



2026:CGHC:18591-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 404 of 2022

Pawan Das Hewar S/o Ghasidas, Aged About 25 Years R/o Village
Lakhapuri, P.S. Mardapal, District Kondagaon Chhattisgarh

... Appellant

versus

State of Chhattisgarh Through Station House Officer, Police Station
Narayanpur, District Narayanpur Chhattisgarh

... Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate
For State	:	Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per, Ramesh Sinha, C.J.

23/04/2026

1. Heard Ms. Nirupama Bajpai, learned counsel for the appellant.
Also heard Mr. Shailendra Sharma, learned Panel Lawyer, appearing
for the respondent/State.

2. This criminal appeal has been preferred under Section 374(2) of
the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the
impugned judgment of conviction and order of sentence dated



25.01.2022, passed by the learned Additional Sessions Judge (F.T.C.)

Kondagaon, District Kondagaon, C.G. in POCSO Case No.03/2021, by

which the appellant has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 04 of the Protection of Children from Sexual Offences Act, 2012	Life imprisonment and fine of Rupees 1000/- in default of fine additional R.I. for 03 Years.
Under Section 506 (B) of the Indian Penal Code	Rigorous imprisonment for 03 Years and fine of Rupees 1000/- in default of fine Additional R.I. for 01 Year
Under Section 3 (2) (V) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989	Life Imprisonment and fine of Rupees 1000/- in default of fine Additional R.I. for 03 years
Under Section 376 (1) of the Indian Penal Code	No separate sentence has been awarded.
	All the sentences shall run concurrently.

3. Case of the prosecution, in brief, is that complainant PW-3, father of the victim, appeared at Narayanpur police station on 14/12/2020 and lodged a missing person report that his minor daughter had left her house along with her brother on 04/12/2020 to submit the answer sheet of class 10th at Government Higher Secondary School Halami Munjmata. Her brother returned home after leaving her at the house of relative. On 10/12/2020 at around 5.00 pm, the victim proceeded from Halami Munjmata saying that she was going home to Kalepal, who did not reach home till today. Her whereabouts were searched nearby but she was not found anywhere. On the information of which a missing



person report was registered and crime number 196/2020 under section 363 IPC was registered and taken into consideration.

4. During the investigation, the victim was recovered on 15/12/2020, from the possession of the appellant and the recovery Panchnama Ex. P/7 was prepared. She was sent for her medical examination to District Hospital Narayanpur, where she was medically examined by PW-6 Dr. Sakun Markam. While medically examining the victim, the doctor had not noticed any external injuries on her body; however, her hymen was ruptured, and redness was found on her private part, and she gave her MLC report Ex. P/7. Two slides of her vaginal swab were prepared, sealed and handed over to the police for their chemical examination. Spot map Ex. P/3 was prepared by the police. The social status certificate of the victim has been seized vide seizure memo Ex. P/2, in which the victim is shown to belong to the Scheduled Tribe community. With respect to the age and date of birth of the victim, the police have seized the class 5th and 9th mark-sheet vide seizure memo Ex. P/4. The school register has also been seized from the school vide seizure memo Ex. P/25, and after retaining its attested true copy Ex. P/31C, the original register was returned. As per the school register, the date of birth of the victim is 03/04/2004. The appellant was arrested on 16/12/2020, and he too was sent for her medical examination to the District Hospital, Narayanpur, where he was medically examined by Dr. Amarnath Tarak, PW-7. The doctor did not notice any external injuries on his body and found him capable of performing sexual intercourse, and gave his report Ex. P/9. Semen slide of the appellant was also



prepared and handed over to the police for its chemical examination.

The vaginal slides of the victim, her underwear, pubic hair, semen slide of the appellant and his underwear were sent for its chemical examination to FSL, Raipur, from where report Ex. P/20 was received, and semen and sperm were found on the sent articles except the pubic hair of the victim. The police have also collected a blood sample of the victim and the appellant for a DNA report and sent it to the State FSL, DNA unit, Raipur. From the FSL, Raipur, a DNA report was received, and the DNA profiles were found matched. Statement of the witnesses under Section 161 of Cr.P.C. and statement of the victim under Section 164 of the Cr.P.C. were recorded and after completion of usual investigation, charge-sheet was filed before the learned trial Court, for the offence under Section 363, 376 and 506 of IPC, Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act"), and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "Atrocities Act, 1989").

5. To prove its case, the prosecution has examined P.W.1 the victim (A), P.W.2 the friend of the victim, P.W.3 the father of the victim (B), P.W.4 the brother of the victim (C), P.W.5 Assistant Sub-Inspector Chhabiram, P.W.6 Dr. Sakun Markam, P.W.7 Dr. Amarnath Tarak, P.W.8 Constable Roydas Mandavi, P.W.9 Constable Sunita Vatti, P.W.10 Assistant Sub-Inspector Narayan Singh Poya, P.W.11 Deputy Superintendent of Police Unnati Thakur, P.W.12 Assistant Sub-Inspector Vandana Chandrakar & P.W.13 teacher.



6. When the accused was charged with the offences under Section 376(1), 506 (B) IPC and Section 4 of the Protection of Children from Sexual Offences Act and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act the same read out to him and explained to him. He denied the charges and claimed trial. When the statement was recorded under Section 313 of the Code of Criminal Procedure, the accused stated that he was innocent and had been falsely implicated. He expressed his desire not to produce defence evidence.

7. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellant who have committed aforesaid offence, convicted and sentenced him in the aforementioned manner, against which the appeal under Section 374(2) of the Cr.P.C. has been preferred by the accused/appellant.

8. Learned counsel for the appellant submits that the impugned judgment of conviction and sentence passed by the learned trial Court is contrary to law and evidence on record and is liable to be set aside. She would next contend that the conviction has been recorded primarily on the basis of the testimony of the victim, which, according to the defence, suffers from material inconsistencies and does not inspire confidence. She would also submit that the conduct of the victim, as emerging from her deposition, creates serious doubt regarding the prosecution story. The defence has elicited in cross-examination that the victim had accompanied the appellant and had remained with him,



which shows that the relationship was consensual in nature. There is no independent corroboration of the version of the victim on material particulars. The supporting witnesses, including PW-03 (father), are interested witnesses and their evidence is based on what was told to them, and thus cannot be treated as substantive corroboration. She would next contend that with regard to age, the prosecution has relied upon school records, particularly the Dakhil Kharij Register, however, the same has not been proved in accordance with law. The witness (PW-13) has admitted in cross-examination that the basis of entry of date of birth is not known. In absence of proof of the source of such entry, the said document cannot be treated as conclusive proof of age. Therefore, it is prayed that the appellant may be acquitted from the charges leveled against him.

9. On the other hand, the learned counsel for the State opposes the arguments advanced by the learned counsel for the appellant and submitted that the victim was a minor and below 18 years of age at the time of incident, which is proved by the school admission register seized vide seizure memo Ex. P/25, which contains the date of birth of the victim as 03/04/2004. The School mark sheet of the victim supports the entries of the school register. The victim was a minor on the date of incident, and her consent is immaterial. The evidence of the victim need not be required for any corroboration, and on the sole testimony of the victim, the conviction can be made. Injury was found on the private part of the victim, and the FSL report duly supported the presence of semen and sperm on the vaginal slide of the victim. Further, the DNA



report is also found positive, which unerringly supported the prosecution's case that the appellant had committed sexual intercourse with the victim. Therefore, there is no illegality or infirmity in the findings of the learned trial Court. The prosecution has proved its case beyond a reasonable doubt, and but for minor omission or contradiction, the prosecution's evidence duly corroborated each other and is sufficient to hold the conviction of the appellant for the offence in question. Therefore, the impugned judgment of conviction and sentence needs no interference.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the learned trial Court with utmost circumspection and carefully as well.

11. The first question which arises for consideration is whether the prosecution has been able to establish beyond reasonable doubt that on the date of incident i.e. 14.12.2020 the victim was below 18 years of age and thus a "child" within the meaning of the POCSO Act?

12. The victim (PW-01), in her deposition, has specifically stated her date of birth as 03.04.2004. Her testimony on this aspect is consistent and has not been shaken in cross-examination. The said assertion finds substantial corroboration from documentary evidence brought on record by the prosecution.

13. PW-13 (Head Master), who has produced and proved the original Dakhil Kharij Register of the school has categorically deposed that the



victim is entered at Serial No. 115, wherein her date of birth is recorded as 03.04.2004. He has further clarified that the said register is maintained in the regular course of official duties. In cross-examination, he admitted that he is the author of the school register and made the entry of the date of birth of the victim. He voluntarily stated that on the basis of the list provided by Anganbadi Centre, he made entries in the school register. He denied that there is no basis for entering the date of birth of the victim in the school register. Thus, this witness has supported the twin condition that he is the author of the school register and stated the basis on which the entries have been made in the school register.

14. PW-3, the father of the victim, has deposed that the victim is his daughter and at the time of the incident she was a minor. He has stated that his daughter was studying in school and was below 18 years of age on the date of occurrence. He has further stated that though he does not remember the exact date of birth of the victim, she had not attained majority at the relevant time. He has also deposed that the police had obtained documents relating to the age of the victim, including her school records. In his cross-examination, nothing material has been elicited to discredit his testimony regarding the minority of the victim.

15. In ***Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263***, the Hon'ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows :

“22. On the issue of determination of age of a minor,



one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

“12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;



(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i),(ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub- rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule



(3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3),matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the



absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW - PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3.



Satpal (PW4) had proved the certificate Exhibit-PG, as having been made on the basis of the school records indicating, that the prosecutrix VW – PW6, was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view, that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW – PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpal-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW – PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.”

16. In view of the foregoing appreciation of oral and documentary evidence, particularly the testimony of PW-13 (Head Master) and the entries in the Dakhil Kharij Register reflecting the date of birth of the



victim as 03.04.2004, this Court is of the considered opinion that the prosecution has successfully established that the victim was below 18 years of age on the date of the incident. Accordingly, she was a “child” within the meaning of the POCSO Act.

17. The next question which arises for consideration is whether the prosecution has been able to prove beyond reasonable doubt that the appellant committed penetrative sexual assault upon the victim?

18. The victim (PW-01), being the victim of the offence, has given a clear, cogent and categorical account of the incident. She has deposed that when she was alone in the house, the appellant came there, caught hold of her, removed her clothes and committed forcible sexual intercourse. She has further stated that the appellant threatened her not to disclose the incident. Her testimony is natural, consistent and inspires confidence. Despite detailed cross-examination, nothing material has been elicited to discredit her version regarding the commission of sexual intercourse. The suggestions put by the defence regarding consent and voluntary conduct have been specifically denied by her. Her evidence finds corroboration from surrounding circumstances as well as from the testimony of PW-03 (father), who has deposed regarding the disappearance of the victim, her subsequent recovery and the lodging of report.

19. It is a settled principle of law that the testimony of the victim, if found reliable and trustworthy, is sufficient to base conviction even in the absence of independent corroboration. In the present case, her



testimony not only inspires confidence but is also corroborated by other evidence on record. Upon careful scrutiny of the evidence of the victim (PW-01), which is found to be consistent, cogent and trustworthy, and duly corroborated by surrounding circumstances and the testimony of PW-03, this Court is of the considered opinion that the prosecution has proved that the appellant committed penetrative sexual assault upon the victim.

20. The next question which arises for consideration is whether the medical and scientific evidence on record corroborates the version of the victim and connects the appellant with the crime?

21. The victim was subjected to medical examination and the medical evidence indicates findings consistent with sexual intercourse. The doctor has proved the medico-legal report, and nothing has been elicited in cross-examination to discredit the same. More importantly, the prosecution has brought on record the FSL/DNA report, which clearly establishes that the biological samples collected from the victim match with that of the appellant. The chain of custody of the samples has been duly proved and remains unchallenged. The DNA evidence provides strong and conclusive corroboration and directly connects the appellant with the act of sexual intercourse. In the case of **Mukesh and Another vs. State (NCT of Delhi) and Others**, 2017 (6) SCC 1, the Hon'ble Supreme Court emphasized that DNA evidence is a scientifically accurate and reliable means of establishing guilt. They have considered in detail the scientific valuation of the DNA report in paragraphs 211 to



228, which are as under:-

211. DNA is the abbreviation of deoxyribonucleic acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behaviour and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix structure which can be compared with a twisted rope "ladder".

212. The nature and characteristics of DNA had been succinctly explained by Phillips, L.J. in *R. v. Doheny-55*. In the above case, the accused were convicted relying on results obtained by comparing DNA profiles obtained from a stain left at the scene of the crime with DNA profiles obtained from a sample of blood provided by the appellant. In the above context, with regard to DNA, the following was stated by Phillips, L.J.:

"Deoxyribonucleic acid, or DNA, consists of long ribbon-like molecules, the chromosomes, 46 of which lie tightly coiled in nearly every cell of the body. These chromosomes 23 provided from the mother and 23 from the father at conception, form the genetic blueprint of the body. Different sections of DNA have different identifiable and discrete characteristics. When a criminal leaves a stain of blood or semen at the scene of the crime it may prove possible to extract from that crime stain sufficient sections of DNA to enable a comparison to be made with the same sections extracted from a sample of blood provided by the suspect. This process is complex and we could not hope to describe it more clearly or succinctly than did Lord Taylor, C.J. in *Deen86* (transcript: 21-12-



1993), so we shall gratefully adopt his description:

"The process of DNA profiling starts with DNA being extracted from the crime stain and also from a sample taken from the suspect. In each case the DNA is cut into smaller lengths by specific enzymes. The fragments produced are sorted according to size by a process of electrophoresis. This involves placing the fragments in a gel and drawing them electromagnetically along a track through the gel. The fragments with smaller molecular weight travel further than the heavier ones. The pattern thus created is transferred from the gel onto a membrane. Radioactive DNA probes, taken from elsewhere, which bind with the sequences of most interest in the sample DNA are then applied. After the excess of the DNA probe is washed off, an x-ray film is placed over the membrane to record the band pattern. This produces an auto-radiograph which can be photographed. When the crime stain DNA and the sample DNA from the suspect have been run in separate tracks through the gel, the resultant auto-radiographs can be compared. The two DNA profiles can then be said either to match or not.'

213. In the United States, in an early case *Frye v. United States*⁸⁷, it was laid down that scientific evidence is admissible only if the principle on which it is based is substantially established to have general acceptance in the field to which it belonged. The US Supreme Court reversed the above formulation in *Daubert v. Merrell Dow Pharmaceuticals Inc* stating thus: (SCC OnLine US SC)

"Although the Fry decision itself focused exclusively on "novel" scientific techniques, we do not read the requirements of Rule 702 to apply specially or exclusively to unconventional evidence. Of course, well-



established propositions are less likely to be challenged than those that are novel and they are more handily defended. Indeed, theories that are so firmly established as to have attained the status of scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under Federal Rule of Evidence 201.

* * *

This is not to say that judicial interpretation, as opposed to adjudicative fact finding, does not share basic characteristics of the scientific endeavor:

‘The work of a Judge is in one sense enduring and in another ephemeral.... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine. B. Cardozo, *The Nature of the Judicial Process* at pp. 178, 179 (1921).”

214. The principle was summarised by Blackmun, J., as follows: (Daubert case, SCC OnLine US SC)

"To summarise: "general acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence especially Rule 702-do assign to the trial Judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

The inquiries of the District Court and the Court of Appeals focused almost exclusively on "general acceptance", as gauged by publication and the decisions of other courts. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded



for further proceedings consistent with this opinion."

After the above judgment, the DNA Test has been frequently applied in the United States of America.

215. In District Attorney's Office for the Third Judicial District v. Osborne⁸⁹, Roberts, C.J. of the Supreme Court of United States, while referring to the DNA test, stated as follows: (SCC OnLine US SC)

"DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognised this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure usually but not always through legislation.

* * *

Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue."

216. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the court accrued information about the tending features of identification of criminals. The recent advancement



in modern biological research has regularised Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53-A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53-A relates to the examination of a person accused of rape by a medical practitioner.

217. Similarly, under Section 164-A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is a must. Section 53-A sub-section (2) as well as Section 164-A sub-section (2) are to the following effect:

"53-A. Examination of person accused of rape by medical practitioner.- (1)

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely-

- (i) the name and address of the accused and of the person by whom he was brought,
- (ii) the age of the accused,
- (iii) marks of injury, if any, on the person of the accused,
- (iv) the description of material taken from the person of the accused for DNA profiling, and
- (v) other material particulars in reasonable detail.

* * *

164-A. Medical examination of the victim of rape- (1)

* * *



(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely -

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling:

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail"

218. This Court had the occasion to consider various aspects of DNA profiling and DNA reports. K.T. Thomas, J. in *Kamti Devi v. Poshni Ram*% observed: (SCC p. 316, para 10)

"10. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate...."

219. In *Pantangi Balarama Venkata Ganesh v. State of A.P.*91, a two-Judge Bench had explained as to what is DNA in the following manner: (SCC pp. 617-18, paras 41-42)

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



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

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

42. Indisputably, the evidence of the experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. In cross-examination, PW 46 had stated as under:

'If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population." "

220. In Santosh Kumar Singh v. State², which was a case of a young girl who was raped and murdered, the DNA reports were relied upon by the High Court which were approved by this Court and it was held thus: (Santosh Kumar case², SCC p. 772, para 71)

"71. We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must,



therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Kamti Devi v. Poshhi Ram. In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on Circumstance 9."

221. In *Inspector of Police v. John David*⁹⁴, a young boy studying in MBBS course was brutally murdered by his senior. The torso and head were recovered from different places which were identified by the father of the deceased. For confirming the said facts, the blood samples of the father and mother of the deceased were taken which were subjected to DNA test. From the DNA, the identification of the deceased was proved. Para 60 of the decision is reproduced below: (SCC p. 528)

"60. The said fact was also proved from the DNA test conducted by PW 77. PW 77 had compared the tissues taken from the severed head, torso and limbs and on scientific analysis he has found that the same gene found in the blood of PW 1 and Baby Ponnusamy was found in the recovered parts of the body and that therefore they should belong to the only missing son of PW 1."

222. In *Krishan Kumar Malik v. State of Harvana*⁹⁵, in a gang rape case when the prosecution did not conduct DNA test or analysis and matching of semen of the appellant-accused with that found on the undergarments of the CrPC, it has become necessary for the prosecution to go in for DNA test in prosecutrix, this Court held that after the incorporation of Section 53-A in such type of cases. The relevant paragraph is reproduced below: (SCC p. 140. para 44)



"44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f 23-6-2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in CrPC the prosecution could have still restored to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.

223. In *Surendra Koli v. State of U.P.*^{9%}, the appellant, a serial killer, was awarded death sentence which was confirmed by the High Court. While confirming the death sentence, this Court relied on the result of the DNA test conducted on the part of the body of the deceased girl. Para 12 is reproduced below: (*Surendra Koli case*[%], SCC p. 84)

"12. The DNA test of Rimpa by CDFD, a pioneer institute in Hyderabad matched with that of blood of her parents and brother. The doctors at AIIMS have put the parts of the deceased girls which have been recovered by the doctors of AIIMS together. These bodies have been recovered in the presence of the doctors of AIIMS at the pointing out by the accused Surendra Koli. Thus, recovery is admissible under Section 27 of the Evidence Act."

224. In *Mohd. Ajmal Amir Kasab v. State of Maharashtra*⁹⁸, the accused was awarded death sentence on charges of killing large number of innocent persons on 26-11-2008 at Bombay. The accused with others had come from Pakistan using a boat "Kuber" and several articles were recovered



from "Kuber". The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA test and the DNA test matched with several accused. The Court observed: (SCC p. 125, para 333)"

333. It is seen above that among the articles recovered from Kuber were a number of blankets, shawis and many other items of clothing. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA profiling and, excepting Imran Babar (deceased Accused 2), Abdul Rahman Bada (deceased Accused 5), Fahadullah (deceased Accused 7) and Shoaib (deceased Accused 9), the rest of six accused were connected with various articles found and recovered from Kuber. The appellant's DNA matched the DNA profile from a sweat stain detected on one of the jackets. A chart showing the matching of the DNA of the different accused with DNA profiles from stains on different articles found and recovered from the Kuber is annexed at the end of the judgment as Schedule III."

225. In *Sandeep v. State of U.P.*⁹⁹, the facts related to the murder of pregnant paramour/girlfriend and unborn child of the accused. The DNA report confirmed that the appellant was the father of the unborn child. The Court, relying on the DNA report, stated as follows: (SCC p. 133, para 67)

"67. In the light of the said expert evidence of the Junior Scientific Officer it is too late in the day for the appellant Sandeep to contend that improper preservation of the foetus would have resulted in a wrong report to the effect that the accused Sandeep was found to be the biological father of the foetus received from the deceased Jyoti. As the said submission is not supported by any relevant material on record and as the appellant was not able to substantiate the said argument with any other



supporting material, we do not find any substance in the said submission. The circumstance, namely, the report of DNA in having concluded that accused Sandeep was the biological father of the recovered foetus of Jyoti was one other relevant circumstance to prove the guilt of the said accused."

226. In *Rajkumar v. State of M.P.* 100, the Court was dealing with a case of rape and murder of a 14-year-old girl. The DNA report established the presence of semen of the appellant in the vaginal swab of the prosecutrix. The conviction was recorded relying on the DNA report. In the said context, the following was stated: (SCC pp. 357-58, para 8)

"8. The deceased was 14 years of age and a student in VIth standard which was proved from the school register and the statement of her father Iknis Jojo (PW1). Her age has also been mentioned in the FIR as 14 years. So far as medical evidence is concerned, it was mentioned that the deceased prosecutrix was about 16 years of age. So far as the analysis report of the material sent and the DNA report is concerned, it revealed that semen of the appellant was found on the vaginal swab of the deceased. The clothes of the deceased were also found having the appellant's semen spots. The hair which were found near the place of occurrence were found to be that of the appellant."

228. From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted."

22. In light of the medical evidence and the FSL/DNA report, which conclusively establishes that the biological samples of the victim match



with that of the appellant, this Court is of the considered opinion that the scientific and medical evidence fully corroborates the prosecution case and firmly connects the appellant with the commission of the offence.

23. The next question which arises for consideration is whether the plea of consent raised by the defence has any legal relevance in the facts of the present case?

24. In view of the finding recorded under Point No. 1, the victim was a minor at the time of the incident. Under the provisions of the POCSO Act, consent of a minor is legally immaterial. Even otherwise, the victim has categorically stated that the act was committed against her will. Thus, the plea of consent raised by the defence is devoid of merit and deserves to be rejected.

25. The final question which arises for consideration is whether the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt so as to sustain the conviction recorded by the learned trial Court?

26. The prosecution case stands firmly established on the basis of the reliable and cogent testimony of the victim (PW-01), Corroborative evidence of PW-03, Documentary proof of age through the Dakhil Kharij Register, Medical evidence, and Conclusive DNA/FSL report. The chain of evidence is complete and consistent, and there are no material contradictions or discrepancies going to the root of the matter.

27. Considering the cumulative effect of the reliable testimony of the victim, corroborative evidence of other witnesses, documentary proof of



age, and conclusive scientific evidence, this Court is of the considered opinion that the prosecution has successfully proved its case beyond reasonable doubt against the appellant, and no ground is made out to interfere with the findings recorded by the learned trial Court.

28. The offence under Section 3 (2) (v) of the Atrocities Act, 1989, also stands proved by the prosecution on the ground that the victim belongs to the Schedule Tribe community. The social status certificate of the victim (Ex. P/32C) has not been challenged by the defence. Further, the victim, PW-1, has specifically deposed in para 1 of her deposition that she belongs to the Scheduled Tribe community, and the appellant knew the said fact. Section 3(2)(v) of the Atrocities Act, 1989, provides that whoever, not being a member of a Scheduled Caste or Scheduled Tribe, commits any offence under the IPC, with imprisonment for a term of ten years or more against a person knowing that such person is a member of a Scheduled Caste or Scheduled Tribe, shall be punishable with imprisonment for life and with fine. In the present case, the appellant knowingly committed the offence that the victim belongs to a Scheduled Tribe and committed the offence of rape upon her, for which he is sentenced to Life imprisonment. Therefore, his conviction and sentence under Section 3 (2) (v) of the Atrocities Act, 1989, are also found justified.

29. Having thus appreciated the entire evidence on record and answered the points for determination in favour of the prosecution, this Court now proceeds to examine the legal position governing reliance on



the testimony of the prosecutrix in cases of sexual assault.

30. In the Indian society refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the *sine qua non* for conviction in a rape case. The observations of Vivian Bose, J. in ***Rameshwar v. The State of Rajasthan***, reported in ***(AIR 1952 SC 54)*** were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...”

31. Crime against women in general and rape in particular is on the



increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the victim inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the victim must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation. This position was highlighted in ***State of Punjab v. Gurmeet Singh***, reported in **(1996) 2 SCC 384**.



32. A victim of a sex offence cannot be put on par with an accomplice.

She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the victim. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the victim it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the victim must necessarily depend on the facts and circumstances of each case. But, if a victim is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the victim does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in



accepting her evidence.

33. The Hon'ble Supreme Court in the matter of ***Ranjit Hazarika v. State of Assam***, reported in ***AIR 1998 SC 635*** has held that the evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime, but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.

34. The Hon'ble Supreme Court in the matter of ***Rai Sandeep @ Deenu v. State of NCT of Delhi***, reported in ***(2012) 8 SCC 21*** held as under:-

"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.”

35. As per the statement of the victim (PW-1), she has categorically deposed that she knew the accused as he was related to her acquaintance and thus identifiable. She has specifically stated that on the date of incident, when she had gone to the house of her friend, the accused found her alone, caught hold of her, gagged her mouth and forcibly committed sexual intercourse with her against her will. She has further stated that the accused threatened her not to disclose the incident to anyone and assured her that he would marry her.

36. Considering the aforesaid facts and circumstances of the case, particularly the evidence of the victim (PW-1), which inspires confidence and remains consistent on material particulars, coupled with the evidence of her father (PW-3), who has deposed regarding the missing of the victim and lodging of report, and other supporting witnesses, it is evident that the prosecution version stands duly corroborated. The medical evidence adduced by the prosecution, along with the report of



the medical officer, further lends assurance to the version of the prosecutrix. It is also borne out from the record that the victim was a minor at the time of incident, which stands proved from the documentary evidence i.e. school records and dakhil-kharij register, wherein her date of birth is recorded as 03.04.2004. The said documentary evidence has been duly proved by the concerned witness and remains unshaken in cross-examination.

37. The medical officer who examined the victim and prepared the MLC report has supported the prosecution case, and it is quite clear from the documentary as well as oral evidence available on record that the accused committed forcible sexual intercourse with the victim. The conduct of the accused in threatening the victim further establishes absence of consent. The prosecution has thus been successful in proving beyond reasonable doubt that on the date of the incident, the victim was below 18 years of age and the accused committed penetrative sexual assault upon her. Thus, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentenced as awarded by the trial Court is hereby upheld. The present appeal lacks merit and is accordingly **dismissed**.

38. It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.

39. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his



jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

40. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

SD/-

(Ravindra Kumar Agrawal)
Judge

SD/-

(Ramesh Sinha)
Chief Justice

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