



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1580 of 2019

Judgment Reserved on 08.07.2025

Judgment Delivered on 23.07.2025

1 - Suraj Kujur S/o Paskal Kujur Aged About 24 Years R/o Sakin Kamtara, Police Station Kunkuri, District Jashpur, Chhattisgarh.

2 - Suresh Ram S/o Late Asmu Ram Aged About 27 Years R/o Sakin Kamtara, Police Station Kunkuri, District Jashpur, Chhattisgarh.

3 - Deepak Ekka (Deleted) As Per Honble Court Order Dated 22-04-2025.

... Appellants

versus

1 - State Of Chhattisgarh Through Police Station Kunkuri, District Jashpur, Chhattisgarh.

... Respondent

For Appellant No.1	:	Mr. Ashok Swarnkar, Advocate
For Appellant No.2	:	Ms. Aakanchha Vishwakarma, Advocate on behalf of Mr. A.N. Pandey, Advocate
For Respondent/State	:	Ms. Nand Kumari Kashyap, P.L.

Division Bench

Hon'ble Smt. Justice Rajani Dubey, J. &
Hon'ble Shri Justice Amitendra Kishore Prasad, J.

C A V Judgment

Per, Amitendra Kishore Prasad, J.

1. In this appeal filed under Section 374(2) Cr.P.C., the appellants No.1 & 2 have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 30.08.2019 passed by the Special Judge, Jashpur, District Jashpur, C.G. {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989} (for short, 'the Act, 1989'), in Special Criminal Case under the SCST Act No.15/2017, whereby and whereunder the appellants stand convicted for the offence under Sections 376(2) (I)(L) & 376 (D) of Indian Penal Code (in short, 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and considering the provisions of Section 42 of the POCSO Act, appellant Nos. 1 & 2 have been sentenced as under:-

Conviction	Sentence
Under Section 376(D) of Indian Penal Code	Imprisonment for 20 years and fine of Rs.1,000/- and in default of payment of fine amount to undergo additional R.I. for three months.

2. During the pendency of this appeal, appellant No. 3 – Deepak Ekka has died. Therefore, the appeal in respect of appellant No.3 stands abated.
3. The prosecution's case, in brief, is that the victim, who is deaf and dumb, aged about 15 years, and had studied up to Class 4 in Primary School, Ambikapur, experienced a deterioration in her health on 10.06.2017. Thereafter, she was admitted to Kunkuri Hospital, where the doctor informed the complainant that she was five months pregnant. Upon being asked, the victim communicated through gestures that the accused- Suraj Kujur, had taken her to his house and committed forcible sexual intercourse with her. Thereafter, on 9.07.2017, the victim's mother lodged a written report (Ex.P-21) at Police Station Kunkuri against the accused- Suraj Kujur, pursuant to which FIR (Ex.P-22) was registered. Subsequently, when the victim's mother made inquiries through gestures, the victim informed her, through gestures and in writing, that accused persons namely Suresh Kujur, Suresh Ram, and Deepak (now deceased) of village Karmatar had committed forcible sexual intercourse with her. After obtaining a consent letter from the victim's mother (Ex.P-23), the victim was sent for a medical examination, which was conducted by Dr. Sangeeta Tirkey (PW-2). After conducting the examination, she opined that the victim had engaged in intercourse, leading to her pregnancy, which was approximately 4-5 months along, and the age of the fetus in the womb was 16-21 weeks. (PW-2) Dr. Sangeeta Tirkey

advised a sonography to ascertain the correct age of the unborn baby and noted that the victim is deaf and dumb and gave her MLC report vide Ex.P-5.

4. During the investigation, a spot map was prepared (Ex.P-1). The accused persons were taken into custody (Exs.P-30 & 33, respectively) and were also sent for medical examination, where Dr. C.K. Sai (PW-8) examined them and found that they were capable of performing intercourse. Vide Ex.P-11C, a copy of the *Dakhil Kharij Register* was seized, where the victim's date of birth was mentioned as 21.01.2002. Vide Ex.P-19, the victim's caste certificate was seized. Vide Ex.P-24, a progress report card for the year 2014-2015 was seized, where her date of birth was also mentioned as 21.01.2002.
5. After due investigation, statements of the witnesses were recorded under Section 161 of Cr.P.C. After due investigation, the accused persons were charge-sheeted before the jurisdictional criminal Court and the case was committed to the trial Court, in which, accused persons abjured their guilt and entered into defence by stating that they have not committed the offences.
6. The prosecution, in order to prove its case, examined as many as 17 witnesses and exhibited 37 documents and Article-A, whereas the accused persons in support of their defence have neither examined any defence witness nor exhibited any document. The statement of the accused persons were recorded under Section

313 of Cr.P.C., in which, they denied circumstances appearing against them in the evidence brought on record by the prosecution, pleaded innocence and false implication.

7. The learned trial Court, after appreciating the oral and documentary evidence available on record, acquitted the accused persons for the offence under Sections 363/34, 366(क) of IPC and accused-Suresh Ram for the offence under Section 3(2)(v) of the Act, 1989, however, convicted the accused persons for the offence as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred by the appellants No.1 & 2 herein, questioning the impugned judgment of conviction and order of sentence.
8. Learned counsel for the appellants would submit that the trial Court erred in convicting appellants No. 1 & 2 for the offences in question. He would argue that the prosecution's case is weak and fraught with inconsistencies and contradictions. He would further submit that, as the victim is deaf and dumb, her statement requires special caution and reliable, certified assistance during recording, which was absent. He would also contend that the absence of DNA testing, despite the victim's pregnancy, is crucial in a gang rape case to link the accused persons to the pregnancy. Furthermore, there is a lack of credible medical evidence supporting the allegation of rape and the pregnancy linkage, and the victim's date of birth was not established with certainty, thereby impacting the assessment of her capacity to consent. He

would also submit that, in the absence of corroborative and cogent evidence, appellants No. 1 & 2 are entitled to the benefit of the doubt.

9. On the other hand, the learned State counsel would support the impugned judgment and submit that the prosecution has been able to prove the offence beyond a reasonable doubt. Therefore, the trial Court rightly convicted the appellants No.1 & 2 for the aforesaid offences, and the instant appeal deserves to be dismissed. The State counsel relied on the victim's statement naming the accused persons and the pregnancy as strong evidence. He argued that the victim's disability does not diminish the credibility of her statement, especially when supported by witnesses. It was submitted that the absence of a DNA test is a lacuna but does not entirely disprove the allegations. It is further submitted that the victim's statement and medical confirmation of pregnancy suffice to uphold the conviction.
10. We have heard learned counsel for the parties, considered their rival submissions made herein-above and perused the records with utmost circumspection.
11. The first question which arises for consideration by this Court is whether the finding recorded by the trial Court holding the victim to be below 18 years on the date of incident is correct or not.
12. In order to ascertain the age of the victim, though PW-12 mother of the victim and PW-4 sister of the victim have stated in

her deposition that at the time of incident, age of her daughter/victim was 15 years, but they have not told the exact date of birth of the prosecutrix. This apart, PW-5 George Ranjit Kujur, Head Master of the Primary School Jokari, based on Serial No.1045 written in original *Dakhil Kharij Register*, has stated that date of birth of the victim is 21.01.2002 and her date of admission in class 1st was 06.01.2011. However, on the contrary, in cross-examination, he admitted that he had not written the date of birth of victim in *Dakhil Kharij Register* (Ex.P-11C) and he cannot tell the reason, on what basis, her date of birth was written in *Dakhil Kharij Register* (Ex.P-11C). He further admitted that no birth certificate of prosecutrix is attached with the documents (Ex.P-11C).

13. From perusal of the above statements, it is clear that although age of the victim was shown as 21.01.2002 in *Dakhil Kharij Register* (Ex.P-11C), but on what basis, the entry of date of birth was made in the said *Dakhil Kharij Register* is not mentioned and that no documentary evidence has been brought by the prosecution to prove the date of birth. This apart, PW-5 George Ranjit Kujur, Head Master of School, also admitted that he had not written the date of birth of victim in the said *Dakhil Kharij Register* and he has no knowledge on what basis her date of birth was written in that document. If the statements of the above witnesses coupled with the available documents on record are taken into consideration, then it is clear that the prosecution has not been able to prove the exact age and date of birth of the victim. Therefore, in absence of

any reliable or primary documentary evidence with regard to exact date of birth of victim, it is difficult to hold that at the time of incident, the victim was minor.

14. In case of **Alamelu and Another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385**, the Hon'ble Supreme Court has held that the transfer certificate which is issued by government school and is duly signed by the Headmaster would be admissible in evidence under Section 35 of the Evidence Act 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the victim in the absence of any material on the basis of which the age was recorded. The Hon'ble Supreme court held that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

In paragraphs 40,42,43,44 and 48 of its judgment in Alamelu (Supra), the Supreme Court has observed as under :

“40.Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which

the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

42. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of Birad Mal Singhvi Vs. Anand Purohit¹, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No

evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents 1988 (Supp) SCC 604 have no probative value and the dates of birth as mentioned therein could not be accepted."

43. The same proposition of law is reiterated by this Court in the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal*, where this Court observed as follows:-

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue"."

44. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of

Ravinder Singh Gorkhi Vs. State of U.P.⁴ held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the victim although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

15. Thus, looking to the facts of the present case and after considering the evidence collected by the prosecution, we find that the prosecution has failed to bring on record clinching, cogent and reliable evidence to prove the fact that the victim was minor and below 18 years of age on the date of incident. Accordingly, we set aside the findings given by the trial Court to the effect that on the date of incident, victim was minor and below the age of 18 years.

16. Now, the next question would be, whether the appellants No.1 & 2 are the author of the crime in question or not?

17. Appellants No. 1 & 2 have been charged and convicted under Section 376(D) of the Indian Penal Code, solely based on the statement of PW-13 victim. The victim, being deaf and dumb, communicates primarily through gestures. Mrs. Lata Kosharey, BRP, Inclusive Education, Kunkuri, was present in Court to facilitate communication during the victim's testimony. Mrs. Kosharey, who has been giving training to deaf and dumb children since 2012, was called by Kunkuri Police Station for this purpose. She successfully facilitated communication by understanding the victim's gestures and some written expressions. The witness also demonstrated an ability to understand and convey information in writing. Consequently, Mrs. Lata Kosharey was present throughout the testimony to assist the victim in providing her evidence. When the Court presented photographs of the accused persons, the victim recognized them. Upon being asked who committed the alleged crime, she responded in writing on a paper, stating that accused Suresh beat her, accused Suraj took her away by holding her hand and covered her mouth, and that accused Deepak committed wrongdoing with her. However, in cross-examination, PW-13 victim could not state the name the appellants herein, but indicated that they were the ones who committed the aforesaid offence.

18. Section 118 of the Evidence Act deals with the competency of a witness. By virtue of this provision, all persons are competent to testify unless the Court considers that because of tender years, extreme old age, disease whether of body or mind, or any other

cause of the same kind they are prevented from understanding questions put to them or from giving rational answers. All grounds of incompetency have been swept away by this provision. Thus, the competency of witnesses is the rule and their incompetency is an exception. The sole test is whether the witness has sufficient intelligence to depose or whether he can appreciate the duty of speaking truth.

- 19.** Section 119 of the Evidence Act provides for witnesses who are unable to communicate verbally and states as under:

“119. Witness unable to communicate verbally.—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed.”

- 20.** The aforesaid provision clearly provides that when a deaf and dumb person is examined in the Court, the Court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied

on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. The Supreme Court in the matter of **State of Rajasthan v. Darshan Singh alias Darshan Lal AIR (2012) SC 1973** has clearly held that in case the witness can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. It was further held that the law required that there must be a record of signs and not the interpretation of signs and also held as under:-

“18. ... However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law required that there must be a record of signs and not the interpretation of signs.

20. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write.

A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

21. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.

22. In the instant case, there is sufficient material on record that Geeta (PW.16) was able to read and write and this fact stood proved in the trial court when she wrote the telephone number of her father. We fail to understand as to why her statement could not be recorded in writing, i.e., she could have been given the questions in writing and an opportunity to reply the same in writing.

23. Be that as it may, her statement had been recorded with the help of her father as an interpreter, who for the reasons given by the High Court, being an interested witness who had assisted during the trial, investigation and was examined without administering oath, made the evidence unreliable. In such a fact, acquitted the respondent.”

- 21.** From the aforesaid decision, it is quite clear that a deaf and dumb witness must be administered oath by appropriate means or with the help of the assistance of the interpreter and there must be

record of signs and not interpretation of signs and interpreter must not be the interested person and such statement must be video-graphed.

22. Reverting to the statement of the victim (PW-13), it is evident that her testimony was central to the conviction of the appellants herein. Being a deaf and mute witness, her statement was interpreted by Mrs. Lata Kosharey, who, notably, was not examined during the trial. A careful perusal of the statement of PW-13 reveals that she was administered an oath, and her responses were recorded solely based on gestures and written communication on paper. Furthermore, her statement was not video recorded, as required under the proviso to Section 119 of the Indian Evidence Act. Given that the victim is deaf and dumb, special precautions should have been taken to ensure the reliability of her statement. She was examined in the presence of Mrs. Lata Kosharey, who was claimed to be trained in communicating with deaf and mute individuals. However, the prosecution failed to produce any certificate or proof of her qualifications. The presence of an uncertified intermediary raises serious doubts regarding the accuracy and reliability of the victim's communication, particularly concerning the identification of the accused persons. In the absence of such verification, the statement of the victim (PW-13) alone cannot be relied upon for the conviction of the accused in a case of gang rape.

23. That apart, PW-4, Raveena Tirkey, the sister of the victim, also confirmed that the victim is a deaf and dumb. She stated that when the victim was taken to the hospital, it was revealed that she was five months pregnant. Upon questioning, the victim wrote the names of all three accused on a piece of paper, alleging their involvement. She also noted that the victim often wandered in the village and used to visit Kamtara frequently. When asked about this, the victim reportedly argued with family members. PW-4 further testified that the victim did not specify which of the three accused was responsible for the pregnancy, and hence they initially lodged an FIR naming only Appellant No. 1, Suraj Kujur. She mentioned that he is a married man with children. Further, PW-12, Nirmala Tirkey, the mother of the victim/complainant, who lodged the FIR, also confirmed that the victim is deaf and dumb. She stated that after noticing the victim's swollen abdomen, she took her to the hospital, where a pregnancy of five months was confirmed. She further admitted that the victim could not state who was responsible for the pregnancy and mentioned that the victim frequently visited the village of Kamtara to graze cattle. Thus, the testimonies of PW-4 and PW-12 contain inconsistencies and admissions indicating that the victim wandered often, quarreled with the family, and that the family inferred the involvement of the accused based on their understanding of victim's gestures. The initial complaint lodged with the police did not specifically name the accused persons. It was only subsequent to the registration of the First Information Report (FIR)

that the names of the accused, including Appellant No. 1, Suraj Kujur, were included, based solely on the victim's written statement. However, this naming was not supported by any independent evidence.

- 24.** Moreover, PW-2, Dr. Smt. Sangeeta Tirkey, confirmed that the victim was approximately four to five months pregnant and observed that her sexual characteristics were well developed. However, she did not find any external injuries on the victim nor there were injuries to the genital or perineal regions. Despite recommending a sonography to confirm the pregnancy and assess the gestational age, no such test was conducted. Therefore, although pregnancy was confirmed, but the prosecution failed to determine the timing of conception conclusively. Additionally, the absence of external injuries or signs of a violent sexual assault raises further doubts about the allegation of forcible rape. That apart, the most critical piece of evidence, a DNA test was not conducted to establish a link between the accused persons and the pregnancy. This omission is significant, especially in a gang rape case where pregnancy is involved. The prosecution did not provide any plausible explanation for failing to conduct DNA testing, either on the victim or on the fetus (or subsequently born child), to determine paternity and confirm the involvement of the accused persons. Despite pregnancy being a key aspect of the case, the prosecution failed to undertake this essential scientific investigation. Furthermore, according to the testimony of the Investigating Officer (PW-16), the investigation did not pursue

the issue of DNA testing or take steps to conclusively verify the medical evidence.

25. In the matter of **Chotkau v. State of Uttar Pradesh, (2023) 6 SCC 742**, Hon'ble Apex Court, in para-80 has observed as under:

"80. After saying that Section 53A is not mandatory, this Court found in paragraph 54 of the said decision that the failure of the prosecution to produce DNA evidence, warranted an adverse inference to be drawn. Paragraph 54 reads as follows: (Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460 SCC p.485)

"54. For the prosecution to decline to produce DNA evidence would be a little unfortunate particularly when the facility of DNA profiling is available in the country. The prosecution would be well advised to take advantage of this, particularly in view of the provisions of Section 53A and Section 164A CrPC. We are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved but we are certainly of the view that where DNA profiling has not been done or it is held back from the trial court, an adverse consequence would follow for the prosecution."

26. In the case of **Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130**, Hon'ble Apex Court in para-44 has held as under:

“44. Now, after the incorporation of Section 53 (A) in the Criminal Procedure Code, w.e.f. 23.06.2006, brought to our notice by learned counsel for the Respondent-State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in the Cr.P.C. the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the Appellant with that found on the undergarments of the prosecutrix to make it a fool proof case, but they did not do so, thus they must face the consequences.”

27. Also, the Hon’ble Supreme Court in the matter of **Kattavellai @ Divakar vs. State of Tamil Nadu** in CRA No. 1672/2019 also reported in **2025 LiveLaw (SC) 703**, has held as under:-

“30. Having noticed various gaps as above, the logical question that arises is where were the swabs?; why were they sent for forensic analysis belatedly?; were they properly stored?; whether the Malkhana of the Police Station where they were kept according to some of the witnesses, was sufficiently equipped or not; if the same were kept in the hospital, was it ensured that no other member of the staff could have had access to them?; in whose custody were they?; if the swabs were damaged, who shall be held responsible for the destruction of

vital evidence, etc. Similar questions arise in connection with the semen sample taken from the accused as a consequence of an order passed by the Judicial Magistrate, Uthamapalayam, on 13th June, 2011. PW-56 states that the said samples were sent to FSL, Chennai, on 16th June, 2011 but subsequently returned. It is unclear, yet again, that between 13th and 16th June 2011 where such samples were stored; who was in charge thereof and whether he had kept them in safe custody?; how and in what condition they were sent; when and why they were returned - unfortunately, all these questions have no answer forthcoming from the record.

31. In Anil v. State of Maharashtra (2014) 4 SCC 69 this Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected. We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would

focus on ensuring that throughout this process the samples remain in pristine, hygienic and biologically suitable conditions.

34. Prakash Nishad v. State of Maharashtra (2023) 16 SCC 357 was a case concerning the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted. DNA evidence had to be rejected by this Court on the grounds that there was a delay in sending the samples to the FSL, which was unexplained. It was observed that because of the delay, the concomitant prospect of contamination could not be ruled out. The need for expediency in sending samples to the concerned laboratories was underscored.

35. This case, incidentally, if not unfortunately, is another one of the like of the above. Despite the presence of DNA evidence, it has to be discarded for the reason that proper methods and procedures were not followed in the collection, sealing, storage, and employment of the evidence in the course of the Appellant-convict's conviction. DNA, as we have observed, has been held to be largely dependable, even though this evidence is only of probative value, subject to the condition that it is properly dealt with. Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many

regions across the world. It is also equally true that many persons wrongly convicted have finally had justice served, with them being declared innocent because of advancements in this technology. It is unfortunate that, alongside such advancements, we still have cases where, despite the evidence being present, it has to be rejected for the reason that the concerned persons, either doctors or investigators, have been careless in the handling of such sensitive evidence.”

28. In the matter of **Nathu vs. State** reported in **2025 SCC OnLine Del 2038**, the Hon'ble High Court of Delhi has held as under:-

“35.The prosecution also placed reliance on the DNA report (Ext. PW 9/A), which established that the child born to the prosecutrix was biologically fathered by the appellant. This fact is not disputed. However, the DNA report merely proves paternity it does not and cannot, by itself, establish the absence of consent. It is trite law that the offence under Section 376 IPC hinges on the absence of consent. Mere proof of sexual relations, even if resulting in pregnancy. is insufficient to prove rape unless it is also shown that the act was non-consensual. In fact, the surrounding circumstances render the prosecution's case highly improbable.”

29. In the light of the above cited judgments, the most critical piece of evidence, a DNA test was not conducted by the prosecution to establish a link between the accused persons and the pregnancy of the victim. This omission is significant, especially in a gang rape case where pregnancy is involved. The prosecution did not provide any plausible explanation for failing to conduct DNA testing, either on the victim or on the fetus (or subsequently born child), to determine paternity and confirm the involvement of the accused persons, therefore, it could not be established that it was of the appellants, as such it goes against the prosecution.

30. In that view of the matter, we are of the considered opinion that the appellant No.1 Suraj Kujur and appellant No.2 Suresh Ram are entitled for acquittal and the learned trial Court is totally unjustified in convicting and sentencing the appellant for offences under Section 376(D) of IPC. As such, the appellants No.1 & 2 are entitled to be acquitted of the aforesaid charge on the basis of benefit of doubt. Accordingly, the impugned judgment of conviction and order of sentence dated 30.08.2019, passed by the learned trial Court is liable to be set-aside.

31. Consequently, the conviction of the appellant for offence punishable under Section 376(D) of IPC as well as the sentence imposed upon them by the learned trial Court is hereby set-aside. They are acquitted of the said charge leveled against them on the basis of benefit of doubt. The appellants are reported to be in jail, we

direct that they be released from jail forthwith, if not required in any other matter/case.

32. In the result, the criminal appeal is **allowed**.

33. In compliance with Section 437-A Cr.P.C., both the appellants are directed to furnish a personal bond of ₹25,000/- with two sureties each of the like amount before the concerned court. The bond shall be effective for six months and include an undertaking that in case of filing a Special Leave Petition or grant of leave against this judgment, the appellants will appear before the Supreme Court upon receipt of notice.

34. Registry is directed to transmit the lower court record along with a copy of this judgment to the trial court forthwith for information and necessary compliance.

**Sd/-
(Rajani Dubey)
Judge**

**Sd/-
(Amitendra Kishore Prasad)
Judge**