IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

CRIMINAL REFERENCE NO.03 OF 2021

IN REFERENCE

Versus

VIRENDRA ADIWASI

Appearance:

Shri Nitin Kumar Gupta – Public Prosecutor for the reference-petitioner.

Shri Aditya Adhikari – Senior Advocate assisted by Shri Kaustubh Chaturvedi – Advocate for the respondent.

CRIMINAL APPEAL NO.4401 OF 2021

VIRENDRA ADIWASI

Versus

STATE OF MADHYA PRADESH

Appearance:

Shri Pramod Singh Tomar – Advocate for the appellant.

Shri Nitin Kumar Gupta – Public Prosecutor for the respondent-State.

Reserved on : 15.05.2025

Pronounced on : 25.06.2025

J U D G M E N T

Per*: *Justice Vivek Agarwal

These cases originate from the impugned judgment dated 23.07.2021 passed by the learned Special Judge (POCSO Act)/Ninth Additional Sessions Judge, Sagar, District Sagar (M.P.) in Special case No.37/2019 (*State of Madhya Pradesh through Police Station Sanodha, District Sagar Vs. Virendra Adiwasi S/o Nirpat*), whereby the appellant-accused has been convicted by the learned trial Court under Sections 363, 366A of IPC and sentenced to undergo rigorous imprisonment for 7 years (fine of Rs.100/-) and rigorous imprisonment for 10 years (fine of Rs.100/-), respectively, with default stipulation to undergo additional rigorous imprisonment for 2 months on each count. The appellant is also convicted under Section 376(3) read with Section 376(2)(f) of IPC and Section 5(n) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to life imprisonment and fine of Rs.100/- with default stipulation to undergo

additional rigorous imprisonment for 2 months. The appellant is also convicted under Section 302 of IPC and sentenced to death penalty i.e. hanging till death and fine of Rs.200/- with default stipulation to undergo additional rigorous imprisonment for 4 months.

2. Brief facts of the case are that, the victim/deceased is related to the appellant. Intimation was received by SHO, Police Station Sanodha, District Sagar on 07.04.2019 through control room, Sagar that a dead body was lying in jungle near village Bodha Pipariya. When concerned SHO had gone to the said jungle to verify the correctness of the information, then he had seen dead body of the victim aged about 12 years in the jungle. Dehati Nalsi was lodged by the father of the victim to the effect that he is a resident of village Bodha and is working as a labourer. He has 3 sons and one daughter. The victim/deceased is his daughter who has studied upto Class-5th. On 06.04.2019, there was a function in regard to their relative for which his mother (PW-2) had gone along with the victim. They were returning on foot when appellant Virendra had met his mother and said that she may move on foot and he will take the victim on his bicycle. His mother (PW-2) had returned back by 12 noon, but when the victim did not return, then informant, father of the victim (PW-3) and mother of the victim i.e. PW-4 had gone to village Aapchand to find whereabouts of the victim. When

victim and appellant were not found, then they returned back to their village and caused inquiry. On inquiry, they were informed by villager Madan (PW-5) that a girl is lying dead in the jungle, near Paran Nala. Then, PW-3 father of the victim had gone to Paran Nala along with Magan, his brother-in-law and other persons, where they had seen the girl lying dead. Intimation was given to police. Merg was registered at 0/19 under Section 174, Cr.P.C.

3. As dead body of deceased was recovered at night, Shav Panchnama could not be prepared. Relatives of the deceased, villagers and a constable were left at the spot and then after returning to the police station, PW-23 Inspector Chandan Singh Parihar registered actual merg No.31/2019.

4. On 08.04.2019, PW-23 Inspector Chandan Singh Parihar had reached the spot along with FSL team and dog squad, where after giving intimation for preparation of Shav Panchnama, Shav Panchnama was drawn. Body was found near a bush in half naked state. She was putting on a green red colour Kurta which was above her chest and near her left leg was lying an underwear and a torn piece of salwar. A plastic slipper was lying near the dead body. At a distance of 1 feet from the dead body, a piece of salwar was lying. There were signs of vomiting. There was swelling on lips, eyes and throat. There were injury marks on the chin. Women witnesses had examined private parts of the prosecutrix, who opined that there was

swelling in the private parts and she had passed stool. Thereafter, dead body was sent for postmortem.

5. Spot map (Ex.P-7), etc. were prepared, necessary samples were collected. A white colour plastic button entangled with a green colour thread was found, pieces of clothings, etc. were seized, merg statements of PW-2 grandmother of the prosecutrix and PW-3 father of the prosecutrix were recorded.

6. It has also come on record that dog handler Constable Sudhanshu Ahirwar (PW-12) left the dog from the scene of crime after dog smelled the clothings of the prosecutrix, then dog travelled to village Aapchand upto the house of the appellant Virendra Adiwasi, which is at a distance of about 7 kms. A panchnama was prepared, videography and photography were done, short postmortem was conducted, on the basis of which case crime No.131/2019 was registered at the police station Sanodha, District Sagar for offence under Sections376(2)I, 302 of IPC and Sections 3/4 and 11/12 of the Protection of Children from Sexual Offences Act, 2012.

7. Thereafter, next day accused Virendra was taken into custody from Nayakheda Aapchand square. He admitted that he had taken the prosecutrix on his bicycle and thereafter he had hidden that bicycle in the *Gaushala* where husk is kept. He had also taken out his shirt out of the heap of husk

and given it to the police for which memorandum and seizure memo were prepared and then arrest memo was prepared.

8. It is further evident from the record that DNA test was carried out for which MLC and Identification form were sent, blood sampling was done and vide DNA report (Ex.P-30) it has come on record that vaginal slide of the deceased (Article 'G'), pubic hair (Article 'H'), underwear (Article 'I') and lower (Article 'I'), contain Y-chromosome STR DNA profile which matches with source 'J' i.e. blood sample of appellant Virendra and contains similar Y-chromosome STR DNA profile.

9. Similarly, it has come on record that on the vaginal slide of the deceased (Article 'G') as well as pubic hair of the deceased (Article 'H'), contain Autosomal STR DNA profile as obtained from blood sample of appellant Virendra Adiwasi.

10. It is also mentioned that seized button (Article 'C'), piece of salwar (Article 'D') along with seized shirt of appellant Virendra Adiwasi (Article 'K') were sent to Physical Science Branch, SFSL (SGR) after sealing them and putting an official seal.

11. It has also come on record that the threads of the shirt recovered at the instance of the appellant, matched with the thread of the button which was recovered from the spot.

12. Shri Aditya Adhikari, learned Senior counsel submits that there are 3 witnesses on whose shoulder whole case has been based. PW-2 Grandmother of the victim, who is the witness of last seen, PW-6 Jolly @ Phool Singh Adiwasi is a police witness and PW-8 Dheeraj Adiwasi is an eye and panch witness, but he is an antagonist witness as appellant is an accused in a case qua his mother. It is further submitted that the doctor who prepared DNA report is not examined.

13. Reliance is placed on the judgment of Hon'ble Supreme Court in case of **Karandeep Sharma @ Razia @ Raju Vs. State of Uttrakhand (2025) SCC Online SC 773**, to submit that in absence of scientist who conducted DNA examination being not examined and report of DNA is not proved, then the reports with regard to DNA profiling becomes highly vulnerable. It is submitted that on the basis of such DNA report, conviction cannot be based. It is submitted that it does not fulfill the requirements of Section 293, Cr.P.C.

14. It is further submitted that button seized vide Ex.P-21 was sent for examination after 8 months and 20 days for FSL examination. It was seized on 08.04.2019, as is evident from Ex.P-21, but was sent for FSL examination on 27.12.2019 and, therefore, on the basis of said piece of evidence, no firm opinion can be drawn to record finding of conviction of

the appellant. It is further submitted that when the evidence on record is taken in totality, then it is not a case for conviction, but it is a case for acquittal.

15. Similar arguments have been raised by Shri Pramod Singh Tomar, learned counsel for the appellant. He submits that appellant is innocent and he has been falsely implicated. Evidence of PW-2 Grandmother of the victim is not trustworthy. Merely matching of DNA sample as reported vide Ex.P-30 is not a sufficient circumstance to uphold conviction of the appellant.

16. Learned senior counsel for the accused further submits that in fact learned Third Additional Sessions Judge, Sagar in S.T. No.109/2020 (*State of Madhya Pradesh Vs. Virendra Singh S/o Nirpatsingh Adiwasi*) convicted the appellant Virendra Singh S/o Nirpatsingh Adiwasi in a similar matter involving a lady of about 80 years of age under Sections 450, 376, 302 of IPC and it is his duty to bring such facts to the knowledge of this Court to consider aggravating and mitigating circumstances.

17. In the same breath, it is also submitted that coordinate Bench of this Court in criminal appeal No.1973 of 2013 decided on 28th April, 2025: *Prakash Vs. The State of Madhya Pradesh*, has placed reliance on the judgment of Hon'ble Supreme Court in case of **Karandeep Sharma @**

Razia @ Raju (supra) and has held that "Paragraph 39 of the said judgment passed by the Supreme Court is unequivocal, unambiguous and specific, leaving nothing to doubt. It has held conclusively that DNA report cannot be accepted under Section 293 of the Cr.P.C., and that it is mandatory to examine the expert, who carried out the DNA test, in order to establish the findings and also in order to demonstrate to the trial Court, the experiments and procedures carried out by him in order to comply and satisfy the Provision of Section 51 of the Evidence Act. Section 51 would apply in all such cases, where an expert is examined as a witness under Section 45 the Evidence Act."

18. Thus, it is submitted that in the present case, since the expert who carried out the DNA examination is not examined, therefore, on the basis of DNA report, no conviction can be recorded. In the alternate, it is submitted that looking to the age of the appellant being 24 years, there are chances of his rehabilitation in the society and also taking this fact into consideration that the appellant comes from an underprivileged and neglected section of the society, this Court should consider converting the death penalty into that of life imprisonment for a fixed duration in terms of the judgment of Hon'ble Supreme Court in case of **Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka, (2008) 13 SCC 767**.

19. Shri Nitin Kumar Gupta, learned Public Prosecutor, in his turn, submits that it is not a simple case where acquittal can be recorded. There is evidence of last seen given by grandmother of the victim (PW-2). It is also a case where dog handler PW-12 Constable Sudhanshu Ahirwar had made the dog sniff the clothings of the deceased and had left the dog from the scene of crime and the dog had straightaway reached the house of the appellant and, therefore, evidence of PW-12 cannot be brushed aside. Besides this, it is submitted that no fault could be pointed out in the collection of samples for DNA examination and admittedly they were sent promptly within two days of collection. Therefore, no adverse inference can be drawn from the DNA reporting.

20. Referring to Section 293, Cr.P.C. it is submitted that Section 293 itself provides considerable latitude to the concerned Court to summon and examine any such expert as to the subject-matter of his report. It is, thus, submitted that conviction of the appellant deserves to be maintained, especially in view of the evidence which has come on record and also taking into consideration the fact that the appellant is habitual violator of privacy and appears to be a person of perverted mind, inasmuch as, after violating privacy of a 80 years old woman for which he has been convicted in ST No.109/2020, arising out of case crime No.105/2019 registered at Police

Station Sanodha, District Sagar under Sections 376, 302 of IPC, he soon committed another offence with a 12 years old girl, therefore, no leniency is called for.

21. After hearing learned counsel for the parties and going through the record, following issues emerge for consideration of this Court:-

(1) Whether evidence of PW-2 Grandmother of the prosecutrix and PW-12 Sudhanshu Ahirwar, dog squad handler, have remained unrebutted or there are some loopholes in that story?

(2) Another issue which arises is as to whether under the facts and circumstances of the present case, order of the coordinate Bench in **Prakash Vs. The State of Madhya Pradesh** (supra) can be taken as a binding precedent, looking to the fact that report of Forensic Science Laboratory as contained in Ex.P-30 clearly makes mention of the fact that the samples which were received by the Forensic Science Laboratory were intact and the seal on the samples were found to be intact?

(3) Similarly, a issue arises as to whether another Forensic Science Laboratory report (Ex.P-29) in relation to the shirt button which was recovered from the spot was having same threads as were found on the shirt recovered at the instance of the appellant

from a heap of husk in his courtyard, are sufficient circumstances to connect the appellant with the crime or not?

(4) Another issue which emerges is that whether in case the evidence points out towards the guilt of the appellant, then whether it is a fit case to uphold death penalty or there are mitigating circumstances available to convert appellant's sentence from death penalty to that of life imprisonment for a fixed period in the light of law laid down by Hon'ble Supreme Court in case of **Swamy Shraddananda @ Murali Manohar Mishra** (supra)?

(5) What will be the impact of the subsequent conviction order passed in S.T. No.109/2021?

22. The facts of the case which are undisputed are that on 6.4.2019, prosecutrix had gone to village Aapchand with her grandmother for attending the rites of Nirpat Adiwasi. On 7.4.2019, at about 8.00 a.m. the prosecutrix, a 12 years old girl and her grandmother (PW-2), left village Aapchand. When they were way back to their home from Village Aapchand, accused approached them and offered to take the prosecutrix home on his bicycle. Grandmother of the prosecutrix (PW-2), walked home on foot and

there she discovered that prosecutrix was missing. Grandmother of the prosecutrix (PW-2), inquired with individuals, namely, Monu and Uttam Adiwasi (PW-9), but they had no information. In the evening, when PW-4 mother of the prosecutrix returned home, she was informed by PW-2 that the accused had taken the prosecutrix, who was still missing. PW-4 mother of the prosecutrix along with Bhandu and Monu searched for the girl on a motorcycle, but were unsuccessful.

23. PW-5 Madan Adiwasi, while collecting wood in the forest, found a dead body beneath a tree near Paran Nala and reported it to the villagers. Villagers gathered at the scene when Vrindawan Adiwasi (PW-10) informed the police on dial 100.

24. The police visited the scene and registered a 'Zero' number Merg intimation and recorded the statements of PW-3, father of the victim. They had left the spot after securing it, as it was night and came back to the spot on 8.4.2019. They had drawn Lash Panchayatnama (Ex.P-5), Naksha Panchayatnama (Ex.P-6), Property Seizure memo (Ex.P-8) and had recorded statements of PW-3 father of the victim. They had sent the dead body for postmortem. Ex.P/18 is the postmortem report and Ex.P/21 is the short postmortem report. FIR is Ex.P/22, Identification Form is Ex.P/24 and 161 Cr.P.C. statements of PW-2 grandmother of the victim is Ex.D-1. Duty

report of the Dog Squad is Ex.P-13. Property seizure memo is Ex.P-19. Appellant was arrested vide arrest memo (Ex.P-20). His memorandum statement under Section 27 of the Indian Evidence Act were recorded vide Ex.P-19, and then property seizure memos was recorded at the instance of the appellant vide Ex.P-21. Statement of the father of the victim under Section 161 Cr.P.C. is Ex.D/2. Identification form of the accused is Ex.P/10. Appellant's blood sample was drawn vide Ex.P/15.

25. On 10.4.2019, at about 3:20 p.m., seizure memo was made vide Ex.P/16. On 12.4.2019, 161 Cr.P.C., statements of various witnesses were recorded. Ex.P/14 is the certificate of dog proceedings in which it is mentioned that in case crime No.131/2019, under Section 376(2)(1), 302, IPC and Sections 3, 4, 11, 12 of POCSO Act, place of incident was Paran Nala jungle, Village Pipariya Bodha, Police Station Sanodha. The certifier (PW-12) had gone and had made him smell slippers and clothings of the victim and had left the dog who came running for a distance of seven kilometers through jungle via village Aapchand and reached the house of the suspect Virendra Adiwasi and helped the police.

26. Admittedly, there is no dispute in regard to age of the prosecutrix and, therefore, it does not call for any elaborate discussion.

27. PW-12, Sudhanshu Ahirwar is the dog handler and PW-13 Hari Shankar Ahirwar is the witness of spot map (Ex.P-7). Dr. Neelam Jain is PW-15, who collected blood sample of the appellant for DNA examination.

28. As far as PW-12, Sudhanshu Ahirwar, dog handler is concerned, after having proved his report Ex.P-14, duty report Panchnama of the dog Ex.P-13 and certificate Ex.P/12, in which it is mentioned that PW-12 Sudhanshu Ahirwar, attended basic training course of tracker and protection w.e.f. 16.01.2017 to 12.11.2017 as a dog handler at Madhya Pradesh Police Training School (DOG) Bhopal, proved that dog after smelling the footwear and clothings of the deceased had straightway gone to the house of the appellant. It had stopped near a bicycle, standing in front of the house of the appellant and started barking. When he asked persons standing nearby, then it was informed that the said house, in front of which bicycle was standing, is the house of Virendra Adiwasi. In cross-examination, it was stated that merely single touch of a person to the articles which was lying on the spot, will not cause any interruption, but when the touch is persistent, then dog will reach to the concerned house. Thus, evidence of PW-12 Sudhanshu Ahirwar has remained unrebutted.

29. PW-15 is wrongly mentioned for two witnesses, namely, Dr. Neelam Jain and Uma Shankar, Constable. But, PW-15 Dr. Neelam Jain stated that

blood sample of appellant Virendra Adiwasi was drawn in front of her for DNA testing. OPD slip of District Hospital, Sagar is Ex.P-17, which contains her signatures from 'A' to 'A' part. Prior to drawing of blood sample, appellant Virendra had filled identification form. His photo was affixed on it and it was verified. Consent of the appellant was taken before drawing his sample. On the consent from, thumb impression of his right and left thumb were obtained. After taking consent of the accused, his signatures were also obtained. Thereafter, 2-2 ml of blood was drawn in 2 EDTA tube vial for DNA examination by the Lab Technician, Deepa Mishra, under her supervision and directions was taken in front of the Investigating Officer, Inspector Chandan Singh Parihar and witness Ram Prasad, which was sealed and given to the Constable Barelal. Identification form is Ex.P-10, on which photo has been identified by this doctor through her signatures. There is no cross-examination on this witness.

30. It has come on record and admitted that the samples which were drawn on 10.04.2019 were sent to the Forensic Science Laboratory, Sagar by the concerned Superintendent of Police Sagar, vide letter No.266/2019, dated 12.4.2019, Ex.P-25 and proved by PW-23 Inspector Chandan Singh Parihar.

31. In DNA report (Ex.P-30), it is clearly mentioned that samples were received in an intact condition as is evident from Ex.P/30. It is also mentioned in Ex.P-30 that in terms of the provisions contained in Section 293 Cr.P.C. Assistant Chemical Examiner, FSL Laboratory Madhya Pradesh Government is exempted from appearing as a witness and the report can be accepted, but if there is any emergent need, then D.D. Bansal, Scientific Officer and Assistant Chemical Examiner, FSL Madhya Pradesh Government or any authorized officer can be called in the Court for evidence.

32. This DNA report (Ex.P-30) also makes a mention of the automated and differential extraction process was adopted for carrying out DNA analysis and, thereafter, DNA report was given as contained in Ex.P/30. Thus, it is evident that the ground which has been taken by the learned Senior counsel/amicus curiae that as per Section 293, Cr.P.C., since Scientific Officer/Chemical Examiner was not examined, therefore, that report is inadmissible is concerned, judgment of **Karandeep Sharma** (supra), makes a clear mention in paragraph 39 as under:-

> "39. The first flaw in the prosecution case on the aspect of DNA profiling is that the expert who conducted the DNA examination was not examined in evidence and the DNA report was merely

exhibited in evidence by the Investigating Officer(PW-14) who undeniably is not connected with the report in any manner. This Court in the case of **Rahul v. State of Delhi, Ministry of Home Affairs (2023) 1 SCC 83**, while dealing with the issue concerning evidentiary value of DNA report, has held that DNA profiling reports cannot be admitted in evidence ipso facto by virtue of Section 293, Cr.P.C and it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the expert. The relevant excerpts from the said judgment are reproduced hereinbelow for the sake of ready reference:-

> "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**."

33. Thus, it is held that 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.

34. Thus, the ratio of law is that when the collection and sealing of the samples sent for examination and the methodology deployed for testing are not free from suspicion, then examination of the expert or the authorized person from the Forensic Science Laboratory is must to prove the DNA report and it cannot be admitted in evidence.

35. When provisions contained in Section 293, Cr.P.C., are taken into consideration, then Section 293(1) Cr.P.C., itself provides that "Any document purporting to be a report under the hand of a Government scientific expert to whom this Section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any

proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code."

36. Sub-Section (2) of Section 293, Cr.P.C., grants a discretion in the hands of the Court that if it thinks fit, may summon and examine any such expert as to the subject-matter of his report.

37. Sub-section (4) of Section 293 Cr.P.C., provides that this section applies to the following Government scientific experts, and then a list of seven categories is given.

38. Admittedly, in the present case reports Ex.P-29 & Ex.P-30, have been issued by the competent authority mentioned in Sub-section (4) of Section 293, Cr.P.C. There is no allegation of either tempering with the collection of requisite samples nor that of mal-preservation, or inappropriate technique being applied.

39. Various High Courts and Supreme Court had an occasion to deal with this aspect and in case of **Bhagwandas Vs. State of Punjab, 1982 Cr.L.J. 2138 (P&H-DB)**, it is held that it is not incumbent on the prosecution to examine any or every concerned official within the office of the chemical examiner with regard to the safe custody of the sample therein and its failure to do, does not introduce any infirmity in its case.

40. In **Shyam Sundar Vs. State of Haryana, 2007 Cr.L.J. (NOC) 507 (P&H-DB)**, it is held that report of FSL is admissible in evidence in view of the provisions of Section 293, Cr.P.C.

41. Hon'ble Supreme Court in **Rajesh Kumar Vs. State Government of NCT of Delhi, (2008) 4 SCC 493**, held that there is no necessity to examine any witness to prove the excise control laboratory report.

42. In State **of Punjab Vs. Nachhatar Singh, 1982 Cr.L.J. 1197, 1201 (P&H-DB)**, it is held that report of chemical examiner to the effect that seals on the sample were intact when it was examined by him, is considered to be a sufficient safeguard against any mischief that could be perpetrated in the office of the chemical examiner.

43. In **Dasu Vs. State of Maharashtra, 1985 Cr.L.J. 1933 (BOM)**, it is held that in absence of any request from the accused for summoning the chemical analyzer and unless he shows that the report is deficient and needs personal elucidation, the trial Court can admit it in evidence and need not call the analyzer or examiner.

44. In **Phool Kumar Vs. Delhi Administration, AIR 1975 SC 905**, it is held that where report of a fingerprint expert is used as evidence against the accused, neither the court feeling it necessary to examine him nor the prosecution or the accused filing any application to summon him, an

objection cannot be taken at the appellate stage against non-examination of the expert.

45. In State **of Kerala Vs. Arun Velenchary, 2002 Cr.L.J. 2512 (KER-DB)**, it is held that Sub-section (2) of Section 293, Cr.P.C. uses the word "may" and not "shall". On the facts of each case, the Court has to exercise the discretion whether the expert has to be examined.

46. Thus, it is evident that law is well settled and that is the ratio of law laid down by Hon'ble Supreme Court in **Karandeep Sharma** (supra), that where there are doubts as to the efficacy of drawing of or preservation of the sample, then in that case it is mandatory to have evidence of the chemical examiner or the person so authorized under Section 293, Cr.P.C., before it can be taken as a piece of evidence.

47. We have carefully gone through the evidence of PW-15 Dr. Neelam Jain, who had collected the blood sample of the appellant and also the evidence of the Investigating officer of the case. Besides this, PW-14 Shri Barelal Chadhar, who had received the blood sample from PW-15 Dr. Neelam Jain, vide Ex.P-15, and had prepared seizure memo Ex.P-16, that this witness PW-14 Barelal Chadhar was not subjected to any cross-examination. Similarly, PW-15 Dr. Neelam Jain too was not subjected to any cross-examination.

48. Thus, when appellant failed to raise any doubt as to the collection of his blood sample or preservation of various articles which were sent for DNA examination, then in terms of Sub-section (1) of Section 293, Cr.P.C., we are of the opinion that without there being any request for examination of the expert, and without raising any doubt as to the efficacy of collection, preservation and receipt of samples, so also in regard to the process which was followed by the concerned expert, who has been given an immunity from appearing before the court in a routine course, then collection of samples etc., being not under suspicion, decision of coordinate Bench of this Court in **Prakash Vs. The State of Madhya Prakash** (supra), is neither a binding precedent nor will cover the facts and circumstances of the present case.

49. Since of the FSL reports Ex.P-29 & Ex.P-30 are available on record and they besides evidence of PW-2 of last seen corroborated with the evidence of PW-12 Sudhanshu Ahirwar, Dog Squad Handler, are sufficient circumstances, inasmuch as, conviction is not based only on the FSL reports Ex.P-29 & Ex.P-30, but there is corroborative evidence of last seen and the dog handler, therefore, the aforesaid question is answered accordingly.

50. PW-2 Grandmother of the victim is the witness of last seen. There are no material contradictions in the evidence of this witness PW-2.

51. PW-3 is the father of the prosecutrix. He has proved the age of the prosecutrix and also the fact that appellant Virendra had confessed at 'Man Khandan Mata Mandir', that he committed a blunder. He had given a confessional statement that he had raped the girl and then strangulated her.

52. PW-5 Madan is the person who stated that he had gone to the forest to pick wood when he had seen a girl lying dead near Paran Nala. He had approached Upsarpanch Vrindawan and had informed him and Maganlal about dead body lying in the forest.

53. PW-6, Jolly @ Phool Singh, corroborated the statements of PW-2 grandmother of the victim that she had informed him that victim and she were returning from village Aapchand, when appellant Virendra had taken the victim on bicycle, leaving behind PW-2 to come on foot.

54. PW-8 Dheeraj Adiwasi stated that both Virendra and Ram Prasad are known to him so also the deceased. Deceased was daughter of Ram Prasad. At the time of the incident, he was in his fields. He had seen Virendra taking victim towards the jungle.

55. PW-9 Uttam Adiwasi and PW-10 Vrindawan are hearsay witnesses.

56. PW-11 Hargovind Prajapati, had carried out photography and videography on 8.4.2019 at the instance of the police. This witness stated that PW-12 Sudhanshu Ahirwar, dog handler was present along with the

FSL team. Dead body of deceased was smelled by the dog and then the dog through the jungle had reached the house of appellant Virendra at village Aapchand. He had prepared a video and had also taken certain photographs. He had prepared videos DVD. DVD does not contain any deletion etc. He proved certificate (Ex.P/9) given under Section 65-B of the Evidence Act, containing his signatures and the photographs contained in Ex.P-10.

57. PW-13 Harishankar Ahirwar is the witness of seizure of slippers and torn cloths of the victim.

58. PW-15, Umashankar, Constable No.1497, had taken dead body of the victim to the District Hospital, Sagar, where panel of doctors had conducted postmortem.

59. PW-17 Rahul Ahirwar is the person who prepared spot map.

60. PW-18 Gajendra Singh Gond is the witness of seizure of DVD and photographs from the spot and in regard to the movement of the dog.

61. PW-19 Krishna Yadav is the witness of memorandum (Ex.P/19), arrest memo (Ex.P/20) and memo of seizure of cycle and shirt of Virendra (Ex.P/21). He has supported the prosecution case.

62. PW-20 Head Constable Babu Singh supported the seizure at the instance of Constable Umashankar.

63. PW-22 Dr. Jitendra Saraf conducted postmortem on the body of the deceased and gave an opinion that cause of death is not clear, but there were signs of casual assault. Vaginal slides were taken, preserved and seized for DNA examination. Death had occurred within 24-48 hours. His report is Ex.P-18. No cross-examination was conducted on this witness too by the learned counsel for the appellant.

64. PW-23 Inspector Chandan Singh Ahirwar, Police Inspector, is the person who carried out the investigation. He was given a specific suggestion in paragraph 12 that Yadav family had made the dog team to smell cloths of the appellant, therefore, dog had reached to the house of the appellant, but he denied this suggestion. Even otherwise, this suggestion appears to be weak. Admittedly, dog squad had gone to the scene of crime on 08.04.2019 as is proved by PW-12 Sudhanshu Ahirwar, dog handler, whereas arrest of the appellant was made on 09.04.2019 from Nayakheda Aapchand Chouraha in presence of witnesses Ramsewak and Krishna. Therefore, this suggestion will not help the defence.

65. Appellant Virendra in his 313 Cr.P.C. statements, except for saying that he is innocent, has not taken any other plea of alibi or shown his absence from the scene of crime. His presence is proved by PW-2 Grandmother of the victim.

66. Thus, when all the facts and circumstances of the case especially evidence of PW-2 grandmother of the victim, PW-5 Madan, PW-12 Sudhanshu Ahirwar, dog handler, PW/15 Dr. Neelam Jain and Investigating officer of the case is taken into consideration, then there is evidence of last seen given by PW-2, evidence of PW-12 that dog after smelling cloths of the victim, had directly gone to the house of appellant, coupled with the fact that there is a DNA report which was promptly sampled and sent for examination, chain of all the circumstances is complete to point out towards the guilt of the appellant and nobody else. Therefore, as far as conviction is concerned, that is required to be upheld and is hereby upheld.

67. As far sentence is concerned, there are two circumstances which are to be taken into consideration while drawing a balance sheet of aggravating and mitigating circumstances, mainly, involvement of the appellant in a case of violation of privacy and murder in relation to a senior citizen in case Crime No.105/2019, originating from the same police station and young age of the appellant.

68. Though it is stated by Shri Nitin Gupta, learned Public Prosecutor for the State that in view of second conviction, appellant appears to be a person of perverted mind and there are no chance of his rehabilitation, therefore, death penalty be maintained. But, there are two intervening factors which

are required to be taken into consideration as submitted by learned amicus curiae Shri Aditya Adhikari. Firstly, criminal appeal No.145 of 2022 originating from the said judgment is still pending. Secondly, the fact that there may be interpolation in DNA report etc., as all the samples in the said case, though prior to the incident in the present case, were drawn subsequently and there is possibility of intermixing, which is required to be dealt with by the concerned appellate Court and, therefore, we will be committing a grave error in basing our findings on the basis of judgment of conviction recorded by the trial court, especially, when appeal is pending.

69. Therefore, taking into consideration the judgment of Supreme Court in **Ramesh K. Naika Vs. Registrar General High Court of Karnataka, 2025 SCC Online 575**, and **Arvind Singh Vs. State of Maharashtra, (2021) 11 SCC 1**, we are of the view that there are no reports of proven misbehaviour or erratic behaviour of the appellant in the prison. It is also true that appellant was aged about 24 years. Prior to that, he had no criminal antecedents. We are conscious of the fact that in **Ramesh Naika** (supra), young age or criminal antecedents have been denied to be treated as mitigating circumstances, but only thing which is required to be seen is possibility of rehabilitation and whether the present case is one which will

fall in the category of 'rarest of the rare' cases to shake the collective conscious of the community.

70. Similar ratio of law is laid down by Hon'ble the Supreme Court in the case of **Ramesh A. Naika** (supra) where Hon'ble Supreme has summarized the tables of judgment where sentence without remission for the remainder of the convict's life was granted starting from **Swamy Shraddananda** (supra), **Sebastian Vs. State of Kerala, (2010) 1 SCC 58** to **Deen Dayal Tiwari Vs. State of U.P., 2025 SCC Online SC 237** and noted cases wherein life sentence has been imposed till the end of the convict's natural life subject to remission starting from **Mulla Vs. State of U.P., (2010) 3 SCC 508** to **Arvind Singh Vs. State of Maharashtra, (2021) 11 SCC 1**. Hon'ble Supreme Court directed to take of the hangman's noose from the appellant's neck and instead directed that he remains in prison till the end of his days given by God Almighty.

71. However, looking to the fact that facts of the case of **Arvind Singh** (supra) are similar to that of the present case, we allow the present appeal in part and while maintaining the conviction, substitute the death sentence imposed by learned trial Court to appellant-Virendra Adiwasi into the life imprisonment. It is directed that the life means till the end of life with

further observations and directions that there shall not be any remission till the accused completes 25 years of imprisonment.

72. Accordingly, criminal appeal filed by the appellant is allowed in part and the criminal reference is answered in the following manner: -

(i) The conviction of the appellant of offences under Sections 302, 363, 366A, 376(3) read with Section 376(2)(f) of IPC and Section 5(n) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 is upheld and the sentences awarded to him are confirmed, except the death sentence for the offence under Section 302 IPC.

(ii) The death sentence awarded to the appellant for offence under Section 302 IPC is commuted into that of imprisonment for life with a condition that no remission will be admissible to him till he completes 25 years of imprisonment.

(iii) The other terms of sentences awarded to the appellant, including the amount of fine and default stipulations, are also confirmed.

73. In above terms, criminal appeal is allowed in part and the criminal reference is answered accordingly.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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