



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Leave To Appeal No. 667/2024

State Of Rajasthan, Through Public Prosecutor

-----Appellant

Versus

Shyam Kumar Son of Mangi Lal, aged about 26 Years, Resident
of Akoda Police Station Dablana District Bundi (Rajasthan)

-----Respondent



For Appellant(s) : Mr. Amit Punia-Addl.G.A cum PP
For Respondent(s) :

JUSTICE ANOOP KUMAR DHAND

Order

09/10/2025

1. By way of filing this criminal leave to appeal, a challenge has been led to the impugned judgment dated 21.10.2023 passed by Special Judge (Protection of Children from Sexual Offences Act, 2012 and the Commission for Protection of Child Rights Act, 2005) No. 2, Bundi in Session Case No.151/2022 by which the accused-respondent has been acquitted from the charges of the offences under Sections 363, 366-A, 376(2)(n), 376(3) of the IPC and Sections 3/4(2) & 5(I)/6 of the POCSO Act, 2012.
2. Brief facts of the case are that a written report was registered with Police Station, Dablana by the father of the prosecutrix on 04.02.2022 alleging there in that on 03.02.2022, the accused respondent-Shyam Lal abducted his minor daughter along with some ornaments and cash.
3. Upon this report, crime No. 26/2022 was registered with the Police Station, Dablana for the offence under Section 363 IPC and



after investigation, charge sheet was submitted against the accused respondent for the offences punishable under Sections 363, 366A, 376(2)(n) and 376(3) and Section 3/4(2) and 5(I)/6 of the POCSO Act, 2012. Thereafter, charges were framed against the respondent for the above stated offence. The accused respondent denied the charges and claimed trial. The prosecution examined as many as 9 witnesses in support of its case and exhibited certain documents and thereafter, explanation of the accused respondent was recorded under Section 313 Cr.P.C. wherein he denied his participation in the incident and stated that he has falsely been booked in this case but in his defence no evidence was produced.

4. After appreciating the evidence available on record and hearing the prosecutrix, the learned Trial Judge vide judgment dated 21.10.2023 acquitted the accused respondent from all the charges.

5. Feeling aggrieved and dis-satisfied by the aforesaid judgment passed by the Court below, the State has preferred the present criminal leave to appeal.

6. Learned Public Prosecutor submits that though the prosecutrix has not supported the version of prosecution and she has been declared as hostile, but the DNA report available on record indicates the involvement of the accused respondent in the commission of offence with the prosecutrix. Counsel submits that the DNA report is a scientific evidence which cannot be discarded but in the instant case without appreciating the same, the benefit of doubt has been extended to the accused only on a technical count that the prosecutrix has not levelled any allegations of



sexual assault against the respondent, hence interference of this Court is warranted.

7. Heard and considered the submissions made at the Bar and perused the material available on record.

8. Perusal of the record indicates that the investigation and subsequent proceedings were set in motion by the father of the prosecutrix by way of lodging an FIR against the petitioner alleging therein that the accused respondent has abducted his minor daughter. During the course of investigation, statements of the prosecutrix and other witnesses were recorded and thereafter chargesheet was submitted against the respondent for the above offence and the charges were framed accordingly but during the course of the trial, when the statements of prosecutrix PW1- "J" was recorded, she did not support the allegations of sexual assault/rape against the accused respondent hence the prosecution has declared her as hostile. The other evidence available on record has also failed to prove the case against the accused respondent beyond the reasonable doubt.

9. After appreciating all these facts and circumstances of the case, the trial Court came to the definite conclusion that the prosecution has failed to prove it's case beyond reasonable doubt and accordingly, the findings of fact was recorded in favour of the accused respondent.

10. Now the question which remains for consideration before this Court is whether in absence of any clear and specific allegation of rape/sexual assault, the accused can be convicted for the offence of rape simply on the basis of DNA report?





11. For the same, this Court considers the two judgments passed by the Division Bench of this Court in the case of **Dalla Ram Vs. State of Rajasthan** reported in **2022 (1) RLW 65 (Raj.)** and **Bhagwan Bairwa Vs. State of Rajasthan** while deciding **D.B. Criminal Appeal No.357/2022** dated 02.02.2023.

12. The Division Bench of this Court in the case of **Dalla Ram** (supra) has held in Para Nos.16 and 20 which read as under:-

“16. This Court fails to understand how a person can be convicted solely on the basis of Report of DNA Examination, which is not corroborative piece of evidence. It is strange to note that learned trial court in the impugned judgment also relied upon the police statement of the witnesses.....

20. Learned trial court has also erred in applying presumption under Sections 29 and 30 of the POCSO Act. This presumption can only be drawn only when prosecution succeeds to prove that any sexual assault has been committed with the victim by the accused.”

13. Similarly, in the case of **Bhagwan Bairwa Vs. State of Rajasthan** while deciding **D.B. Criminal Appeal No.357/2022** dated 02.02.2023, the Division Bench of this Court has held in Para No.11 as under:-

“11. Apart from this, a DNA report is merely an opinion of the expert and evidenciary value of the DNA is only corroborative. On the basis of such a corroborative piece of evidence, no conviction can be recorded in absence of substantial evidence particularly when the prosecutrix and her family members have not supported the prosecution case. The medical expert also did not find any sign of sexual assault on the person of the prosecutrix. It may also be noted that



DNA is a developing science and the chance of human error in the results cannot be ruled out. Thus, conviction solely based upon DNA report is not safe. We fortify our view from the law laid down by the Hon'ble Apex Court in case of Manoj and Ors. Vs. State of Madhya Pradesh MANU/SC/0711/2022."



14. The aforesaid judgments have been passed by the Division Bench of this Court on the basis of the judgments passed by the Hon'ble Apex Court wherein on several occasions it has been held that a person cannot be convicted solely on the basis of DNA report and the same cannot be treated as corroborative piece of evidence. The presumption under Sections 29 and 30 of the POCSO Act can be drawn only when the prosecution succeeds to prove that any sexual assault has been committed with the victim by the accused.

15. This Court finds no error in the judgment passed by the trial Court, which requires any interference of this Court and the criminal leave to appeal filed by the State stands rejected.

(ANOOP KUMAR DHAND),J

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