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CRL.A.(MD)NO.1017 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.01.2025

PRONOUNCED ON : 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

CRL.A.(MD)No.1017 of 2024

Ammavasi @ Alagarsamy

... Appellant / Accused

Vs.

The Inspector of Police,
Natham police station,
Natham, Dindigul District.
(Crime No.132 of 2022)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 415(2) of BNSS, calling for the records and to set aside the judgment made in Spl.S.C.No.215 of 2023 on the file of the Special Court for POCSO Act Cases, Dindigul dated 08.11.2024 and to allow the appeal.

For Appellant : Mr.S.Arjun

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

* * *

**J U D G M E N T**

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(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This criminal appeal is directed against the judgment dated 08.11.2024 rendered in SPL.S.C.No.215 of 2023 on the file of the Special Court for POCSO Act Cases, Dindigul. By the impugned judgment, the appellant had been sentenced to life imprisonment for the offence under Section 6 of the POCSO Act, 2012 together with fine of Rs.1 Lakh. He was also sentenced to three years Rigorous Imprisonment for the offence under Section 366 IPC and levied with fine of Rs.5,000/-.

2. The case of the prosecution is that the appellant kidnapped the victim who was a minor girl and subjected her to repeated penetrative sexual assaults and as a result, the victim became pregnant and delivered a girl child on 13.04.2022. The child died on the next day. Complaint was taken from the mother of the victim on 14.04.2022. Based on the same, Crime No.132 of 2022 was registered on the file of Natham police station at around 20.30 hours for the offences under Section 450 IPC and Section 5(i), 5(j)(ii) r/w.



Section 6 of POCSO Act, 2012. P.W.21 was the Inspector of Police, Natham police station and she conducted investigation. She collected the blood samples of the child as well as the accused and sent the same for forensic analysis. Following her transfer, P.W.22 continued the investigation and filed final report before the Fast Track Mahila Court, Dindigul. Cognizance was taken in Spl.S.C.No.5 of 2023. Following the establishment of the Special Court for POCSO Act Cases, Dindigul, the case was transferred and renumbered as Spl.S.C.No.215 of 2023. Charges were framed against the accused. He pleaded not guilty. The prosecution examined P.W.1 to P.W.22 and marked Ex.P.1 to Ex.P.24. On the side of the accused, no evidence was adduced. After considering the evidence on record, the trial Court found the accused guilty of the charges and sentenced him as mentioned above.

3. The question that calls for consideration is whether the impugned judgment warrants interference.

4. P.W.1 victim turned hostile. Her testimony completely exonerates the accused. She deposed that the accused never made



any sexual assault. She denied that the accused ever had physical relationship with her. While admitting her signature found in the statement recorded under Section 164 Cr.P.C., she testified that it was done as instructed by the police. P.W.2 defacto complainant / the mother of the victim also turned hostile. The other material witnesses also turned hostile. Yet the Court below chose to find the accused guilty on the strength of Ex.P.24 DNA report.

5. Our attention is drawn to the judgment of the Madras High Court rendered in ***Crl.A.No.538 of 2023 dated 20.12.2023 (Chandra Mohan V. State)***. Paragraph Nos.8, 9 and 10 of the said judgment are as follows:-

“ 8. Now the question is that in the absence of any other evidence, can it be held that the appellant committed the offences alleged against the victim on the basis of the opinion evidence of the expert. The question as to the accuracy of the results by comparison of the DNA profile had come up for consideration in several cases before the Hon’ble Supreme Court. In a recent Judgment in ***Manoj Vs. State of Madhya Pradesh***, reported in ***(2023) 2 SCC 353***. The Hon’ble Supreme Court held as follows:



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151. ... 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.”(emphasis supplied).

153. The Law Commission of India in its Report [185th Report, on Review of the Indian Evidence Act, 2003.], observed as follows:

“..Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law.” (emphasis in original)

154. In Dharam Deo Yadav v. State of U.P.



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[Dharam Deo Yadav v. State of U.P., (2014) 5 SCC 509 : (2014) 2 SCC (Cri) 626] this Court discussed the reliability of DNA evidence in a criminal trial, and held as follows : (SCC pp. 528-29, para 36)

“36. ... More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in court. DNA profile, however, is consistently held to be valid and reliable, but of course, ***it depends on the quality control and quality assurance procedures in the laboratory.***”

156. ... This Court has also emphasised the need for assuring quality control, about the samples, as well as the technique for testing in Anil v. State of Maharashtra [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] : (Anil case [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] , SCC p. 81, para 18)

“18. ... DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory.”

157. This Court, in one of its recent decisions, Pattu Rajan v. State of T.N. [Pattu Rajan v. State of T.N., (2019) 4 SCC 771 : (2019) 2 SCC (Cri) 354], considered the value and weight to be attached



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to a DNA report : (SCC p. 791, para 52)

“52. 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. ...***”

158. 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."

The above Judgment would show that the guilt of the accused can be established by relying upon the DNA reports, provided the reliance is to “corroborate.” In paragraph 158 of the Judgment extracted above, the said position has been made clear. We may also note



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that in the article published by the Central Forensic Science Laboratory, Calcutta, which has been quoted with approval by the **Hon'ble Supreme Court in the above decision, it is stated that if DNA evidence is not properly documented, collected, packaged, and preserved, it would not meet the legal and scientific requirements for admissibility in a Court of law. The report also states that DNA evidence can be contaminated when DNA from another source gets mixed with the DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his or her mouth, nose, or other parts of the face and then touches an area that may contain the DNA to be tested.**

9. Therefore, it is seen that DNA testing can be a powerful technique in investigations and criminal trials. However, care has to be taken to ensure that the samples collected are properly documented, packaged, and preserved.

...

11.....The Division Bench of the Bombay High Court in ***Suresh Vs. The State of Maharashtra***, reported in ***2023 SCC Online Bom 641***, held as follows:

"9... P.W.8 the investigating officer ought to



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have explained, where those samples were kept, in which condition they were kept and how they were transmitted. P.W.9 A.S.I. Sonawane is the carrier, however, he has not stated as to in which condition, that means in which boxes, he had taken those samples. The method of preservation is not stated by anybody. Under such circumstance, we cannot rely on the DNA test report Exhibit-41.

10. We have considered the ocular evidence as well as the scientific evidence. As regards the ocular evidence is concerned, at the cost of repetition, we would like to say that P.W.4 and P.W.5 are not trustworthy as they have changed their statements in the cross. **When the ocular evidence was not supporting, conviction ought not to have been based only on the DNA test report i.e. medical report."** "

6. Subsequently the Hon'ble Division Bench vide judgment dated **19.06.2024** in **Crl.A.No.641 of 2021 (Krishnaraj @ Thangaraj V. State)** had also followed **Chandra Mohan** case.

7. We are inclined to adopt the very same approach in this case also. It is not in dispute that except the DNA report, there is no



other evidence against the appellant. P.W.1 herself had completely exonerated the accused. She turned hostile. In view of the **Pattu Rajan** case and the judgment of this Court dated **20.12.2023** made in **Crl.A.No.538 of 2023 (Chandra Mohan V. State)**, we are therefore of the view that it would be most unsafe to find the accused guilty solely on the strength of DNA report. This is all the more so because there is no clear evidence regarding drawing of samples, their packing and preservation. Ex.P.24 forensic examination report is also silent on the manner of preservation of the sample. Therefore, the possibility of contamination cannot be ruled out. There is nothing on record to show that proper quality control measures were taken to preserve the integrity of the sample. The probative value of the DNA report stands undermined.

8. For this reason, we hold that the prosecution has not proved its case against the accused beyond reasonable doubt. In this view of the matter, the impugned judgment dated 08.11.2024 in Spl.S.C.No.215 of 2023 passed by the learned Sessions Judge, Special Court for POCSO Act Cases, Dindigul is set aside. This criminal appeal is allowed. The appellant is acquitted of all the charges. The



conviction and sentence imposed on the appellant are set aside. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed by the appellant shall stand discharged. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
26th February 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

1. The Sessions Judge,
Special Court for POCSO Act Cases,
Dindigul.
2. The Inspector of Police,
Natham police station,
Natham, Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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