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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th August, 2025

+ CRL.A. 269/2025 & CRL.M.A. 6930/2025, CRL.M.(BAIL) 486/2025
ASHISHAppellant

Through: Mr. Akshya and Ms. Nupur Jhangala,
Advocates.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Mukesh Kumar, APP for the
State with Mr. Naresh Dagar,
Advocate.
SI Bharat, PS: Uttam Nagar, W/SI
Sushma, PS: Nangloi Metro, Ms. Soni
Kampa, Senior Scientific Officer,
FSL Rohini.
Ms. Inderjeet Sidhu, Advocate for the
Prosecutrix.
Mr. Abhishek, Advocate for R-K.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA
JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present appeal under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ Section 374(2) of the Code of Criminal Procedure,

¹ "BNSS"



1973² assails judgment of conviction dated 04th December, 2024 and order on sentence dated 17th January, 2025 passed by the Court of ASJ (FTSC), (POCSO)-01, South-West District, Dwarka Courts in SC No. 223/2020. These proceedings emanate from FIR No. 443/2020 registered at P.S. Uttam Nagar for the offences under Section 376 of the Indian Penal Code, 1860³ and Section 6 of the Protection of Children from Sexual Offences Act, 2012.⁴

2. A conviction under Section 376 IPC read with Section 6 of the POCSO Act entails the gravest stigma and the severest of sentences; and therefore, this Court is tasked to examine whether the finding of guilt is borne out by reliable evidence and in accordance with settled legal principles. The jurisdiction under Section 415(2) BNSS/Section 374(2) CrPC is not confined to errors of law alone, but extends to a reappraisal of the evidence, ensuring that both the conviction and the sentence withstand the scrutiny of fairness, legality, and proportionality.

Factual Background

3. The case of the Prosecution is as follows:

3.1. On 6th May, 2020, information was received at P.S. Uttam Nagar from DDU Hospital stating that a young girl, ('K', the Prosecutrix), had been brought by her mother for medical termination of pregnancy. The information was recorded *vide* DD Entry No. 30B, and the same was entrusted to ASI Manoj (PW-6), who, accompanied by W/Constable Premlata, proceeded to the hospital. After some time, the Investigating

² "Cr.P.C."

³ "IPC"

⁴ "POCSO"



Officer,⁵ W/SI Sushma (PW-12) also arrived at the hospital. Medical examination revealed that the Prosecutrix was 22 weeks pregnant. In the presence of her sister ‘N’ and father ‘D’, she gave a written complaint (Ex. PW-1/A) alleging that her elder brother, Ashish, the Appellant, had subjected her to sexual assault on two or three occasions, including once shortly after Holi, following which her menstrual cycle ceased in March 2020.

3.2. On this complaint, the subject FIR was registered and investigation set in motion. During investigation, her statement was also recorded under Section 164 Cr.P.C., where she stated that sexual relations had taken place with the Appellant “around one or two days before Holi,” but added that it was “with her consent” and that she did not wish to pursue proceedings.⁶ Nevertheless, chargesheet was filed and the Special Court took cognizance on 28th August, 2020.

3.3 By order dated 18th September, 2020, charges were framed against the Appellant under Section 6 read with Section 5(j)(ii) and (l) of the POCSO Act. The Appellant pleaded not guilty and claimed trial.

3.4. In support of its case, the Prosecution examined twelve witnesses, comprising the Prosecutrix and her immediate family members, the investigating officers, school and municipal record keepers, and the forensic examiner. For clarity and ease of reference, the witnesses are summarised in the table below:

PW No.	Name / Description	Role / Deposition
PW-1	The Prosecutrix	Complainant; alleged sexual assault; statement

⁵ “IO”

⁶ Translation of “Holi se karib ek-do din pehle mere bhai aur mere beech sexual relations huye jo meri marzi se hua tha. Mai koi karyawahi nahi chahti”.



PW No.	Name / Description	Role / Deposition
		under Section 164 CrPC.
PW-2	Father of the Prosecutrix	Present at hospital; witness to complaint; spoke on circumstances.
PW-3	Mother of the Prosecutrix	Brought the Prosecutrix to hospital for MTP; corroborated disclosure.
PW-4	Sister of the Prosecutrix	Present when prosecutrix made complaint at hospital.
PW-5	HC Kuldeep Singh, MHC(M), P.S. Uttam Nagar	Proved deposit and handling of case property.
PW-6	ASI Manoj Kumar	Recorded DD entry 30B; visited DDU Hospital; facilitated FIR registration.
PW-7	HC Umesh	Accompanied IO; prepared site plan of residence.
PW-8	Purshpendra Khatri, TGT, Uttam Nagar	Produced school records; DOB: 3 rd October, 2007.
PW-9	Soni Khampa, Junior Forensic Examiner, FSL Rohini	Conducted forensic analysis of biological exhibits.
PW-10	Pradeep Kumar, Record Keeper, Birth & Death Dept.	Produced birth record; DOB: 2 nd November, 2004.
PW-11	Baladin Ahirwar, Principal	Produced school record; DOB: 15 th September, 2004.
PW-12	W/SI Sushma, Investigating Officer	Conducted investigation; collected evidence; filed charge-sheet.

3.5. Upon conclusion of the Prosecution evidence, the statement of the Appellant was recorded under Section 313 of the Cr.P.C. All incriminating circumstances appearing in the record were put to him. The Appellant denied the allegations *in toto*, asserting that he had been falsely implicated, and further claimed that the Prosecutrix had not herself made any complaint against him. He, however, chose not to lead any defence evidence. The matter thereafter proceeded to final arguments.

3.6. Upon consideration of the age of the Prosecutrix, the depositions of Prosecution witnesses, and the medical and forensic evidence brought on



record, the Trial Court held that the Appellant had subjected the Prosecutrix to repeated acts of penetrative sexual assault, which culminated in her pregnancy. By judgment dated 4th December, 2024, he was convicted for the offences punishable under Section 6 read with Section 5(j)(ii) and Section 5(l) of the POCSO Act, 2012. By the order on sentence dated 17th January, 2025, he was sentenced to undergo rigorous imprisonment for a period of twenty years, along with a fine of ₹2,000/-.

Appellant's Case

4. Mr. Akshya, counsel for the Appellant, assails the conviction and sentence on multiple grounds, urging that the impugned judgment suffers from grave infirmities and rests on assumptions, rather than reliable proof. His submissions are summarised below:

4.1. The conviction of the Appellant is unsustainable in law, being founded solely on DNA evidence, without adequate corroboration from oral testimony. Although the Prosecution examined as many as twelve witnesses, none of them, succeeded in establishing the case beyond reasonable doubt. The Trial Court brushed aside critical contradictions and inconsistencies, instead resorting to presumptions to arrive at guilt.

4.2. The evidence of the Prosecutrix (PW-1) is diametrically opposed to the Prosecution's case. In her deposition, she stated that she was in a relationship with one Rahul and that her physical relations were with him prior to Holi, 2020. She maintained that her pregnancy came to light only when her mother noticed changes in her body and took her for medical examination. PW-1 denied having lodged any complaint against the Appellant, or having given a statement under Section 164 Cr.P.C. implicating him. On the contrary, she explained that earlier references to the



Appellant's name were made under fear of Rahul, who had allegedly threatened to implicate her brother falsely. The testimony of PWs-2 to 4, the parents and sister of the Prosecutrix, also did not support the Prosecution's version, instead alleging that their signatures had been obtained on blank papers by the investigating agency. These testimonies strike at the root of the Prosecution's case, yet were disregarded by the Trial Court.

4.3. The Trial Court erroneously relied upon the DNA report to convict the Appellant, despite there being a clear break in the chain of custody of the samples. The record is silent on the identity of the medical officer who collected blood and foetal material. The Prosecution failed to establish foundational evidence that the samples tested indeed pertained to the Prosecutrix and her foetus. Such lapses, it is argued, gravely undermine the reliability of the DNA analysis. Reliance in this regard is placed on the judgment of the High Court of Bombay in *Nivrutti v. State of Maharashtra*⁷ as well as of the Supreme Court in *Prakash Nishad v. State of Maharashtra*,⁸ to submit that conviction cannot rest on DNA evidence alone, particularly in the face of a compromised chain of custody and contrary oral testimony.

4.4. The IO (PW-12) admitted that no inquiry was conducted at Meera Nursing Home, where the Prosecutrix first became aware of her pregnancy, before being referred to DDU Hospital. This omission raises significant doubt about the Prosecution's version of events.

4.5. There are glaring inconsistencies in the medical evidence. While the Prosecutrix claimed on 6th May, 2020 that she was only two months

⁷ MANU/MH/7875/2024.

⁸ MANU/SC/0613/2023.



pregnant, the subsequent medical record shows she was 22 weeks pregnant and, on 14th May, 2020, delivered a stillborn baby boy. This discrepancy, it is urged, was never reconciled by the investigating agency and casts doubt on the reliability of the Prosecution version.

4.6. PW-12 (the IO) conceded that government guidelines require dispatch of biological samples to FSL within one week of collection and that they be stored at room temperature. Yet, in the present case, the samples were sent only after one month. PW-5 (MHC(M)) further testified that the samples were kept refrigerated in the *malkhana*. Mishandling of the samples renders the DNA report unreliable and insufficient to form the sole basis for conviction, particularly in the absence of any corroborative evidence.

4.7. The Trial Court failed to appreciate that Exhibit PW-1/A, the alleged complaint, was not authored by the Prosecutrix herself. While the chargesheet records that the Prosecutrix submitted a written complaint, the IO (PW-12), during cross-examination, stated that the said complaint was written by the Prosecutrix's sister. However, the sister (PW-4) remained silent on this issue during her testimony. This discrepancy casts serious doubt on the authenticity of the complaint.

4.8. The cumulative effect of these lapses renders the conviction legally untenable. None of the eyewitnesses support the case; the Prosecutrix has exonerated the Appellant; and the only piece of evidence relied upon by the Trial Court being the DNA report, stands vitiated by grave procedural lapses. In these circumstances, the Appellant is entitled to the benefit of doubt.

Respondent's Case

5. On the other hand, Mr. Mukesh Kumar, APP for the State, strongly



opposes the appeal and supports the findings of the Trial Court. He submits that there exists sufficient material on record, particularly in the form of scientific evidence and the categorical statement of the Prosecutrix recorded under Section 164 of the Cr.P.C., which clearly implicates the Appellant. He further contends that, given the nature of the offence and the surrounding circumstances, the facts themselves are sufficient to sustain the conviction. He places strong reliance on the DNA profiling, asserting that in cases of this nature, such scientific evidence is conclusive for determining the culpability of the accused.

6. The doubts sought to be raised by the Appellant regarding the reliability and integrity of the DNA report are unfounded. The forensic report, prepared by a competent government laboratory, carries a presumption of correctness unless rebutted by credible defence evidence. No expert testimony was led on behalf of the Appellant to cast doubt upon the methodology or findings of the FSL. In the absence of such rebuttal, the DNA report stands as reliable and conclusive proof. The minor irregularities in the handling of samples, even if assumed, cannot outweigh the probative force of DNA profiling, which has consistently been recognised by courts as one of the most accurate forms of identification in criminal law.

7. Mr. Kumar emphasises that the Prosecutrix's pregnancy at the age of 15 years is an admitted and uncontroverted fact, which by itself establishes that penetrative sexual assault had occurred. He submits that once the DNA profiling unequivocally connects the Appellant to the pregnancy, conviction under Section 6 of the POCSO Act follows as a natural consequence. The subsequent attempt by the Prosecutrix during trial to resile from her earlier statement does not dilute the evidentiary value of her Section 164 statement,



particularly when it stands corroborated by unimpeachable scientific evidence.

Prosecutrix's Case

8. Ms. Inderjeet Sidhu, counsel representing the Prosecutrix, has taken a nuanced stand, adopting a position distinct from that of the State. Notably, she has not opposed the present appeal, and instead, has reiterated the account placed by the Prosecutrix during the course of trial. It is her submission that the Prosecutrix did not support the Prosecution version, denied the involvement of the Appellant in the alleged acts of sexual assault, and refrained from attributing any culpability to him.

9. The Prosecutrix herself has appeared before this Court and made an unequivocal statement that the Appellant is not the individual responsible for her pregnancy. She asserts that the relationship in question was with one Rahul, whom she described as her boyfriend at the relevant time. The Prosecutrix has further affirmed that her present stand is entirely voluntary, untainted by coercion or pressure, whether from her parents or any other quarter. She has gone to the extent of requesting this Court to extend relief to the Appellant, including consideration of bail, emphasising that her consistent position throughout the trial has been that her brother, the Appellant, is not responsible for the pregnancy.

Analysis

10. The Court has considered the rival contentions advanced by the parties and has carefully perused the material available on record. The Appellant is the Prosecutrix's biological elder brother and stands convicted for repeated penetrative sexual assault upon his minor sister. With that backdrop, it is apposite to first settle the question of age, for it bears directly



on the statutory presumptions and on the (in)significance of any plea of “consent”.

Age of the Prosecutrix

11. To prove the age of the Prosecutrix, the Prosecution examined multiple witnesses. PW-8, Sh. Pushpendra Khatri, TGT (Computer Science), Govt. Girls Sr. Secondary School No. 2, Uttam Nagar, produced the school records indicating her date of birth as 3rd October, 2007. PW-10, Sh. Pradeep Kumar, Record Keeper, Birth and Death Department, proved the birth certificate reflecting her date of birth as 2nd November, 2004. PW-11, the Principal of the school, deposed that her date of birth was 15th September, 2004. Faced with these conflicting school records, the Trial Court rightly preferred the municipal birth record, an entry in an official register maintained in the regular course of public duty, which is relevant under Section 35 of the Indian Evidence Act, 1872; its certified copy is admissible under Sections 76-77, and it enjoys the presumption of regularity under Section 114, Illustration (e). On that footing, the Prosecutrix was about **15 years 4 months** old in March 2020, when the sexual activity is alleged. This conclusion is reinforced by PW-1’s own testimony confirming her year of birth as 2004. The Prosecutrix was, therefore, a “child” within Section 2(1)(d) of the POCSO Act.

12. Pertinently, the age of the Prosecutrix at the time of the alleged incident is not controverted by the Appellant. Once minority is established, two consequences follow. First, any assertion of “consensual” relations, whether in the Prosecutrix’s Section 164 Cr.P.C. statement or at trial, is legally ineffectual: consent of a child is no defence to penetrative sexual assault under POCSO. Second, the case squarely attracts the aggravated



provisions of Section 5(j)(ii) (pregnancy as a consequence of penetrative sexual assault) and Section 5(l) (repeated penetrative sexual assault), punishable under Section 6.⁹ With these foundational facts in place (minor victim; pregnancy contemporaneous with the alleged period; relationship within the family), the statutory presumption under Section 29 is triggered, shifting the burden to the accused to rebut guilt on the preponderance of probability. Whether the defence has discharged that burden, despite the scientific and other materials relied upon by the Prosecution, is considered in the succeeding parts of this analysis.

Statements of the Prosecutrix

13. The FIR was registered pursuant to a telephonic intimation from DDU Hospital, where the Prosecutrix had been taken by her mother for medical termination of pregnancy. On examination, she was found to be approximately 22 weeks pregnant. In the presence of her sister and father, she gave a written complaint (Ex. PW-1/A) alleging that the Appellant, her biological elder brother, had subjected her to “wrong acts” on two to three occasions, including once before Holi. She stated that after this incident she had missed her menstrual cycle from March onwards, which led to her being taken first to Meera Nursing Home and subsequently to DDU Hospital, where the pregnancy was confirmed and the police was informed.

14. In her subsequent statement under Section 164 Cr.P.C., the Prosecutrix acknowledged that she had entered into a physical relationship with the Appellant. While she characterised the relationship as consensual and expressed unwillingness to pursue further investigation, she

⁹ The offence under Section 5(n) of the POCSO Act is also attracted, given that the Appellant is the Prosecutrix’s biological elder brother, although no conviction was recorded under this provision.



unambiguously identified the Appellant as the person with whom she had sexual relations.

15. However, when examined as PW-1 before the Trial Court, the Prosecutrix retracted from both her earlier versions. She stated that she had developed a relationship with a boy named Rahul while in Grade VII and that her pregnancy was the result of consensual relations with him in a jungle behind her school. She further stated that her mother noticed the bulging of her belly, after which she was taken to hospital and her pregnancy was medically confirmed and terminated.

16. Confronted with this departure, the Trial Court permitted her cross-examination by the Prosecutor. During cross-examination, she denied the suggestions put to her, but admitted that at the time of her initial medical examination at DDU Hospital, she had told the attending doctor that the Appellant had subjected her to sexual relations against her consent over the previous year. She specifically admitted stating that he had physical relations with her five to six times, the last being around March. Although she volunteered that this statement was made out of fear of her boyfriend Rahul, the record shows that she did not disclose any particulars of Rahul, his parentage, address, or whereabouts. She further admitted that she had never made any complaint against Rahul. The relevant portion of her cross-examination is extracted below:

“It is correct that in the DDU Hospital I gave brief description of the incident to the doctor stating that accused Ashish was having sexual relations with her against her consent for the last one year, he made sexual relations with her 5-6 times and last time he made relations on and around March. Volunteered, I stated the same due to fear of my boyfriend. It is incorrect to suggest that the said description is correct and I gave it voluntarily without any fear or pressure. It is correct that I have not made any complaint against Rahul anywhere till date. It is incorrect to suggest that I did not make any complaint against Rahul as



he did not do anything wrong against me. It is correct that my date of birth is 21.11.2004. I do not know the parentage or address of my boyfriend Rahul. I am not aware about his whereabouts. It is incorrect to suggest that I do not know about the details of Rahul as he is an imaginary character and I have concocted the said story to save my brother from this case.”

17. Thus, a clear progression is evident across her statements: in her written complaint she directly implicated the Appellant in repeated sexual acts; in her Section 164 Cr.P.C. statement she admitted physical relations with the Appellant but attempted to present them as consensual; and in her deposition before the Court she sought to exonerate him entirely, attributing her pregnancy to an unidentified person, Rahul. This gradual dilution of her account reflects a retreat from her initial allegations.

18. In assessing these inconsistencies, it is important to note that the Appellant is the Prosecutrix’s biological elder brother. Allegations of sexual assault within the immediate family often attract extraordinary pressures, emotional, social, and economic. It is not uncommon for family members to retract or dilute earlier allegations to shield the accused from penal consequences. This inference is strengthened by the conduct of her parents and sister, who initially signed the written complaint but, at trial, denied knowledge of its contents and alleged that their signatures were obtained by the police. Such a coordinated change of stance across immediate family members lends weight to the possibility of an attempt to protect the Appellant. Accordingly, these contradictions cannot, by themselves, be treated as fatal to the case of the Prosecution, particularly when other corroborative and scientific evidence is available on record.

19. At this juncture, it is apposite to refer to the judgement of *Nirmal*



Premkumar v. State,¹⁰ wherein the Supreme Court categorised the reliability of oral testimony of the Prosecutrix into three distinct classes:

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.”

xx...x...x...

13. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim’s testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

20. In view of the above legal position, the Prosecutrix’s statements in this case do not fit the first category. There is a discernible progression: an initial written complaint naming the Appellant for repeated “wrong acts”; a Section 164 Cr.P.C. statement admitting sexual relations with him (sought to be portrayed as consensual); and, finally, a trial deposition disowning both versions and attributing pregnancy to an unidentified “Rahul,” about whom no particulars (parentage, address, complaint, or contemporaneous trace) are forthcoming. At the same time, her testimony cannot be branded wholly unreliable: she admitted in cross-examination that, during the initial DDU medical examination, she told the doctor the Appellant had sexual relations with her against consent on multiple occasions, and her family’s coordinated retraction plausibly reflects intra-familial pressures rather than a proven

¹⁰ 2024 SCC OnLine SC 260.



falsity of the first accounts.

21. The Supreme Court, in *State of M.P. v. Balveer Singh*,¹¹ after examining a catena of previous decisions, succinctly summarised the governing principles for appreciating the testimony of a child witness:

“35. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.”

22. Furthermore, the Supreme Court in *R. Shaji v. State of Kerala*,¹² emphasized that while a statement recorded under Section 164 Cr.P.C. does not constitute substantive evidence, since the defence has no opportunity to cross-examine the witness at that stage, it may nonetheless be used under Section 157 of the Evidence Act to corroborate or contradict the testimony of the witness before the Trial Court. In this background, the vacillation in the Prosecutrix’s version of events, ranging from allegations against the Appellant in her initial complaint and statement under Section 164 Cr.P.C., to complete exoneration of the Appellant during her deposition, places her testimony squarely within the third category as delineated by the Supreme

¹¹ 2025 SCC OnLine SC 390.

¹² (2013) 14 SCC 266.



Court in *Nirmal Premkumar*, *i.e.*, neither wholly reliable nor wholly unreliable. In such a situation, in view of the legal principles enunciated in *Balveer Singh*, the Court cannot discard her testimony outright, nor is it prudent to accept it in its entirety without reservation. Judicial prudence, therefore, demands that her testimony be examined in light of corroborative material to assess its veracity and reliability.

23. It is here that the scientific evidence, particularly the DNA profiling, assumes significance. Where the oral testimony of the Prosecutrix is not of sterling quality, but the record contains scientific corroboration consistent with her earliest account, the Court is entitled to rely on such corroboration to sustain the conviction. Whether that scientific evidence is admissible, intact in chain, and probative is the next inquiry to which the Court now turns.

Scientific Corroboration through DNA Profiling

24. DNA profiling, when conducted in accordance with established forensic protocols, has consistently been treated by courts as possessing the highest probative value. The present case is a classic illustration where such scientific corroboration becomes decisive.

25. The FSL, Rohini report (Ex. PW-9/A) and the deposition of PW-9, Ms. Soni Khampa, Junior Forensic Examiner (Biology), conclusively demonstrate that the DNA profile of the foetus matched with that of the Appellant. PW-9 deposed in categorical terms that one set of alleles each from the Appellant and the Prosecutrix were accounted for in the DNA profile generated from the foetal samples, thereby proving that the Appellant was the biological father and the Prosecutrix the biological mother of the foetus. She further clarified the methodology employed, including the use of



STR analysis through Identifier amplification and Powerplex 21 system kits, analysed via Gene-Mapper iDx software which leaves no room for speculation about the accuracy of the findings. The relevant portion of her testimony is extracted below:

The result of Biological analysis was that the blood was detected on exhibits '1A', '1B', '2A' and '3'. The DNA examination was done by me and as per said examination, the source of exhibits '1B' (Blood sample of accused), '2A' (Blood sample of victim), '2B' (Fleshy tissue material), '2C' (Fleshy tissue material) and '3' (Blood sample of Baby boy) were subjected to DNA isolation. DNA was isolated from the source of exhibits '1B', '2A', '2B', '2C' and '3'. Identifier amplification kit and Powerplex 21 system amplification kit was used for PCR amplification and data was analyzed by using Gene-Mapper iDx Software in each of the samples.

My result of DNA examination was that one set of allele each from the source of exhibit '1B' (Blood sample of accused) and '2A' (Blood sample of victim) were found to be accounted in the DNA profile generated from the source of exhibits '2B' (Fleshy tissue material), '2C' (Fleshy tissue material) and '3' (Blood sample of Baby boy).

The conclusion of above examination was that DNA profile (STR) analysis were performed on the exhibits '1B', '2A', '2B', '2C' and '3' were sufficient to conclude that DNA profile generated from the source of exhibit '1B' (Blood sample of accused) is Biological father and exhibit '2A' (Blood sample of victim) is Biological mother of exhibits '2B' (Fleshy tissue material), '2C' (Fleshy tissue material) and '3' (Blood sample of Baby boy).

26. Therefore, a cumulative assessment of the FSL report and the deposition of PW-9, Ms. Kampa, leaves little room for doubt that the Appellant is the biological father of the foetus that was aborted by the Prosecutrix. The scientific evidence, in this case, serves as strong and conclusive corroborative material, significantly strengthening the Prosecution's case.

27. When doubts were raised during appellate proceedings regarding the conclusiveness of the DNA evidence, this Court directed the presence of PW-9. She appeared and explained that while a sibling match ordinarily



shows a partial overlap of 20-30%, the present case involved direct parentage analysis with foetal tissue collected at the time of medical termination. The DNA profile exhibited a 50% match with the Prosecutrix and a 50% match with the Appellant, the classical signature of biological parentage. This clarification underscores the evidentiary weight of the report, ruling out any competing hypothesis consistent with innocence.

28. The Appellant has sought to challenge the DNA evidence on the ground of alleged non-compliance with chain-of-custody protocols and improper storage. Reliance is placed on *Prakash Nishad*, where the Supreme Court stressed that the probative value of DNA evidence depends on the facts and circumstances of each case and the weight accorded to other evidence on record, whether contradictory or corroborative.

29. The record in the present case reveals that at the time of medical termination, the biological samples of both the foetus and the Prosecutrix were sealed with the official seal of the CMO, DDU Hospital, as recorded in the seizure memo (Ex. PW-12/G). The FSL report explicitly confirms that the samples were received with the same intact seal. Further, PW-9 did not depose anything regarding the tampering, contamination, or spoilage of the samples. Importantly, the defence did not cross-examine PW-9 on the possibility of contamination nor suggest any infirmity in the sealing or handling process. The allegation of a broken chain of custody, therefore, remains a bare assertion unsupported by any material.

30. The contemporaneous sealing, intact receipt at the laboratory, unchallenged testimony of the forensic examiner, and the absence of any defence evidence pointing to tampering, establish beyond cavil that the chain of custody was preserved. The DNA report thus stands as a piece of



unimpeachable scientific evidence. Courts have repeatedly underscored that DNA evidence, when reliable, constitutes the most objective form of corroboration in sexual offence cases. In *Mukesh v. State (NCT of Delhi)*,¹³ the Supreme Court held that DNA profiling is an exact science and can safely be relied upon to link the accused with the offence. Applying that principle, this Court is satisfied that the FSL report in the present case not only corroborates the earliest version of the Prosecutrix, but also provides an independent and conclusive basis to sustain the conviction.

Conclusion

31. The Prosecutrix was a child, about fifteen-and-a-half years old at the relevant time, as proved by the municipal birth record and not disputed before this Court. In a POCSO prosecution, her “consent” is legally irrelevant. The undisputed fact of pregnancy, contemporaneous with the period alleged, is established by medical records; its legal significance is captured by Section 5(j)(ii) (pregnancy consequent to penetrative sexual assault) and Section 5(l) (repeated penetrative sexual assault), attracting punishment under Section 6.

32. On the evidentiary plane, the earliest complaint and the statement under Section 164 Cr.P.C. identified the Appellant; the later courtroom deposition by the family does not efface those accounts, particularly where intra-familial pressure is a live possibility. The FSL report (PW-9/A), proved through PW-9, demonstrates a direct parentage match with foetal tissue: one allele set from the Appellant and one from the Prosecutrix across the STR loci tested. The chain documents show sealing with the CMO, DDU Hospital seal and intact receipt at FSL; there is no cross-examination

¹³ (2017) 6 SCC 1.



impeaching the seals, the methodology, or the statistics, and no defence expert to the contrary. On this record, the DNA profiling is admissible, reliable, and lends corroboration to the Prosecution version.

33. With minority, pregnancy, and biological paternity established, the statutory presumption under Section 29 of the POCSO Act stands triggered. The defence has not rebutted it even on a preponderance of probabilities. The unidentified “Rahul” remains without particulars, complaint, or contemporaneous trace; speculative hypotheses cannot dislodge a scientific identification supported by the documentary chain. No perversity or misappreciation of evidence is shown that would warrant appellate interference.

Sentence

34. Turning then to the question of sentence, this Court has considered whether any mitigating circumstance has been shown that would justify departure from the punishment awarded. None has been demonstrated. On the contrary, the aggravating features are manifest: the Prosecutrix was only fifteen and a half years old; the assault was not an isolated lapse but repeated; it occurred within the sanctity of the home, at the hands of a brother who ought to have been her protector; and it resulted in pregnancy, concealed until the second trimester. The psychological and physical trauma inflicted upon a child in such circumstances cannot be overstated.

35. Section 6 of the POCSO Act prescribes a minimum sentence of twenty years’ rigorous imprisonment for aggravated penetrative sexual assault under Section 5(j)(ii) and 5(l). The Trial Court, by awarding the statutory minimum, has already imposed the lowest sentence permissible in law. In the absence of any mitigating factor of exceptional weight, this Court



finds no reason to interfere. The punishment imposed is neither excessive nor disproportionate; rather, it is the calibrated legislative response to the gravity of such offences.

36. Accordingly, the sentence of twenty years' rigorous imprisonment and fine of ₹2,000/- imposed by the Trial Court is affirmed.

37. Dismissed.

Postscript

38. Before parting, the Court records what it witnessed in open court. The Prosecutrix, her sister, and their parents stood together, not to press accusation, but to seek the Appellant's release. The Prosecutrix, though no longer a child in years, yet plainly fragile, spoke in a low voice, visibly anxious, her thumbs nervously twisting.

39. Such dynamics are, sadly, not uncommon. Intra-familial abuse is often shrouded in silence- silence borne at the child's expense, where duty recasts as protection of the adult, and fear that the truth, if spoken, will shatter what remains of the family. Such abuse rarely ends at the bar of law; it fractures a household, reorders loyalties, and can still silence the very voice the statute is designed to protect.

40. This Court does not sit in moral judgment over the family. Its remit is narrower: to apply the statute as enacted and the evidence as proved. The POCSO framework is a conscious legislative choice, excluding "consent" where the victim is a child and prescribing stern minimums for aggravated conduct. Where those elements stand established, judicial latitude is limited. The outcome here follows that mandate.

41. Courts cannot mend what is broken at home. The message, however, must remain unambiguous. A child's bodily integrity is inviolable.



Compassion for a family in anguish cannot translate into impunity for harm done to a child. The law's foremost duty is to safeguard the child's dignity and safety. That duty is only partly discharged through punishment; it also demands measures of care and rehabilitation. Accordingly, the following directions are issued to secure support and dignity for the Prosecutrix:

41.1 The Delhi State Legal Services Authority¹⁴ shall, within two weeks, appoint a support person in terms of Rule 4(7) of the POCSO Rules, 2020, and coordinate counselling for the Prosecutrix, and for her parents and sister, through a qualified clinical psychologist/psychiatric social worker experienced in child sexual-abuse cases. The counsellor shall also advise on educational/vocational continuity and any further medical or legal assistance needed. A brief compliance note shall be filed before the Trial Court within six weeks.

41.2 If not already done, the DSLSA shall facilitate the disbursement of the compensation amount of INR 13,50,000/- awarded to the Prosecutrix by the Trial Court, *vide* order on sentence dated 17th January, 2025. The DSLSA shall also ensure the opening and/or verification of a protected bank account in the name of the Prosecutrix and complete the disbursal process within eight weeks from the date of this order, if not already effected.

41.3 The Registry shall upload only a suitably redacted copy of this judgment; identifying particulars of the prosecutrix shall remain sealed. All authorities shall ensure strict non-disclosure in terms of Section 33(7) POCSO and Section 228-A IPC.

41.4 The Superintendent of the Jail shall ensure that the Appellant has access to appropriate counselling and correctional programmes during

¹⁴ "DSLSA"



incarceration.

42. With the above directions, the appeal is disposed of.

SANJEEV NARULA, J

AUGUST 27, 2025

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