormal – Advocate for the Appellant
Mr. B. B. Bhise – APP for the State
.....

WITH
CRIMINAL APPLICATION NO. 3125 OF 2025
IN
CRIMINAL APPEAL NO. 821 OF 2022
.....

CORAM : NEERAJ P DHOTE, J.

RESERVED ON : 24.09.2025
PRONOUNCED ON : 13.10.2025

JUDGMENT : -

1. This is the Appeal against Conviction under Section 374(2) of the Code of Criminal Procedure [for short "Cr.P.C."], as the Appellant is convicted by the learned Additional Sessions Judge, Ahmednagar, *vide* the Judgment and Order dated 22.09.2022 in Special Case No. 264 of 2019, for the offences punishable under Sections 376(2)(n) of the

Indian Penal Code [for short “IPC”] and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act [for short “POCSO Act”], and sentencing him to suffer Rigorous Imprisonment for a period of ten [10] years and fine of Rs.5,000/-, in default, to suffer Simple Imprisonment for one [1] month under Section 6 of POCSO Act.

2. The case of the Prosecution, as revealed from the Police Report, is as under : -

[a] The Informant resides at Burhannagar, Tal. & Dist. Ahmednagar, with his family comprising wife and two daughters. His younger daughter (Victim) was studying in 12th std., in March-2019. On 14.03.2019, the Informant and his wife left home at 09:00 am for work. The Victim had come home a day prior as her exam was over and therefore, she was at home. In the evening at 07:00 p.m., when the Informant and his wife returned home, they did not find Victim in the house. They inquired about the Victim, however, she could not be traced. The Informant went to Bhingar Camp Police Station and lodged report at Exh. 19. After five (5) months, the Informant's daughter was found with the Appellant at Bolhegaon Shirur and the Police brought the Victim and the Appellant to the Police Station. The Informant went to the Police Station. It was

revealed that the Appellant took the Victim with him and they went to different places where the Appellant established sexual relations with the Victim. The Appellant was known to the Informant as he was the resident of the village where the maternal uncle of the Victim was residing.

- [b] The statement of the Victim was recorded and the Victim was sent for medical examination. The clothes of the Victim were seized. The Appellant was sent for medical examination. The clothes of the Appellant came to be seized. The Victim showed the places where she went with the Appellant. The statement of witnesses were recorded. The Victim was found to be pregnant. Pregnancy was terminated under medical advice. The blood samples of the Victim and the Appellant and the samples of foetus were collected and sent for Chemical Analysis. The articles collected during the investigation were also sent for Chemical Analysis. The necessary documents were collected including the C.A. report showing the Appellant and the Victim as the biological parents of the foetus, and the Appellant came to be Charge-sheeted for the offence punishable under Sections 363, 376(2)(N) of the IPC and Sections 4, 5(2)(J)(L)/6 and 8 of the POCSO Act.

3. The learned Trial Court framed the Charge against the Appellant *vide* Exh. 6 for the offence punishable under Sections 363, 376(2)(n) of the IPC, Sections 4, 6 and 8 of the POCSO Act, to which the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all eighteen (18) witnesses and brought on record the relevant documents. The witnesses examined by the Prosecution were cross-examined on behalf of the Appellant. After the Prosecution filed Evidence Closure *Pursis* at Exh. 124, the learned Trial Court recorded the statement of the Appellant under Section 313(1)(b) of the Cr.P.C. at Exh. 125. The Appellant denied the evidence and the case of the Prosecution. After hearing both the sides and appreciating the evidence on record, the learned Trial Court convicted the Appellant as above.

4. It is submitted by the learned Advocate for the Appellant that, the evidence of the Victim does not show that she was subjected to sexual assault by the Appellant. The age of the Victim was not established. The Victim was major at the time of the incident. The samples for DNA were not collected as required under the prescribed procedure and, therefore, the DNA report cannot be taken into consideration. The Appellant has denied his case in the statement recorded under Section 313 of Cr.P.C. The learned Trial Court did not appreciate the evidence in right perspective and the Appeal be allowed

by setting aside the Conviction and the Sentence. In support of his submissions, he cited Judgments, which would be considered at the later point.

5. It is submitted by the learned APP for the State that, the evidence on record goes to show that, the Victim was minor at the relevant time. The birth certificate of the Victim is admitted by the Appellant. The age of the Victim was proved by the relevant evidence of the Informant and the School record. The Victim's evidence is material and her evidence has proved the case against the Appellant. After the samples were collected, they were sealed and sent for examination. The DNA report and the medical papers brought on record support the Prosecution's case. The learned Trial Court has rightly considered the evidence on record and, therefore, the Appeal be dismissed. In support of his contention, he cited the judgments, which would be considered at later point of time.

6. It is submitted by the learned Advocate for the Victim that, the Victim took U-turn from her statement given to the Investigating Officer, and the evidence on record does not establish the Charge against the Appellant and the Conviction be set aside. He submitted that, being the Officer of the Court it was his duty to point out the proper aspects of the matter.

7. Heard all the sides. Scrutinised the evidence available on record.

8. The foremost aspect is the age of the Victim, as the Charge and Conviction is under penal Section of POCSO Act. Section 2(d) of the said POCSO Act, defines the term 'Child' as under :

2(d). "Child" means any person below the age of eighteen years.

9. The Informant is the father of the Victim. His evidence show that, the Victim's date of birth was 27.06.2002. The said date of birth is not specifically challenged in his cross-examination. The birth certificate showing birth of female child, which is the part and parcel of the record show that it was admitted by the Defence, and the same was marked as Exh. 37. The date of birth in the said birth certificate is the same which is deposed by the Informant as that of the Victim. The evidence of PW11 – Kashinath Maruti Hafse show that he was the Headmaster of the School where the Victim took admission in 5th Std., on 15.06.2011. His evidence show that, at the time of taking admission, the School Leaving Certificate of previous school was submitted. The entry at Sr. No. 4379 in the register of their school was in respect of the Victim showing her parents name and the date of birth as 27.06.2002. Except denial, nothing has come in his cross-examination so as to discard his testimony. True it is, that the school record of the first school attended by the Victim is not brought in evidence by the Prosecution,

however, that would not be fatal for the Prosecution in this case as the evidence discussed above is not seriously challenged by the Appellant. The evidence of PW8 – Dr. Yogesh Sakhari Sonawane, Medical Officer, show that, on 06.08.2019, his opinion for Victim's age was called and on the basis of X-ray report, he opined that the Victim was less than 18 years of age. Further, he accepted that the opinion relating to the age of the Victim was not conclusive. The date of incident is after 14.03.2019, which goes to show that at the relevant time, the Victim was nearing 17 years of age. From the evidence on record, it is established that the Victim was below the age of 18 years and, therefore, was the child at the relevant time.

10. The father of the Victim is examined as PW1 – Mubarak Khajubhai Shaikh. His evidence show that, he was not the witness to any of the incident constituting an offence. On 14.03.2019, after he and his wife left for the work and returned home in the evening, the Victim was not at home. The Victim was not located though searched by him. He went to the Police Station and lodged the report at Exh. 19. After five (5) months, the Police brought the Victim and the Appellant to the Police Station where Informant met Victim. The Victim told him as to what happened with her. The Victim told him about the sexual relations by the Accused with her. He knew the Appellant, as the Appellant was the resident of village of the Victim's maternal uncle. This witness set the criminal law in motion.

11. The Victim is examined by the Prosecution as PW2. The Prosecution's case mainly rests on her testimony. She is the prime witness of the Prosecution. Her evidence show that, she knew the Accused as he was the resident of the village of her maternal uncle where she used to visit during holidays. The Accused was married. On 15.08.2018, the Appellant threatened that, if she did not accompany him, he would kill her parents. The said incident was of Pimpri Ghumari. Thereafter, the Victim returned to her native. The Accused used to come to her native place. On 14.03.2019, the Appellant called her to the State Bank Square and she went. From there, the Appellant took her to Belwandi Phata, Taluka Shrigonda, where one room was hired and they both stayed there for five (5) months. At that place, the Appellant committed forcible sexual intercourse with her without her wish. Thereafter, the Appellant took her to Ozar on motorcycle, where the Appellant garlanded her. Thereafter, the Appellant took her to Golhegaon, Taluka Shirur, where one room was hired and they both stayed there for one (1) month. The accused established forcible sexual intercourse with her wherever they went. Thereafter, on 05.09.2019, the Police from Bhingar Camp Police Station came there and they brought both of them at Bhingar Camp Police Station. Her further evidence show that, on 05.09.2019, the Police recorded her statement. She identified her clothes, which were seized by the Police. She was

medically examined at the Civil Hospital where the Doctor told that she was pregnant of 16 weeks. She was hospitalised and underwent abortion.

12. It has come in the evidence of the Victim that, she had not stated correctly in her statement dated 05.09.2019, as the Accused had threatened her. She admitted that she never made any complaint to the Police or to the Court that, she had given incorrect statement on 05.09.2019. Her evidence that, the Accused threatened her was an omission/improvement. It has come in her cross-examination that, when Appellant inquired with her whether she was ready to go to her parents, she declined to go with her parents or anybody, though subsequently she made an application to go to her parents. Her evidence further show that, they both resided together like a married couple. She admitted that, during the period of five (5) months, she never contacted her family members. Her testimony show that, wherever she and Appellant resided, it was the residential area and she did not tell the owner that she was forcibly brought by the Appellant. Her further evidence show that, she eloped with the Appellant and, therefore, her testimony that, the Appellant threatened her to kill her parents if she did not accompany him is required to be seen with doubt. She further admitted that, she did not complain against the Appellant with Shirur Police Station. Her evidence further show that, her evidence that, the

Accused threatened her to kill her parents if she did not accompany him and took her to Belwandi Phata, Taluka Shrigonda, and hired one room and kept there for five (5) months during which period the Appellant established physical relations with her without her wish and the aspect of the Appellant established forcible physical relations with her, was an omission/improvement. The evidence of the Investigating Officer PW15 – Mangesh Kashinath Bendkoli show that the statement of the Victim was recorded on 05.09.2019 by lady Police Inspector Jayashri Kale, however, the said lady Police Officer is not examined by the Prosecution and, therefore, the defence lost an opportunity to prove the omissions/improvements.

13. The evaluation of the evidence of PW2 Victim goes to show that, she is not the witness of sterling quality. Her evidence show that, on material aspects there are omissions. The evidence of Victim goes to show that, though minor, she was of matured understanding. It is true that the consent by the minor for sexual intercourse is not a consent in the eye of law, however, her testimony cannot form the basis to maintain the Conviction. Her evidence is not concrete and is shaky. The Victim's evidence in respect of the Appellant committed forcible intercourse with her against her wish while they stayed in a rented room for five (5) months at Belwandi Phata, is inconsistent with her narration given by her to the Medical Officer while she was medically examined

on 05.09.2019. The Victim admitted that the MLC papers were based on her information, and thereafter, the Doctor has taken her signature. The said MLC papers were confronted to the Victim and marked Exh. 25, as she identified her signature on the same and also deposed of the same. The said MLC papers were also given Exh. 43 in the evidence of PW5 – Sandeep Jagannath Ghugare, the Medical Officer, and also referred to PW10 – Dr. Nandkumar Dnyanehwar Pokharkar, who examined the Victim on 05.09.2019. The evidence of PW5 – Sandeep Jagannath Ghugare show that, there were no symptoms of sexual assault and no genital injury on the Victim's body. Further, the evidence of PW9 – Dr. Rajashri Mishrilalji Pagariya, Medical Officer, Civil Hospital, where the Victim was hospitalised for termination of pregnancy, show that the Victim did not complain of forceful sexual intercourse on her. Further, it has come in the evidence of PW10 - Dr. Nandkumar Dnyanehwar Pokharkar that, in the history, the Victim did not narrate any forceful sexual assault on her. Therefore, the evidence of Victim by itself will not be sufficient to prove the Charge.

14. The evidence of PW10 – Dr. Nandkumar Dnyanehwar Pokharkar shows that, he was the Medical Officer at the Civil Hospital, Ahmednagar. On 05.09.2019, the Victim was brought for medical examination. He recorded the history and examined the Victim. He referred the Victim to the Gynaecologist, Dentist, Radiologist, and

Psychiatrist. The cross-examination of this Medical Officer shows that, his evidence was not disputed. The medical evidence further show that the Victim was found to be pregnant of 15 to 17 weeks. The Victim was admitted for the purpose of abortion and the abortion was done on 18.09.2019. The evidence of PW6 – Dr. Swati Maruti Fadtare, who was attached to the Civil Hospital at Ahmednagar, as Gynaecologist, where the Victim was admitted for abortion, show that she examined her and found her to be pregnant and the abortion process was started on 17.09.2019. The evidence of PW9 – Dr. Rajashri Mishrilalji Pagariya shows that, she was the Medical Officer in the Civil Hospital, Ahmednagar, where the Victim was admitted. She examined her on 13.09.2019 and gave opinion for medical termination of the Victim's pregnancy. The other Medical Officer PW7 – Dr. Mangesh Bhagwan Raut deposed that, on 18.09.2019, the process of abortion was already going on by prescribing medicine and on 18.09.2019, the Victim was spontaneously aborted. The medical evidence is not seriously challenged by the Defence. From the above referred medical evidence, it is established by the Prosecution that the Victim was medically examined and she was found to be pregnant and thereafter her pregnancy was terminated on medical advice.

15. The other evidence is in the nature of Chemical Analyzer report (for short 'CA report') at Exh. 123, showing that the Appellant

and the Victim were the biological parents of the abortus. The said CA report is brought on record in the evidence of PW18 – Dipak Yadav Kudekar, who was the Chemical Analyzer at Nashik. His evidence show that, on 11.09.2019, he received two sealed envelopes and two sealed plastic container containing blood sample of Victim and Accused for DNA test along with necessary papers. He extracted DNA from sample of abortus. On 19.09.2019, his office received one sealed plastic container containing abortus of Victim and found that the Appellant and the Victim were the biological parents of the Victim child. His cross-examination show that, collection of sample and transport is the important factor in the analysis of DNA test. He was not aware as to what procedure was followed by the Medical Officers while taking DNA sample. It has come in his evidence that the procedure followed for taking blood samples for general examination and for DNA analysis was different. Touching the samples by plastic or mouth also affect its analysis. He received the samples in plastic container. He did not receive any document as to in what condition the samples were preserved. 99.97% genes of human body were similar. Before receipt of the sample in the laboratory, he had no occasion to see the same. It has come in his evidence that the DNA science is based upon the theory of probability. It has further come in his evidence that he had not sent empty DNA kit to the concerned Police Station.

16. The learned Advocate for the Appellant placed reliance on the judgments in **Kattavellai @ Devakar versus State of Tamilnadu, 2025 LiveLaw (SC) 703** and **Nivrutti Nagorao Hange Versus State of Maharashtra and Another, 2024 All.M.R. (Cri) 3445**, to contend that the protocol for selecting and preserving the samples for DNA analysis is required to be followed and the chain of custody of samples is required to be established to rule out the possibility of contamination or tampering with samples and necessary precautions are required to be taken right from the beginning of samples for DNA till the final result of the analysis. According to him, the evidence on record nowhere show that, the said aspects were taken care of. According to him, the prosecution failed to establish the chain of custody of samples from the beginning to end.

17. The relevant observations from the judgment in Nivrutti Hange (supra) are reproduced as under :

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

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

One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Indian Evidence Act. Undoubtedly, an expert giving evidence

before the Court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the Court in forming its opinion on questions concerning foreign law, science, art, etc., on which the Court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.

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

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

*Undoubtedly, it is the duty of an expert witness to assist the Court effectively by furnishing it with the relevant report based on his expertise along with his reasons, so that the Court may form its independent judgment by assessing such materials and reasons furnished by the expert for coming to an appropriate conclusion. Be that as it may, it cannot be forgotten that opinion evidence is advisory in nature, and the Court is not bound by the evidence of the experts. (See *The State (Delhi Administration) v. Pali Ram*, MANU/SC/0189/1978 : (1979) 2 SCC 158; *State of H.P. v. Jai Lal and Ors.*, MANU/SC/0557/1999 : (1999) 7 SCC 280; *Baso Prasad and Ors. v. State of Bihar*, MANU/SC/8723/2006 : (2006) 13 SCC 65; *Ramesh Chandra Agrawal v. Regency Hospital Ltd. and Ors.* (supra); *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors.*, MANU/SC/1416/2009 : (2010) 2 SCC (Cri.) 299).*

33. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more

important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party”.

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

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

....

Collection and Preservation of Evidence

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

....

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

DNA evidence involves comparison between genetic material thought to come from the person whose identity is

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

....

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

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

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

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

38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific

Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the Accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.

(Emphasis supplied)

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

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

18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA

profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory". (Emphasis supplied)

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

"60. We may observe that the Maharashtra Police Manual¹, when speaking of the integrity of scientific evidence in Appendix XXIV states -

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

61. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to "Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers - Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India"² which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken "Must be submitted in the laboratory without any delay."

62. The document also lays emphasis on the 'chain of custody' being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person

handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item."

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

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

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

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

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

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

"39. The question is, based on the DNA reports, whether the conviction and/or sentence passed by the trial court would be sustainable. We have gone through the impugned judgment. The

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

10. Maintaining the chain of custody:

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

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

18. The relevant observations from the judgment in Kattavellai

@ Devakar (supra) are reproduced as under : -

DNA- A NECISSITATED ADDENDUM:

43. *As we have discussed earlier in this judgment, the DNA evidence collected has been rendered unusable. It suffers from various shortcomings in as much as there is large amount of unexplained delay; the chain of custody cannot be established; possibility of contamination cannot be ruled out etc. We have also referred to instances in the recent past where, similar to the case at hand the DNA evidence was rendered unusable on account of similar lapses. A perusal of the various documents released by a number of bodies such as the Standard Operating Procedure for Crime Scene Investigation issued by the Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India⁴⁸;*

Guidelines for collection, storage and transportation of Crime Scene DNA samples issued by the Central Forensic Science Laboratory, Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India⁴⁹; a Forensic Guide for Crime Investigators (Standard Operating Procedures) issued by LNIN National Institute of Criminology and Forensic Science, Ministry of Home Affairs, Government of India⁵⁰ show that, although, procedures have been suggested, there is no uniformity nor there is a common procedure which is required to be followed by all investigating authorities. This, obviously, has the potential to have an impact on the cases investigated. When it comes to procedure followed by the police generally, differences therein are understandable keeping in view the difference in society, regional complexities as also other factors given the wide length and breadth of the Country, however, the same yardstick cannot be applied when it comes to sensitive evidence such as DNA for the concerns, causes of its dilution in evidentiary value and requirements for it to be collected and maintained in pristine condition is not subject to the same factors. So, even though 'Police', 'Public Order' are subjects mentioned in List-II of the Seventh Schedule of the Constitution of India that in itself cannot permit differing procedures and sensitivities to such evidence, to rule the roost. The aspects in which we find there to be errors committed regularly are in fact procedural aspects which aid the sanctity of the evidence.

44. *This lack of a common procedure to be followed, is concerning. As such, we issue the following directions which shall be followed henceforth, in all cases where DNA Evidence is involved:*

1. *The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence,*

but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.

- 2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48- hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.*
- 3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.*
- 4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.*

The Directors General of Police of all the States shall prepare sample forms of the Chain of Custody Register and all other documentation directed above and ensure its dispatch to all districts with necessary instruction as may be required.

19. PW7 – Dr. Mangesh Bhagwant Raut was the Medical Officer in the Civil Hospital at Ahmednagar and was on duty on 18.09.2019. On that day, after the Victim spontaneously aborted, he took samples of product of conception and sealed the same as per manual and handed over the same to the Police Constable Adsul. Evidence of PW12 – Adsul show that, he was the Policeman attached to Bhingar Camp Police Station and was deputed to deposit DNA sample of product of conception and accordingly, on 18.09.2019, at 11:30 a.m., he took samples in sealed condition from the Medical Officer, Civil Hospital, Ahmednagar, and came to the Police Station, and I.O. prepared report and thereafter he went to Nashik with sample report by S.T. bus and deposited the same with the concerned Clerk, who gave acknowledgement to that effect. This evidence on record goes to show that, after collecting the samples of conception by PW7 – Dr. Mangesh Bhagwan Raut, it was handed over to PW12 – Santosh Bhausaheb Adsul, who deposited the same to the concerned Clerk. However, the said concerned Clerk is not examined by the Prosecution.

20. The evidence of PW16 – Dr. Shritej Ashok Jejurkar show that, he was attached to Civil Hospital at Ahmednagar as Medical Officer and on 10.09.2019, he was on duty. The Appellant was brought at Bhingar Camp Police Station for DNA samples. Accordingly, he collected the samples by preparing the papers. He took the blood samples of

Appellant in an empty kit sent by Laboratory of Chemical Analyzer and after preparing necessary documents, sealed the kit and handed it over to Police Constable of Bhingar Camp Police Station. It has come in his cross-examination that there was scored portion in date and time, and the MLC number and FIR number were not mentioned. He admitted that, the samples drawn from the patient are required to be preserved in proper condition and he was not knowing whether the facility of preserving blood samples was available in the Civil Hospital. The evidence of this witness do not show as to who was the Police Constable to whom the sample was handed over. The said Police Constable is not examined.

21. The evidence of PW17 – Dr. Ashojk Ramchandra Khatke show that, he was attached to the Civil Hospital at Ahmednagar as Medical Officer, and on 10.09.2019, he was on duty. The Police Constable Adsul brought the Victim for collection of DNA samples. He took the DNA samples in the kit, which was brought by the Police, prepared papers and handed over the sealed packet to the Police Constable. It has also come in his cross-examination that, the samples drawn from the patient are required to be preserved in proper condition and he did not know whether the facility of preserving blood samples was available in the Civil Hospital. It has come that, the MLC number and FIR number were not mentioned and he cannot tell whether the

MLC number was written on the kit when he received the same. However, the evidence of PW12 – Adsul, discussed in Paragraph No. 19, show that, he had collected the samples in a sealed condition from the Medical Officer, Civil Hospital at Ahmednagar on 18.09.2019 and deposited the same with the concerned Clerk. His evidence nowhere show that he collected the samples of the Victim from PW17 – Dr. Ashojk Ramchandra Khatke on 10.09.2019. Thus, his evidence gives rise to two possibilities. One, that he collected only the samples in respect of product of conception on 18.09.2019 from PW7 – Dr. Mangesh Bhagwan Raut. Two, that he collected the samples from PW7 - Dr. Mangesh Bhagwan Raut and PW17 – Dr. Ashojk Ramchandra Khatke on the same day. If that is so, the samples of the Victim drawn by PW17 - Dr. Mangesh Bhagwan Raut on 10.09.2019 remained in the Civil Hospital for eight (8) days i.e. till 18.09.2019.

22. The evidence of PW15 – Mangesh Kashinath Bendkoli, the Investigating Officer, show that, on 11.09.2019, the DNA samples of the Appellant and the Victim and the clothes were sent to the Chemical Analyzer for analysis through Police Hawaldar Ghorpade.

23. The evidence of PW13 – Sanjay Karbhari Ghorpade show that on 11.09.2019, he was deputed for depositing muddemal i.e. clothes of the Victim and the Accused, four sealed bottles and DNA sample of the Victim and the Accused and two sealed packets which

were in DNA kit to the Chemical Analyzer and accordingly, he went to Nashik and deposited the same. On the contrary, the evidence of PW18 – Dipak Yadav Kudekar, who was the Chemical Analyzer at Nashik Laboratory, show that on 11.09.2019, he received two sealed envelopes and two sealed plastic containers containing blood samples of the Victim and the Appellant for DNA. This evidence show variance in the number of articles as deposited by PW13 – Sanjay Karbhari Ghorpade and PW18 – Dipak Yadav Kudekar.

24. The above discussed evidence show that, the complete chain of handling the samples for the DNA is not established. There are missing links to complete the chain of handling the samples for DNA right from drawing the samples till the report of its analysis. Considering the above referred evidence in respect of DNA samples in the light of the above referred legal position, it will not be possible to accept the DNA report showing the Appellant as the biological father of the abortus of the Victim.

25. The learned APP in support of his submissions relied on the judgments in (1) **Ganesan v. State Represented by its Inspector of Police**, AIR 2020 SC 5019, (2) **Jarnail Singh v. State of Haryana**, 2013 Cri. L. J. 3976, (3) **Sunil s/o Fattesing Sable Versus The State of Maharashtra**, Criminal Appeal No. 718 of 2016 decided by the Division Bench of this Court on 3rd October, 2023, and (4) **Anil Vs. The State of Maharashtra**

and Ors., MANU/MH/3187/2024, on the point that the Conviction can be maintained on the sole testimony of the Victim when found to be trustworthy and reliable, and the consent in rape is incomprehensible. The said judgments are on the evidence available in the respective cases. At the case at hand the testimony of the Victim is not accepted for not meeting the standard of the sterling witness, and the other corroborated evidence not taking the case of prosecution any further, the presumption under Section 29 of the POCSO Act will not come into play. The other evidence of the panch witnesses do not take the case of the Prosecution any further to prove the Charge. The other C.A. reports at Exh. 71, 72 and 73 in respect of the clothes, blood samples and the nail-clippings of the Appellant and the Victim also do not take the case of the Prosecution any further in proving the Charge. On re-appreciation of the evidence available on record, as discussed above, it is not possible to maintain the Conviction recorded by the learned Trial Court against the Appellant. Interestingly, the learned Trial Court has acquitted the Appellant of the Charge for the offence punishable under Section 363 of the IPC. Hence, the following order is passed:

ORDER

- [i] The Appeal is allowed.
- [ii] The Judgment and Order dated 22.09.2022 passed by learned Additional Sessions Judge, Ahmednagar, in Special Case No. 264 of 2019, convicting and sentencing the Appellant, is hereby quashed and set aside.

- [iii] The Appellant is acquitted of the offences punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012.
- [iv] Fine, if paid by the Appellant, be refunded to him.
- [v] The Appellant be released forthwith, if not required in any other Crime.
- [vi] Muddemal articles be dealt with as per the operative order of the learned Trial Court.
- [vii] Fees of learned Advocate, Mr. R. C. Bora, appointed to represent Respondent No. 2, is quantified at Rs. 10,000/- [Rupees Ten Thousand], which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.
- [viii] Pending Application, if any, stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde