

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO.691 OF 2025(F)
WITH
CRIMINAL MISC. APPLICATION NO.692 OF 2025(F)**

Mr. Afzal Khan @ Albaz Khan
Age 25 years, Indian National,
R/o. C-10-38-1, Salmo Wado,
Near Church, Saligao,
Bardez, Goa.

...Appellant

Versus

The State of Goa
(as represented by the Officer
Incharge/Investigating Officer,
Of Anjuna Police Station)
Through The Public Prosecutor,
The High Court of Bombay at Goa,
Porvorim, Goa.

... Respondent

Mr Rohan Desai with Ms Esha Ghodekar, Advocates for the
Appellant.

Mr Pravin Faldessai, Additional Public Prosecutor for the
Respondent/State.

CORAM : ASHISH S. CHAVAN, J.

**Reserved on : 17th MARCH 2026
Pronounced on : 20th MAY 2026**

JUDGMENT :

1. By way of the present Appeal, the Appellant has challenged the judgment and order dated 16.07.2025 and 21.07.2025 passed by the learned



Fast Track Special Court (POCSO) at Panaji whereby the learned Sessions Judge in Sessions Case (ORS) No.77/2023 has convicted the Appellant under Section 376 of IPC and sentenced him to undergo 10 years rigorous imprisonment and to pay fine of Rs.1,00,000/- (Rupees One Lakh only) and in default to undergo 6 months rigorous imprisonment. The judgment dated 21.07.2025 directs that if the fine amount is realised, the same shall be paid to the victim after the appeal period is over.

2. The Appeal was admitted by this Court vide its order dated 28.07.2025 and taken up for final hearing by consent of the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the Respondent/State.

3. The Appellant is in custody since 01.08.2023, as reflected in the impugned judgment and order dated 21.07.2025.

4. It is the case of the prosecution that on 30.07.2023 between 04.45 pm to 05.50 pm, the Appellant committed offence of rape on the victim, punishable under Section 376 of IPC. As per the complaint of the victim, aged 18 years, on 30.07.2023, PW4 (friend of the victim) convinced the victim to accompany her for a day picnic at a Holiday Home (hotel) at Arpora. Accordingly, the victim along with PW4 proceeded to the said Holiday Home and booked a room at about 12.00 hours noon. It is alleged that thereafter PW4 left the room and returned along with the Appellant, who is claimed to be the boyfriend of PW4. The Appellant ordered food and drinks for all and at about 04.45 pm, the victim alleges that she slept on the bed and her friend



PW4 along with the Appellant also slept on the same bed. She alleges that at about 05.50 pm, the victim woke up and noticed that she was disrobed and the Appellant was partially nude and lying on top of her. The victim pushed the Appellant and ran to the washroom along with her clothes. She found sperms fallen on her vagina. She washed, wore clothes and came out. Upon seeing PW4, the victim started crying. However, she did not say anything to PW4 and left the room to return home. After going home, on the next day (i.e. on 31.07.2023), the victim informed her sister about the said incident. It is alleged that thereafter the victim, her sister and her brother-in-law visited the residence of PW4, where there was an altercation between PW4 and the sister of the victim. Subsequently, on 01.08.2023, the complaint was filed by the victim with the Anjuna Police Station and the FIR was registered. The victim was sent for a medico-legal examination on 01.08.2023 at 5.40 am.

5. After the conclusion of investigation, chargesheet was filed against the Appellant. The Appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 12 witnesses in support of their case and the Appellant examined himself and his wife in his defence. The Appellant came to be convicted vide judgment and order dated 16.07.2025 and 21.07.2025.

6. Heard Mr Rohan Desai, learned Counsel for the Appellant and Mr Pravin Faldessai, learned Additional Public Prosecutor for the Respondent/State. Perused the records.



7. Before adverting to the submissions of the respective Counsel, it would be necessary to examine the evidence in brief so as to appreciate the conspectus of the controversy involved.

8. The prosecution examined the victim as PW1. She has deposed in terms of the complaint and statement under Section 164. She has also brought on record the register of the Holiday Home, where the incident has allegedly taken place. The employer of the Appellant was examined as PW2. He has deposed about his scooter, which was used by the Appellant, allegedly while going to the scene of offence. The doctor, who examined the Accused and produced the medical examination report, is examined as PW3. The friend of the victim and the alleged girlfriend of the Appellant is examined as PW4. One of the panchas to the scene of offence panchanama has deposed as PW5. The owner of the premises is examined as PW6. He has introduced in evidence the CCTV footage along with the Certificate under Section 65(B) of the Evidence Act. The Forensic Analyst, who had collected the blood sample of the Appellant and also sent it for DNA profile, was examined as PW7. It is pertinent to note that no DNA reports are relied upon or tendered in evidence by this witness. A waiter in the concerned Holiday Home, who claims to have seen the Appellant, is examined as PW8. One of the panchas of the vehicle attachment panchanama is examined as PW9. The doctors, who conducted the medico-legal examination of the victim, were not available for evidence, since they were no longer in the employment of the hospital. The medico-legal examination report was tendered in evidence by their colleague, who claimed to identify their signatures and was examined as PW10. The Forensic



Scientist attached to the CFSL unit was examined as PW11 in support of her examination report. She has concluded that the DNA profile indicates the presence of semen of the Appellant on the bedsheet in the room where the incident has allegedly taken place. The Investigating Officer (IO) has been examined as PW12 and the wife of the Appellant and the Appellant himself have been examined as DW1 and DW2, respectively.

9. On behalf of the Appellant, the impugned judgment was assailed on several counts. It was submitted that, as per the prosecution case, the time of the alleged incident is from 04.45 pm to 05.50 pm on 30.07.2023, however, the complaint is filed on 01.08.2023 at 4.47 am (morning), after about two days. The attention of this Court was invited to the admission of the IO, who in her deposition, admits that there was 48 hours delay on the part of the victim to approach the police and register a complaint. The explanation sought to be given on behalf of the victim for the delay is that after coming home, she was frightened and not feeling well. Save and except for this reason, there is no other explanation offered by the victim for the delay. The Appellant has contended that considering the fact that the victim along with her sister had gone to the residence of PW4 on the very next day of the incident, where there was an altercation between the relatives of PW4 and the sister of the victim, but did not approach the Police instead, the explanation for the delay ought not to be believed. The victim has changed the version of the incident from time to time. In the complaint, she alleges that the Appellant allegedly disrobed her and attempted to commit sexual assault, whereas in her 164 statement she changes the version to that of sexual



intercourse and in her oral evidence, she states that the statements made by her in her complaint and her 164 statement are both true. During her cross-examination, she admits to have demanded Rs.5,00,000/- (Rupees Five Lakhs only) from the wife of the Appellant to settle the matter out of Court.

10. The evidence of PW4 runs contrary to that of the victim. PW4, on being confronted with the hotel register entry showing the name of the Appellant, states that the Appellant never entered the hotel. PW4 has maintained this stand throughout the evidence. Thus, it is submitted that the evidence of PW4 runs contrary to the version of PW1. Although PW4 was declared hostile, it is a settled position of law that the entire evidence of a hostile witness need not be excluded from consideration, and the part that finds corroboration and credibility can be relied upon by the Court.

11. On behalf of the Appellant, it was also submitted that the identification of the Appellant assumes significance in the wake of the fact that the Appellant is only identified by witnesses in Court. No Test Identification Parade has been conducted by the prosecution. The evidence of the owner of the premises is, at the best, hearsay evidence since he was never present when the alleged incident had taken place. The CCTV footage, which forms an integral part of the evidence and which was played in Court, clearly establishes that the Appellant was not seen entering the hotel and only the victim is seen in the reception area going to the room. There is no document in the nature of bills, UPI payments, etc., to show the presence of the Appellant inside the hotel premises. PW8, a waiter in the premises, does speak about the presence



of the Appellant, however, his evidence does not inspire confidence. Insofar as the CCTV footage is concerned, the Appellant has argued that the said CCTV footage shows the parking lot and reception area. The victim admits that in order to enter the hotel rooms, one has to go through the reception area and that the CCTV footage of the reception area does not show the presence of the Appellant. The victim and PW4 are seen entering the hotel. The Appellant is seen parking his scooter in front of the reception in the parking lot. The victim is seen going out of the hotel, followed by the Appellant. This fact is also corroborated by the IO, who, in his evidence, states that the Appellant is not seen in the footage near the reception area. Thus, the Appellant contends that even taking the CCTV footage as it is, the Appellant, at the best, is seen in the parking lot and while leaving the hotel. The CCTV footage does not show that the Appellant went beyond the reception area or entered the rooms. On the aspect of medical evidence, the Appellant has pointed out that the doctor, who has proved the medico-legal examination report of the victim, has in her cross-examination categorically stated that the fresh hymenal tears were within 12 hours. This means that the victim was subjected to sexual intercourse within 12 hours of the time of medical examination. The incident happened on 30.07.2023. After a gap of two days, i.e. 01.08.2023, the victim was medically examined at 6.30 am. The medical evidence thus rules out the possibility of the sexual assault on 30.07.2023. The Appellant further argued that although the prosecution has relied heavily on the presence of semen of the Appellant, confirmed by DNA profile, it is submitted that the DNA report cannot be read in isolation. It is only a



corroborative piece of evidence and cannot be the sole basis of conviction. Moreover, the fact that the prosecution has claimed that PW4 was allegedly the girlfriend of the Appellant, and the victim states that the Appellant and PW4 were sleeping on the same bed prior to the incident, the presence of semen on the bedsheet cannot *ipso facto* lead to one inescapable conclusion, namely that the Appellant has committed rape on the victim. There can be several probable causes for the presence of the Appellant's semen on the bedsheet. In the light of the submission made on behalf of the Appellant, it was prayed that the Appeal may be allowed and the Appellant be acquitted. As regards the entry in the hotel register, although it reflects the name of the Appellant, his signature is not to be seen corresponding to his name. The checkout time is also contrary to the time mentioned by the victim. The Appellant argues that the possibility of his false implication cannot be ruled out.

12. Per contra, learned Additional Public Prosecutor, Mr Faldessai for the State, supported the impugned judgment and prayed for rejection of the Appeal on several grounds. According to the prosecution, the evidence of the victim is insufficient to convict the Appellant. Inviting the attention of this Court to the deposition of the victim, it was argued that the incident of forcible sexual intercourse has been clearly deposed by the victim. It is submitted that the allegations of the victim in the complaint, in her 164 statement and finally her testimony in Court must be considered in a holistic manner. Minor discrepancies and/or inconsistencies do not render the evidence of the victim untrustworthy. The testimony of PW8 (the waiter) has



established the presence of the Appellant in the room at the date and time alleged. Thus, the evidence of PW1 (victim) and PW8 (the waiter) establish the presence of the Appellant at the scene of offence. It is further submitted that the forensic evidence establishes the presence of the semen of the Appellant on the bedsheet which was attached under a panchanama from the hotel. This further strengthens the argument of the prosecution that the Appellant was present at the scene of offence. The prosecution has further argued that the medical evidence corroborates the testimony of the victim. It was pointed out that the admission of the doctor during cross-examination that there was a fresh hymenal tear within 12 hours cannot be construed in favour of the Appellant. The doctor, who was examined, was not the author of the medical report and hence the admission was thus not an opinion of the doctor, who had performed the medico-legal examination, but a statement made by a colleague doctor, who was attempting to explain the meaning of the term 'fresh hymenal tear'. Insofar as DNA evidence is concerned, the prosecution argued that the DNA profile reveals the presence of semen on the bedsheet attached from the hotel room. Thus, the presence of the Appellant in the room where the incident has taken place is beyond doubt. In this light, even if the CCTV footage does not show the Appellant entering the reception area, the DNA evidence establishes his presence. Moreover, the Appellant has not explained the presence of semen on the bedsheet, which can certainly enable this Court to draw an adverse inference against the Appellant. It was prayed on behalf of the prosecution that in the conspectus of the aforesaid



facts, the Appeal against conviction must fail and the impugned judgment must be confirmed.

13. Appreciating the rival contentions, the question that falls for consideration before this Court is whether, in the facts and circumstances of the case, the prosecution has succeeded in proving beyond reasonable doubt the offence punishable under Section 376 of IPC against the Appellant, and, if so, whether the substantive sentence of rigorous imprisonment for 10 years is proportionate to the magnitude of the offence.

14. In the light of the submissions advanced and in the conspectus of the evidence on record, following facts emerge distinctly. The victim in her complaint states that on 30.07.20203, her friend (PW4) persuaded her to accompany for a day picnic at a holiday home at Arpora. Accordingly, the victim along with PW4 proceeded to the said holiday home and booked a room at about 12.00 hrs noon. PW4 left the room and allegedly returned with the Appellant whom she introduced to the victim as her boyfriend. All three had food and consumed beer. It is the case of the victim in her deposition that at about 4.45 pm she slept on the bed and PW4 along with the Appellant slept next to the victim. The Complaint, the 164 statement and the evidence proceed on the aforesaid sequence till this juncture. There is divergence in what happens thereafter. In the complaint, the victim alleges that at about 5:50 pm when she woke up, she noticed that the Appellant was on her partially nude and had disrobed her and she was under him nude. She realised that the Appellant was trying to have forcible sexual intercourse with her. She pushed



the Appellant and ran to the washroom to change her clothes. She has lodged the complaint on the allegation that the Appellant disrobed her and was trying to have forcible sexual intercourse with her. In her 164 statement, the victim reiterates the same sequence of events, only adding that when she went to the washroom, she found sperm (semen) on her private part, however, at the end of the statement, she alleges that the Appellant had forcible sexual intercourse with her against her will when she was in deep sleep. In her evidence, she also reiterates the same sequence of events and states that the Appellant was trying to have forcible sexual intercourse with her. Thus, the sequence of events remains the same. The 164 statement, however, makes an allegation of forcible sexual intercourse. Under cross-examination, when the attention of the victim is drawn towards this discrepancy, the victim states that both her statements are true. As far as the aspect of delay in registration of complaint is concerned, it is not in dispute that the victim has approached the police on 01.08.2023 at 4:47 am in the morning. It is also not in dispute that the incident is alleged to have occurred between 4:45 pm to 5:50 pm on 30.07.2023. Thus, there is a delay of almost 48 hours in lodging the complaint. The explanation that the victim gives for the delay in the complaint and also in the evidence is that she was scared immediately after the incident. However, on the next day, she informed the incident to her elder sister. The victim along with her sister and brother-in-law went to the house of PW4 on the next day. The victim deposes that there was an altercation between PW4 and the sister of the victim after which the victim and her sister approached the police, who eventually registered the complaint. The intervening episode between the victim and



PW4 assumes significance in the wake of another admission by the victim, where she states under cross-examination that she had demanded Rs.5.00 lakhs from the wife of the Appellant to settle the matter out of court. This admission is corroborated by the deposition of the wife of the Appellant in Court, who was examined as DW1. The delay in approaching the police station on the part of the victim has to be tested on the anvil of the aforesaid sequence of events. Here it would be pertinent to note that even the FIR is silent on the reasons of the delay. Another aspect which assumes significance is the fact that the FIR was registered on the basis of the complaint by the victim at 04:47 hrs. The FIR applies Section 376 IPC. However, the complaint clearly alleges 'attempt' to commit rape. The IO in her evidence acknowledges this fact and states that she is aware of the distinction between rape and attempt to rape. The medical examination of the victim was done at 6:30 a.m. on 1.08.2023. Thus at the time of registration of offence the fact of intercourse was not even demonstrable, however the IO has applied Section 376 IPC without even waiting for the medical report. This assumes significance since by her own admission IO states that the complaint received by her was for 'attempt' to rape. It is another matter that the subsequent statements did make allegations of rape but the inescapable fact is that the IO registered an offence without even *prima facie* examining whether the allegations in the complaint make out the ingredients of the said offence or not.

15. It is in the background of the aforesaid aspects that the medical evidence needs to be considered. The victim was sent for medical examination on 01.08.2023 and examined at 6:30 a.m. The Medico-legal Report opines



that “Nulligravida with fresh hymenal tear at 6 o’clock position and 7 o’clock position suggestive of recent vaginal penetration”. The doctors who had examined the victim have since left the Goa Medical College and hence the Report was proved in evidence by PW 10, a doctor from the same institution who was familiar with the signature of the doctors who had prepared the report. Under cross-examination, she states that by fresh hymenal tear it is meant that the *injury is within 12 hours*, whereas the incident has admittedly taken place prior to *48 hours of medical examination*. To examine whether the allegation of forcible non-consensual intercourse by the Appellant on the victim as alleged, all aforesaid aspects need to be examined holistically. No doubt it is trite law that even the sole testimony of the prosecutrix can form the basis for conviction provided it is safe, reliable and worthy of acceptance. However, the question whether the testimony of the prosecutrix is one which inspires confidence would be peculiar to the facts and circumstances of each case. In the present case, the victim has changed the version of the allegations without any cogent explanation as can be seen from the foregoing discussion. The delay of more than 48 hours to lodge the complaint when seen from the perspective of the intervening altercation between the victim and PW4 and in the light of the admission that she had demanded Rs.5.00 lakhs from the wife of the Appellant to settle the matter out of court and in the wake of the medical evidence, which opines that the intercourse has taken place within 12 hours whereas the incident has taken place prior to 48 hours of the medical examination, cumulatively, does not inspire confidence in the testimony of the victim.



16. Dealing with the argument of the Appellant regarding his identification and presence at the scene of offence, it is an admitted position that the Appellant and the victim were strangers to each other prior to the incident. Hence, the absence of Test Identification Parade (TIP) assumes significance. When an explanation was sought by the defence from the IO as to why the TIP was not conducted, the only explanation that was given was that the victim has given the name of the Appellant in the Complaint. However, it is not disputed that the victim has not given any description of the assailant in her complaint. Thus, it is evident that the victim has identified the Appellant for the first time in Court. The Hon'ble Supreme Court has observed that such evidence is inherently a weak piece of evidence. The purpose of a prior TIP, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to look for corroboration of the testimony of the witness in court as to the identity of the accused who are strangers (See *Malkhansingh V/s. State of MP*¹).

17. The prosecution has contended that the CCTV footage, the hotel Register and witnesses, who claim to have seen the Appellant at the hotel on the given day establish his presence which is corroborated by the dock identification. Insofar as the CCTV is concerned it was played in the learned Trial Court in the presence of the victim. The Court has observed that the victim and PW4 is seen entering the hotel and going to the reception area. The footage shows that the Appellant has parked his scooter in front of the

¹ (2003) 5 SCC 746



reception in the parking lot. The footage also shows the victim going out of the hotel and the Appellant going on his scooter and talking to PW4. In order to understand the topography of the hotel, it is pertinent to note that the CCTV footage pertains to the parking lot and the reception area of the hotel premises. The victim in her deposition categorically states that to enter the hotel rooms, one has to go through the reception area and only then one can enter the rooms. The victim, after seeing the footage, admits that the footage in the reception area does not show the Appellant. The IO examined as PW12 also corroborates this fact. Furthermore, it is an admitted position that the victim was never called to the police station to view the CCTV footage, nor was any viewing panchanama prepared by the police. Thus, the victim saw the CCTV footage for the first time during the course of evidence. Insofar as the identification of the Appellant by other witnesses, two witnesses, namely the owner of the premises of the hotel and the alleged waiter of the hotel, were examined as PW6 and PW8, respectively. The deposition of PW4, insofar as the Appellant is concerned is hearsay in nature. The CCTV footage has been played before him during the course of evidence and from the CCTV footage, he has identified the Appellant. His narration, insofar as what is seen in the CCTV footage, is no different from the observations of the learned Trial Court. To reiterate, the CCTV footage, although shows the Appellant at the parking lot of the hotel and while leaving the hotel premises on scooter, it does not show the Appellant going inside the reception area. Thus, even if his evidence is considered, at the best, it establishes the presence of the Appellant in the proximity of the scene of offence. Here, it is pertinent to note that



CCTV footage is that category of evidence, which is neutral in nature and eliminates the aspect of subjectivity to that extent. Going by the CCTV footage, at the best, the Appellant is seen in the parking lot of the hotel premises and while leaving the hotel premises. It does not show the Appellant either in the reception area or entering the room. The other witness, PW8 (the waiter), claims to have seen the Appellant in room no.6 along with two girls. He has identified the Appellant on VC. He has produced on record a restaurant bill, about which under cross-examination he admits that there is no name or mention of room number on the bill, which he claims that the Appellant paid for. Under cross-examination, it is established that PW8 has not been able to show whether there was any payment made by the Appellant as alleged. It must also be noted that after the said incident he identified the Appellant for the first time on video conference during the course of the evidence. Moreover, he has not produced any document to show that he was working for the concerned hotel. The IO admits in her evidence that she had not collected any documentary evidence to show that the waiter was employed in the hotel. No staff register was maintained by the hotel. Although this witness does claim to have identified the Appellant, this Court has appreciated his evidence with circumspection in view of the reasons, which are set out hereinafter.

18. To establish the presence of the Appellant in the hotel at the relevant time, the prosecution has relied upon an entry in the hotel register which reflects the name of the Appellant along with the victim and PW4. A perusal of this document which has been exhibited in evidence shows that although



the names of the victim, Appellant and PW4 appear on the register, only the signature of the victim appears in the signature column of the document. In other words, the Appellant has not signed the said document. It has come in the evidence of the victim that only she had given proof of identity to book the room in her name. Even this fact does not find mention in the copy of the Register as corroborated by the IO. The check-in time in the entry of the register is given as 30.07.2023 and check-out time is 31.07.2023, which is contrary to the deposition of the victim, who states that she left the hotel on the very same day. The original register or extract bearing the entry is not seized by the IO. Even the photocopy that was exhibited as secondary evidence in Court was not seized under any panchanama. The photocopy produced in Court is not certified or attested by the hotel management. No effort was taken by the IO to send the entry for handwriting analysis to confirm whether the Appellant has himself written his name. No effort was taken by the IO to collect ID proof of the Appellant. This probabilises the defence theory that the hotel register entry could be manipulated to falsely implicate the Appellant.

19. From the evidence it is borne out that PW4 is a minor. Thus, PW6 has committed an offence of providing room to a minor without any identification. In the light of the defence of denial and false implication taken up by the Appellant, the evidence of the waiter, i.e. PW8, assumes significance, particularly in view of the fact that the hotel provided room to PW4, a minor girl, without any ID proof and was thus in breach of law. The IO was extensively cross-examined on this aspect. She admits in her evidence that



although she is aware of the directions issued by the government that a minor cannot be given accommodation in a hotel unless accompanied by parent or guardian and the owner of such premises is liable for action in case of a lapse, she has not issued any notice or reported the matter to the competent authority for initiating action. The IO has neither collected any documents from the hotel owner about the staff nor has the waiter given her any document to show that he was in employment of the hotel. The hotel owner and staff have certainly acted in breach of law. These attending circumstances probabalise the defence argument that the hotel management, in an attempt to cover their lapses may have deposed against the Appellant. Hence the evidence of the waiter PW 8 does not inspire confidence.

20. The prosecution has harped on the DNA evidence to establish its case beyond reasonable doubt. PW11 Forensic Scientist has been examined to prove a report authored by PW11 which opines that the semen stains found on the bedsheet matched with the DNA profile of the Appellant. It is an undisputed fact that the bedsheet was recovered after almost 48 hours. The room had easy access to any person during this period and PW5 panch witness clearly deposes in his evidence that housekeeping is done during the time of check-in and check-out which implies that the room had already been cleaned by the housekeeping staff. This fact is corroborated by the IO in her evidence. In the light of the discussion on the violation of law by the hotel management and the window of time between the incident and seizure of the bedsheet, the defence argument that the bedsheet may have been tampered with needs to be examined. Viewing this fact from another perspective, it is the case of the



victim that PW4 and the Appellant were also sleeping on the same bed prior to the incident. Hence, the mere presence of semen stain on the bedsheet is not a circumstance which inescapably points to the allegation of rape against the Appellant and could have several probable explanations. Lastly, it would be relevant to examine the proposition of the Appellant that probative value of DNA report is at par with any opinion of evidence under Section 45 of the Indian Evidence Act and is not substantive evidence by itself. The Appellant has placed reliance on a three Judge Bench of the Hon'ble Apex Court in the matter of ***Prakash Nishad alias Kewat Zinak Nishad V/s. State of Maharashtra***², more particularly on the observations dealing with the probative value of DNA evidence reproduced as under:

*"64. Even otherwise, on the value of DNA evidence, we may refer to an observation made by this Court in **Pattu Rajan V/s. State of T.N.**³, as under: (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 the 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. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."

² (2023) 16 SCC 357

³ (2019) 4 SCC 771



(emphasis supplied)

65. Referring to the above case, a three-Judge Bench in **Manoj V/s. State of M.P.**⁴, through S. Ravindra Bhat, J., observed: (SCC p. 435, para 158)

"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."

(emphasis in original)"

21. Reliance was also placed on the observations of the Hon'ble Apex Court in **Rahul V/s. State of Delhi, Ministry of Home Affairs and Anr.**⁵, wherein it is observed as under:

"37. In this regard very pertinent observations made by this Court in Manoj v. State of M.P. (supra) deserve to be made. This Court has dealt in detail with the issue of DNA profiling methodology and statistical analysis, as also the collection and preservation of DNA evidence. The relevant paragraphs read as under: (SCC paras 151-56)

"151. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata was relied upon. The relevant extracts of the article are reproduced below:

'Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with intercalated proteins. Twenty-three pairs of chromosomes present in

⁴ (2023) 2 SCC 353

⁵ (2023) 1 SCC 83



each nucleated cells and an individual inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All information about internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases: Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar-phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.

Only 0.1% of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.

DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed genetic markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA profile unique to an individual (except monozygotic



twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoospermic or vasectomised male. Cases in which DNA had undergone environmental stress and biochemical degradation, mini STRs can be used for over routine STR because of shorter amplicon size.

DNA profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available in the laboratory. The analysis principles, however, remain similar, which include:

1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.

In mtDNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:....

Statistical Analysis

Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

(1) Match: If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.

(2) Exclusion: If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.

(3) Inconclusive: The data does not support a conclusion of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an



estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.

In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken into consideration while reporting a match. Paternity or Maternity Indices and Likelihood Ratios are calculated further to support the match.

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.'

*152. In an earlier judgment, **R. v. Doheny**⁶ the UK Court of Appeal laid down the following guidelines concerning the procedure for introducing DNA evidence in trials: (1) the scientist should adduce the evidence of the DNA comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinise the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.*

⁶ (1997) 1 Cri App R 369 (CA)



153. *The Law Commission of India in its report, observed as follows:*

'DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not "match", then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 1,00,000: This is described as the "random occurrence ratio" (Phipson 1999, 15th Edn., para 14.32).

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law.'

154. In ***Dharam Deo Yadav v. State of U.P.***⁷ this Court discussed the reliability of DNA evidence in a criminal trial, and held as follows: (SCC pp. 528-29, para 36)

'36. The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. ... DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. 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

⁷ (2014) 5 SCC 509



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.'

155. The US Supreme Court in District Attorney's Office for the Third Judicial District v. Osborne⁸, dealt with a post-conviction claim to access evidence, at the behest of the convict, who wished to prove his innocence, through new DNA techniques. It was observed, in the context of the facts, that: (SCC OnLine US SC)

'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. DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others.'

*156. Several decisions of this court - **Pantangi Balarama Venkata Ganesh v. State of A.P.**⁹, **Santosh Kumar Singh v. State**¹⁰, **Inspector of Police v. John David**¹¹, **Krishan Kumar Malik v. State of Haryana**¹², **Surendra Koli v. State of U.P.**¹³, and **Sandeep v. State of U.P.**¹⁴, **Rajkumar v. State of M.P.**¹⁵ and **Mukesh v. State (NCT of Delhi)**¹⁶ have dealt with the increasing importance of DNA evidence. This Court has also emphasised the need for assuring quality control, about the samples, as well as the*

⁸ 2009 SCC OnLine US SC 73

⁹ (2009) 14 SCC 607

¹⁰ (2010) 9 SCC 747

¹¹ (2011) 5 SCC 509

¹² (2011) 7 SCC 130

¹³ (2011) 4 SCC 80

¹⁴ (2012) 6 SCC 107

¹⁵ (2014) 5 SCC 353

¹⁶ (2017) 6 SCC 1



*technique for testing - in **Anil v. State of Maharashtra**¹⁷: (Anil case25, SCC p. 81, para 18)*

'18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory.'

(emphasis in original)"

22. In the totality of the circumstances, firstly, in the background of the discussion on the lapses on the part of the hotel staff and owner and the delay in seizure of the bedsheet, the defence of the Appellant that the exhibits may have been manipulated to incriminate him is probalised. Secondly, mere presence of semen on the bedsheet will not be *ipso facto* a conclusive proof of the offence of rape in the facts of the present case and lastly, DNA evidence not being infallible, its probative value has to be corroborated with other cogent and reliable evidence to base a finding of guilt.

23. Examining the reasoning in the judgment impugned, the learned Trial Court has observed that the delay in lodging the complaint is satisfactorily explained by the victim. It observes that evidence on record shows that the incident of rape took place when the victim was sleeping. The evidence of the victim is corroborated by the owner of the hotel and the waiter. The medical

¹⁷ (2014) 4 SCC 69



evidence establishes that there was sexual intercourse and the victim was never pregnant prior to this incident. The DNA report is positive. PW4 has turned hostile. The Appellant has not examined the family members of PW4 to prove that he was in relationship with her. Unfortunately, this Court cannot persuade itself to agree to the reasoning of the learned Trial Court in view of the aforesaid discussion of facts and law.

24. In view thereof, the prosecution has failed in proving beyond reasonable doubt the offence punishable under Section 376 of IPC against the Appellant. Resultantly, the Appellant is acquitted. The Appeal is allowed. The Appellant to be set at liberty forthwith unless required in custody in any other proceeding.

25. Criminal Appeal No.691/2025(F) is disposed of in the aforesaid terms. Accompanying applications, if any, also stand disposed of. Registry to waive office objections and number CRIA No.691/2025(F) and CRMA No.692/2025(F).

26. Parties to act on an authenticated copy of this order.

ASHISH S. CHAVAN, J.