



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Leave To Appeal No. 270/2024

State of Rajasthan, through P.P.

----Appellant

Versus

Chandrabhan S/o Lt. Sh. Mahaveer, R/o Rayawali Police Station,
Rajiyasar District Sriganganagar.

----Respondent



For Appellant(s) : Mr. Narendra Kumar Gurjar, GA-cum-AAG
with Mr. Vikram Rajpurohit, Dy.G.A. & Mr. Ravindra Singh Bhati.

For Respondent(s): None.

HON'BLE MR. JUSTICE ARUN MONGA

Judgment (Oral)

31/01/2025

1. Application filed under Section 5 of the Limitation Act seeking condonation of delay of 162 days in filing the leave to appeal, is allowed.
2. Leave is sought herein to appeal against a judgment and order dated 04.09.2023 passed by learned Special Judge No.1, (POCSO Act Cases), Sriganganagar, Rajasthan (trial court), vide which, the learned trial court while giving benefit of doubt acquitted the respondent – Chandrabhan (aged about 25 years at the time of incident in year 2020).
3. Brief factual narrative leading to registration of the FIR and subsequently, which led to acquittal of the accused-respondent, is as follows:
 - 3.1. On 29.12.2020, the complainant, Omprakash (father of the victim, a 12-year-old minor at the time of the incident), lodged a

complaint at Police Station Rajiyasar alleging therein that on 28.12.2020, after returning home around 8:00 PM from grazing sheep, his wife informed him that their son, S @ C, had not yet returned. As they began searching for him, S @ C arrived home crying. When questioned, he stated that Chandrabhan had taken him to his fields but did not explain the reason for his distress.

Concerned, the complainant's wife took S @ C to the said field, where they discovered footprints and bloodstains. Upon returning home, they noticed blood on S @ C's pajama and saw that blood was flowing from his anus. Suspecting that Chandrabhan had committed some wrongdoing, the complainant informed Dr. Krishnalal Sharma, who advised them to take S @ C to Suratgarh for medical treatment.

3.2. Based on the said allegations, FIR No.210/2020 dated 29.12.2020 was registered and after the investigation a charge sheet was submitted against Chandrabhan for offenses under sections 303, 377 IPC and sections 5(M)/6 of the POCSO Act, 2012. The translated version of FIR, reads as under:-

*"To,
The Officer-in-Charge,
Police Station Rajiyasar.
Subject: Request for filing a case,
Sir,*

I, the undersigned, Omprakash, son of the late Shri Ramlal, caste Meghwal, aged 40 years, resident of Raiyawala, Police Station Rajiyasar, District Sri Ganganagar, hereby submit my complaint. I am a shepherd by profession and work for Jaitaram Meghwal, herding his sheep. On 28.12.2020, I left in the morning to take the sheep for grazing and returned around 8:00 PM in the evening.

As I was passing in front of the sheep owner's house in my village, my cousin's son, Balram, approached me and asked for 2000/- rupees, saying that my son, [REDACTED] needed to be

taken to Suratgarh. I inquired what had happened, and he told me to come home and I would find out. I then locked the sheep in the pen and went home. My wife, Kalawati, informed me that she had gone to the animal pen behind the house to work. After returning, she asked our 4-year-old son, [REDACTED] and he told her that [REDACTED] had gone to the shop. I then went back to my work, but by 5:00 PM, [REDACTED] had not returned. I went out to search for him, and when I came back, I found him at home, crying. Ramkumar then told me to ask [REDACTED] who he had gone with, and [REDACTED] told me he had gone with Chandrabhan to the fields. When I asked why he was crying, he did not explain. I then asked him to take me to the place where Chandrabhan had taken him. He led me to a field near the village towards Barmal, where I found footprints of Chimnarayan and another person under a Kikar tree. There were bloodstains on the ground, and a piece of cardboard had been used to wipe off the blood, which I brought home.

Upon reaching home, I noticed that [REDACTED]'s pajama had blood on the back. When I removed the pajama, I saw that blood was still flowing from his back. I concluded that Chandrabhan had committed a wrongful act with [REDACTED]. My wife informed me of this, and Balram went to fetch Dr. Krishnalal Sharma from the village. After examining [REDACTED] the doctor gave him an injection and advised that we take him to Suratgarh, as he could not treat him and that something wrong had happened with him.

Following the doctor's advice, I, along with Mangilal, Krishansingh Sankhla Rajput, and Krishna, took [REDACTED] to Dr. Jayant Vyas in Suratgarh, where the doctor gave him medicine for five days. Due to the late hour and incomplete information, I was unable to file a case earlier. Now, I am submitting this petition to request that a case be filed against Chandrabhan, son of Mahavir, caste Meghwal, aged 30 years, resident of Raiyawala, for committing a heinous act with my son, [REDACTED] aged 5 years. I respectfully request that legal action be taken against the accused and a case be filed.

Signature: Omprakash

Complainant:

Omprakash, son of Late Shri Ramlal,

caste Meghwal, age 40 years,

resident of Raiyawala,

Police Station Rajiyasar,

District Sri Ganganagar, Mobile No. 8905441574

Action Taken:



On 29-12-2020, at 6:40 PM, Omprakash, son of Shri Ramlal, caste Meghwal, aged 40 years, resident of Raiyawala, Police Station Rajiyasar, came to the police station and submitted the typed report. Based on the contents of the report, a case under sections 5/6 of the POCSO Act and 377 IPC was registered. The investigation was initiated by Police Officer Vikram Tiwari. Copies of the FIR/SDR were issued as per rules, and a free copy of the FIR was provided to the complainant.”



3.3. The accused denied charges and claimed trial. During trial, the prosecution examined 14 witnesses and exhibited 47 documents. The accused Chandrabhan in his examination under section 313 of Cr.P.C. denied all charges and claimed that he was falsely implicated due to enmity. He chose not to adduce any evidence.

3.4. After conclusion of trial, the learned trial court vide its judgment dated 04.09.2023, acquitted the accused – Chandrabhan from charges under sections 363, 377 IPC, and sections 5(M)/6 of the POCSO Act, 2012, giving him benefit of doubt.

4. In the aforesaid backdrop, I have gone through the impugned judgment and perused the case file and given my thoughtful consideration to the arguments addressed by learned counsel for prosecution-state/appellate.

5. Learned counsel for the appellant – State argues that the trial court while passing its judgment did not appreciate the evidence produced by the prosecution nor did it appreciate the documents produced by the prosecution in their entirety. Instead, it passed the above-mentioned judgment solely based on the statement presented by the defense.

5.1. He further argues that the victim child in this case was under the age of 12 at the time of the incident. Although the victim child turned hostile, he confirmed the incident in his statements under Section 161 and 164 of the CrPC. He contends that though the victim's parents turned hostile but in their statements they stated that the victim was assaulted by respondent-accused.

5.2. Counsel would argue that in this case, the FSL and DNA reports provide evidence against the accused, which substantiates the charges against him. The blood sample of the accused (Exhibit P-9) and the blood sample from the victim's pajama (Exhibit P-1) were matched. Therefore, based on this evidence, the decision of the learned trial court is also liable to be set aside.

6. Having heard the learned counsel for the appellant - State and after perusing the impugned judgment, I find no grounds to interfere. Neither there is any irregularity in procedure nor any error pointed out in the appreciation of the evidence adduced by the prosecution. Clearly, there was insufficient evidence that could have led to the conviction of the under-trial.

7. Before advertizing any further, let us also see the reasons, inter alia, for acquittal given by the learned trial court in its judgment dated 04.09.2023. Translated version of relevant extract thereof, reads as under:-

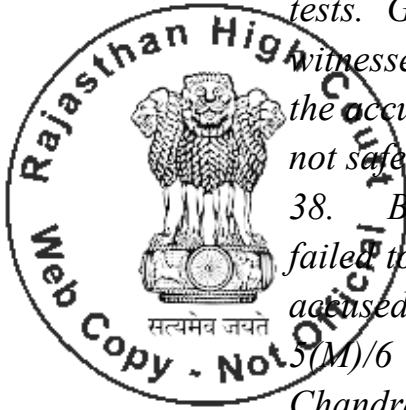
“36. xxxx --- xxxx --- xxxx

In the above-mentioned precedents, the Hon'ble Supreme Court and various Hon'ble High Courts have established the principle that where the victim/complainant and key witnesses do not support the prosecution's case, conviction cannot be based solely on scientific evidence. According to Section 45 of the Indian Evidence Act, scientific evidence is corroborative and not conclusive evidence, and it is an expert's opinion, which the court is not bound to accept. Furthermore, DNA reports are

considered acceptable evidence only when they are supported by the facts and circumstances of the case, the method of sample collection, and scientific analysis. It is imperative for the prosecution to prove the entire scientific methodology of sample collection, preservation, and analysis in court.

37. *In this case, PD 1 (victim 'S'@'C') and his parents, who are key witnesses, have turned hostile and have not supported the prosecution's version in any way. The case relies solely on scientific evidence from FSL biological/serological and DNA tests. Given that the victim and his family, along with key witnesses, have not supported the prosecution's case, convicting the accused, Chandrabhan, based solely on scientific evidence is not safe.*

38. *Based on the aforementioned analysis, the prosecution has failed to prove beyond reasonable doubt the charges against the accused Chandrabhan under sections 363, 377 IPC and section 5(M)/6 of the POCSO Act, 2012. Therefore, the accused Chandrabhan is entitled to the benefit of doubt and should be acquitted of the charges."*



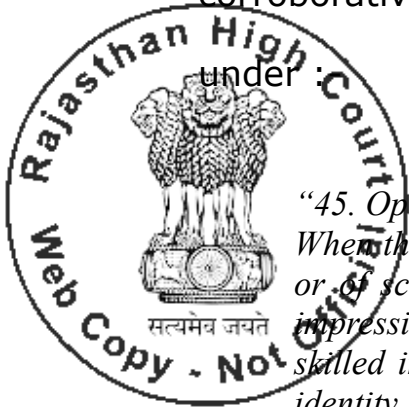
8. Trite it may sound, that while ten guilty may go unpunished, one innocent must not go punished merely on the grounds of suspicion. The burden of proof lies with the prosecution, and, if at all, courts must err on the side of caution to avoid convicting the innocent. Acquittal on the grounds of benefit of doubt does not necessarily amount to overlooking the evidence. On the contrary, it is only after applying due consideration to the entirety of the matter, the learned trial judge came to the conclusion that it was not a case of sufficient evidence, and there was a risk of committing a mistake merely on the grounds of suspicious circumstances, which remained uncorroborated otherwise.

9. Delving further into the merits of the prosecution evidence, the victim and his parents turned hostile and did not support the prosecution's version of events. Without their testimony, the prosecution lacked direct evidence to establish the offense beyond reasonable doubt. I am thus of the view that learned Trial court

rightly did not convict the accused/under trial based on unreliable or retracted testimonies.

10. Moreover, prosecution merely, but heavily, relied on scientific evidence such as DNA and forensic reports. As per Section 45 of the Indian Evidence Act, 1872 forensic reports are only corroborative, not conclusive evidence. Section 45, *ibid* reads as

under :



“45. Opinions of experts.—

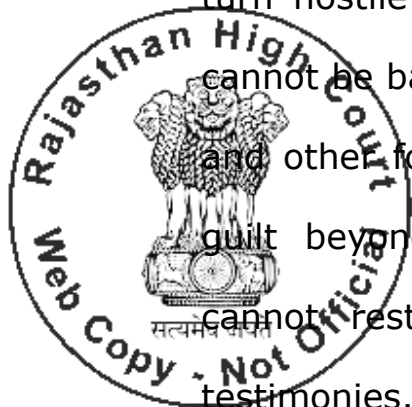
When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts. “

A perusal of the section, *ibid* [corresponding new section, in verbatim, now is section 39 of Bharatiya Sakshya Adhiniyam, 2023] reveals that law, no doubt, enables trial court to rely on expert opinions, however, such opinions are only meant to assist the court and are not binding.

11. In modern criminal trials, expert evidence, including DNA tests, forensic reports, and digital evidence, plays a crucial role. But the credibility, methodology, and corroboration of expert evidence determine its weight. Court has the discretion to accept or reject expert opinions based on the facts and circumstances of the case. Though the experts provide opinions based on their specialized knowledge, but their testimony is not conclusive. Expert evidence per se is merely corroborative and it must be supported by other forms of admissible evidence. Such opinions are only advisory and should be evaluated alongside other evidence. Thus, the expert evidence alone is not sufficient for

conviction, unless corroborated by other evidence. To canvass and accept otherwise would be fraught with the danger of, in given cases, experts being influenced by either the party engaging them and/or other extraneous considerations viz. media trail etc.

12. As an upshot, if the victim, complainant, or key witnesses turn hostile or fail to support the prosecution's case, conviction cannot be based solely on scientific evidence. Eyewitness accounts and other forms of direct evidence remain crucial in establishing guilt beyond a reasonable doubt. In light thereof, conviction cannot rest solely on scientific evidence without supporting testimonies.



13. Aside above all, in the instant case, the prosecution failed to prove the proper chain of custody for DNA samples, making their reliability questionable. The method of sample collection, preservation, and analysis was not sufficiently explained in the trial court, thus raising doubts about forensic conclusions. The trial Court's judgment is, therefore, well-reasoned and there no irregularity in the trial proceedings that would warrant interference.

14. Resultantly, no grounds to interfere are made out.

15. Leave to appeal is dismissed. Pending application(s), if any, stand disposed.

(ARUN MONGA),J

Sr. No.1 – Sumit / Jitender /-

Whether Fit for Reporting:- Yes / No