[2023] 14 S.C.R. 977 : 2023 INSC 936

CASE DETAILS

NAVEEN @ AJAY

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal Nos. 489-490 of 2019)

OCTOBER 19, 2023

[B. R. GAVAI, PAMIDIGHANTAM SRI NARASIMHA AND PRASHANT KUMAR MISHRA, JJ.]

HEADNOTES

Issue for consideration: Whether appellant was afforded a fair trial; whether he was deprived of his valuable legal rights.

Penal Code, 1860 – s. 302 – Appellant was convicted and sentenced for committing rape and murder of 3 months old girl child – His death sentence was confirmed by the High Court – Appellant contended that the entire trial was completed within a span of 15 days and appellant was not afforded a fair trial – Propriety:

Held: The Order-sheet would clearly indicate that the trial was conducted in a hurried manner without providing ample and proper opportunity to the defence counsel, who was engaged through legal aid, to prepare himself effectively – It is also to be noted that copies of DNA Report, FSL Report and Viscera Report were not submitted along with the charge-sheet and were presented before the Court during the course of trial – When the reports were challenged by the accused before the High Court, it was brushed aside by observing that even if the authors of the reports were not called for evidence, in terms of Section 293 Cr.P.C., the reports are not open to question as the defence had an opportunity to cross-examine the authors of the reports during the trial – High Court was not correct in saying that the defence had an opportunity to cross-examine the experts – Accused, who was in jail and defended by a counsel from legal aid, was compelled by the Trial Court to produce defence witness of his own in one day – It was impossible for the accused himself to produce doctors, the authors of the Reports (Ex.P-72), in one day because

the said experts are government servants and could not have attended the Court at the request of an accused in jail – There was no opportunity, in the real sense, to the appellant to cross-examine the experts – Therefore, the Judgment of conviction and sentence passed by the Trial Court and affirmed by the High Court is set aside and the matter is remitted back to the trial court for de novo trial by affording proper opportunity to the appellant to defend himself. [Paras 8, 10, 21, 22]

Criminal Trial – Fair Trial – Definition of:

Held: There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted – Each one has an inbuilt right to be dealt with fairly in a criminal trial – Denial of a fair trial is as much injustice to the accused as is to the victim and the society – Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor, and the atmosphere of judicial calm – Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated – It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence – Since fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial – It is thus settled that a hasty trial in which proper and sufficient opportunity has not been provided to the accused to defend himself/herself would vitiate the trial as being meaningless & stage-managed – It is in violation of the principle of judicial calm. [Para 16]

Principle/Doctrine – Judicial Calm – Discussed. [Paras 16, 17]

LIST OF CITATIONS AND OTHER REFERENCES

Bashira vs. State of U.P. AIR 1968 SC 1313 : [1969] SCR 32; *Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors* (2004) 4 SCC 158 : [2004] 3 SCR 1050; *Anokhilal vs. State of Madhya Pradesh* (2019) 20

SCC 196: *Rahul v. State of Delhi, Ministry of Home Affairs & Anr* (2023) 1 SCC 83; *Manoj & Ors. Vs. State of M.P* (2023) 2 SCC 353: *Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra* (2014) 4 SCC 69 : [2014] 3 SCR 34 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 489-490 of 2019.

From the Judgment and Order dated 24.12.2018 of the High Court of Madhya Pradesh at Indore in CRR No. 3 of 2018 and CRLA No.3830 of 2018.

Appearances:

B H Marlapalle, Sr. Adv., Bhavesh Seth, Avinish Kumar Saurab, Harini Raghupathy, Rajat Mittal, Advs. for the Appellant.

Pashupathi Nath Razdan, Ms. Smriti Razdan, Ms. Maitreyee Jagat Joshi, Pulkit Agarwal, Astik Gupta, Ms. Akanksha Tomar, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

PRASHANT KUMAR MISHRA, J.

These appeals would call in question, the impugned Judgment of conviction and sentence dated 24.12.2018 passed by the High Court of Judicature of Madhya Pradesh at Indore in Criminal Reference No. 03 of 2018 and Criminal Appeal No. 3830 of 2018 upholding the conviction of the appellant under Sections 363, 366-A, 376(A), 376(2)(i), 376(2)(j), 376(2)(k), 376(2)(m), 302 and 201 of the Indian Penal Code[1], and Section 5(m), 5(i) read with Section 6 of Protection of Children from Sexual Offences Act 2012[2], and confirming the sentence of death imposed on the appellant by the Fifth Additional Sessions Judge, Indore (MP) in Sessions Trial No. 87

1 (for short, 'IPC')
2 (for short, 'POCSO')

of 2018 arising out of Crime No. 50 of 2018 dated 20.04.2018, registered at P.S. Sarafa, Indore, Madhya Pradesh.

2. The appellant has been convicted and sentenced for committing rape and murder of 3 months old girl child. The appellant was tried for the afore-mentioned offences on the allegation that complainant-Sunil and his wife were engaged in the business of selling balloons and they were residing at Rajawada, Indore (MP). On 20.04.2018, complainant-Sunil along with his family members were sleeping at a platform near Rajawada, at about 03:00 a.m., his daughter (deceased) aged about three months and four days started weeping on which her mother Sonubai fed milk, thereafter, the deceased slept. At about 05:00 a.m. when complainant-Sunil and his family members woke up, they did not find the deceased at the place where she was sleeping. Despite search, they could not find her. Thereafter, Sunil lodged a missing report of his daughter at Police Station, Sarafa, Indore registered as Crime No. 50 of 2018 (Ex.P-7). At about 13.27 hours, one Mr. Deepak Jain (PW-5) informed the Police Station MG Road, Indore (MP) that one dead body of a girl of about three months old has been found at Shreenath Palace Society, Indore. MERG intimation was recorded under Section 174 of the Code of Criminal Procedure, 1973[3]. On coming to know about the discovery of a dead body, Sunil went to the spot and identified the deceased as his daughter. Postmortem of the dead body was conducted, and the Report thereof was submitted by Dr. Poonam Mathur (PW-20) vide Ex. P-53. After completing the investigation including collection of evidence from CCTV footage, recovery of incriminating articles, chemical analysis report etc., the charge-sheet was filed on 27.04.2018. The DNA report was produced later during the trial.

3. On the basis of evidence brought on record during the course of trial, wherein the prosecution examined 29 witnesses and also proved 78 documents including expert opinion/chemical report/FSL report, the Trial Court convicted the appellant for the subject offences against which the appellant preferred appeal before the High Court. The Sessions Court also sent reference to the High Court under Section 396 Cr.P.C. for confirmation of death sentence. The High Court has confirmed the death sentence and

3 (for short, 'Cr.P.C.)

resultantly the Criminal Appeal preferred by the appellant has also been dismissed by the impugned Judgment.

4. We have heard learned counsel for the parties. They have advanced lengthy arguments and have taken us through the entire evidence on record. However, considering the nature of the order, we propose to pass, we are not referring to the details of the evidence on record.

5. At the outset, learned senior counsel Mr. B.H. Marlappalle assisted by Mr. Rajat Mittal, Advocate-on-Record for the appellant argued that the entire trial for such serious offences has been completed within a span of 15 days i.e. from 27th April, 2018 (when the charge-sheet was filed) to 12th May, 2018 (when the Judgment was delivered by the Sessions Court). Referring to the order-sheet recorded by the trial court from 27th April, 2018 to 12th May, 2018, learned senior counsel would submit that the appellant has not been afforded a fair trial depriving him of his valuable legal rights. It is also argued that the DNA report (Ex.P-72) has not been proved in accordance with law. The forensic experts were not examined during the trial, nor the report was put to the accused for admission or otherwise.

6. *Per contra* learned counsel for the respondent-State, while supporting the impugned Judgment of the High Court, would submit that the appellant having not raised any objection regarding hasty completion of trial or denial of a fair trial, it is not open for the appellant to argue, at this stage, that the trial has not been conducted properly and fairly. He would submit that in view of clinching evidence against the appellant which are scientific in nature, the Sessions Court and the High Court as well, have not committed any illegality in convicting and sentencing the appellant.

7. To appreciate the arguments regarding denial of fair trial, we have gone through the complete order-sheet recorded by the trial court from 27th April, 2018 to 12th May, 2018. The gist whereof is reproduced hereunder: -

27.04.2018

- Charge-sheet filed.
- Cognizance taken.
- Charge-sheet supplied to the accused. He requested for appointment of an advocate through legal aid.

- Advocate from legal aid appointed on the same day.
- The case was posted on the same day, after some time, for arguments on charge.
- Later on, the case was posted for next day for hearing arguments on charge.

28.04.2018

- Arguments on charge heard, charges framed.
- Accused was asked as to whether he admits any documents as required under Section 294 of Cr.P.C. to which the accused refused to admit any document.
- District Public Prosecution Officer was directed to submit trial program today itself.
- Prosecution submitted trial program for examining 34 witnesses.

01.05.2018

- PW Nos. 1 to 4 examined.
- The prosecution was directed to keep its remaining witnesses present (summons not issued).

02.05.2018

- PW Nos. 5 to 10 examined.
- The prosecution was directed to keep its remaining witnesses present (summons not issued).

03.05.2018

- PW Nos. 11 to 15 examined.
- Two witnesses discharged without examination.
- The prosecution was directed to keep its remaining witnesses present (summons not issued).

04.05.2018

- PW Nos. 16 to 20 examined.

- FSL report received from State Forensic Science Laboratory, Sagar, Viscera Report of deceased received from the Regional Forensic Science Laboratory, Jhumarghat, Rau, Indore and DNA report received from the State Forensic Science Laboratory, Government of M.P. produced by the prosecution.
- The prosecution was directed to keep its remaining witnesses present through summons tomorrow.

05.05.2018

- PW Nos. 21 to 25 examined.
- No other witnesses were presented.
- Remaining Witnesses were directed to be called through summons.
- Witness-Sunil was directed to be called from the District Jail, Dhar through production warrant (this witness was never examined).
- The case fixed for 07.05.2023 for remaining witnesses.

07.05.2018

- PW No. 26 examined.
- The prosecution was directed to keep its remaining witnesses present tomorrow.

08.05.2018

- PW Nos. 27 to 29 examined.
- The prosecution closed its evidence.
- The case was posted for accused examination under Section 313 of Cr.P.C. tomorrow.

09.05.2018

- The accused examined under Section 313 of Cr.P.C.
- The accused requested to provide an opportunity to produce defence witness on his behalf.
- He was directed to keep the defence witness present tomorrow.

10.05.2018

- Defence witness was not present.
- Defence closed.
- Parties were directed for final arguments today itself (after recess).
- Final arguments heard.
- The case was posted for Judgment on 12.05.2018.

12.05.2018

- Judgment pronounced.
- The accused and his advocate heard on the question of sentence.
- The case posted after some time for hearing the accused on sentence (order-sheet does not record that copy of the Judgement supplied to the accused).
- After some time, sentence pronounced.
- Copy of the Judgment provided to the accused.

8. A close reading and scrutiny of the order-sheet recorded by the Trial Court, as stated above in brief, would manifest that the accused was not provided an opportunity to engage a counsel of his choice and instead his submission was recorded that he desires to be defended by a counsel appointed through legal aid. From the very beginning, the trial proceeded on day-to-day basis except on Saturday and Sunday and all the witnesses examined by the prosecution were produced without issuing summons. One witness-Sunil was directed to be produced from District Jail, Dhar through production warrant. However, this witness was never examined nor there is any indication that this witness has been given up. It is this witness (Sunil) who was named as a suspect in the FIR. Non-examination of this witness has therefore left a crucial gap in the prosecution case. It is significant to note that the FSL report, Viscera report and DNA report were not submitted along with the charge-sheet. The same were presented before the Trial Court on 04.05.2018. The accused was never asked as to whether he admits the documents, as required under Section 294 of Cr.P.C.. Neither any witnesses

were called to prove these reports. After the prosecution case was closed on 08.05.2018, the accused examination was conducted on the very next day i.e. on 09.05.2018 and thereafter on the next day i.e. on 10.05.2018, the case was fixed for examination of defence witness. It requires special notice that the accused was in jail and was not defended by a counsel of his choice but by a legal aid counsel. He was not in a position to present the witness himself, yet he was directed to keep his witnesses present on the next day i.e. on 10.05.2018. On this date, he could not produce his witnesses, therefore, his defence was closed, and the case was posted for final arguments after recess.

9. In a case of this nature, the trial was conducted on day-to-day basis and the order-sheet does not record that copies of statement of witnesses were supplied to the accused or his counsel, it is not known as to whether the defence counsel was supplied all the requisite material basing which he could have advanced his final arguments.

10. The Order-sheet would thus clearly indicate that the trial was conducted in a hurried manner without providing ample and proper opportunity to the defence counsel, who was engaged through legal aid, to prepare himself effectively. It is also to be noted that copies of DNA Report, FSL Report and Viscera Report were presented before the Court during the course of trial on 04.05.2018.

11. In the matter of ***Bashira vs. State of U.P.***[4], almost similar situation, like in the present case arose, when the trial was conducted in 13 days. Dealing with submissions made by the accused counsel apropos lack of sufficient opportunity to defend the accused, this Court held in paragraph 8 and 9 as follows: -

> *"8. There is nothing on the record to show that, after his appointment as counsel for the appellant, Sri Shukla was given sufficient time to prepare the defence. The order- sheet maintained by the Judge seems to indicate that, as soon as the counsel was appointed, the charge was read out to the accused and, after his plea had been recorded, examination of witnesses began. The counsel, of course, did his best*

4 AIR 1968 SC 1313

to cross-examine the witnesses to the extent it was possible for him to do in the very short time available to him. It is true that the record, also does not contain any note that the counsel asked for more time to prepare the defence, but that, in our opinion, is immaterial. The Rule casts a duty on the court itself to grant sufficient time to the counsel for this -purpose and the record should show that the Rule was complied with by granting him time which the court considered sufficient in the circumstances of the case. In this case, the record seems to show that the trial was proceeded with immediately after appointing the amicus curiae counsel and that, in fact, if any time at all was granted, it was nominal. In these circumstances, it must be held that there was no compliance with the requirements of this Rule.

9. In this connection, we may refer to the decisions of two of the High Courts where a similar situation arose. In Re: Alla Nageswara Rao, Petitioner(1) reference was made to Rule 228 of the Madras Criminal Rules of Practice which. provided for engaging a pleader at the cost of the State to defend an accused person in a case where a sentence of death could be passed. It was held by Subba Rao, Chief Justice as he then was, speaking for the Bench, that:-

> *" a mere formal compliance with this Rule will not carry out the object underlying the rule. A sufficient time should be given to the advocate engaged on behalf of the accused to prepare his case and conduct it on behalf of his client. We are satisfied that the time given was insufficient and, in the circumstances, no real opportunity was given to the accused to defend himself."*

This view was expressed on the basis of the fact found that the advocate had been engaged for the accused two hours prior to the trial. In Mathai Thommen v. State the Kerala High Court was dealing with a sessions trial in which the counsel was engaged to defend the accused on 02nd August, 1958, when the trial was posted to begin on 04th August, 1958, showing that barely more than a day was allowed to the counsel to get prepared and obtain instructions from the accused. Commenting on the procedure adopted by the Sessions Court, the High Court finally expressed its opinion by saying:

> *"Practices like this would reduce to a farce the engagement of counsel under Rule 21 of the Criminal Rules of Practice which has been made for the purpose of effectively carrying out the duty cast on courts of law to see that no one is deprived of life and liberty without a fair and reasonable opportunity being afforded to him to prove his innocence. We consider that in cases like this counsel should be engaged at least some 10 to 15 days before the trial and should also be furnished with copies of the records."*
>
> *In our opinion, no hard and fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the trial; but, on the circumstances of each case, the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence. In the present case, when the counsel was appointed just before the trial started, it is clear that there was failure to comply with the requirements of the rule of procedure in this behalf."*

12. In ***Bashira*** (supra), this Court concluded that the conviction of the appellant in a trial held in violation of Rule and the award of death sentence will result in the deprivation of his life in breach of the procedure established by law. Holding further that, the conviction is void because of an error in the procedure adopted at the trial, it was directed that the accused shall be tried afresh, and the matter be remitted back to the Sessions Court.

13. The issue concerning importance of a fair trial was considered by this Court in ***Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors.***[5] (*known as* 'Best Bakery Case') wherein this Court made the following observations in paragraphs 38 to 40:-

> *"38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the*

5 (2004) 4 SCC 158

guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

(Emphasis supplied)

14. In the case of ***Anokhilal vs. State of Madhya Pradesh***,[6] this Court, after referring to ***Best Bakery*** (supra) on the issue, has held in paragraphs 21 to 23 as follows: -

"21. In the present case, the Amicus Curiae, was appointed on 19.02.2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the Amicus Curiae did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed.

6 (2019) 20 SCC 196

22. The provisions concerned viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted herewith, and after 'hearing the submissions of the accused and the prosecution in that behalf'. If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.

*23. In our considered view, the Trial Court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to prepare the matter. The approach adopted by the Trial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was conducted within a fortnight thereafter. In the process, t*he assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful."

This Court, in ***Anokhilal*** (supra), also set aside the conviction and sentenced imposed by the Trial Court and the High Court and directed for *de novo* trial. This Court also laid down certain norms in matters where the accused is represented by a counsel appointed through legal aid. The norms, as stated in paragraph 31 of the said judgment are reproduced hereunder: -

"31.1 In all cases there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years' practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

31.2 In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

31.3 Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

31.4 Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in ***Imtiyaz Ramzan Khan.****"*

15. In ***Best Bakery*** (supra), this Court has observed that the principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapting to new and changing circumstances, and exigencies of the situation – peculiar at times and related to the nature of crime, persons involved – directly or operating behind social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system. The concept of fair trial entails familiar triangulation of interests of the accused, the victim, and the society.

16. It was further observed that there can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor, and the atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial. It is thus settled that a hasty trial in which proper and sufficient opportunity has not been provided to the accused to defend himself/herself would vitiate the trial as being meaningless & stage-managed. It is in violation of the principle of judicial calm.

17. The principle of ***"judicial calm"*** in the context of a fair trial needs to be elaborated for its observance in letter and spirit. In our view, in the hallowed halls of justice, the essence of a fair and impartial trial lies in the steadfast embrace of judicial calm. It is incumbent upon a judge to exude an aura of tranquillity, offering a sanctuary of reason and measured deliberation. In the halls of justice, the gavel strikes not in haste, but in a deliberate cadence ensuring every voice, every piece of evidence, is accorded its due weight. The expanse of judicial calm serves not only as a pillar of constitutional integrity, but as the very bedrock upon which trust in a legal system is forged. It is a beacon that illuminates the path towards a verdict untainted by haste or prejudice, thus upholding the sanctity of justice for all.

18. The issue concerning evidentiary value of DNA report has been considered by this Court in a recent Judgment reported in the case of ***Rahul v. State of Delhi, Ministry of Home Affairs & Anr.***[7] wherein the following has been held in Paragraphs 36 and 38 as under: -

> *"36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1) giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant-accused. The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.*
>
> *38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The*

7 (2023) 1 SCC 83

record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion."

(Emphasis supplied)

19. In the case of ***Manoj & Ors. Vs. State of M.P.***[8], it was held that 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 as it can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen even when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches the 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.

20. In the case of ***Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra***[9], the following has been held in paragraph 18 as under:-

"18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be

8 (2023) 2 SCC 353
9 (2014) 4 SCC 69

obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory."

(Emphasis supplied)

21. In the case at hand, the prosecution is based on circumstantial evidence in which the prosecution has to prove each link in the chain of circumstantial evidence and the important chains in the link are DNA report, FSL report and Viscera report. When the reports were challenged by the accused before the High Court, it was brushed aside by observing that even if the authors of the reports were not called for evidence, in terms of Section 293 Cr.P.C., the reports are not open to question as the defence had an opportunity to cross-examine the authors of the reports during the trial. In our considered view, the High Court was not correct in saying that the defence had an opportunity to cross-examine the experts. The trial has been conducted on day-to-day basis wherein the accused, who was in jail and defended by a counsel from legal aid, was compelled by the Trial Court to produce defence witness of his own in one day. It was impossible for the accused himself to produce Dr. Anil Kumar Singh and Dr. Kamlesh Kaitholiya, the authors of the Reports (Ex.P-72), in one day because the said experts are government servants and could not have attended the Court at the request of an accused in jail. The Trial Court treated the accused as if he is carrying a magic wand which is available to produce highly qualified experts, who are government servants, on a phone call. There was no opportunity, in the real sense, to the appellant to cross-examine the experts.

22. For all the afore-stated reasons, we are of the considered view that the Trial Court conducted the trial in a hurried manner without giving proper opportunity to the accused to defend himself. Therefore, the Judgment of conviction and sentence passed by the Trial Court and affirmed by the High

Court is hereby set aside and the matter is remitted back to the trial court for *de novo* trial by affording proper opportunity to the appellant to defend himself. The trial court and the District Legal Services Authority, Indore, are directed to provide assistance of a senior counsel to the appellant to contest the trial on his behalf.

23. The appeals stand disposed of accordingly.

Headnotes prepared by: **Appeals disposed of.**
Ankit Gyan