



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

CRIMINAL APPEAL NO. 307 OF 2024

Somnath Sadhu Birajdar
Age. 26 years, Occ. Driver, Now : Nil,
R/o. Ganeshwadi, Tal – Shirur Anantpal, Dist. Latur
At present at Central Prison, Aurangabad. ...Appellant

Versus

1. The State of Maharashtra,
Through Police Inspector,
P.S. Shirur Anantpal.

2. ABC (Prosecutrix/Victim) ...Respondents

...

Advocate for Appellant : Mr. S.G. Bobade a/w. Mr. N.I. Deshmukh

APP for Respondent No. 1 : Ms. A.S. Deshmukh

Advocate for Respondent No. 2 : Mr. Rohit Gunale h/f. Mr. V.D. Gunale

...

CORAM : RAJNISH R. VYAS, J.

DATE : 20TH JANUARY, 2026

ORAL JUDGMENT :

1. This appeal is preferred by the accused challenging his conviction awarded by Special Court, (POCSO Act), Assistant Sessions Judge, Nilanga, dated 19.05.2023, passed in Special (POCSO) Case No. 07/2020, by which, the present appellant was convicted for commission of offence punishable under Section 376 (2) (n) of the Indian Penal Code (herein after would be referred to as 'the IPC' for sake of brevity) and directed to suffer rigorous imprisonment for ten years and pay fine of Rs. 1,000/- in default to suffer rigorous imprisonment for one year.

2. The appellant was also convicted for commission of offence punishable under Section 376 (3) of IPC and directed to suffer rigorous imprisonment for twenty years and pay fine of Rs. 2,000/- in default to suffer rigorous imprisonment for two years.

3. He was also convicted for commission of offence punishable under Section 4 read with Section 3 of Protection of Children from Sexual Offences Act (herein after would be referred to as 'the Act of 2012' for sake of brevity) and directed to suffer rigorous imprisonment of ten years and pay fine of Rs. 1,000 in default to suffer rigorous imprisonment for one year.

4. He was also convicted for commission of offence punishable under Section 6 read with 5 (j) (ii)(l) of the Act of 2012 and directed to suffer rigorous imprisonment for twenty years and pay fine of Rs. 2,000/- in default to suffer rigorous imprisonment for two years.

5. So far as conviction of offence punishable under Section 452 of the IPC, the appellant was directed to suffer rigorous imprisonment for three years and pay fine of Rs. 500/- in default to suffer rigorous imprisonment for six months.

6. He was also convicted for conviction of offence under Section 506 of the IPC, and directed to suffer rigorous imprisonment for three years and pay fine of Rs. 500/- in default to suffer rigorous

imprisonment for six months. All the sentences were ordered to run concurrently. Compensation of Rs. 6,000/- was directed to be paid to the victim out of the fine amount.

7. In short, it is the case of prosecution that victim who at the relevant time was 17 years old and residing with her sister in a house, was subjected to forcible sexual intercourse by the appellant. It was the case of prosecution that some time in the month of February 2020, appellant who was the neighbour of the victim, came to victim's house at night hours, at which time, the victim was sleeping in the kitchen along with her sister. The appellant entered the kitchen, awoke her and took her by holding her hand in another room, where he proposed the victim. When victim asked him to go, he refused and threatened her, and thereafter, forcibly kept physical relation with her. He also threatened her that in case the incident is disclosed to anybody, he would take appropriate steps.

8. It was the case of prosecution that on 03.09.2020, because the victim was not feeling well, she was taken to the hospital i.e. Government Hospital, Latur, by her father and step mother. Prior to that, according to the victim, her sonography was conducted at Hi Tech Hospital. At about 05:30 p.m. on 03.09.2020, victim delivered a girl child who died on 04.09.2020 at 08:00 a.m.

9. According to the prosecution's case, this triggered the lodging of the First Information Report No. 131/2020 dated 05.09.2020, as the victim's parents enquired about the incident, during which the victim narrated the facts as stated above. The appellant was arrested on 08.09.2020.

10. During the course of investigation, the blood samples of the appellant and the victim were seized along with the clothes. DNA samples of the child also came to be collected. Those samples were forwarded to the laboratory and laboratory by submitting report opined that the appellant and the victim were concluded to be biological parents of the child (exhibit 20). After completion of investigation, chargesheet was filed and charge was framed on 06.04.2021, by Additional Sessions Judge and Special Judge, Nilanga, to which the appellant pleaded not guilty.

11. In order to bring home the charge, prosecution had examined total twelve witness. The appellant, thereafter, was questioned under Section 313 of Code of Criminal Procedure, wherein he stated that due to earlier quarrels he was falsely implicated. In support of his defence, he examined two witnesses. A witness i.e. D.W. 1 – Pundlik was examined in order to support his contention that quarrel had taken place on earlier occasions. D.W. 2 – Dr. Vivek was examined in order to buttress his

contention that sonography performed, was of the step mother of the victim, so also the child born was of the step mother of the victim and not of the victim.

12. After considering the evidence on record, the trial Court convicted the appellant and sentenced him to suffer imprisonment, maximum of which is twenty years.

13. Learned counsel for the appellant Mr. Bobade, pointed out that the entire evidence rendered by the prosecution is untrustworthy. In fact, the prosecution had suppressed various documents which compelled the appellant to examine D.W.-2. He submitted that if the documents produced in the evidence through D.W.-2 are seen, it would reveal that in the medial papers, pertaining to sonography, the name of step mother as a patient is mentioned and not the name of victim of crime. He further submitted that since a specific number was assigned to the patient for medical treatment, all subsequent documents would demonstrate that the child born was that of the stepmother and not of the victim. He submitted that there was absolutely no explanation advanced by the prosecution as to why those documents were not supplied to the Investigating Officer.

14. He further submitted that date of birth of the victim was not proved in accordance with law, and therefore, the provisions of the Act of 2012, ought not to have been invoked.

15. He submitted that the chain of custody which is required to be proved by the prosecution on the basis of documentary evidence, is not proved properly, and therefore, the DNA report is required to be ignored. He further submitted that just because DNA report concludes that the appellant and the victim are the biological parents, it does not mean that the offence of rape is conclusively proved. He submitted that delay in lodging First Information Report is not proved by the prosecution. Accordingly to him, neither any First Information Report nor any testimony advanced by the prosecutrix, a specific date of incident is mentioned, and therefore, the prosecution had not proved the case beyond reasonable doubt. He submitted that his client be acquitted considering the nature of evidence brought on record.

16. Per contra, learned APP Ms. Deshmukh supported the conviction awarded by the trial Court and contended that the testimony of the prosecutrix is cogent and reliable. She submitted that there is absolutely no reason advanced or brought on record by the appellant to show that he was falsely implicated. According to her, the chain of custody of collecting and depositing DNA sample is properly proved. She thus submitted that the appeal be dismissed.

17. Mr. Gunale, learned counsel for the victim supported the stand taken by the prosecutor. He submitted that at the time of incident

victim was minor, who had categorically stated in her deposition that she was subjected to forcible sexual intercourse. He submitted that offence is proved beyond reasonable doubt, and therefore, interference at the hands of this Court is not required.

18. Rival contentions for consideration :

P.W.-1 is the star witness who is prosecutrix. P.W.-2 is the father of the victim. P.W.-8 is the Headmaster of the School where the victim had taken education.

19. At this stage, since the appellant is convicted for commission of the offences punishable under the Act of 2012, it is necessary to scrutinize the evidence in order to arrive at the conclusion as to whether the prosecution has proved that on the date of incident victim was minor or not.

20. Act of 2012, more particularly Section 2 (d) defines child which means any person below age of eighteen years.

21. If the testimony of P.W.-1 is perused, it would reveal that she had stated her date of birth as 09.08.2005, whereas, the incident had taken place in February, 2020. According to her, she had done her education till 10th standard. If the cross-examination of the aforesaid witness is perused, it would be crystal clear that no suggestion was given to the said witness that 09.08.2005, was not her date of birth. There is no

denial in cross-examination so far as date of birth is concerned.

22. Coming to the testimony of P.W.-2 who is father of the victim, in his examination he had categorically stated that his daughter / victim had passed her 10th standard examination in 2020. In his deposition, he had stated that date of birth of the victim was 09.08.2005. This witness had proved the birth certificate below exhibit 55. If exhibit 55 is perused, it would reveal that the said certificate is issued by the concerned Municipal Council and date of birth of the victim is shown as 09.08.2005. The birth certificate also shows name of child / victim, name of father i.e. P.W.-2 and name of mother.

23. The prosecution also relied upon testimony of P.W.-8, who was the Head Master of the concerned school. P.W.-8 in the examination-in-chief had stated that since 2018, he was posted as Head Master with a Zilla Parishad School and in the year 2019, police had given a letter and asked about extract of admission register. The said letter was marked at exhibit 91. He submitted that he had supplied extract of admission register along with his covering letter which was marked as exhibit 92, whereas extract of admission register was marked as exhibit 93. According to register, the date of birth of victim is 09.08.2005. In cross-examination, he admitted that at the time of the victim's admission, he was not the school's Head Master; he also admitted that the admission

form does not mention the basis on which the date of birth was recorded. He also admitted that he did not know the date whether the date of birth was stated correctly or incorrectly.

24. Considering the testimony of P.W.-1, P.W.-2, and P.W.-8, it can be said that prosecution had proved the age of victim as 09.08.2005, for the reason that P.W.-1 and P.W.-2 had categorically stated the said date as date of birth. P.W.-2 had proved exhibit 55 which is birth certificate. Further, there is no denial to the date of birth in cross-examination of P.W.-1 and P.W.-2. I, thus come to conclusion that prosecution had proved the date of birth and consequently, the fact that the victim was child as defined under the Act of 2012.

25. The appellant is convicted for commission of offence punishable under Section 376 (2) (n) of the IPC. Section 375 defines the rape. According to Section 375 of the IPC, a man is said to commit “rape” if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her perform such an act with him or any other person. Such penetration must be against the will of the prosecutrix or without her consent. Section 376 prescribes punishment of rape. Section 376 (2) (n) speaks about commission of rape repeatedly on the same woman.

26. If testimony of P.W.-1 / victim is perused, it would be crystal

clear that this offence has been proved beyond reasonable doubt by the prosecution. The relevant portion of testimony of P.W.-1 is reproduced herein below :

“In February 2020, he came to my house in the night. I can not tell exact date. At that time, I along with my sister sleep in kitchen. My father used to sleep in the field. Second marriage of my father was performed on 24.04.2020.

He came to Kitchen and awoke me and took me by holding my hand in another room. He proposed me as I like him and he loves him. I asked him to go, he refused to go and threatened me. There he forcibly kept physical relation with me and he threatened that if tell anybody else then he will see me and he left.

After 5-6 days he came again from eastern wall. It was about midnight 12.00 hours. At that time also he kept physical relation forcibly with me. He kept physical relationship with me till April 2020. In March 2020, menstrual cycle stop. After second marriage of my father he stop coming to our house.”

27. The cross-examination of the aforesaid witness was done at length by the learned counsel for the appellant. In the cross-examination, it was brought on record that the biological mother of the victim had died due to burn in the year 2013 and sister, brother and the mother of the victim used to visit house of mother of accused on various occasions. It

was also brought on record that even after the death of the mother of the victim, same continued. It was brought on record that father of victim was married to two women, thereafter. One of it was Sangita. It was suggested to the victim that there used to be a quarrel between the appellant and the father of the victim due to which a false case was filed. She denied the fact that on 03.09.2020, she along with her father and mother went to doctor at Hippalgaon for medical checkup at clinic. She shown her ignorance whether doctor had referred her mother Sangita to Hi Tech Hospital, Latur, for sonography. It was also suggested that date due to lock down the appellant was at Pune from February, 2020 till December, 2020.

28. The main thrust of the argument advanced by the appellant is that no specific date and time was given by the prosecutrix regarding the incident, and therefore, same should not be believed. In this regard, it is necessary to mention here that victim, at the time of the offence was a girl of hardly 16 years who was residing in a village. Even otherwise, it is not expected from the prosecutrix that she would give the details of the incident. Nothing has been brought on record by way of substantial evidence that there was any reason for false implication of the applicant.

29. Learned counsel for the appellant contended that there was delay in lodging first information report since even according to P.W.-1,

the act was committed in the month of February 2020, but the First Information Report was lodged on 05.09.2020, and therefore, the case is not proved by the prosecution beyond reasonable doubt. It is necessary to mention here that according to testimony of P.W.-1, in the month of March 2020, her menstrual cycle stopped and thereafter on 03.09.2020, she delivered a baby (female) child. On 04.09.2020, the child expired.

30. If the aforesaid dates are taken into consideration then it cannot be said that there was no delay in lodging First Information Report. The victim was a minor girl. On 03.09.2020, she delivered the baby girl, who died on 04.09.2020, and consequently, the First Information Report was filed on 05.09.2020.

31. There is one more reason to disregard the argument advanced by the appellant regarding the delay and that is the testimony of father P.W.-2. The relevant part of the testimony is reproduced as below :

“On that day at around 5.00 to 5:30 p.m, she delivered and gave birth to female child. After some time to myself and my wife taken her in confidence and inquired. At that time she told that, our neighbour accused Somnath had entered into house on climbing wall in month of February. She told that, at that time Sakshi was in sleep with another daughter. Then accused took her by holding her hand in another room. At that time he had forcibly established physical

relations and threatened while leaving that if you tell incidence to anybody then will kill you. Then after some days similar incidence occurred.”

32. If testimony of P.W.-1 and P.W.-2 is seen, it would be crystal clear that it is for the first time on 03.09.2020, incident was noticed by the parents, and therefore, the criminal law was set in motion on 05.09.2020. Thus, I come to conclusion that there is absolutely no delay in lodging the First Information Report.

33. The applicant is also convicted for commission of offence punishable under Section 376 (3) of the IPC. 376 (3) speaks about commission of rape on a woman under 16 years of age. In view of discussion made (supra), it is proved that the victim at the time of incident was less than 16 years, hence I come to conclusion that the prosecution has proved the offence punishable under Section 376 (3) of the IPC.

34. As the appellant is also convicted for commission of offence punishable under Section 4 as defined under Section 3 of the Act of 2012, it is necessary to see what Section 3 speaks about. Section 3 speaks about penetrative sexual assault, which reads as under :

*“3. Penetrative sexual assault.— A person is said to commit “penetrative sexual assault” if—
(a) he penetrates his penis, to any extent, into the*

vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

35. Section 4 is the punishment for penetrative sexual assault.

No more discussion regarding applicability of Section 3 and 4 would be necessary, since the prosecution has already proved that the appellant had committed rape which will also cover definition of penetrative sexual assault, in the facts and circumstances of the case. Since I have already observed that the victim at the time of the commission of offence was a child as defined under Section 2 clause (d) of the Act of 2012 and thus was below 16 years of age, the conviction of the appellant under Section 4 has also been proved by way of evidence by the prosecution.

36. The appellant is also convicted for commission of offence punishable under Section 6 of the Act, in the light of definition of

aggravated penetrative sexual intercourse more particularly Section 5 (j) (ii) and (l). Section 5 of the Act of 2012, speaks about aggravated penetrative sexual assault. Obviously, when offence under Section 5 is required to be proved, even ingredients of Section 3 i.e. penetrative sexual assault will have to be proved. As the penetrative sexual assault is proved, since the accused had inserted his penis into the vagina, Section 5 also comes into the picture. As per clause (j) (ii), in case the prosecutrix / female child is made pregnant, as a consequences of sexual assault, the punishment triggers. Coming to clause (l) of Section 5, suffice it to say that it belongs to the family of Section 376 (2) (n), where as Section 376 (2) (n) speaks about commission of rape repeatedly on the same woman. Further, clause (l) Section (5) of the Act of 2012, speaks about commission of penetrative sexual assault on the child more than once or repeatedly.

37. Since the testimony of P.W.-1 clearly shows that she was subjected to forcibly sexual intercourse on various occasions, it logically follows that even the offence under Section 5 is duly proved.

38. The appellant was also convicted under the provision of Section 452 of the IPC. Section 452 of IPC, speaks about house trespass after preparation for hurt, assault, wrongful restraint. House trespass is defined under section 452 of the IPC, which speaks that whoever

commits house-trespass, having made preparation for restraining any person, or for putting any person in fear of hurt, would be punished for a term which may extend to seven years, and shall also be liable to fine.

39. Criminal trespass is defined under Section 441 of the IPC, which says that whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

40. Thus it is proved by the prosecution that the accused had criminally trespassed the house of the victim in order to commit the offence i.e. act of commission of rape, and therefore, even conviction awarded by the trial Court under Section 452 of the IPC, is required to be maintained.

41. The appellant was lastly convicted under Section 506 of the IPC. The trial Court had relied upon Part II of Section 506 of the IPC. Section 506 of the IPC, speaks about the punishment regarding criminal intimidation. The definition of criminal intimidation originates from Section 503 of the IPC. Criminal intimidation is defined by the IPC, as whoever threatens another another with any injury to his person,

reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

42. If the testimony of the said P.W-1 is perused, it would reveal that the said offence is also made out. The relevant part of the testimony of P.W.-1 is reproduced herein below :

“He came to Kitchen and awoke me and took me by holding my hand in another room. He proposed me as I like him and he loves him. I asked him to go, he refused to go and threatened me. There he forcibly kept physical relation with me and he threatened that if tell anybody else then he will see me and he left.”

43. In view of the testimony of P.W.-1, it is crystal clear that prosecution proved the ingredients of Section 506 of IPC.

44. At this stage, it is necessary to mention here that counsel for appellant argued that the DNA report cannot be taken into consideration, since the chain of custody is not proved. He submitted that the Court ought not to have convicted the appellant for commission for the offences for which he was charged. I would like to clarify that even the DNA

evidence is ignored, the testimony of victim is enough to arrive at the conclusion that the prosecution proved the case beyond reasonable doubt. But I will discuss the DNA evidence also, so that a complete justice can be done to the accused.

45. On 03.09.2020, delivery of the child of the victim / P.W.-1 occurred at Government Hospital, Latur. Prior to that, a sonography was conducted at Hi Tech hospital. If the medical documents of Hi Tech hospital, which are proved by the defence and produced below exhibit 138 are perused, it would reveal that same are not in the name of victim but are the in the name of her step mother 'Sangita'. Even exhibit 139, which is a form required to be filled in for all diagnostics procedures, shows that the name mentioned is Sangita. The prosecution submitted that by mentioning name of Sangita a precaution was taken by the P.W.-2 and P.W.-5 Sangita (step mother) so as to protect identity of the victim who was minor.

46. Learned prosecutor thus submitted that the said two documents at exhibit 138 and 139, should be read in favour of the prosecution and not in favour of the accused/appellant. I am afraid I can accept the arguments advanced by the prosecution. I am of the opinion that since there is a conflict between documentary evidence and oral evidence, it is the documentary evidence which would prevail. As the

aforementioned documents/aforesaid exhibits bear the name of Sangita, I conclude that documents were not pertaining to the victim.

47. This takes me to several other documents. As already stated victim was taken to the Government Hospital, Latur, on 03.09.2020, where she delivered a baby child. At this stage, testimony of P.W.10 – Dr. Ramdas Panchal, is required to be taken into consideration. This witness stated that he holds qualification of MBBS, MS and was posted at the said hospital since 21.08.2020. On 03.09.2020, when he was on duty victim came along with P.W.-2 and P.W.-5 i.e. mother. As it was found that victim was 16 to 17 years old and unmarried, the Chief Medical Officer was informed about Medico Legal Case and it was registered as MLC No. 7611/SST/2020.

48. On 04.09.2020, police came and they recorded statement of victim and victim was stable and conscious. The victim was admitted on 03.09.2020, and was discharged on 07.09.2020. On 15.09.2020, he received one letter in which query was raised by Investigating Officer. He proved that letter below exhibit 103. He submitted that one Dr. Ashwini Jadhav, was junior resident. According to him, fetus of victim was about 26 to 28 weeks. After delivery, the baby was handed over to Paediatrics as said baby was pre-matured, who died on 04.09.2020.

49. If exhibit 103 is perused, it is the letter issued by Police Sub

Inspector, attached to police station Shirur Anantpal, Latur, to the Medical Officer, District Hospital, Latur, in which, certain queries were made regarding the age of baby and the names of Medical Officer who treated the victim. In this letter, it was stated that since the post mortem of baby was performed, the request was made to the concerned Medical Officer to preserve piece of sternum bone for DNA sample. Exhibit 104 is the query answered by P.W. 10 – Dr. Ramdas Panchal, in which he has given the necessary answers and stated that the gestation age of delivered baby (fetus) is around 26 to 28 weeks clinically.

50. At this juncture, it is necessary to go through the exhibit 105. It is discharge summary issued by Government Medical College and General Hospital, Latur. It bears the name of victim. Thus, the contention of the learned counsel for the appellant that it was step mother Sangita who was treated in the hospital and the fetus was of Sangita, is falsified by the evidence.

51. Various suggestions were put to P.W.-10, by the defence. This witness had stated that name entered at the registration would continue for the entire treatment till discharge. It was admitted by this witness that he came to know that patient was unmarried as informed by relatives. He admitted that in report which was proved at exhibit 106 name of Sangita appears. The report below exhibit 106 is the sonography

report submitted by Hi Tech Institute. This piece of evidence is already discussed by me in earlier part of judgment. Cross-examination of this witness indicates an attempt by the defence to establish that the baby was of Sangita and it was Sangita who received treatment; however, the witness's testimony, along with Exhibit 105, falsifies this story.

52. Now coming to the testimony of a Medical Officer, who had conducted the post mortem report is required to be seen. P.W.-9 is the person who had conducted the post mortem report. He stated in examination-in-chief that on 04.09.2020, he was on duty as a Post Mortem Medical Officer and was attached to the Government Medical College, Latur. He submitted that dead body of the baby of the victim was brought by Police Head Constable S.G. Hogade, Gandhi Square, Police Station, Latur. Prior to conducting of post mortem report, he received inquest panchnama along with the dead body duly signed by Casualty Medical Officer. Covering letter was included with the inquest panchnama. Police had requested the sample for DNA for further investigation, by way of letter which was marked as exhibit 97.

53. P.W.-9 had further deposed that he conducted the post mortem and had taken sample of sternum bone for DNA analysis and further comparison, if any. The same was sent and handed over to police on the same date. He also prepared P.M. report and handed over to the

police. The P.M. report was proved below exhibit 98.

54. Thus, it is clear that a request was made to take sample for DNA purpose of the baby. The sample was taken and it duly sealed. This witness in cross-examination had admitted that he had not undergone training for DNA sample and no specific training for collecting sample and sealing. He could not say exactly whether the said baby was of Sangita or victim. Various suggestions were given to him that he had deposed falsely that Casualty Medical Officer had received a letter and inquest panchmnama and handed over it to him along with dead body for post mortem. It was further suggested that he had not taken the sternum bone for DNA sample and further comparison, if any. Thus, the defence submitted that the chain of custody was not proved as there is no document to show that the sternum bone was handed over to the police.

55. At this juncture, it is necessary to take into consideration the testimony of DNA carrier P.W.-7, who is one Satyawan Banshi Kamble, attached to Shirur Anantpal police station, Latur, and on 09.09.2020, he was working as Police Head Constable. His senior P.S.I. Swami, Investigating Officer of the crime in question, directed him to bring DNA kit from FSL, Aurangabad, and accordingly, letter was given to him. The said letter dated 09.09.2020, was at exhibit 83.

56. According to him, he brought the DNA kit and came to

police station and handed over to P.S.I. Swami. He categorically deposed that in DNA kit dated 15.09.2020, there was a piece of chest bone of the baby and along with it he went to FSL on 16.09.2020. At that time, a letter was given to him, so also blood samples were given to him. The letter bearing signature of P.S.I. Swami and acknowledgment of FSL was marked at exhibit 84.

57. Exhibit 84 produced on record (more particularly page no. 144), clearly shows that it is communication issued by Police Sub Inspector, Police Station Shirur Anantpal, Latur, to the Deputy Director of Original Forensic Science Laboratory, Aurangabad. It shows that various exhibits that exhibit A, B and C were forwarded along with the questionnaire to the laboratory. Exhibit A was the sternum bone of the baby, which was forwarded. Exhibit B was the blood sample of the victim, whereas exhibit C was the blood sample of the accused. All these samples were forwarded for obtaining the DNA report. This communication is dated 15.09.2020 and the acknowledgment given by the forensic laboratory is dated 16.09.2020.

58. If the DNA report below exhibit 20 is perused, it would reveal that it refers to the letter dated 15.09.2020, issued by Police Sub Inspector, Police Station Shirur Anantpal. Letter dated 15.09.2020, bears outward no. 770/2020, whereas exhibit 20, DNA report also speaks about

receipt of letter bearing outward no. 770/2020 dated 15.09.2020. in connection with crime in question. This DNA report opines that the victim and the appellant are concluded to be the biological parents of the baby.

59. Thus, it is crystal clear that there is absolutely no break in chain of custody of the material. Contention of learned counsel for the appellant that there is no document to show that the bone of the baby was handed over by the Medical Officer to the Investigating Officer stands meritless in view of the discussion and more particularly the document which was at exhibit 84.

60. Learned counsel for the appellant has relied upon a law laid down by the Hon'ble Apex Court in the case of **Rahul v. State of Delhi, Ministry of Home Affairs, (2023) 1 SCC 83.** In the case of Rahul (supra), Hon'ble Apex Court had discussed various aspects regarding the chain which is required to be established while forwarding the DNA sample, preservation of DNA sample. No doubt when scientific investigation is carried out the custody is required to be proved. It is also stated by the Hon'ble Apex Court that DNA report is just an opinion. As already stated there is nothing to disbelieve that the samples were not properly preserved and the chain of custody was not proved. The communication discussion (supra) clearly shows that DNA samples were

properly taken and forwarded to the laboratory.

61. The trial Court has appreciated the evidence in just and proper manner and by keeping in mind the principle of proving the case beyond reasonable doubt awarded the conviction to the appellant. The prosecutrix's testimony inspires confidence and in view of the Sections 29 and 30 of the Act of 2012, which speaks about presumption which is required to be raised, I am of the opinion that prosecution has proved the case beyond reasonable doubt, whereas the accused / appellant has not rebutted the presumption. In that view of the matter, Criminal Appeal is dismissed.

(RAJNISH R. VYAS, J.)

SPC