



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

Criminal Application (APPA) No. 842 of 2025

in

Criminal Appeal No. 329 of 2024

Criminal Confirmation Case No. 3 of 2024

[Sanjay Deopuri Puri **vs.** State of Maharashtra at the instance
of Police Station, Kalmeshwar vide Crime No. 858/2019]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Ms. Shreya Rastogi with Mr. Shivkumar Dviwedi, Advocates for
the applicant/appellant

Mr. S. S. Doifode, A.P.P. for the State/respondent

CORAM: ANIL L. PANSARE
AND RAJ D. WAKODE, JJ.

DATE : 27-11-2025.

Heard.

2. The applicant – accused has filed present application under Sections 367 and 391 read with Section 293(2) of the Code of Criminal Procedure, 1973 (for short ‘the Code’) to examine as witness, the forensic analysts.

3. The applicant has been convicted for the offences punishable under Sections 363, 302, 376(AB) and 376(2)(i)(j)(m) of the Indian Penal Code, 1860 (for short ‘IPC’) and under Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). He has been sentenced to death under Section 302 of IPC. Separate punishment is imposed for other offences.

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4. We have heard Ms. Shreya Rastogi, learned counsel for the applicant and Mr. S. S. Doifode, learned Additional Public Prosecutor (APP) for the State.

5. Admittedly, the case of prosecution is based on circumstantial evidence. There is further no dispute that the trial Court has heavily relied upon Forensic Science Laboratory (FSL) report to connect the applicant with the crime. The findings to that effect find place in paragraph 68 of the judgment, which reads thus :-

“68) It is important to mention that there is no explanation on behalf of accused how blood of the victim girl was found on his underwear which is recovered at his instance under the recovery panchanama Exh-27. In view of the aforesaid facts and findings of Chemical Analyser, the prosecution has established beyond reasonable doubt that blood detected on the underwear of the accused is of the victim girl. To that extent accused as per Section 106 of the Evidence Act failed to offer or give any explanation how the blood of the victim girl is found on his underwear.”

Thus, the Court held, on the basis of FSL report, that the blood detected on the underwear of the accused was of victim girl and accordingly, expected accused to discharge burden in terms of Section 106 of the Evidence Act.

6. The argument is that though FSL report was marked exhibit, the scientific expert was not examined. Therefore, opportunity to cross-examine the witness

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was never given to the applicant.

7. Learned counsel for the applicant further submits that the applicant had denied the FSL report and despite such fact, the trial Court took a view that though the applicant denied the report, he has not filed any application for examining scientific expert.

8. In this context, learned counsel for the applicant submits that once the applicant had denied the report, the trial Court should have invited prosecution to examine the scientific expert in terms of sub-section (2) of Section 293 of the Code, particularly when capital punishment was imposed. Thus, it is argued that fair opportunity was not given to the applicant to defend himself.

9. In support, learned counsel for the applicant relied upon the judgment of Supreme Court in the case of ***Irfan alias Bhayu Mevati Vs. State of Madhya Pradesh [2025 SCC OnLine SC 359]*** wherein the Court held as under :-

“29. The instant case involves capital punishment and thus, providing a fair opportunity to the accused to defend himself is absolutely imperative and non-negotiable. The trial in the case at hand was concluded without providing appropriate opportunity of defending to the accused and within and within a period of less than two months from the date of registration of the case, which is reflective of undue haste. The failure of the trial Court to ensure the deposition of the scientific experts while relying upon the DNA

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report, has definitely led to the failure of justice thereby, vitiating the trial.

30. *In the wake of the above discussion, we allow the application filed by the appellants. The case is remanded to the trial Court who shall summon the scientific experts associated with the preparation and issuance of the DNA report with the entire supporting material. These scientific experts shall be summoned and examined as Court witnesses with a proper opportunity of examination to the prosecution and the defence in that order. In case the accused are not represented by a counsel of their choice, a defence counsel having substantial experience in terms of the guidelines laid down by this Court in Anokhilal (supra) (extracted in Para 26 of this judgment) shall be appointed to defend the accused and in the de novo trial.*

31. *Pursuant to the testimony of the scientific experts being recorded, the accused shall be again questioned under Section 313 CrPC in context to the fresh evidence. They shall be provided a fair opportunity of leading defence evidence. Thereafter, the trial Court shall proceed to re-hear the arguments and decide the case afresh as per law. The entire process as directed above, shall be completed within a period of four months from the date of receipt of this order.”*

Thus, the Court held that failure of the trial Court to ensure deposition of the scientific experts while relying upon the DNA report, has led to failure of justice thereby, vitiating the trial. The Court then remanded the case to the trial Court with a direction to summon the scientific experts for giving opportunity of

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examination to prosecution and defence. The Court further directed to record statement of accused under Section 313 of the Code in context with fresh evidence and to afford them opportunity to lead defence evidence. The trial Court was then directed to re-hear the arguments and decide the case afresh as per law.

10. Thus, the Supreme Court has held that failure to examine scientific expert responsible for DNA evidence has violated rights of accused to a fair trial and accordingly remanded the matter back for consideration afresh from the stage of examining experts.

11. Learned APP has opposed the application. He submits that the trial Court is fully justified in relying upon the FSL report, which according to him, is permissible in terms of Section 293 of the Code. He submits that it was open for the applicant to challenge the report by examining the expert, which the applicant has not done. Thus, according to him, despite affording opportunity, the applicant failed to avail the same and, therefore, the judgment cannot be faulted.

12. In support, he has relied upon the judgment of the Supreme Court in the case of *Ashok Kumar Vs. State of Haryana [(2000) 2 SCC 592]* wherein the Court found that the report of Chemical Analyzer was clear. The appellant therein did not challenge the report nor had he given any application for examining the Chemical Analyzer as witness to establish that seals

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on samples were the same as received by him.

13. Thus, the dispute before the Supreme Court was about the sealing of the sample and in that context, the Supreme Court held that appellant should have challenged the report by examining him as witness.

14. We have gone through the judgments and material placed before us. We find that the applicant herein was represented by counsel appointed through Legal Aid. Another important feature is that applicant herein has been convicted and sentenced to capital punishment. Considering the seriousness of the crime and the effect of the punishment, we are of the considered view that firstly, the prosecution should have examined the Chemical Analyzer because it was fully aware that prosecution's case is based on circumstantial evidence and in that context, the FSL report was a clinching evidence to complete the chain of links, more so, when the applicant had denied the FSL report. Secondly, the Court should have, considered the nature of charges against the applicant and invoked sub-section (2) of Section 293 of the Code and should have examined chemical analyzer. Having not done so and in the light of the judgment of Supreme Court in *Irfan's* case (supra), we do not find any reason to not follow the directions given by the Supreme Court in the aforesaid case.

15. At this stage, learned APP has referred to two judgments of the Supreme Court viz. (1) *Mohinder*

Singh and others Vs. State of Punjab and another [AIR 1985 SC 383] and (2) *Dagdu and others Vs. State of Maharashtra [AIR 1977 SC 1579]* to submit that it is open to the High Court to re-appreciate the evidence once again by permitting the prosecution to lead additional evidence, if so necessary instead of remanding the case back to the Sessions Court.

16. We are not inclined to accept this proposition in as much as the judgments which are relied upon do not consider the effect of capital punishment because the case before the Supreme Court was not in respect of capital punishment. As such, it is well settled that first appellate Court could offer an opportunity of leading additional evidence to the parties, the question here is of capital punishment which is imposed by the trial Court after considering entire material before it. The High Court's jurisdiction in the case of capital punishment is to confirm the sentence. If the High Court has to permit either party to lead additional evidence and thereupon to form an opinion of imposing capital punishment, the applicant will lose valuable right of another forum re-appreciating the entire evidence.

17. For the aforesaid reasons and in terms of *Irfan's* case (supra), the applicant should get an opportunity to test the veracity of FSL report by examining the forensic analysts. Accordingly, we proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The judgment and order dated 3-6-2024 passed by the Additional Sessions Judge-8 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Nagpur in Special Case No. 105/2020 is quashed and set aside.
- (iii) The trial Court shall summon the scientific experts associated with the DNA report and serology report. These witnesses shall be summoned and examined as Court witnesses by affording proper opportunity of examination to the prosecution and the defence in that order. Pursuant to the testimony of scientific experts, the trial Court shall record the statement of applicant under Section 313 of the Code to the extent of fresh evidence. The trial Court shall then provide opportunity to lead defence evidence, if so desired and thereafter the trial Court shall rehear the argument and decide the case afresh as per law. The entire process shall be completed as expeditiously as possible.
- (iv) The record and proceedings shall be sent back to the trial Court immediately.
- (v) The applicant/accused shall be produced before the trial Court on 9-12-2025. The counsel representing the applicant shall also remain present before the trial Court on that day.

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(vi) Criminal confirmation case and criminal appeal are disposed of in aforesaid terms.

(JUDGE)

(JUDGE.)

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