IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 13th OF FEBRUARY, 2026

CRIMINAL REVISION No. 4646 of 2024

AVINASH PANDEY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Arunodaya Singh - Advocate for the applicant.

Shri Pramod Choubey - Government Advocate for the respondent No.1/State.

ORDER

Heard on admission.

2. The revision is admitted for final hearing.

3. Learned Government Advocate submits that victim is served.

4. With the consent of learned counsel for the parties, revision is heard finally.

5. This revision is filed being aggrieved of the order dated 28/08/2024 and 03/09/2024 passed by the Special Judge (POCSO Act) Sirmour District Rewa in Special Case No.64/2020 whereby an application filed by the applicant under Section 91 & 233 of Cr.P.C. for calling the defence witnesses was dismissed and the case was fixed for final arguments.

6. Learned counsel for the applicant submits that learned trial Court vide order dated 03/09/2024, which was the second application filed basically for the same purpose under Sections 256 & 94 of BNSS has been dismissed and referred to the order of the Hon'ble Division Bench of this court passed in

Criminal Reference No.06/2022 (In reference vs. Anokhilal) and other connected matter dated 11/09/2023, in which the Hon'ble Division Bench remanded the case for recording the statement. The basic contention of learned trial Court was that why application was not made earlier ? and under Section 293 of Cr.P.C., the report of Forensic Expert is admissible without formal proof.

7. In both the orders, it has been mentioned that this case is under the category of the oldest 100 cases and direction have been made by the Hon'ble High Court to dispose the cases within 6 months, but no specific direction particular in this case has been mentioned in the impugned order, meaning thereby, it was a general direction which is meant to be referred for disposal of the cases specially in the POCSO cases, where the time limit is fixed for disposal.

8. Learned Government Advocate supports the impugned order and prays for dismissal of the revision.

9. Heard learned counsel for the parties and perused the record.

10. **Section 293 of Cr.P.C.** is reads as under :-

> *"293. **Reports of certain Government scientific experts** - **(1)** 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.*
>
> *(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.*
>
> *(3) Where any such expert is summoned by a Court and he is*

unable to attend personally, he may unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.(4) This section applies to the following Government scientific experts, namely; (a) any Chemical Examiner or Assistant Chemical Examiner to Government; (b) the Chief Inspector of Explosives; (c) the Director of the Finger Print Bureau; (d) the Director, Haffkeine Institute, Bombay; (e) the Director or Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory; (f) the Serologist to the Government. (g) any other Government scientific Expert specified by notification by the Central Government for this purpose."

11. In Criminal Reference No.06 of 2022 (In Reference vs. Anokhilal), the Hon'ble Division Bench when an objection was raised regarding DNA report, accepted the objection and directed thus :-

"22. Hence, for all these reasons, the application (I.A. No.6640 of 2023) is allowed on the following terms: (i) The Trial Court to summon and examine the expert, namely, Dr. Pankaj Shrivastava, who was the then Scientific Officer Assistant Chemical Examiner, Government of Madhya Pradesh, DNA Fingerprinting Unit, State Forensic Science Laboratory, Sagar (M.P.) and Dr. S.K. Verma, Assistant Chemical Examiner, Regional Forensic Science Laboratory, Indore (M.P.); (ii) (iii) The Trial Court to examine the accused under Section 313 of the CrPC with respect to such additional evidence; The Trial Court, thereafter, to consider the new evidence and material and by

considering the other evidence already on record, pronounce its judgment.

23. Consequently, Criminal Reference (CRRFC No.6 of 2022) is disposed off. Criminal Appeal (CRA No. 11421 of 2022) is allowed. The judgment of conviction dated 29.08.2022 and the order of sentence dated 30.08.2022 passed by the learned Special Judge (POCSO), Khandwa in Sessions Case No.100053 of 2013 are set aside. The matter is 24 remanded to the Trial Court for consideration, as directed hereinabove. The parties to appear before the Trial Court on 25.09.2023. In view of the long passage of time, the Trial Court is directed to complete the exercise within a period of three months, if necessary, then on a day-to-day basis."

12. In the case of ***Rahul vs. State of Madhya Pradesh (NCT of Delhi), 2023 (1) SCC 83 (CRA No.611/2022 and two other connected cases),*** the three Hon'ble Judges Bench of the Supreme Court vide judgment dated 07/11/2022 has allowed the appeals and set aside the conviction of the accused, wherein in Paras- 32, 33 & 34 reads as under :-

"32. 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 Ex. PW-23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the Investigating Officer on 14.02.2012 and 16.02.2012; and they

were sent to CFSL for examination on 27.02.2012. 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 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.

33. Thus, having regard to the totality of circumstances and the evidence on record, it is difficult to hold that the prosecution had proved the guilt of the accused by adducing cogent and clinching evidence. As per the settled legal position, in order to sustain conviction, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused only and none else. The circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. As demonstrated earlier, the evidence with regard to the arrest of the Appellants-accused, their

identification, discoveries and recoveries of the incriminating articles, identity of the Indica Car, the seizures and sealing of the articles and collection of samples, the medical and scientific evidence, the report of DNA profiling, the evidence with regard to the CDRs etc. were not proved by the prosecution by leading, cogent, clinching and clear evidence much less unerringly pointing the guilt of the accused. The prosecution has to bring home the charges levelled against them beyond reasonable doubt, which the prosecution has failed to do in the instant case, resultantly, the Court is left with no alternative but to acquit the accused, though involved in a very heinous crime. It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the Courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise.

34. The Court is constrained to make these observations as the Court has noticed many glaring lapses having occurred during the course of the trial. It has been noticed from the record that out of

the 49 witnesses examined by the prosecution, 10 material witnesses were not cross-examined and many other important witnesses were not adequately cross-examined by the defence counsel. It may be reminded that Section 165 of the Indian Evidence Act confers unbridled powers upon the trial courts to put any question at any stage to the witnesses to elicit the truth. As observed in several decisions, the Judge is not expected to be a passive umpire but is supposed to actively participate in the trial, and to question the witnesses to reach to a correct conclusion. This Court while not accepting the submission that it was improper for the Court to have interjected during the course of cross-examination of the witness, had observed in the case of ***State of Rajasthan vs. Ani alias Hanif and Others*** *thus:-*

"11. We are unable to appreciate the above criticism. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant" in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words

"relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question.

12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence-collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimised.

13. In this context it is apposite to quote the observations of

Chinnappa Reddy, J. in Ram Chander v. State of Haryana [(1981) 3 SCC 191 : 1981 SCC (Cri) 683 : AIR 1981 SC 1036] : (SCC p. 193, para 2)

"The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

13. Meaning thereby that when accused do not object on the DNA report then DNA report can be accepted as provided under Section 293 of Cr.P.C. but when it is objected and accused wants to examine the expert witness of the prosecution as a defence witness then the application cannot be rejected on technical grounds like; why application was not filed earlier or document can be accepted under Section 293 of Cr.P.C. or the case is old because the Hon'ble Supreme Court or Hon'ble High Court generally when directing the quick disposal of the cases never mean that trial has to be conducted in a hurried manner and not afford proper opportunity to any party because if justice delayed is justice denied but it has to be read conjointly with justice

hurried is justice buried.

14. In view of the aforesaid, the order of learned trial Court cannot be sustained and is hereby set aside. The learned trial Court is directed to call the expert witness and other witnesses, as prayed, in the applications disposed of on 28/08/2024 and 03/09/2024, and record their statements as per law and thereafter to proceed further and decide the case finally.

15. With the aforesaid observation and direction, this revision stands disposed of.

(AVANINDRA KUMAR SINGH)
JUDGE

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