

MHCC020069392020



Presented on : 07-07-2020
Registered on : 07-07-2020
Decided on : 29-11-2022
Duration : 2Y-4M-22Ds

Exhibit-

**IN THE COURT OF EXTRA JOINT SPECIAL JUDGE UNDER THE
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

AT GREATER MUMBAI

POCSO SPECIAL CASE NO. 522 OF 2020

CNR NO. MHCC02-006939-2020

The State of Maharashtra
(At the instance of Vikhroli Police
Station, Mumbai, in C.R.No.98/2020)

..Complainant.

Versus

Puttan @ Safik Samiulla Khan
Age :- 40 Years.
R/a :- Cannon Chawl,
In front of Hari Masjid,
Behind Saphia Hotel,
Tagore Nagar,
Vikhroli, Mumbai

.. Accused.

CORAM : HHJ ANIS A.J. KHAN

**Extra Joint Special Judge, Under
POCSO Act,**

DATED : 29.11.2022 (C.R.NO.29)

Mrs. Pranjali Joshi Ld. SPP for the State.

Ld Advocate Gaurav Bhawnani for accused

JUDGMENT

1. The accused stands charge sheeted for the offences punishable under Sections 376(2)(f)(i)(n) and 506(2) of the Indian Penal Code (Here-in-after shall be referred as "I.P.C". in short) r/w Sections 4, 6, 8 and 12 of The Protection Of Children From Sexual Offences Act, 2012 (Here-in-after shall be referred as "POCSO" in short) In Crime Register No.98/2020 of Vikhroli Police station, Mumbai. In order to hide the identity of the victim girl and her relatives, their names are not disclosed in the judgment as per Section 33(7) of POCSO Act.

2. The brief facts of the prosecution case are as under.

The case of the prosecution is that victim girl is step daughter of accused she was aged 14 years and was studying in 9th standard. Her real father was addicted by liquor hence before two years back her mother took divorce from first husband and married with accused before five years back and was residing with accused alongwith three daughters.

3. First incident took place in the month of October 2019. When she was sleeping with sisters on ground and accused was sleeping with victim's mother on bed. She felt that somebody moving hand on her body. She woke-up and found that accused is sleeping with her on ground and moving hand on her body. When she opposed accused pressed her mouth and committed intercourse with her by force and threatened to kill her if she disclose this fact to anybody. She further alleged that accused/step father repeatedly committed sexually intercourse with her by force whenever her mother is tired and sleeping.

4. On 10.03.2020 her mother went to native place at home town to

see parents of accused. On 11.03.2020 at 11.00pm taking advantage of absence of mother, he again established sexual relation by force. Thereafter also till victim's mother came back from native place accused committed repeated forcible sexual intercourse with her. When the mother of victim came back from U.P. on 16.03.2020 and she inquired with sisters where you were sleeping in her absence. She narrated that the both sisters used to sleep on ground and victim sister and accused father used to sleep together on bed. She inquired with victim girl, she narrated all the incidents of sexual intercourse by force committed by accused father. Therefore she got examined her in hospital and she came to know that victim girl is pregnant. Her mother narrated the incident and fact of pregnancy of victim girl to her brother, sister and sister in law. After sonography came to know victim is carrying pregnancy of 16 weeks.

5. Hence, victim lodged complaint against the accused in Vikhroli Police station, Mumbai. Police registered the crime vide C.R.No. 98/2020 for the offences punishable under Sections 376(2)(f)(i)(n) and 506(2) of the IPC r/w Sections 4, 6, 8 and 12 of the POCSO Act. Police investigated the matter. Recorded statements of witnesses and inspected the spot. Drew spot panchanama. Two separate seizure panchanamas of clothes of victim girl as well as accused. Arrested the accused, Sent the victim and accused for medical examination etc. After due investigation presented the charge sheet in the court.

6. Charge was framed against accused vide Exh.15 by my learned predecessor. Charge was read over and explained to the accused in vernacular. Accused pleaded not guilty and claimed to be tried. Defence of accused was of total denial. Statement under Section 313 of Cr.P.C.

was record. Accused stated that he has been falsely implicated in this false case.

7. From rival contention of parties following points arise for my determination and I gave my findings accordingly,

NO	POINTS	FINDINGS
1	Does prosecution prove that accused in the month of October 2019 onwards and on 11.03.2020 till 16.03.2020 in his own house at night hours, repeatedly committed rape on his minor victim step daughter aged 14 years, due to which she got pregnant and thereby committed an offence punishable under Section 376(2)(i)(f)(n) of the IPC ?	In the affirmative
2	Does prosecution prove that on the same period, time and place as mentioned above accused committed aggravated penetrative sexual assault on his minor victim step daughter aged 14 years and thereby committed an offence defined under Section 5 and punishable under Section 6 of the POCSO Act ?	In the affirmative
3	Does prosecution further prove that on the same period, time and place as mentioned above accused committed aggravated sexual assault on his minor victim step daughter aged 14 years and thereby committed an offence defined under Section 9 and punishable under Section 10 of the POCSO Act.	In the affirmative

4	Does prosecution further proved that on the same period, time and place as mentioned above accused committed sexual harassment on his minor victim step daughter aged 14 years and thereby committed an offence defined under Section 11 and punishable under Section 12 of the POCSO Act.	In the affirmative
5	Does prosecution further proved that on the same period, time and place as mentioned above accused has repeatedly at night committed penetrative sexual assault on his minor victim step daughter aged 14 years and threatened to kill her if disclosed said fact to anybody thereby committed an offence defined under Section 506(2) of the IPC	In the affirmative
6	What order?	As per final order.

REASONS

8. In order to establish the guilt of accused, prosecution has examined in all twelve witnesses i.e PW-1 Complainant (Victim's mother) (Exh.20), PW-2 Victim "X" (Exh.21), PW-3 Dr. Asha Deepak Paikrao (Exh.22), PW-4 Dr. Megha Karnik (Exh.25), PW-5 Sangeeta Ganesh Kale (Exh.27), PW-6 Ankita Anil Pawar (Exh.33), PW-7 Rohan Mahadev Shinde (Exh.35), (PW-8) Dr. Anuradha Bhosale(Exh.36) PW-9 Roasaheb Dhaji Mote (Exh.39), PW-10 Anil Pilaji Sonawane (Exh.48), PW-11 Shubhangi J. Jagtap (Exh.54), PW-12 Bhavesh Prakash (Exh.55) and DW-1 Co-grand mother of victim girl.

9. Prosecution has relied on certain documents to prove its case. DNA report (Exh.10 & 11) , C.A. report (Exh. 12 to 14), Reference Letter (Exh. 23) Sonography Report (Exh. 24), Treatment sheet and admission paper of victim (Exh.26 Colly), Acknowledgment receipt and letter dated 18.03.2020 (Exh.28), Acknowledgment receipt and letter dated 20.03.2020 (Exh.29), letter dated 21.03.2020 (Exh.30), Letter dated 23.03.2020 (Exh.31). Acknowledgment receipt and letter (Exh.32), Supplementary statement of victim girl (Exh.34). Medico-legal report (Exh.37), Printed FIR (Exh.40), Spot panchanama dated 18.03.2020 (Exh.41), seizure panchanama of clothes of victim girl (Exh.42), portion mark "A" of the statement of (PW-1)victim's Mother(Exh. 43), letter Send to Bhabha Hospital (Exh. 44) Letter dated 18.03.2020 written to medical officer of Bhabha Hospital (Exh.45). Letter dated 18.03.2020 to CWC, Mankhurd (Exh. 46), Birth Certificate of Birth and Death Register (Ex.49), Letter written to BMC Dated 25.03.2020 (Exh.50), Letter to Anjuman High School (Ex.51), Letter dated 06.04.2020 for sending seized clothes to FSL (Exh.52), Letter dated 08.04.2020 (Ex.53), Medical report of accused (Exh.56)

AS TO POINT Nos 1 TO 5

10. All the points are interlinked with each other, I prefer to discuss them together so as to avoid repetition. It is worth to note that, the PW-1 victim's mother and PW-2 victim did to support to the case of prosecution, turned hostile. Only doctor, investigating officer and other prosecution officers and Chemical Analyzer have support to the case of prosecution.

11. Heard Ld SPP and advocate for the accused at the length.

Advocate for accused argued that victim and her mother did not support to the case of prosecution and turned hostile. In such circumstances, we have to see whether evidence on record, particularly DNA report read with documentary evidence and oral evidence of Doctor, CA Analyzer is sufficient to prove prosecution case beyond reasonable doubt.

12. On careful reading evidence on record, it appears that serious allegation of rape committed by accused/step father on his own step daughter has been made. Victim daughter and mother of victim have turned hostile. A perusal two witnesses reveals that on being cross examination by SPP they have admitted that :-

i. PW-1 mother of victim has admitted in her examination in chief that she married with accused Puttan before five years back. She has admitted that on 10.03.2020, she went to native place U.P. and came back on 16.03.2020. She inquired with children. Her children told that accused used to sleep with victim girl on bed and they all used to sleep on ground. On inquiry with victim girl, stated that in the night time accused moved hand on her body. Found that accused is sleeping with her. Victim girl stated that she opposed. She also came to know that victim girl is pregnant for four months. She narrated this fact to relative. Further stated that she do not know from whom she is pregnant.

ii. PW-2 victim girl has also admitted that she was pregnant, but stated that she was pregnant from her boy friend Farooq. During cross examination she has admitted that she was not pregnant from Farooq.

iii. Victim girl has admitted that her step father is in jail and only

earning member of family. Mother is not willing to keep him behind bars. She has stated that whatever wrong did by my step-father, I want to excuse him. Do not want to keep him behind bars.

iv. Birth certificate and age of victim is not much disputed by accused.

v. Victim has admitted in her cross-examination, accused is only earning member of family and she desire that accused be acquitted.

13. Thus it became evident that both the victim and mother are material witnesses have turned hostile. In order to ensure that he is only earning member of their family. They want to escape from conviction. Therefore, they have not supported to the case of prosecution. In such situation the only evidence in support of prosecution case is in the form of deposition of investigating officer, other police officers, doctors, chemical analyzer who conducted DNA Test.

14. In this regard I must refer judgment of Hon`ble Supreme Court in I. Criminal Appeal No. 339-340 of 2014 in case of Rajesh Yadav & Anr. Etc Vs. State of U.P.

II. C. Muniappan Vs. State of T.N. (2010)9 SCC 567.

III. Vinod Kumar Vs. State of Punjab (2015) 2SCC 220

Wherein it is held that the testimony of hostile witness can be relied upon by the prosecution as well as the defence. It is also well settled law that even if there is omission, contradiction and discrepancies the entire evidence cannot be disregarded. In case of *C. Muniappan v. State of T.N., (2010) 9 SCC 567*:

Thus hostile witness would not be totally rejected if spoken in favour of the prosecution. In case of State of U.P. Vs. Ramesh Prasad

Mishra 1996(10)SCC360

It is held that “ Thus the law can be summarized to the effect that the evidence of a hostile witness cannot be discarded as whole and relevant part thereof which are admissible in law can be used by prosecution of deposition.

15. Here-in-this case though PW-1 victim's mother is declared hostile, but during examination in chief she has categorically stated that on 10.03.2020 she alone went to U.P. and came back on 16.03.2020. She inquired with children where they were sleeping. According to them they were sleeping on ground and victim girl and accused/step father were used to sleep on bed. Victim girl also admitted that accused moved hand on her body, but she opposed. This fact link with further investigation. Medical report, oral evidence of doctor on record. It is noted that PW-2 victim also declared hostile but she has admitted in her cross-examination that accused is only earning member of family. Her mother desired that accused be acquitted. She has admitted she was pregnant. Pregnancy was terminated in hospital this fact is not denied by victim and her mother.

16. It has come in the evidence of PW-2 victim girl that she lodged complainant against her step father. Police arrested her father. But she denied the allegation of rape mentioned in FIR. However, she has admitted that her mother took her in hospital. Dr. reported she was pregnant of four months. The victim has admitted that pregnancy was terminated in Bhabha Hospital Kurla. She has narrated the incident to the Doctor and police. Admission given by victim in her cross-examination itself sufficient to prove that the victim is in emotional pressure of mother hence denied the incident to release her father from jail on the say of

mother. Prosecution has also examined PSI Ankita who recorded statement of victim under Section 161 of Cr.P.C and proved portion marked "A" of the statement dated 19.03.2020 at (Exh34)

17. In this peculiar circumstances, DNA test is an effective tool of investigation and proof of guilt of accused and it has now been accepted with advancement of scientific technology due to accuracy of the test. The question as to whether DNA test report can be relied on for proving case of prosecution,. I must refer case **Mukesh Vs. State of NCT of Delhi & others Reported in 2017 (6) SCC** Hon`ble Supreme Court took into consideration series of its earlier judgment on the said question and also judgment of Foreign Jurisdiction. It is quite clear that DNA report deserves to be accepted, if the sampling is proper and if there is no evidence of tampering of sample. Here-in this case also prosecution has examined PW-3 Dr. Asha Deepak Paikrao she did sonography and reported that victim is carrying pregnancy of 16 weeks it is at (Exh.24) Dr. Megha Karnik (PW-4) stated that victim is aged 15 years carrying pregnancy. She was admitted for termination of pregnancy. She is qualified gynecologist lady doctor conducted process of termination of pregnancy. Took blood samples of victim, fetus and accused sent for DNA to FSL. It appears that medical examination of victim child was done by lady officer Dr. Asha Paikrao (PW-3) and Dr. Megha Karnik (PW-4) who are lady doctors. Medical examination of victim girl was done by Lady Doctor (PW-8) Dr. Anuradha Bhosale in accordance with Section 27 of the POCSO Act and under Section 164-A of the Cr.P.C. Medical reports are at Exh. 23, 24 , 26 and 37. The DNA Kits collected by lady police PW-5 Sangeeta Ganesh Kale from FSL Exh.28 and acknowledgment receipt is at Exh.29. DNA samples received from Hospital Collected at Exh.30. Addressed to FST

Kalina, DNA Kit box and acknowledgment by FSL Kalina receipt is at Exh.32. The samples were duly sealed, no complaint of tampering.

18. Before considering DNA analysis report let me first refer to what is DNA. The infallibility of identification by DNA profiling and its accuracy with certainty. DNA - Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. DNA is the genetic blue print for life and is virtually contained in every cell. No two persons, except identical twins have ever had identical DNA. DNA profiling is an extremely accurate way to compare a suspect's DNA with crime scene specimens, victim's DNA on the blood-collected from fetus, victim and accused. DNA testing can make a virtually positive identification when two samples match.

19. The Experts opine that the identification is almost hundred per cent precise, using the chemical structure of genetic information by generating DNA profile. The DNA test can be based of conviction of accused. The only requirement that sampling of the blood samples has to be proper and should be no material indicating any tampering of sample.

20. Here-in-this case prosecution has examined PW-5 Sangeeta Ganesh Kale, lady police who categorically stated that she collected DNA Kit from FSL and collected sample Kit from hospital on 23.03.2020. Letters are at **Exh.28, 30, 21 and 32**. It is noted prosecution has also examined Dr. Megha Karnik (PW-4) who conducted termination of pregnancy of victim girl collected, blood sample of victim and her fetus for DNA test sent to FSL Kalina through WPC 040674 Police Station Vikhroli, PW-5 corroborated with documentary evidence and proved the same. No

evidence on record to show that samples are tampered.

21. Evidence of PW-7 Rohan Mahadev Shinde reveals that with reference to letter No 2081/21 dated 20.03.2020 Vikhroli Police Station In crime No. 98/2020 under Section 376 of The IPC and POCSO Act received. DNA samples kits which were carried by W.P.C. No. 040670. There were two sealed vials labled with name of the victim and fetus. He also received blood sample of accused Puttan on dated 08.04.2020. According to him DNA analysis consist of four stages 1st stage is DNA extraction, 2nd stage is DNA Quantification, 3rd stage is DNA Amplification and 4th stage is capillary electropherogram and data interpretation. According to him he prepared comparative analysis DNA profile of blood sample of accused, victim girl and fetus. He came to conclusion that the victim and accused are biological parents of fetus of victim girl. Advocate for accused cross examined the Chemical Analyzer at the length, but nothing comes on record to disbelieve his testimony.

22. The prosecution also examined Dr. Asha PW-3 was who firstly examined victim and ask to do sonography. After sonography she found that victim girl is carrying pregnancy of 16 weeks. Reference letter Exh-23 and sonography report is at Exh-24. This evidence remain unchallenged.

23. The prosecution examine Dr. Megha PW-4, who is medical officer on duty in Bhabha Hospital, Kurla. On 22.03.2020 victim girl aged 15 years, produced before her for termination of pregnancy. She obtained consent of mother and victim and pregnancy was terminated. She collected blood sample of victim, fetus for DNA test and sent to FSL

through WPC 040674, Vikhroli police station, medical papers are at Exh-26 collectively. The bunch of medical papers remain unchallenged. Nothing came on record to disbelieve the same.

24. Prosecution also examined WPC 040670 Sangeeta Kale. She states that on 18.03.2020, she collected 2 DNA kits from FSL, Kalina vide letter Exh-28 and handed over to Doctor medical officer, Bhabha hospital, Kurla for collecting DNA samples. After collecting sealed DNA samples sealed box from hospital, she carried and handed over to C.A. Kalina, Mumbai vide letter Exh-30. Acknowledgment receipt are at Exh-31 and Exh-32. During cross nothing came to disbelieve her testimony. There is no evidence of tampering of samples.

25. Prosecution examined Dr. Anuradha who obtain her consent for medical termination of pregnancy it is at Exh-37. During cross-examination by advocate for accused nothing came on record to disbelieve her testimony. Her evidence also remain unchallenged.

26. Prosecution has examined PW-9 API Raosaheb Mote who registered FIR Exh-40. According to him victim girl file complaint against the step-father alleging that he committed repeated rape on her and she became pregnant. He prepared spot panchanama Exh-41. Seizure panchanama Exh-42 and seized clothes of victim. He recorded statement of victim under Section 161 of Cr.P.C. dated 18.03.2020, though she decided not to support to prosecution and declared hostile. But witness has proved Portion mark "A" of statement under Section 161 of Cr.P.C. at Exh-43 was recorded by him as per say of victim. He sent her for medical examination vide letter Exh-44. He also issued letter dated 18.03.2020 to Child

Welfare Committee Exh-46 and issued letter to FSL, Kalina for collecting DNA kits at Exh-28. The evidence of investigating officer link the chain of investigation papers on record.

27. In order to continue link of investigation of prosecution has examined PW-10 PI Anil Sonawane, who investigated the matter. According to him he obtained birth application of victim at Exh-49 from BMC also obtained copy of school leaving certificate showing date of birth vide Exh-51. During investigation he produced victim to Bhabha hospital, Kurla for medical termination of pregnancy. Obtained DNA samples kit from FSL vide letter Exh-30. Sealed pack DNA sample kit was handed over to FSL, through carrier PW-5 Kale. Investigating officer also collected blood sample of accused for DNA on 08.04.2020 for Chemical Analyzer its report is at Exh.14. Condition of parcel was sealed before examination. The concerned officer of FSL acknowledge the same. He also seized cloth of accused at article A and B, same were sent to FSL, Kalina for CA examination. After due investigation presented charge-sheet. Advocate for accused cross-examined him at the length but nothing come on record to disbelieve link of investigation.

28. PW-11 Shubhangi Jagtap who was PSI station incharge. She was called by PI Vikhroli for recording statement of victim girl. Accordingly she went in Bhabha hospital, Kurla, Victim girl is aged 16 years who was carrying pregnancy of 16 week. She stated that her step-father committed repeated rape on her. PW-11 PSI Shubhangi recorded her statement at Exh-40A. During cross-examination except the denial suggestion nothing came on record.

29. PW-12 Dr. Bhavesh examined accused and issue certificate Exh-56, reported that he is not impotent. On perusal of C.A. examination report (Exh.12) shows that Director of F.S.L. Mumbai received one sealed envelope, seal was intact, blood sample of victim. The C.A. examination report (Exh.13) also shows that the four sealed parcels, seal intact and description of articles was Top, Pyjama, Underwear and Full pant. The C.A. examination report (Exh.14) shows that C.A. analyzer FSL received, two sealed test tube, seal intact containing blood sample of accused Puttan. The C.A. report (Exh.10) are sealed in card board box, sealed intact. Description of articles, blood in two vials, labeled name of victim and another vial labeled of fetus. Same were sealed, intact. Absolutely there is no evidence of tampering of samples. The advocate for accused has not challenged the contents of report Exhs.12, 13, 14 and Exh.10 on record.

30. The DNA report is at Exh-10. Original electropherogram report is at Exh-73. Prosecution has proved the DNA report by examining C.A. analysis FSL, Kalina, Mumbai. A perusal of evidence of said witness shows that he has deposed in detail about manner in which he scientific test was conducted. He has also deposed about the manner in which blood sample were received in sealed in kit and has supported the findings of the said DNA report. In cross-examination nothing of significance has been brought out. DNA is pre-dominant forensic technique for detection of biological relations of parties. I must refer case of Apex court *Mukesh Vs State 2019 (2) Maharashtra Law Journal (Criminal) (Hon'ble Supreme Court) 52.* Apex court observed that DNA report deserve to be accepted. If sampling are proper.

31. I have gone through written notes of argument submitted by accused at Exh-71 submitted that the prosecution failed to examine material witnesses to prove that the blood samples were properly sealed and not tampered. The prosecution failed to prove that accused committed rape on victim girl, contrary victim and her mother denied the prosecution story. Hence it is clear case of acquittal.

Relied on the judgments of Hon`ble Supreme Court list Exh-72:-

- 1) Prem Sagar Manocha v. State (NCT of Delhi), (2016) 4 SCC 571.
- 2) Rahul v. State (NCT of Delhi), 2022 SCC OnLine SC 1532.
- 3) Manoj v. State of M.P., 2022 SCC OnLine SC 677.
- 4) Jitendra v. State of Maharashtra, 2017 SCC OnLine Bom 8600.
- 5) Cho Mingur Lepcha v. State of Sikkim, 2022 Cri LJ 460.
- 6) Amol v. State of Maharashtra, 2022 SCC OnLine Bom 107.
- 7) Tulshiram Bhanudas Kambale v. State of Maharashtra, 2000 Cri LJ 1566.
- 8 State v. Motia, 1955 Cri LJ 835.
9. Premjibhai Bachubhai Khasiya v. State of Gujarat, 2009 SCC OnLine Guj 12076 : 2009 Cri LJ 2888.
10. Navin Dhaniram Baraiye v. State of Maharashtra, 2018 Cri LJ 3393.

32. Advocate for accused re-called PW-7 Rohan Mahadev Shinde (C.A. Analyzer) for cross examination but when he re-called for cross-examination Ld advocate for accused prefer not to cross examine him. Witness was discharged. Electropherogram Report taken on record at Exh.70.

33. I have carefully gone through guidelines given by Hon'ble Supreme Court in all above cited cases. *I must refer guidelines given by the Hon`ble Supreme Court in recent judgment in case of Rahul Vs. State of Delhi 2022 SCC Online SC 1532.* Hon'ble Supreme Court had observed in para 138 of Judgment that, only 1% of DNA differs from one person to another.

DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and / or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed Genetic Markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA Profile unique to an Individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoospermic or "vasectomized" male. Cases in which DNA had undergone environmental stress and biochemical degradation, min ISTRs can be used for over routine STR because of shorter amplicon size.

DNA Profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities

available In the laboratory. The analysis principles, however, remain similar, which include:

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

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

Statistical Analysis

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

- 1) Match : If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.
- 2) Exclusion : If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.
- 3) Inconclusive : The data does not support a conclusion of the three possible outcomes, only the “match” between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.

34. In case of paternity/ maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible

mutations should be taken into consideration while reporting a match. Paternity of Maternity Indices and Likelihood Ratios are calculated further to support the match.

Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his / her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA Profiling.

35. Thus, a perusal of document DNA report Exh-10, evidence of PW-7, CA examiner and Evidence of investigating officer PW-10 Anil Sonawane shows without any doubt that there was no tampering with procedure of collection of blood sample by Dr. Megha PW-4, she collected blood samples of victim girl and her fetus for DNA test. The documents Exh-26, 28, 30, 31, 32, 37 are on record remain unchallenged, nothing came on record to suspect the contents of documents and procedure adopted by expert to say not proper.

36. Once, it is found that procedure of blood sample and their submission to C.A. laboratory for analysis is proper. There is no evidence of tampering of same, the DNA report need to be accepted. PW-7 Rohan Shinde C.A. analyser examined by prosecution who proved DNA test. Nothing came on record to disbelieve his testimony. DNA report clearly indicate that the accused is biological father of fetus of victim girl, who committed repeated rape on victim girl, step-daughter of accused.

37. Last but not least I must mention that investigation officer Anil Sonawane, PW-10 has obtained birth certificate of victim girl at Exh-49, same is not challenged by accused. The birth certificate is issued by municipal authorities who maintained birth register as per Death and Birth Registration Act. There is no rebuttal evidence on record to disbelieve the same. It shows that on the date of incident victim girl was below aged 16 years and “child” defined under Section 2(d) of POCSO Act, 2012.

38. Offence is heinous, a step-father who committed repeated rape on victim girl who is child below 18 years. DNA report is established that victim girl was carrying pregnancy and accused was biological father of victim fetus. Merely because the victim PW-2 and PW-1 victim's mother had turned hostile it cannot lead to fatal the case of prosecution. It is indeed sad, very serious heinous act committed by accused who is step father of victim girl. Though the PW-1 mother of victim and PW-2 victim girl have chosen not to support prosecution case and they have turned hostile. But scientific evidence in the form of DNA test report on record proved the guilt of accused beyond all reasonable doubt. I must refer the landmark judgment of Hon'ble Supreme Court, reported in **AIR 2014 SC**

932, do deny the DNA test report would be to deny the truth. Further observed that the hallmark of justice is truth must be triumph.

39. The evidence and material on record clearly demonstrate that despite of the material prosecution witness turning hostile, the prosecution conclusively proved its case beyond reasonable doubt against the accused.

Hence, I answer point Nos 1 to 5 in affirmative

40 As, I held accused Puttan @ Safik Samiulla Khan guilty. I stop here to hear the accused on the point of sentence.

Date: 29.11.2022

**ANIS A.J. KHAN
Extra Joint Special Judge,
Under POCSO Act,
Gr. Mumbai.**

41. The accused has submitted that he is only earning member of his family and prayed for leniency. Ld advocate for accused submits that minimum sentence may be awarded. Ld SPP submits that offence is serious. Hence maximum sentence be awarded. Considering submission and legal position stated above having considered the evidence and document on record. It is emanate that offence is heinous against not only child but it is against his own step daughter who is below 16 years committed aggravated penetrative sexual assault punishable under Section 6 shall not be less than 20 years. Hence, I proceeded to pass following order which would meet the end of justice.

ORDER

1. Accused Puttan @ Safik Samiulla Khan is found guilty under Section 235(2) of The Code of Criminal Procedure for the offence punishable under Sections 376(2)(f)(n) and 506(2) of The Indian Penal

Code. Accused is also found guilty for the offence defined under Section 5 and punishable under Section 6, defined under Section 9(l)(n) and punishable under Section 10 and defined under Section 11 and punishable under Section 12 of The Protection Of Children From Sexual Offences Act, 2012.

2. Accused Puttan @ Safik Samiulla Khan is convicted for offence defined under Section 5 and punishable under Section 6 of The Protection Of Children From Sexual Offences Act, 2012. Vide Section 235(2) of The Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 20 year (Twenty Years) and to pay fine of Rs. 20,000/- (Rs. Twenty Thousand Only In default of payment of fine, he shall further under go further rigorous imprisonment of one year.

3. Accused Puttan @ Safik Samiulla Khan is convicted for offence defined under Section 9(i)(n) and punishable under Section 10 of The Protection Of Children From Sexual Offences Act, 2012. Vide Section 235(2) of The Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 7 year (Seven Years) and to pay fine of Rs. 10,000/- (Rs. Ten Thousand Only) In default of payment of fine, he shall further under go further rigorous imprisonment of six months.

4. Accused Puttan @ Safik Samiulla Khan is convicted for offence defined under Section 11 and punishable under Section 12 of The Protection Of Children From Sexual Offences Act, 2012. Vide Section 235(2) of The Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 3 year (Three Years) and to pay fine of Rs.3,000/- (Rs. Three Thousand Only) In default of payment of fine, he shall further under go further rigorous imprisonment of six months.

5. Accused Puttan @ Safik Samiulla Khan is convicted for offence defined under Section 506(2) of The Indian Penal Code Vide Section 235(2) of The Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 2 year (Two Years) and to pay fine of Rs.1,000/- (Rs. One Thousand Only) In default of payment of fine, he shall further under go further rigorous imprisonment of three months.
6. No separate punishment is awarded for under Section 376(2)(f) (n) of the Indian Penal Code as per Section 42 of Protection Of Children From Sexual Offences Act, 2012, awarded greater punishment as per the protection of children from Sexual offence Act, 2012.
7. The substantive sentence shall run concurrently vide Section 31 of Code of Criminal Procedure, 1973.
8. Accused is entitled for set off under Section 428 of the Code of Criminal Procedure.
9. If the fine amount so realized, the compensation Rs.34,000/- (Rupees Thirty Four Thousand Only) be paid to the victim under Section 357 (1) (b) of Code of Criminal Procedure, 1973.
10. Muddemal article if being worthless be destroyed after appeal period is over.
11. A copy of judgment be given to the accused under section 354 (4) of Code of Criminal Procedure, 1973.

12. Pronounced in the open court.

Date: 29.11.2022

**ANIS A.J. KHAN
Extra Joint Special Judge,
Under POCSO Act,
Gr. Mumbai.**

Dictated on : 28.11.2022
Transcribed on : 28.11.2022
Draft submitted on : 28.11.2022
Corrected copy : 29.11.2022
recd. on
Final Copy : 29.11.2022
Submitted on

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER

29/11/2022
UPLOADED DATE AND TIME (R.R.HATE)
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.	H.H.J. Anis A.J.Khan (Court Room No.29)
Date of Pronouncement of Judgment/Order	29/11/2022
Judgment/Order signed by P.O.on	29/11/2022
Judgment/Order uploaded on	29/11/2022