PRAKASH NISHAD @ KEWAT ZINAK NISHAD

v.

STATE OF MAHARASHTRA

(Criminal Appeal Nos.1636-1637 of 2023)

MAY 19, 2023

[B. R. GAVAI, VIKRAM NATH AND SANJAY KAROL*, JJ.]

Evidence – Case of circumstantial evidence – Six year old child was sexually assaulted, killed and thrown her into a 'nala' – Appellant was arrested on the basis of suspicion – Charged for having committed offences punishable u/s.376, 377, 302 and 201, IPC –Concurrently convicted, death sentence imposed for the charge u/s.302 and sentenced for other offences – Correctness of – Held: There were yawning gaps in the chain of circumstances rendering it far from being established, pointing to the guilt of the appellant – Several irregularities and illegalities on the part of the agencies examining the case – Charges levied on the appellant not proved – Orders of the courts below set aside – Penal Code, 1860 – ss.376, 377, 302 and 201 – Code of Criminal Procedure, 1973 – s.53A – Criminal Law.

Criminal Law– Whether non-recording of the disclosure statement of the appellant in the language in which it was made and recording it in a language totally unknown to the appellant, contents whereof were also not read over and explained to him, can be said to have caused any prejudice to the cause of justice? – Held: Yes – Appellant did not know how to read and write in Marathi – Perusal of the alleged disclosure statement reveals that it was recorded in Marathi and the Investigating officer not having read over or explained contents thereof to the appellant in his vernacular language i.e Hindi – It was important for the appellant to understand the case of the prosecution against him – There is nothing on record to show that it was not practicable to record evidence of the appellant as well as others, whose vernacular was not Marathi, but Hindi – Statutory safeguards in reference to language not having been complied with caused prejudice to the appellant– Code of Criminal Procedure, 1973.

Code of Criminal Procedure, 1973 – s.53A – Non-compliance with – Held:In the present case, none of the witness deposed the fact of medical examination of the appellant as stipulated u/s.53A –No reason was given for having decided that there was no need to comply with the provisions of s.53A– Samples of the blood and semen of the

* Author

appellant were sent for forensic analysis – However, there is nothing on record to establish as to who took such samples, on what date, on how many occasions and why were they not sent all at once – None of the police officials testified to the formalities of keeping the samples safe and secure being complied with – There is only one document (Ext.79) on record, indicating the appellant to have been medically examined – But even this document does not reveal sample of the body part being drawn – In any event, the doctor who conducted such examination did not testify the correctness of the contents thereof – Also, the document itself is uninspiring confidence having certain interpolations therein – Additionally, the document does not fall true to the statutory requirements imposed u/s.53A – This is a glaring lapse in the investigation of this crime, for a six year-old child was sexually assaulted on both of the private parts – Medical examination of the appellant would have resulted into ascertainment of such assault – Samples when collected are to be sent to the concerned laboratory as soon as possible – Delay in sending the samples is unexplained – "Without any delay" and "chain of custody" aspects which are indispensable to the vitality of such evidence, were not complied with – Thus, in the instant case, the DNA Report cannot be the basis to send appellant to the gallows – Maharashtra Police Manual – Appendix XXIV – Evidence – Criminal Law.

Evidence – Value of DNA evidence – Discussed.

Criminal Law – Crime involving severe punishments such as imprisonment for life or the sentence of death – Role and responsibilities of the investigating authorities, not adhered to – Deprecated.

Allowing the appeals, the Court

HELD:

1.1 The Appellant did not know how to read and write in Marathi. This being the position, this Court has highlighted the importance of the appellant being able to understand the case of the prosecution against him. Inability to do so, by virtue of a language barrier causes prejudice to the case of the appellant. There is nothing on record to show that it was not practicable to record evidence of the appellant as well as others, whose vernacular was not Marathi, but Hindi. The original testimony, from which the text, tenor and true import of their testimony may be gauged, is not part of the record. Therefore, it is apparent that statutory safeguards in reference to language have not been complied with, causing prejudice to the appellant in terms of Syed Qasim Rizvi. [Para 45]

Syed Qasim Razvi v. State of Hyderabad **1953 SCR 589 – followed.**

Siju Kurian v. State of Karnataka **2023 SCC OnLine 429 – distinguished.**

1.2 No blood of the appellant was found on any one of the articles recovered by the police. Only stains of semen were found on the nicker (brown) belonging to the prosecutrix and her vaginal swabs. Samples of the blood and semen of the appellant were sent for forensic analysis. Importantly though, there is nothing on record to establish as to who took such samples, on what date, on how many occasions and why were they not sent all at once, none of the police officials have testified to the formalities of keeping the samples safe and secure being complied with. There is only one document (Ext.79) on record, indicating the appellant to have been medically examined. But even this document does not reveal sample of the body part being drawn. In any event, the doctor who conducted such examination, has not stepped into the witness box to testify the correctness of the contents thereof. Also the document itself is uninspiring confidence as this Court notices certain interpolations therein and in a different hand. Additionally, the document does not fall true to the statutory requirements imposed under Section 53A Cr.P.C.Here, a child of the tender age of six was assaulted brutally and killed. The appellant was arrested on suspicion of having committed the crime. The police proceeded in accordance therewith and were supposed to have made discoveries as per the statements made by the appellant in custody, then in what manner can it be said that, at the time when such a positive call was required to be made by the authorities, reasonable grounds did not exist for the compliance with Section 53A to be a must? This, in the view of this Court is a glaring lapse in the investigation of this crime, for a six-year-old child was sexually assaulted on both of the private parts of her body. Medical examination of the appellant would have resulted into ascertainment of such assault. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. Samples when collected are sent to the concerned laboratory as soon as possible. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure

that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item." Indisputably, these "without any delay" and "chain of custody" aspects which are indispensable to the vitality of such evidence, were not complied with. In such a situation, this court cannot hold the DNA Report Ext.85 to be so dependable as to send someone to the gallows on this basis. In the present case, even though, the DNA evidence by way of a report was present, its reliability is not infallible, especially not so in light of the fact that the uncompromised nature of such evidence cannot be established; and other that cogent evidence is absent almost in its entirety. [Paras 52, 54, 56, 58, 61-63 and 66]

Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers-Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India **– referred to.**

1.3 In the instant case, the reasons why the investigation officers were changed time and again from PW 6 to PW 12 and then to PW 13, is surprising and unexplained. No reason stands given for having decided that there was no need to comply with the provisions of Section 53A, Cr.P.C.; there is unexplained delay in sending the samples collected for analysis; a premises already searched was searched again, the reason for which is not borne from record; lock panchnama is not prepared; no samples of blood and semen of the appellant can be said to have been drawn by any medical or para medical staff; allegedly an additional sample is taken from the appellant more than a month after the arrest; alleged disclosure statement of the appellant was never read over and explained to the appellant in his vernacular language; the appellant was not residing alone at the place alleged to be his residence; and what was the basis of appellant being a suspect at the first instance, remains a mystery; persons who may have shed light on essential aspects- 'GB' and 'MS' went unexamined etc., such multitudinous lapses have compromised the quest to punish the doer of such a barbaric act in absolute peril. The charges levied on the appellant stand not proved [Paras 77 and 79]

Sharad Birdhichand Sarda v. State of Maharashtra **(1984) 4 SCC 116 : [1985] 1 SCR 88;** *Indrajit Das v. State of Tripura* **2023 SCC OnLine SC 201;** *Krishan Kumar Malik v. State of Haryana* **(2011) 7 SCC 130 : [2011] 8 SCR 774;** *Rajendra PrahladraoWasnik v. State of Maharashtra* **(2019) 12 SCC 460 : [2018] 14 SCR 585;** *Pattu Rajan v. State of T.N.* **(2019) 4 SCC 771;** *Manoj v. State of M.P.* **(2023) 2 SCC 353;** *Maghavendra Pratap Singh @Pankaj Singh v. State of Chattisgarh* **2023 SCC OnLine SC 486 – relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.1636-1637 of 2023.

From the Judgment and Order dated 13.10.2015 in CRLAP No.88 of 2015, CONFC No.4 of 2014 and SC No.407 of 2010 and dated 14.10.2015 in CONFC No.4 of 2014 and CRLAP No.88 of 2015 of the High Court of Judicature at Bombay.

B. H. Marlapalle, Sr. Adv., Ms. Pratiksha Basarkar, Rishad Ahmed Chowdhury, Avinish Kumar Saurabh, Ms. Anuja Mishra, Advs. for the Appellant.

Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Shreya Saxena, Ms. Yamini Singh, Sourav Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

SANJAY KAROL, J.

Leave granted.

2. The following issues arise for consideration in the present appeals :

1) Whether non-recording of a disclosure statement of the appellant in the language in which it is made and recording of the same in a language totally unknown to the appellant, contents whereof are also not read over and explained to him, can be said to have caused any prejudice to the cause of justice?

2) Whether DNA evidence can form the solitary basis in determining the guilt of the appellant?

3) Whether the circumstances as identified and relied on by the prosecution indeed point to the guilt only of the appellant, closing out any and all other possibilities of any other person?

The Factual Prism

3. Pursuant to FIR No.109/2010 dated 12.6.2010 registered at P.S. Bhayander (Thane, Maharashtra), the appellant Prakash Nishad @ Kewat Zinak Nishad was charged for having committed an offence punishable under Sections 376, 377, 302 and 201 of the Indian Penal Code, 1860 ('IPC' for short). The Trial Court vide judgment dated 27.11.2014 rendered in Sessions Case No.407/2010, convicted the accused in connection with all the offences and imposed capital punishment for the charge under Section 302 IPC and sentence of imprisonment for other offences. Hereinbelow is a tabular representation of the sentences as imposed by the Trial Court:

S.No.	Statutory provision under the Indian Penal Code, 1860	Imposition of Sentence on the Appellant
1.	Section 376	Life imprisonment and fine of Rs. 1,000. In default, rigorous imprisonment for a time period of 3 months.
2.	Section 377	Life imprisonment and fine of Rs. 1000. In default, rigorous imprisonment for a time period of 3 months.
3.	Section 302	Death Penalty and fine of Rs. 3,000. In default, rigorous imprisonment for a time period of 9 months.
4.	Section 201	Rigorous imprisonment for 7 years and fine of Rs. 1,000. In default, rigorous imprisonment for a time period of 3 months.

4. Such findings of fact and conviction, including that of the death sentence imposed were affirmed by the High Court of Bombay, being the first Court of Appeal in both the proceedings. The reference was also answered in terms of common judgment dated 13-14.10.2015 rendered in Criminal Appeal No.88/2015 and Criminal Confirmation Case No.4/2014.

Hence, the present appeals preferred by the appellant.

5. The courts below concurrently found the prosecution to have established the case beyond reasonable doubt, i.e., the appellant after sexually assaulting a minor girl (aged six years) put her to death. Also, in an attempt to destroy the evidence threw her into a 'nala' (drain) and concealed material evidence of crime.

6. At the threshold, we may point out that it is a case of circumstantial evidence, as none has witnessed the crime for which the appellant stands charged for. The prosecution case is primarily based, not on ocular evidence but on the confessional statement of the appellant leading to the recovery of incriminating articles and through scientific analysis establishing his guilt. The sheet-anchor of the case being the DNA analysis report stating the semen of the appellant found on the undergarments of the prosecutrix (nicker) and the vaginal smear slide of the prosecutrix.

7. We now proceed to examine the prosecution case, as has unfurled through the testimonies of the prosecution witnesses. However, in the service of ease, the 13 prosecution witnesses given in a tabular form, which are categorised as follows:

   1) Testimony of the medical examiner, i.e., PW 4 – Dr. Anjali Pimple (Ext.27);

   2) Testimonies of the independent witnesses, i.e., PW 1 – Mustakin Mohamad Ismail Shaikh, father (Ext.18), PW 2 – Rehanabano, mother (Ext.20) and PW 3 – Falim Ahmed Ibrahim Shaikh, uncle (Ext.21)(all being the relatives of the prosecutrix);

   3) Testimonies of the Investigating Officer, i.e., PW 6 – Sub-Inspector Suresh Ganpat Chillawar, 1st Investigating Officer (Ext.42), PW 11 – Ashok Sonar, Head Constable (Ext.56), PW 12 – A.P.I. Sudhir Shantaram, 2nd Investigating Officer (Ext.65) and PW 13 – Deputy Commissioner of Police Deepak Pundalik Devraj, 3rd Investigating Officer (Ext.67); and

   4) Testimonies of the witnesses to the recovery of incriminating articles, i.e., PW 5 – Bipin Sohanlal Bafna (Ext.34), PW 7 – Suresh Jagdish Khandelwal (Ext.46), PW 8 – Vishal Navin Chandra Saha (Ext.49), PW 9 – Vijay Sudama Soni (Ext.53) and PW 10 – Ramlakhan Jaiswal (Ext.54), who are panch witnesses.

S.No.	Prosecution Witness	Type
PW 1	Mustakin Mohd. Ismail Shaikh.	Father of prosecutrix
PW 2	Rehanabano Mohd. Shaikh	Mother of prosecutrix

PW 3	Falim Ahmed Ibrahim Shaikh	Uncle of prosecutrix
PW 4	Dr. Anjali Pimple	Medical Examiner
PW 5	Bipin Sohanlal Bafna	Panch Witness for search conducted on 13.06.2010
PW 6	S.I. Suresh Ganpat Chillawar	First Investigating Officer - conducted search on 12.06.2010
PW 7	Suresh Jagdish Khandelwal	Panch Witness - for search conducted on 16.06.2010
PW 8	Vishal Navin Chandra Saha	Panch Witness - for search conducted on 17.06.2010
PW 9	Vijay Sudama Soni	Panch Witness – crime spot witness on 12.06.2020
PW 10	Ramlakhan Jaiswal	Panch Witness – crime spot witness on 12.06.2020
PW 11	Ashok Sonar	Head Constable – registered Report on 12.06.2010
PW 12	A.P.I. Sudhir Shantararn Kudalkar	Second Investigation Officer – conducted search on 13.06.2010 and on 17.06.2010.
PW 13	Deputy Commissioner of Police, Deepak Pundalik Devraj	Third Investigation Officer – conducted search on 16 06.2010 and 17.06.2010

8. The prosecutrix was born from the wedlock of PW 1 and PW 2 and at the time of occurrence of the incident, i.e., on 11.6.2010, she was just 6 years of age. Neither her identity, nor the fact that she died as a result of major ante-mortem injuries, is in dispute.

9. Dr. Anjali Pimple (PW 4), who examined the body of the prosecutrix, has testified to the factum of the post-mortem conducted by her and preparation of medical report (Ext.28) thereof. As a witness on oath, she has deposed that the prosecutrix suffered multiple injuries (15 in total) on her body, including on both of her private parts. Undoubtedly such injuries are severe, serious and grievous in nature. Thus, the prosecution has established the case of homicidal death beyond any doubt.

10. The question which arises for consideration is: as to who committed the dastardly crime? Was it only the appellant or someone else?

11. For ascertaining such fact, we now proceed to examine the prosecution case as set out in different stages, be it investigation or trial.

12. The FIR dated 12.6.2010 (Ext.44), so registered on the complaint of PW 1 (Ext.19 which forms part of Ext.1), records that in the morning of 12th June, 2010 the dead body of the prosecutrix was found floating in the Nala, in close proximity to her house. She had been sexually assaulted and killed by an "unidentified person", after which the body was thrown into the nala with the objective of destruction of evidence of such assault.

13. Significantly, none is suspected at this stage. The said FIR was recorded by Police Officer - PW 11. The investigation consequent thereto was conducted by three people – PW 6, PW 12, and PW 13.

14. PW 6 (the 1st Investigating Officer) in the presence of Panch Witnesses – PW 9 and PW 10, recovered the body of the prosecutrix and sent it for post-mortem, which was conducted by PW 4. This Investigating Officer only conducted the spot search. His role ends here.

15. Thereafter, PW 12 (the 2nd Investigating Officer) based on certain inputs **(not disclosed)**, arrested the appellant from his workplace on 13.6.2010 and searched his house in the presence of two independent witnesses, namely, PW 5 and Piyush Ramesh Kumar Jain (not examined). The search resulted in recovery of certain incriminating articles vide memo Ext.35. **The** appellant **was in no manner associated with such a search.**

16. Thereafter, further investigation was entrusted to PW 13 - the Deputy Commissioner of Police (the third Investigating Officer), who, on the basis of disclosure statement of the appellant, conducted the search at two places, including the house of the appellant previously searched on 13.6.2010. Such searches were conducted on 16th and 17th of June, 2010, leading to the recovery of certain incriminating articles linking the appellant to the crime, which stood established in DNA reports (Ext.85 & 86) prepared by the forensic experts through scientific analysis. The Investigating Officer found tell-tale signs of the appellant in the shape of stains of his semen, on the vaginal smear slide of the prosecutrix and blood stains of the prosecutrix on the

banian (vest) of the appellant, linking the appellant to the crime. As such, on completion of the investigation, a challan was presented in the Court for trial.

17. In the aforesaid backdrop, we now proceed to examine the testimonies of the witnesses as categorized above.

18. On oath, PW 1, (father of the prosecutrix) categorically admits that he had not expressed any doubt on any person for having caused the death of his daughter. He expressly stated that "I had no doubt on any one about the death of my daughter". He recognized the appellant who, according to the said witness, lived in the same "chawl". His testimony is indicative of the fact that on the evening of 11.6.2010, his daughter (the prosecutrix), aged 6 years, after having dinner left home. Finding her not to have returned home, he searched for her and found her to be dead, in a "gutter" near his house. Later on, he states that prior to 14.6.2010, he had not suspected the appellant of having committed the crime. Significantly, the date and the basis leading to such suspicion is not disclosed by him.

19. Other aspects of his deposition, in particular, his statement with respect to the recovery of the nicker shall be dealt with separately. He recognized the nicker (Article 10) to be that of his daughter.

20. PW 2, the mother of the prosecutrix, while corroborating the testimony of her husband, added that till 14.6.2010 she was not aware as to who had assaulted and killed her daughter. However, in Court, she testified to having given the appellant a match box, upon his request, in the early hours of 12.6.2010.

21. PW 3, while corroborating the version of PW 1 and PW 2, only added that finding the prosecutrix not to have returned home, he thought that perhaps she had gone to the neighbour's house to watch television. On the morning of 12.6.2010, a neighbour - whom he does not name - informed PW 2 of the dead body of the prosecutrix lying in a "gutter".

22. It is to be noted that none of the relatives have disclosed either the complicity of the appellant in the crime or the reason for their suspicion towards him, particularly on 14.6.2010 which was two days after the incident.

23. The law on circumstantial evidence is well settled. When a case is governed by such evidence, the evidence must point singularly to the guilt of the appellant, closing out the possibility of all other hypotheses.

24. The *locus classicus* on the subject is **Sharad Birdhichand Sarda v. State of Maharashtra**[1]. A recent judgement of this Court authored by one of us (Vikram Nath, J.) has highlighted the well settled law on circumstantial evidence in **Indrajit Das v. State of Tripura**[2]**,** reiterating the golden principles, as under :

> **"10.** The present one is a case of circumstantial evidence as no one has seen the commission of crime. The law in the case of circumstantial evidence is well settled. The leading case being *Sharad Birdhichand Sarda v. State of Maharashtra*. According to it, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. The said principle set out in the case of *Sharad Birdhichand Sarda* (supra) has been consistently followed by this Court. In a recent case - *Sailendra Rajdev Pasvan v. State of Gujarat*, this Court observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again."

25. To establish the guilt of the appellant, the prosecution relies upon the following circumstances:

    a) The appellant was residing in the same chawl as that of the prosecutrix;

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1 (1984) 4 SCC 116

2 2023 SCC OnLine SC 201

b) Appellant was found near the scene of the crime;

c) The appellant made disclosure statements, i.e., dated 16.6.2010 Ext.47 and dated 17.6.2010 Ext.50, which led to the recovery of incriminating articles vide Memo Nos. Ext.48 and Ext.51. from the house of the appellant and another place where he had hidden the clothes belonging to him and the prosecutrix;

d) The DNA reports prepared on scientific analysis by an expert, establishing the blood of the prosecutrix on banian of the appellant and his semen on the clothes of prosecutrix and her vaginal smear slide.

26. Let us examine whether all these circumstances stand established by the prosecution or not.

Circumstance of 13 residing in the 'chawl' being seen at the spot of the crime

27. PW 1 and PW 2 stated that the appellant resided in the very same chawl as they, although they did not identify his house. Well, that's about all. There being no other evidence of he residing there. Even if the version of the mother of having seen the appellant and giving him a matchbox, in the early hours of 12.6.2010, is believed, the same does not advance the case of the prosecution any further. The appellant was not found at the place where the alleged crime took place or the place from where the body was recovered. The prosecution has not been able to establish the distance between the two places - that of the crime and the place where the appellant was spotted in the morning hours. There is no spot map or any ocular evidence to this effect. As noted above, what led these witnesses to discover the appellant of having committed the crime has gone unstated. It is only on the basis of the information furnished by PW 1, expressing his suspicion on the appellant, that he was on 13.6.2010 arrested and the same day, his residence was searched. It is here that the major contradiction, if not falsity, in the prosecution case emerges. The Investigating Officer PW 12 is categorical of having suspected the appellant only on the basis of the information furnished by the father of the prosecutrix, i.e., PW 1. PW 12 states that "the father of deceased expressed suspicion against the appellant and at the time of his house search was taken." and PW 1 states that "He did not suspect anyone prior to 14.6.2010." The search was

conducted on 13th and not on 14th of June, 2010. He added that finding the house of the appellant to be locked, he called the medical analyzer, Mumbai, whereafter, he, by breaking open the lock of the house of the appellant, recovered incriminating articles vide Ext.36 on 13.6.2010 and such articles being:

"Article 1 – Square cardboard;

Article 2 – Blanket;

Article 3 – Floor tiles pieces;

Article 4 – Mat;

Article 5 –Towel;

Article 6 –Spanner;

Article 7 –Hair found on pillow;

Article 8 – Mat; and

Article 9 – Pillow"

28. Having conducted the search in the presence of PW 5 and Piyush Ramesh Kumar Jain (unexamined), he locked and sealed the house. Out of the two, the prosecution examined only one witness, namely PW 5. Perusal of the testimony of this witness as also the Investigating Officer and the relatives of the prosecutrix, does not establish one major fact, that being, who actually identified the house of the appellant.

29. A 'chawl' is a group of tenements clustered together, very small in size and densely populated. It's an inexpensive accommodation, temporary for some, permanent for others. Living in the same chawl, cannot be, in the attending facts of no one having identified with certainty the exact house/room of the appellant, a circumstance pointing to the guilt of the appellant. As is evident from the decisions referred (supra), for a circumstance to be established, there shouldn't be doubt; it should not leave room for the possibility that, not the appellant against whom the circumstance is sought to be proved but someone else, may have done the said crime.

30. None of the witnesses have deposed that it was at the instance of the appellant that the prosecutrix left the house, nor has anyone deposed to the effect of having seen the appellant and the prosecutrix

together at any point in time; Appellant was not even a visitor to the house of PW 1. They have no relationship, be it of whatever nature. All that is stated is that after having dinner prosecutrix left home, and PW 3 states that he thought she may have gone to the neighbour's house to watch TV. With this being the case, last seen theory, does not come into play. Although argued before us, the Trial Court has correctly not considered the same to be a circumstance of consequence, in either direction.

The Circumstance Disclosure Statement of the appellant and the Recovery of incriminating articles

31. Conjoint reading of the testimonies of PW 12 and PW 13 further renders the prosecution case to be inherently improbable, if not self-contradictory and impossible on this circumstance.

32. Unlike PW 5, who is categorical about having seen the blood-stained nicker in the house of the appellant, PW 12 does not disclose such fact. Undisputedly, both these witnesses together visited the alleged house of the appellant only once, i.e., on 13.6.2010. It is a matter of record that police recovered only one nicker belonging to the prosecutrix, which was recovered at the time of the second search conducted on 16.6.2010, which renders the recovery by PW 13 in the presence of PW 9 to be extremely doubtful, specifically when the search and subsequent recovery of incriminating articles is refuted.

33. There is yet another contradiction which bears significance in the attending facts and that being the time of the seizure of the articles recovered during the first search. The Panchnama (Ext. 36) reveals that the same was prepared in the night of 13.6.2010 between 9.00 p.m. to 9.30 p.m., whereas according to PW 5, all proceedings of recovery appear to have been completed before 2.00 p.m. to 2.30 p.m. by which time the witness had returned home. In fact, the factum of search itself is in doubt as PW 5 categorically states that after conducting the search he visited the police station where his "signatures" were obtained, though, he clarifies that earlier too his signatures were taken, but on what paper and for what purpose, he did not disclose.

34. We may now proceed to the testimony of PW 13, who is the star witness of the prosecution, i.e., the Investigating Officer. According to his version, on 16.6.2010, the appellant, while in police custody,

made a disclosure statement (Ext.47) in the presence of independent witnesses PW 7 and P.K Mehta (not examined). The statement revealed the appellant to have concealed the nicker of the prosecutrix as also his clothes, worn by him at the time of incident, in his house, which he was ready to identify and get recovered.

35. Accordingly, on 16.6.2010 PW 13 along with the Panchas, staff and the appellant searched the room No.39 of Ganesh Deval Nagar. The room was opened, and the appellant produced "amul gold 45 size nicker" and one "white colour nicker of amul gold 80 cm's size banian" having blood stains and one "grey coloured barmuda" and one "brown colour nicker having contents written as Sophia 65 cm" and some blood stains. The said articles were seized vide Memo Ext.48 in the presence of the Panchas. On 17.6.2010 the appellant got recorded a second disclosure statement while in custody, whereby, he stated that some additional clothes which he had worn on the day of the incident could be got recovered. Accordingly, on the basis of such statement Ext.50 dated 17.6.2010, the police party along with the appellant proceeded and searched room No.206 in Deepshree Building at, approximately two kilometers from Valiv Naka. One Ganesh Bheema (Ganesh Kapildev Mishra) opened the door of the room and, as per the disclosure by the appellant, the police recovered certain incriminating articles vide Memo (Ext.51) dated 17.6.2010.

36. All the articles recovered prior to 17.6.2010 were sent for scientific analysis vide letters Ext.68 and Ext.69 both dated 16.6.2010, the blood sample of the appellant was sent for DNA profiling. He also sent a letter to the Civil Hospital for collection of the blood, nails, and hair samples of the appellant. During investigation, he procured the report of the chemical analysis as also the DNA report and the FSL report. The said DNA report prepared by an expert revealed samples of "viscera" (semen) of the appellant on swab drawn from the private parts of the prosecutrix. He also recorded the statement of Munna Saroj, who was residing with the appellant. So is the essence of the examination-in-chief of this witness.

37. It may be noted that neither this witness nor anyone else has deposed the fact of medical examination of the appellant, as is stipulated under Section 53A of the Code of Criminal Procedure (hereafter, 'Cr.P.C.').

38. Further, whether his communication for medical examination of the appellant was ever followed up at all is not known. So also, its resultant consequences. Who took the samples of the body parts of the appellant, if at all, is a mystery. The record does not disclose such fact. Non-examination of Ganesh Bheema and Munna Saroj in Court, despite being cited witnesses renders his version to be uncorroborated, thereby creating a gap in chain of circumstances, preventing it from being complete.

39. The house from where the articles were recovered on 17.6.2010 was neither owned nor in the exclusive possession of the appellant. Instead, as is admitted by the Investigating Officer, it belonged to a third party. The Investigating Officer admits that the said house was occupied by one Ganesh Bheema, who was never examined in the case, so also why and what is that Munna Saroj disclosed on 19.6.2010, has not seen the light of the day. Their complicity in the crime has also not been ruled out. On this issue examination of Ext.35 reveals that the house where appellant was residing was owned by Munna Lalchand and that it was jointly possessed by the appellant and Prakash who have not been examined.

40. What further renders the veracity of the testimony of this witness to be questionable has surfaced in the cross-examination part, wherein he admits not to have mentioned in the statement Ext.47 "that the accused had hidden the clothes". In this view of the matter, the articles so discovered cannot be said to form a discovery in terms Section 27 of the Evidence Act.

41. Significantly, from the testimony of PW 7 it is evident that appellant did not know Marathi language for he states that "I know that the appellant does not know Marathi".

42. Close examination of the testimony of Panch witness PW 8 reveals that the appellant had given his statement in Hindi and not in Marathi.

43. Though, PW 13 is silent on this fact, but perusal of the said disclosure statements (Ext.47 & Ext.50) reveals the same to have been recorded in Marathi and the Investigating Officer not having ever read over or explained contents thereof to the appellant in his vernacular language. As a result thereof, certainty is absent as to the correctness of the statement as made and the statement, as recorded by the police.

44. A Constitution Bench of this Court, in **Syed Qasim Razvi v. State of Hyderabad**[3]**,** in the following extract observed that when there is a lack of understanding of the language of the Court, it causes prejudice to the appellant. The bench observed:

> **"9.** …There is no doubt that ordinary court proceedings in Hyderabad are conducted in Urdu, but Urdu is certainly not the spoken language of even the majority of the people within the Hyderabad State. If the accused in a particular case is not acquainted with the English language and if by reason of the absence of adequate arrangements to have the proceedings interpreted to him in the language he understands, he is prejudiced in his trial, obviously it might be a ground which may be raised on his behalf in an appeal against his conviction. But in our opinion cannot be said that the provision in the Regulation relating to proceeding being conducted in English if the tribunal so desires per se violates the equal protection clause in the Constitution."
>
> (Emphasis Supplied)

45. In the case at hand, the aforementioned proposition of law is squarely applicable. From a perusal of material on record, we find that the Appellant did not know how to read and write in Marathi. This being the position, this Court has highlighted the importance of the appellant being able to understand the case of the prosecution against him. Inability to do so, by virtue of a language barrier causes prejudice to the case of the appellant. There is nothing on record to show that it was not practicable to record evidence of the appellant as well as others, whose vernacular was not Marathi, but Hindi. The original testimony, from which the text, tenor and true import of their testimony may be gauged, is not part of the record. Therefore, it is apparent that statutory safeguards in reference to language have not been complied with, causing prejudice to the appellant in terms of **Syed Qasim Rizvi** (supra). Here only taking note of the decision of this Court rendered in **Siju Kurian v. State of Karnataka 2023 SCC OnLine 429,** we clarify the said decision to have been taken, given the attending facts where the appellant was provided with the

3 1953 SCR 589

assistance of interpreter and his disclosure statement leading to discovery of a fact, unlike the instant case not linking the recovery to the appellant with the crime.

46. Further, PW 1 has stated that the key of the room, after effecting recovery on 16.6.2010, was given to the "room partner of the accused". Who is this room partner? Was he examined? Was he aware of the clothes being hidden? Did he hide the clothes? Was his complicity in the crime ruled out? Are all questions left to be guessed. Such room partner remains unexamined and his complicity and role in the crime not explored.

47. Version of the Investigating Officer, that it was PW 12 who locked the room, does not inspire confidence. The witness does not remember having placed on record any document indicating that the lock was labelled and sealed for the search being conducted at the first instance. It may be noted that in the memos as well, he admits not to have mentioned where exactly the appellant had kept clothes in the room.

48. On the issue of first disclosure statement Ext.47, we find the version of PW 13 to be materially contradicted by the Panch witness PW 7, who, in no uncertain terms and unrefutedly, has deposed that "Devraj asked me that the clothes were hidden in the appellant's house and as to whether I was ready to act as a panch." (here PW 13 – the Investigating Officer is referred to as Devraj). This totally shatters the prosecution case on the point of recovery pursuant to the alleged disclosure statement.

49. Even on the point of recovery of the nicker of the prosecutrix there is contradiction with regard to its place and numbers. We notice that the dead body was recovered in the presence of two independent witnesses, namely, PW 9 and PW 10. Significantly, PW 9 states that on 12.6.2010 the dead body of the prosecutrix was recovered from the nala and that "one nicker was lying on a tin shade. One blood smeared banian was lying on the roof". He further adds that after recovery, the dead body was brought home. "She was raped" (here reference is of the prosecutrix) and that "blood had come out from the private part of the girl". He does not state that tin shade was that of the house of the appellant. However, PW 1

has deposed that "The knicker of my daughter was found on the roof of the accused." But this is in complete contradiction to the statement of PW 13 who stated that the nicker and the banian were recovered pursuant to the disclosure statement of the appellant. On this issue, further contradiction emerges through the testimony of PW 10 who states that "there were no clothes on her person" but in the very next breath adds that "she had worn underwear on her person", and also that "he had not seen the body of the deceased girl". Also, PW 10 states that he cannot read or write in Marathi and that he affixed his signatures on Ext.43 at the police station which is in Marathi. Hence, what is the truth and whom to believe is difficult to infer from the record.

Circumstance of Scientific Examination, in particular DNA Report of the Scientific Officer

50. We may examine the case from yet another angle and that being, as to whether, even if the recovery on the search conducted on 13.6.2010, 16.6.2010 and 17.6.2010 is believed to be so, either on the basis of information obtained from the police during investigation or as a consequence of statement made by the appellant or any other material obtained by the police during the course of investigation, the same stands linked to the appellant or not.

51. We find on this count the prosecution has not sufficiently proven the case. This is for two reasons : (1) If the alleged house of the appellant was thoroughly searched on 13.6.2010, as is evident from memo Ext.35 and recovery memo Ext.36, then the question of recovery of articles on 16.6.2010 should not arise. The house is nothing but a small room of 8.5 feet x 6.5. feet (out of which a bathroom was 2.5 feet x 2.5 feet), as is evident from Ext.35. The police party in the absence of appellant had microscopically scanned the said room, and yet could not find any material allegedly recovered on 16.6.2010 vide memo Ext.48; (2) Even the recovered articles, be it of the search conducted on 13.6.2010, 16.6.2010 and 17.6.2010, do not sufficiently link the appellant to the crime. For elaboration, we extract herein in a tabular form, the articles recovered, numbered, accepted and the scientific evaluation thereof.

Prakash Nishad v. State of Maharashtra. Crl. App. Nos.11009-10 / 2015

S.No.	Memo		Date	Recovery		Description of Item		FSL Report		DNA Analysis		
	Particulars	Ex.	-	By	Witness	Article	Ex.	Blood / Semen of accused	Blood of deceased	Ex.	Result	
	Panchnama @ pg. 239 – 243 First search	35	13.06.2010	PW -12	PW – 5 & Shri. Piyush Ramesh Kumar Jain **[NOT EXAMINED]**	1 – Cardboard Box	8	No	Yes	16	**Blood / Semen of accused**	**Blood deceased**
						2 - Brown Blanket 3 – Two Tiles	9	No	Yes	17		
						4 – Nylon Mat		No	Yes	18	**Ex. 86 @ pg. 339**	**Ex. 86 @ pg. 339**
						5 – Yellow Towel	10	No	Yes	-		
						6 – Iron spanner	11	No	Yes	20		
						7 – One hair on pillow	12	No	Yes	-	Blood on the same is **not of the accused.**	Blood on Ex. 16, 17, 18, 20, 24 is of the deceased. Hair: source unknown.
						8 – Piece cut from mat	13	No	-	-		
						9 – Piece cut from pillow.	14	-	-	22		
						Blood stains on all articles except No. 7	15	No	Yes			
							16	No	Yes	24		
								Ex. 84 @ pg. 335	Ex. 84 @ pg. 335			

	Panchnama @ pg. 262 – 264 Second search	48	16.06.2010	PW – 13	PW – 7 & Shri. Pradip Kodarlal Mehta **[NOT EXAMINED]**	1 – brown nicker of deceased. 2 – blue underwear of accused. 3 – white baniyan of accused. 4 – grey Bermuda of accused. *Blood stains on articles 1,3 and 4.*	1 2 3 4	No No No No **Ex. 80 @ pg. 327**	Yes No Yes Yes **Ex. 80 @ pg. 327**	1 2 3 4	**Semen stain** on Ex.1. **[Ex. 85 @ pg. 337]**	Blood on Ex. 1, 3 is of the deceased. **[Ex. 85 @ pg. 337]**
	Panchnama @ pg. 285 - 287 Third search	51	17.06.2010	PW - 13	PW – 8 & Shri. Pradeep Harishchandra Kajave **[NOT EXAMINED]**	1 – shirt of accused. 2 - pant of accused. *Blood stains on article 1.*	1 2	No No **Ex. 82 @ pg. 331**	Yes No Ex. 82 @ pg. 331	1 2	No No	Blood on Ex. 1. Blood group Type "B"

52. From the aforesaid chart, it is evident that no blood of the appellant was found on any one of the articles recovered by the police. Only stains of semen were found on the nicker (brown) belonging to the prosecutrix and her vaginal swabs.

53. To establish clinching evidence against the appellant, the prosecution seeks reliance on communication dated 16.6.2010 whereby PW 13 sent certain articles for analysis to the Director, Forensic Laboratory, Maharashtra. In terms of the aforesaid, the articles, be that of the appellant or that of the prosecutrix recovered on 12th, 13th and 14th of June, 2010, are as follows :

Muddemal sealed by Medical Officer of the prosecutrix procured on 12.06.2010			
S.No.	**Bottle**	**Description of Articles**	**Exhibit**
1.	A	Blood sample.	Ex. 1
2.	B	Nail clippings from left hand.	Ex. 2
3.	C	Sample of hair on head.	Ex. 3
4.	D	Vaginal fluid swab.	Ex. 4
5.	E	Vaginal fluid swab.	Ex. 5
6.	F	Fluid in mouth.	Ex. 6
7.	G	Nail clipping from right hand.	Ex. 7
Articles of the Appellant procured on 13.06.2010			
8.	-	Square-shaped card box, having the words “Sunora Floor Tiles”.	Ex. 8
9.	-	One chocolate coloured dirty blanket.	Ex. 9
10.	-	Two pieces of green coloured tiles.	Ex. 10
11.	-	One piece of green, yellow, and blue coloured nylon mat.	Ex. 11
12.	-	One yellow towel.	Ex. 12
13.	-	One iron spanner.	Ex. 13
14.	-	One hair found on the pillow.	Ex. 14
15.	-	One piece of mat.	Ex. 15
16.	-	One piece of cloth from a pillow.	Ex. 16

Muddemal sealed by Medical Officer, in medical examination of appellant conducted on 14.06.2010			
1.	Bottle 1	Viscera sample.	Ex. 17
2.	Bottle 2	Blood sample.	Ex. 18
3.	Bottle 3	Blood sample (citrate).	Ex. 19
4.	Bottle 4	Pubic hair sample.	Ex. 20
5.	Bottle 5	Sample of hair on head.	Ex. 21
6.	Bottle 6	Swab taken by cotton of the scratched injury on the neck.	Ex. 22
7.	Bottle 7	Nail clippings of right hand.	Ex. 23
8.	Bottle 8	Nail clipping of left hand.	Ex. 24

54. Perusal of these documents reveals that samples of the blood and semen of the appellant were sent for forensic analysis. Importantly though, there is nothing on record to establish as to who took such samples, on what date, on how many occasions and why were they not sent all at once, we notice that none of the police officials have testified to the formalities of keeping the samples safe and secure being complied with.

55. The first alleged blood sample of the appellant collected on 14.6.2010 was sent for analysis vide communication dated 16.6.2010 (Ext.60). The second alleged blood sample of the appellant taken on 20.7.2010 was sent the very same day vide communication (Ext.72).

56. There is only one document (Ext.79) on record, indicating the appellant to have been medically examined. But even this document does not reveal sample of the body part being drawn. In any event, the doctor who conducted such examination, has not stepped into the witness box to testify the correctness of the contents thereof. Also the document itself is uninspiring confidence as we notice certain interpolations therein and in a different hand. Additionally, the document does not fall true to the statutory requirements imposed under Section 53A Cr.P.C.

57. This Court in ***Krishan Kumar Malik v. State of Haryana***[4] (two-Judge), observed the necessity of compliance with Section 53A,

4 (2011) 7 SCC 130

which later on was clarified in ***Rajendra Prahladrao Wasnik v. State of Maharashtra***[5] (three-Judges) that the said provision is not mandatory in nature. It was observed that it only requires a positive call to be taken in respect of the need to follow the provision or not. The bench held-

"49…There must be reasonable grounds for believing that the examination of a person will afford evidence as to the commission of an offence of rape or an attempt to commit rape. If reasonable grounds exist, then a medical examination as postulated by Section 53-A(2) CrPC must be conducted and that includes examination of the accused and description of material taken from the person of the accused for DNA profiling…"

(Emphasis Supplied)

58. Here, a child of the tender age of six was assaulted brutally and killed. The appellant was arrested on suspicion of having committed the crime. The police proceeded in accordance therewith and were supposed to have made discoveries as per the statements made by the appellant in custody, then in what manner can it be said that, at the time when such a positive call was required to be made by the authorities, reasonable grounds did not exist for the compliance with Section 53A to be a must? This, in the view of this Court is a glaring lapse in the investigation of this crime, for a six-year-old child was sexually assaulted on both of the private parts of her body. Medical examination of the appellant would have resulted into ascertainment of such assault.

59. As has been hitherto observed, there is no clarity of who took the samples of the appellant. In any event, record reveals that one set of samples taken on 14.6.2010 were sent for chemical analysis on 16.6.2010 and the second sample taken, a month later on 20.7.2010 is sent the very same day. Why there exist these differing degrees of promptitude in respect of similar, if not the same- natured scientific evidence, is unexplained.

60. We may observe that the Maharashtra Police Manual[6], when speaking of the integrity of scientific evidence in Appendix XXIV states-

5 (2019) 12 SCC 460

6 Available here-https://www.mahapolice.gov.in/uploads/acts_rules/MumbaiPoliceManualPartIII.pdf

"The integrity of exhibits and control samples must be safeguarded from the moment of seizure upto the completion of examination in the laboratory. This is best done by immediately packing, sealing and labeling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also."

61. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to "Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers- Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India"[7] which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken "Must be submitted in the laboratory without any delay."

62. The document also lays emphasis on the 'chain of custody' being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item."

7 Available at- http://cfslchandigarh.gov.in/Uploads/Media/Original 20180627121024_IO-SOP%20Final.pdf

63. Indisputably, these "without any delay" and "chain of custody" aspects which are indispensable to the vitality of such evidence, were not complied with. In such a situation, this court cannot hold the DNA Report Ext.85 to be so dependable as to send someone to the gallows on this basis. We have carefully perused FSL as well as DNA report forming part of the record. A snapshot of the said reports, in a tabulated format is presented as under :

Sr. No.	**Nature of article**	**Ext. No. as per FSL report**	**Report dated**	**Article No. & date of seizure**	**Belongs to Accused/ Prosecutrix**	**Result and analysis Blood & Semen of whom**		**DNA Report**
1.	Nicker	1	16.8. 2010	10 on 13.6.2010	Prosecutrix	Yes Prosecutrix	No	-
2.	Jangia referred to as underwear	2	16.8. 2010	11 on 16.6.2010	Accused	No	No	-
3.	Banian	3	16.8. 2010	12 on 16.6.2010	Accused	Yes Prosecutrix	No	Identical to blood found on Ext.1
4.	Bermuda	4	16.8. 2010	13 on 16.6.2010	Accused	Yes	No	
5.	Square card-board	16	12.8. 2010	1 on 13.6.2010	Accused	Yes Prosecutrix	No	Identical to blood found on Ext.1
6.	Blanket	17	12.8. 2010	2 on 13.6.2010	Accused	Yes Prosecutrix	No	Identical to blood found on Ext.1
7.	Floor tiles pieces	18	12.8. 2010	3 on 13.6.2010	Accused	Yes Prosecutrix	No	Identical to blood found on Ext.1
8.	Mat	19	12.8. 2010	4 on 13.6.2010	Accused	Yes	No	-
9.	Towel	20	12.8. 2010	5 on 13.6.2010	Accused	Yes Prosecutrix	No	Identical to blood found on Ext.1
10.	Spanner	21	12.8. 2010	6 on 13.6.2010	Accused	-	No	-

11.	Hair found on pillow	22	12.8. 2010	7 on 13.6.2010	Accused	-	No	Unknown person
12.	Mat	23	12.8. 2010	8 on 13.6.2010	Accused	Yes	No	-
13.	Pillow	24	12.8. 2010	9 on 13.6.2010	Accused	Yes Prosecutrix	No	Identical to blood found on Ext.1
14.	Vaginal smear slide	5	12.8. 2010	-	Prosecutrix	No	Yes	Match with the male haplo-types of accused. Are from same paternal progeny

For ready reference the extract of the DNA analysis Ext. is reproduced as under.

"Interpretation

1. The DNA profile of blood detected on ex16 Card board, ex 17 Blanket, ex 18 two pieces of tile, ex 20 Towel, ex 24 piece of cloth from pillow, and blood detected on ex 1 knicker of victim Sayunmbano M.A. Shaikh, ex 3 sandow baniyan of accused Prakash Zinak Nishad of F.S.L.M.L. Case No. DNA 315/10 and ex 1 blood sample of victim Sayunmbano M.A. Shaikh is identical & from one and same source of female origin. DNA profiles match with the maternal and paternal alleles in the source of blood.

2. The DNA profile of blood detected on ex 16 Card board, ex 17 Blanket, ex 18 two pieces of tile, ex 20 Towel, ex 24 piece of cloth from pillow, ex1 blood sample of victim Sayunmbano M.A. Shaikh and blood defected on ex 1 knicker of victim Sayunmbano M.A. Shaikh, ex 3 sandow baniyan of accused Prakash Zinak Nishad of F.S.L.M.L. Case No.DNA 315/10 and blood sample of Prakash Zinak Nishad F.S.L.M.L. Case No. DNA 366/10 is from one and same source. DNA profiles did not match with he maternal and paternal alleles in the source of blood.

3. Control DNA profile of unknown person is obtained from ex 22 One hair."

64. Even otherwise, on the value of DNA evidence, we may refer to an observation made by this Court, in ***Pattu Rajan v. State of T.N.***[8]***,*** as under;

> "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."
>
> (Emphasis supplied)

65. Referring to the above case, a three-Judge bench in ***Manoj v. State of M.P.***[9], through S. Ravindra Bhat J., observed;

> "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."

66. In the present case, even though, the DNA evidence by way of a report was present, its reliability is not infallible, especially not so in light of the fact that the uncompromised nature of such evidence cannot be established; and other that cogent evidence as can be seen from our discussion above, is absent almost in its entirety.

67. Unfortunately, the courts below did not go into all the aforesaid aspects and presumptuously assumed the guilt of the appellant and held him to have committed the crime.

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8 (2019) 4 SCC 771

9 (2023) 2 SCC 353

68. What prevailed upon the courts below, it appears, was the testimony of the doctor PW 4 - Dr. Anjali Pimple, who conducted the post-mortem and, "the clinching medical evidence" and "clinching DNA report". It is on the basis of the said medical evidence that the courts, without recording any findings with regard to the circumstances being unrefuted, convicted the appellant despite there being contradictions, material in nature, belying the prosecution case and the veracity of the statement of witnesses, so also impeaching their credibility.

69. Further, what weighed with the courts below is more so evident from the findings returned by the High Court, i.e., nature of the alleged crime being indeed one of the heart-breaking, horrific and most depraved kind, prompting the confirmation of the death sentence awarded by the Trial Court, considering the case to be the rarest of rare.

70. It is true that the unfortunate incident did take place, and the prosecutrix sustained multiple injuries on her body and surely must have suffered great pain, agony, and trauma. At the tender age of 6, a life for which much was in store in the future was terrifyingly destroyed and extinguished. The parents of the prosecutrix suffered an unfathomable loss; a wound for which there is no remedy.

71. Despite such painful realities being part of this case, we cannot hold within law, the prosecution to have undergone all necessary lengths and efforts to take the steps necessary for driving home the guilt of the appellant and that of none else in the crime.

72. There are, in fact, yawning gaps in the chain of circumstances rendering it far from being established- pointing to the guilt of the appellant.

73. As already pointed out, there are several irregularities and illegalities on the part of the agencies examining the case.

74. The questions raised in the instant appeals are answered accordingly.

75. Before parting with the matter, we must take note of the manner in which the investigation into this dastardly crime was undertaken. Numerous lapses blot the entire map. We have already pointed out multiple instances which have led to the chain of circumstances remaining broken, the larger picture emerging therefrom being that the person, whomsoever they may have been, remains unpunished to this day.

76. Both the crimes committed against the innocent six-year-old child, are unquestionably, *malum in se* i.e., evil and wrong on their own, without the prohibition of law making it so. This fact, coupled with the duty upon the investigating authorities not only to protect the citizens of the country, but also ensure fair and proper investigations into crimes affecting the society, as in the present case, casts upon such authorities, in the considered view of this Court, not only legal, but also a moral duty to take all possible steps within the letter of the law to bring the doers of such acts to the book.

77. In the instant case, the reasons why the investigation officers were changed time and again from PW 6 to PW 12 and then to PW 13, is surprising and unexplained. As we have already pointed out, no reason stands given for having decided that there was no need to comply with the provisions of Section 53A, Cr.P.C.; there is unexplained delay in sending the samples collected for analysis; a premises already searched was searched again, the reason for which is not borne from record; lock panchnama is not prepared; no samples of blood and semen of the appellant can be said to have been drawn by any medical or para medical staff; allegedly an additional sample is taken from the appellant more than a month after the arrest; alleged disclosure statement of the appellant was never read over and explained to the appellant in his vernacular language; the appellant was not residing alone at the place alleged to be his residence; and what was the basis of appellant being a suspect at the first instance, remains a mystery; persons who may have shed light on essential aspects- Ganesh Bheema and Munna Saroj went unexamined etc., such multitudinous lapses have compromised the quest to punish the doer of such a barbaric act in absolute peril.

78. The charges mentioned above, although serious and grievous in nature, cannot be said to have been met against the present appellant. The factum of the commission of the crime against the six-year-old innocent child is not in dispute and cannot be deprecated enough even in the most severe terms. However, as the above discussion has laid out clearly, the circumstances forming the chain of commission of this crime cannot and do not point conclusively to the appellant in a manner that he may be punished for the same much less, with the sentence of being put to death.

79. In view of the above the charges levied on the appellant stand not proved.

80. This court, recently, in ***Maghavendra Pratap Singh @Pankaj Singh v. State of Chattisgarh***[10] had emphasised the role and responsibilities of the investigating authorities by referring to various judgments of this Court. Such principles, which are essential to successful investigations, were not adhered to. Needless to state, such responsibilities would be all the more heightened in cases of crimes involving severe punishments such as imprisonment for life or the sentence of death. Considering the nature of the case, the police ought to have, even more than usual, taken steps, precautions, and decisions to safeguard the fact-finding and investigation exercise.

81. In view of the above, the appeals are allowed. *Ex-consequenti*, the judgment dated 27.11.2014 in Sessions Case No.407/2010, passed by District Judge-2 and Additional Sessions Judge, Thane as affirmed by the High Court vide judgment dated 13th & 14th October, 2015 in Confirmation Case No.4/2014 titled as State of Maharashtra v. Prakash Nishad @ Kewat Zinak Nishad and Criminal Appeal No.88/2015 titled as Prakash Nishad @ Kewat Zinak Nishad Vs. State of Maharashtra, respectively, convicting the appellant under Sections 302, 376, 377 and 201 IPC and sentencing him to death and life imprisonment and other punishments described above, are quashed and set aside.

82. The appellant be set at liberty forthwith, if not required in any other case. Pending applications, if any, are also disposed of.

Headnotes prepared by: Divya Pandey
(*Assisted by:* Shevali Monga, LCRA)

Result of the case: Appeals allowed.

10 2023 SCC OnLine SC 486