



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 179 OF 2024

Suraj s/o Rajesh Wankhede,
Aged about 25 years, Occu – Labour,
R/o Old Bagadganj, Near NIT Garden,
C/o Pravin Kaware, Police Station
Nandanwan, Tq. & Dist. Nagpur.

...Appellant

// VERSUS //

The State of Maharashtra.
through Police Station Officer,
Police Station Nandanwan,
Tq. and Dist. Nagpur.

... Respondent

Mr. Yash Venkatraman, Counsel for the Petitioner,
Ms. Sonia Thakur, Addl.P.P. for the Respondent.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 14th October, 2025.

Pronounced on : 17th November, 2025.

JUDGMENT:

1. The appellant has preferred the present appeal assailing the judgment and order dated 04.04.2022, passed by the Learned Principal District & Sessions Judge, Nagpur; under the Protection of Children from Sexual Offences Act

(hereinafter referred to as the “*POCSO Act*”), in Special (POCSO) Case No. 325 of 2018, whereby the appellant/accused, is convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 376(2) (n) of the Indian Penal Code and Section 6 of the POCSO Act and is sentenced to suffer Rigorous Imprisonment for 10 (ten) years and to pay a fine of Rs. 25,000/- (Rs. Twenty-Five Thousand only), in default, he shall suffer further imprisonment for 3 (three) months.

2. The prosecution's case, in brief, is that the victim, aged 17 years, was a resident of Nandanwan Zopadpatti, Galli No. 9, Behind KDK College, Nagpur, and she came in contact with the accused. In December 2017, PW1, along with Pushpa Bai, a contractor and other women, came to the Lawn for a catering services at a wedding. This event was a three-day programme. There she met a boy, “Lucky”. They allegedly had consensual sex for two times in a room. After the event was over, they both went their separate ways. During this three-day programme, the victim did not complain to the contractor or any other women she was accompanying with. In May 2018, the mother of the victim came to know that the victim was pregnant. She was taken to a Doctor, who referred her to Priyadarshani Women's Hostel, where the victim, as per the say of her mother, registered herself under a false name and also falsely claimed that she came in contact with one 'Lucky' and established relations with him because she

wanted to avoid ignominy. The Superintendent of the Hostel came to know about the pregnancy, and accordingly, a complaint was registered with the police station and during the investigation, the victim gave her correct name and also gave information about the present accused. The victim thereafter delivered a baby on 17.10.2018.

Thereafter, the investigation was carried out. The accused was arrested. The DNA samples of the accused, victim and the child born were obtained and sent for chemical analysis. The charge sheet was filed. The charge was framed by the Trial Court under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 376(2) (n) of the Indian Penal Code and Section 6 of the POCSO Act.

3. During the course of the trial, the prosecution examined eight witnesses, PW1-Siba Suraj Paswan (Exhibit 18), PW2 Anand Bhagwatrao Pagare (Exhibit 23), PW3 Sunita Shripatrao Yuvnate (Exhibit 25), PW4 Pravin Wasudeo Nimbarte (Exhibit 28), PW5-Dr Dipak Narayan Madvi (Exhibit 34), PW6-Dr Priyanka Narayan Shelkar Exhibit 42, PW7-Ankita Vivek Dikshit (Exhibit 43), PW8-Rupali Devaji Bavankar (Exhibit 56).

4. Upon closure of prosecution evidence, the appellant was examined under Section 313 of the Code of Criminal Procedure, brought before the learned Trial

Court through Exhibit No. 65, wherein he denied all incriminating circumstances and claimed false implication.

5. Considering the comprehensive appreciation of evidence brought on record, the learned Sessions Judge found that the victim was a “child” within the meaning of Section 2(1)(d) of the POCSO Act as she was aged below 18 years at the time of alleged incidence. It was observed that the prosecution had successfully established the foundational facts of the case and had proved its case beyond a reasonable doubt on multiple counts. The testimony of the victim was found to be dented yet reliable. The learned Trial Court observed that the victim was worried about ignominy; otherwise, there is nothing in the evidence of the victim, which could create any doubt in respect of testimony.

In the elaborate statement under Section 164 of Cr.P.C., she has narrated the very same incident. Further, the Trial Court observed that the expert witness, PW 7 Ankita Dixit, identified the DNA report and had categorically stated that the victim and the accused were biological parents of the child delivered by the victim. She has also deposed that two kits were issued by her office and that on the very same day, samples were given by the police. She has proved the report at Exh. 46. On this count, the Court concluded that the accused had committed penetrative sexual assault on the victim, and since the victim was below the age

of 18 years at the relevant time, coupled with the statutory presumption under the POCSO Act, all the necessary ingredients can be said to have been made out.

6. Being aggrieved by the said judgment and order of conviction and sentence, the appellant has preferred the present appeal before this Court.

7. The learned Counsel for the appellant has assailed the findings of the Trial Court on multiple grounds. The appellant contended that the learned Trial Court erred in concluding that the victim was under the age of 18 years at the time of the commission of the alleged crime. The reliance on the birth certificate allegedly issued by the Nagpur Municipal Corporation at Exh. 21 is misplaced since there is admittedly an inordinate delay in the issuance of the said birth certificate. In fact, it is argued that the same has been suspiciously issued only after the investigation of the present crime was initiated. It was further contended that an undue reliance has been placed on a questionable birth certificate along with the inconsistent testimony of the victim, which does not sufficiently prove the victim's age.

8. It is further contended that the Victim's testimony, as well as the DNA report, is questionable and that the reliance placed thereon is completely

erroneous. Further, it was contended that the victim's version of the alleged incident has changed throughout the investigation and each of her statements is inconsistent, making her statement completely unreliable. In fact, the victim's version of the story also differs from that of her mother's statement made under Section 164 Cri.P.C.

9. Further, it is argued that the learned Trial Court's reliance on the DNA report at Exh. 46 is fallible. The learned Trial Court failed to see that the alleged blood samples were received from the investigating authorities on 19.11.2018, however, the analysis was completed only on 18.04.2019, after almost 6 months of receiving the blood samples. Thus, there was an inordinate and unexplained delay in completing the DNA analysis, which leaves ample room for the possibility of contamination and tampering of the blood samples, making this piece of evidence completely unreliable. It was further contended that the independent witness was not examined by the learned the Trial Court which has caused grave injustice to the appellant.

10. Lastly, it was argued that the learned Trial Court failed to consider that the Supplementary Statement of the Victim is not on record and there are material discrepancies regarding the date of the incident itself. Pertinently, the discharge summary of the Victim shows that she delivered the child after

completion of a 37-week full term on 17.10.2018. This would imply that the alleged sexual relations ought to have been established in and around the last week of January 2018, whereas the FIR states that the date of the alleged incident was 01.12.2017. Even the timeline of incidents proposed by the mother of the victim in her statement before the learned Magistrate makes the version of victim suspicious. The learned Trial Court, ignoring these material discrepancies, has wrongly convicted the appellant.

11. The appellant has placed reliance in support of his submissions on *Chaitanya Barman v. State of West Bengal and Another*, 2021 SCC OnLine Cal 2429; *State of Sikkim v. Girjaman Rai and Others*, 2019 SCC OnLine Sikk 50; *Sachin s/o Vitthalrao More v. The State of Maharashtra Criminal Appeal No.136 Of 2024*; *Ashik Ramjail Ansari v State of Maharashtra*, 2023 SCC OnLine Bom 1390; *Ravi Anandrao Gorpude v. State of Maharashtra* 2017 ALL MR (Cri) 1509; *Nivrutti v. State of Maharashtra* 2024 SCC OnLine Bom 3068; *Rahul V. State (NCT of Delhi) (2023) 1 Supreme Court Cases* 83.

12. *Per contra*, the learned Additional Public Prosecutor argued in support of the impugned judgment and order passed by the learned Sessions Judge and Special Judge and submitted that the conviction is based on a thorough and

careful appreciation of the oral and documentary evidence on record. The learned APP argued that the findings of the Trial Court are well-reasoned and legally sound and thus warrants no interference.

13. The learned APP submitted that the birth certificate produced on record is proper and does not require formal proof by oral evidence. No objection was raised by the defence at the relevant stage, questioning either the authenticity or admissibility of the said document. The learned APP submitted that the birth certificate produced on record is a public document within the meaning of the Indian Evidence Act and does not require formal proof by oral evidence. She further submitted that, in any event, the said document has been duly proved by the Investigating Officer during the course of the trial. No objection was raised by the defence at the relevant stage, questioning either the authenticity or admissibility of the said document. Therefore, the same warrants no interference at this stage.

14. It is further contended by the learned APP that the DNA report conclusively establishes that the victim and the appellant are the biological parents of the child delivered by the victim. This scientific evidence corroborates the testimony of the victim and clearly establishes the commission of offence.

15. Learned APP further contended that reliance on DNA evidence, added the procedural chain from the collection of samples to the issuance of the DNA report is complete and has been clearly brought on record through the deposition of the Investigating Officer. There is no evidence to establish delay, tampering, or contamination of samples.

16. Finally, it was submitted by the learned APP that even if there is some discrepancy regarding the exact date of birth of the victim, the evidence on record consistently establishes that she was a minor at the time of the incident, being well below the age of 18 years. The prosecution has placed sufficient material on record, including the birth certificate and DNA report which has not been seriously challenged during the trial. The presumption under Section 29 of the POCSO Act, therefore, stands fully attracted in the present case. Accordingly, it is submitted that the prosecution has successfully proved the guilt of the appellant beyond a reasonable doubt, and as such no interference with the judgment of conviction and sentence passed by the Trial Court is warranted.

17. Before undertaking an analysis of the legal issues and the contentions advanced by the parties, it is incumbent upon this Court to carefully examine

the oral and documentary evidence brought on record by the prosecution during the trial before the Special Court.

18. PW1-Victim states that she is a student studying in 12th Standard at Dadasaheb Dhanwate College. She lives with her mother, younger sister, and brother. The victim met the accused in July 2017 near a park. They started communicating via phone, and she introduced him to her mother. The accused frequently visited her house and sometimes dropped her off at college. Physical relations were established at her house in absence of her mother. The mother was angered after a neighbor informed her of the regular visits of accused and subsequently asked the accused not to come to the house. A quarrel also occurred at the house of the accused in the month of February 2018.

The victim's menstrual cycle stopped in February 2018. She was taken to Government Hospital at Sakkardara for checkup however she avoided to conduct Sonography. Later, in the month of May 2018, a medical checkup at Dr. Jivtode's Hospital confirmed her pregnancy. On October 17, 2018, she delivered a child at Mayo Hospital after being transferred from Priyadarshani Women's Hostel. She was admitted to Mayo Hospital for 8 days, where doctors collected blood samples of the victim and the child. On October 18, 2018, when the police first recorded her statement, she did not name the accused, instead named a boy called 'Lucky'. On October 26, 2018, she gave a supplementary statement

to the police where she revealed the name of the accused for the first time. She also gave contradictory statements about the identity of Lucky. In her previous statement she told the police that she had a love affair with a boy named "Lucky." She stated to the Superintendent, Priyadarshani Women's Hostel, that she was impregnated by a boy named "Lucky." She stated, at the time of delivery in Mayo Hospital, that her boyfriend was "Lucky." She then denied having a relationship with said "Lucky". She claims that she stated the name "Lucky" to the police and hospital/hostel authorities because she was frightened. She asserts that she did not lodge a report against Lucky in March 2018, however lodged a report against the accused, at Nandanwan Police Station in March 2018. She previously told the police that her mother and father are no more (deceased).

Her previous testimony reveals that she was staying with her mother, sister, and brother. In her statement under S.164 given to the learned Magistrate, she stated that the accused used to follow and harass her, however, the same is not mentioned in her deposition. There was further inconsistency about the accompaniment of her mother at the time of birth of the child. In her statement under S. 164 Cr.P.C., she stated that she delivered child in presence of a nurse from Mayo Hospital. In her testimony, she states that her mother was with her at the time of delivery. During her examination before the learned Court it has not

come on record if she was forcefully induced by the accused to have sexual relations with him and that she had prevented the accused from establishing such relations.

19. PW2- Anand Bhagwatrao Pagare (Exhibit 23) NPC (Buckle No. 687), has been attached to Sadar Police Station since 2017. On instructions from PSI Ghuge, he received a sealed DNA kit with a C.A. (Chemical Analyser) form. His duty was to deliver it to the Government Laboratory, Nagpur. On the same day i.e. on 25/10/2018, he delivered the kit and obtained an acknowledgment receipt (Exh. 24) generated on a computer and signed by Clerk Shri Girdhari Sayam. In cross-examination, objection was raised on the receipt's admissibility because it lacked an official seal or officer's signature. The learned Trial Court overruled the objection, accepting the argument that it was a computer-generated receipt signed by a clerk. PW2 denied the necessity of obtaining acknowledgment on a separate letter issued in the Laboratory's name and stated his name was not on the alleged letter. In cross-examination, he further denied being issued with a formal duty pass, however, volunteered that the transfer of the DNA kit was recorded in the Station Diary by the I.O. He could not recollect the exact time he received the kit or the exact time he handed it over to the C.A. office. He denied that the sample he carried was not in a sealed condition. He denied that the word 'seal' was struck out from the receipt (Exh. 24). He denied

that the receipt was not given to him or that the clerk's signature was absent. He further confirmed delivering the sealed DNA kit to the laboratory on time, and while his memory of the exact timing was weak, he firmly defended the proper procedure and the integrity of both the sample and the acknowledgment receipt.

20. PW3- Sunita Shripatrao Yuvnate (Exhibit- 25) has been attached to the Sadar Police Station since 2016. She was present when PSI Ghuge recorded the victim's supplementary statement. The victim's mother and the staff of the Priyadarshini Girls' Hostel were also present. During cross-examination, she confirmed that the victim stated her name and address to the Investigating Officer, and specifically that the victim stated her real name.

21. PW4- Pravin Wasudeo Nimbarte (Exhibit- 28) is a Police Constable attached to Nandanwan Police Station since November 2018. He received a requisition letter (Exh. 29) issued by the I.O. to the Deputy Director, Forensic Science Laboratory (FSL), Nagpur, and accordingly collected the DNA kit from the FSL. As per the I.O.'s direction and with a requisition letter (Exh. 30), he took the accused to the Govt. Medical College and Hospital, Nagpur, for examination. He handed the DNA kit to the Medical Officer (M.O.), who then collected the blood sample of accused inside the kit. The M.O. then returned the kit to the Constable in a sealed condition. He returned to the police station,

received a new letter from the I.O. (Exh. 31) requesting an opinion on the DNA test, and personally submitted the sealed DNA kit and form to the Deputy Director of the FSL. He obtained an acknowledgment receipt (Exh. 32) from the Laboratory, identifying the clerk's signature, which was placed in front of him. He then handed the receipt to the I.O. He denied receiving an oral order from I.O. He strongly denied the compromising integrity of the process. He denied that he failed to collect the DNA kit, take the accused to the hospital, or deposit the blood samples with the FSL.

22. PW5- Dr. Dipak Narayan Madvi (Exhibit- 34) Pediatric MD with 14 years of experience at IGMC, treated a low-birth-weight child with respiratory problems who was transferred from the Gynaecology Department on October 17, 2018. After 6-7 days of treatment in the Pediatric Department, the child's condition improved, and they were transferred back to Gynaecology Department. The child was ultimately discharged on November 24, 2018. There was no question regarding the identity of the child or its mother. Further, there was no question asked about the age of the victim or whether such a problem had occurred due to the premature birth of the child.

23. PW6- Dr. Priyanka Narayan Shelkar (Exhibit 42) is an MBBS, M.S. (Gynaecology) who has been practising for four years and worked at IGMC as a

Senior Resident Doctor from 2017 to 2019. She confirmed that the victim was admitted to the hospital on October 16, 2018, and delivered a male child on October 17, 2018, in her unit. She stated she was responsible for the unit, visited the victim daily, and prepared the victim's discharge card. The witness identified a xerox copy of the discharge card, marked as Article A-1, and verified that its contents are true and correct, and it bears her signature and is in her handwriting. She presumed the original was given to the patient. During cross-examination, the witness admitted that she was not personally present when the victim delivered the child. She initially stated the discharge card was in her handwriting, later retracted this, admitting it was not in her handwriting, although she immediately volunteered that it was prepared under her instructions. She also confirmed that she did not bring the original hospital register as she was not asked to do so. She denied the defence's suggestion that she was deposing incorrectly. No questions were put to the witness with regard to the health and age of the victim.

24. PW7- Ankita Vivek Dikshit (Exhibit 43) serving as an Assistant Chemical Analyst at the Regional Forensic Laboratory, Nagpur, since November 2011, testified about the DNA analysis performed in the present case. She stated that on October 25, 2018, the police requested two DNA kits (Exhibit 44). The witness's office supplied the kits and immediately received the victim's blood

sample (Exhibit 45). On November 19, 2018, the police requested and received a kit for the blood sample of the accused (Exhibits 29, 31, 32). The assignment was given to the witness, who performed the DNA extraction from the blood samples of the victim, the accused, and the child. Using PCR amplification, a DNA profile was generated. The witness concluded that, based on the DNA results, the accused and victim are the biological parents of the child. The witness identified the final DNA analysis report (Exhibit 46), confirming its contents are true and correct and that it bears her signature. The witness lacked a separate acknowledgment for supplying the kit for the blood sample of accused. In cross-examination, the witness denied that the final report (Exh. 46) failed to mention the contents of all submitted DNA articles. The witness affirmed that DNA reports depend on sample purity. The witness denied the suggestion that she personally did not perform the DNA extraction and profiling. The witness denied the assertion that the DNA report was incorrect. In re-examination, the witness confirmed that she had produced the identification forms for the accused, the victim and the newly born child, which were supplied to the police as blank forms along with the DNA kits and later received back by the office with the collected samples.

25. PW-8 Rupali Devaji Bavankar (Exabit 56)- is an Assistant Police Inspector at Nandanvan Police Station, Nagpur, who took over the investigation

of the case on November 14, 2018, after it was transferred from Sadar Police Station. She agreed that she sent a letter to the victim's mother, who then provided the victim's birth certificate (Exhibit 57). She sent a letter (Exhibit 58) to the Deputy Commissioner to obtain two government witnesses (panchs). The API then went to the spot, which the victim showed her, and prepared the site inspection report (Exhibit 59) in the panchs' presence. She agreed that she sent a letter (Exhibit 60) to the learned Chief Judicial Magistrate to record the statements of the victim and her mother. She arrested the accused vide arrest panchnama (Exhibit 61). She sent the accused for a medical examination, obtained the medical report, and collected the sealed DNA samples of the accused from the medical officer. She further recorded witness statements, sent the DNA sample of the accused to the chemical examiner, and filed the charge sheet after completing the investigation. The API confirmed the identity of the accused present in the learned Trial Court.

26. After specifically dealing with the testimonies of the witnesses, specific allegations and corresponding evidence need to be evaluated.

27. It was argued by the appellant that the certificate of birth is fabricated because the date of issuing the certificate (17.11.2018) (Exhibit 21) is so close to the date of registration of FIR (14.11.2018) (Exhibit 5 page 15, before the

Trial Court). Even though the date of registration of date of birth of the victim is 20 December, 2001 in Exh 21, there exists a reasonable suspicion about the issuance date on Exh. 21. The issuance was made only after the investigation was set in motion. In a situation like this, other evidence is used to corroborate the birth certificate. Such as the testimony of a witness, a school-leaving certificate or the testimony of Principal of the School where the victim has completed her tenth or twelfth standard. However, the delay in issuing the birth certificate is not properly explained and the application filed for issuing the date of birth certificate was not produced before the learned Trial Court. The investigating officer should have inquired about the tenth certificate or school-leaving certificate. If there exists any reason, such as poverty or illiteracy, because of which there was a delay in issuing the certificate, that ground should have been brought before the learned Trial Court and the Prosecution ought to have resorted to other modes of proving the age of victim. The learned Trial Court has committed an error in not appreciating these factors. The lack of corroborating evidence and a birth certificate issued so close to the registration of FIR raises a doubt on the authenticity of the certificate. Hence, the ground raised by the appellant is found on merit.

28. Appellant has vehemently argued about the authenticity of the DNA report on two grounds-

1. The conclusive results of the DNA were published after an inordinate delay.
2. The chain of custody has been broken.

It is a settled principle of criminal jurisprudence that DNA evidence, being expert evidence, cannot be the sole basis for a conviction. However, time and again the Courts have highlighted the importance of the evidentiary value of DNA testing. It should be noted that a DNA test should be done with a lot of caution. Any contamination would be fatal to the case of prosecution.

The Hon'ble Supreme Court in the case of ***Mukesh v. State (NCT of Delhi)***, (2017) 6 SCC, provided a quality control test. This test ensures that there is no contamination in DNA. The relevant para is reproduced below-

“219... There cannot be any doubt whatsoever that there is a need for 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 hybridisation of the blot to obtain distinct bands with appropriate control. (See the 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.”

In the case in hand, there was no evidence to prove that quality control was done throughout the analysis. Even though PW7 consistently maintain her stand that the sample was pure, there is a lot of gap between the collection of the sample and the analysis of the DNA. The said witness does

not depose about the method of preserving the sample. There is no proof or acknowledgment of the condition under which the sample was kept for six months. Furthermore, there are inconsistencies in the testimony with regard to the number of kits issued. This is not sufficiently explained by the prosecution. There was no written acknowledgment brought on record as to how many kits were received by the sample procuring team and how many kits were submitted to the laboratory. It creates reasonable doubt as to the chain of custody and the procedure adopted for DNA testing.

In the case of ***Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra, 2023 LiveLaw (SC) 461***, the Hon'ble Supreme Court has explained the chain of custody as under:

“62. The document also lays emphasis on the ‘chain of custody’ being maintained. Chain of custody implies that right from the time of taking 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 the name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, the date the items were collected or transferred, agency and case number, the victim’s or suspect’s name and the brief description of the item.”

In the present factual matrix, *the delay is not explained neither the adoption of due procedure has come on record. In such a situation, possibility of* contamination cannot be ruled out. However, PW7 merely deposes that the proper procedure has been adopted. There still exists a contradiction with regard to the number of DNA kits issued and received by PW7. This contradiction was not sufficiently explained by the prosecution. The chain of custody can be said to be broken, as there was no receipt or acknowledgment after the sample reached the laboratory. For conclusively determining that DNA samples are unadulterated, the procedure as held to be correct must be followed. In the present case, nothing has been brought on record by the prosecution to prove compliance of the aforesaid stages. Thus, the contention that the DNA report cannot be relied upon is found to be on merit.

29. The appellant has argued that there exists a lot of inconsistency in the statements of PW1-Victim. In her deposition, she was inconsistent with regard to her mother living with her. She also changed her stand with regard to the identity of “Lucky”, who is accused, as alleged by the prosecution. The reason for this anonymity is not primarily explained by the prosecution. Further, there exists a contradiction as the Victim claims in her deposition that her mother was there with her at the time of delivery. In her statement

before the Ld. Magistrate , she claims that she was left to her own devices.

The relevant testimony is reproduced-

‘डिलेवरी चे पैसे मम्मी ने विचारले असता त्यांनी ५० ते ६० हजार रुपये सांगितले. तेवढे पैसे आमच्याकडे नव्हते. त्यानंतर आम्ही घरी येवून गेलो. गहाण ठेवायला पण आमच्याकडे काहीही नव्हते तसेच एवढे पैसे पण नव्हते. त्यामुळे मम्मी ने मला माझ्या हालात वर सोडून दिले मी जॉब पण सोडून दिला.. मग मी घरी राहात होते.’

PW1 claimed in her statement before the learned Magistrate that a nurse from Mayo Hospital was present at the time of delivery. PW1 in her statement before the learned Magistrate said that her mother was not present at time of delivery. In her deposition consistency was missing.

Hon’ble Supreme Court in the case ***Rai Sandeep @ Deepu vs State Of Nct Of Delhi 2012 (8) SCC 21*** observed that the witness should be consistent from beginning to end. In para 15, the Hon’ble Court held -

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at

the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

In addition to this, the conduct of the victim creates a reasonable doubt. It is difficult to define a straitjacket formula for the conduct of a rape victim. However, in this case, it is only after 7 months of pregnancy that the victim confessed to her mother. She further stated that she was not willing to make a complaint against the accused.

In light of this, the judgment in ***State (GNCT of Delhi) v. Vipin@Lalla Criminal Appeal No. 94 Of 2025 of*** the Hon'ble Supreme Court becomes relevant which holds thus:-

“10. Although it is absolutely true that in the case of rape conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness, which is given a very high value by the Courts. But nevertheless, when a person can be convicted on the testimony of a single witness, the Courts are bound to be very careful in examining such a witness, and thus the testimony of such a witness must inspire confidence in the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.”

In the present case, there exists a reasonable suspicion of the conduct of the victim, where she has not reached out for any help, whether it's from her mother or the protection authorities. It was when her condition was self-explanatory that she told the truth to her mother. In this regard, the appellant has correctly raised the ground of inordinate delay and the conduct of the victim. The judgments relied upon by the Counsel for appellant in this regard, are squarely applicable. This court finds merit in the argument.

30. The appellant rightly mentions that no independent witness was examined by the prosecution. It is settled law of criminal jurisprudence that in cases of rape, the need for examination of an independent witness can be

ignored, especially if there exists strong evidence and consistent testimony of victim. However, in the present case, the testimony of the victim is not consistent. Further, the victim was consistent in her testimony that neighbors had told her mother about visits of the accused in absence of her mother. However, none of the neighbors has been examined. In these case, there was a need for an examination of an independent witnesses. The judicial note of the conduct of victim and inconsistencies in her statements ought to have been taken by the learned Trial Court. Therefore, the ground raised by the appellant is found on merit.

31. The appellant asserts that the victim delivered the child after completion of a 37-week full term on 17.10.2018. This would imply that the alleged sexual relations ought to have been established in and around the last week of January 2018, whereas the FIR states that the date of the alleged incident was 01.12.2017. In this regard, PW5-Dr. Dipak Narayan Madavi (Exhibit-34) has been examined. He states that he has treated a low-birth-weight child with respiratory problems who was transferred from the Gynaecology Department on October 17, 2018. After 6-7 days of treatment in the Pediatric Department, the child's condition improved, and they were transferred back to Gynaecology Department. The child was ultimately discharged on November 24, 2018.

PW6 Dr Priyanka Narayan Shelkar (Exhibit 42), Gynecologist with IGMC stated in her cross examination that she was not personally present when the victim delivered the child. She initially stated the discharge card was in her handwriting, however then retracted this, admitting it was not in her handwriting, although she immediately volunteered that it was prepared under her instructions. She also confirmed that she did not bring the original hospital register as she was not asked to do so. In her testimony, she never commented on the age and premature delivery of the child. The prosecution has failed to prove that the child that was born was a premature one. Hence, the alleged pregnancy happened before 01.12.2017 as slated in the FIR does not inspire confidence.

32. The role of the Court in criminal cases is to strike a balance between the rights of the accused, the rights of the victim and the interests of society. In cases of rape specifically, the testimony of a witness is enough for a conviction if it remains consistent. However, the testimony of the witness cannot always be taken as gospel truth.

33. A brief discussion should also be made about the cases cited by the appellant-

Chaitanya Barman v. State of West Bengal and Another, 2021 SCC OnLine Cal 2429- In this case, the birth certificate was not proved, its authenticity was not challenged, and the birth certificate was obtained after nine years of birth. Further, the girl was found to be cogent and aware of the circumstances of the act. The Court finds this judgment relevant in the present matter. Since in the present factual matrix there was also a delay in obtaining the certificate, and it was issued only after the investigation was set in course.

State of Sikkim v. Girjaman Rai and Others, 2019 SCC OnLine Sikk 50- It is held in the case that the minority of the victim must be proved by cogent evidence. Further, the Court held that even though a birth certificate is a public document under the Indian Evidence Act, the party that produced it is not relieved from the obligation to prove it. The court finds this case to be of relevance as the minority in the present case was solely sought to be proved by the birth certificate, and no other evidence.

Sachin s/o Vitthalrao More v. The State of Maharashtra Criminal Appeal No.136 Of 2024- In this case, the underage victim has confessed to her medical officer that there was a love affair which resulted in the pregnancy. The learned Trial Court has failed to consider this aspect in the trial of the

accused. In the present case, there was no clear admission made by the victim. In fact, the identity of the lover was contradicted by the victim in multiple ways. This court does not find the present case application on the factual matrix because of the inconsistent testimony of PW1.

Ashik Ramjail Ansari v State of Maharashtra, 2023 SCC OnLine Bom 1390-In this case, an underage girl was in a consensual sexual relationship with a married man; the girl holds the maturity of understanding the concept of rape. The Court analysed her conduct and reached to a conclusion that she was able to understand the consequences of her act. The court refused to grant punishment to the accused just because the sexual intercourse was with a minor girl. This Court finds the judgment relevant to the present factual matrix. In this case, PW1 knew about the consequences of the act, and this court finds her mature enough to understand the concept of rape.

Ravi Anandrao Gulpude v. State of Maharashtra2017 ALL MR (Cri) 1509- This case holds that the prosecution is under the duty to prove that the victim is a child under 2(d) of the Act. In the present case, prosecutrix has not disclosed the date of birth throughout the investigation. It was only after the cross-examination that the prosecutrix provided her date of birth. The Court

finds this authority of relevance because the birth certificate was issued only after the investigation was set in course.

Nivrutti v. State of Maharashtra 2024 SCC OnLine Bom 3068. ***Rahul V. State (NCT of Delhi) (2023) 1 Supreme Court Cases 83-*** This case reiterates the principle that DNA cannot be a sole basis for conviction. It further retreats that expert evidence, even though it helps the court in reaching an independent judgment, it cannot be said to be conclusive evidence and cannot be equated with other direct evidence. Further, it held that a DNA analysis report can only be accepted when the chain of custody is proved and the possibility of contamination is minimal. This Court finds the judgment relevant. As discussed above, the DNA report cannot be accepted if there is a possibility of contamination.

34. Upon scrutiny of the entire evidence on record, it reveals that the prosecution has failed to establish that PW1 is a minor. No material has been brought on record to satisfactorily prove that the accused has committed rape with a minor. The arguments advanced regarding correct procedural compliance or authenticity of evidence do not go to the root of the matter and are insufficient. The learned Trial Court has not sufficiently appreciated the evidence in the present factual matrix.

The entire gamut of evidence *qua* the factual matrix unequivocally compels this Court to hold that the prosecution has conspicuously failed in proving that the victim is minor in terms of POCSO and that the Accused/Appellant has committed rape on her. On the other hand, the appellant has successfully established, beyond a reasonable doubt, that the appellant has not committed an act of rape upon a minor girl. The appellant successfully rebutted the statutory presumption under Section 29 of the POCSO Act. As such, the prosecution failed in bringing home the guilt of accused. Thus, the appeal deserves to be allowed.

ORDER

- i) The Criminal Appeal is **Allowed**.
- ii) The Judgment and order dated 04.04.2022, passed by the Learned Principal District & Sessions Judge, Nagpur. Judge under POCSO Act, in Special (POCSO) Case No. 325 of 2018, whereby the appellant/accused, is convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 376(2) (n) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer Rigorous Imprisonment for 10 (ten) years and to pay a fine of Rs. 25,000/- (Rs. Twenty-Five Thousand only), in

default, he shall suffer further imprisonment for 3 (three) months, **is hereby quashed and set aside.**

iii) The Appellant/ Accused be set at liberty if not required in any other offence.

iv) Bail bonds shall stand cancelled.

[NIVEDITA P. MEHTA, J.]