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CRA-12461-2022

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 21<sup>st</sup> OF SEPTEMBER, 2024CRIMINAL APPEAL No. 12461 of 2022*BABULAL SINGH GOND**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Mr. Madan Singh - Advocate for appellant.

Mr. Nitin Gupta - Government Advocate for State.

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ORDER

*Per. Justice Vivek Agarwal*

This appeal is filed being aggrieved of the judgment dated 30.11.2022 passed by learned Special Judge, Protection of Children from Sexual Offence Act, 2012 Umariya, District-Umariya in Special Case No.07 of 2020.

2. Though, the case is to be listed for deciding the application for suspension of sentence bearing I.A. No.11842 of 2023 but on perusal of the record, we have come across the DNA report as was produced by the State Forensic Science Laboratory, Civil Lines, Sagar dated 31.10.2022 in relation to Case Crime No.95 of 2020 of Police Station-Pali, District-Umariya (M.P.) under Sections 363, 366-A, 376(2)(n) of the Indian Penal Code and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012.



3. This report was forwarded to the Superintendent of Police, Umariya vide memo dated 31.10.2022. This report was forwarded by the SHO Pali, District Umariya vide letter number 95 of 2022 dated 14.11.2022 to learned Special Judge, Protection of Children from Sexual Offences Act, 2012 District-Umariya. There is an acknowledgment of receiving this report from the Station House Officer, Police Station-Pali, District-Umariya on 14.11.2022 and it bears signature and seal of Special Judge, Protection of Children from Sexual Offences Act, 2012, District-Umariya, Mr. Vivek Singh Raghuvanshi. The fact also finds place in the order-sheet. The judgment was delivered on 30.11.2022.

4. Order sheets reveal that after receiving the report on 14.11.2022, case was fixed for 17.11.2022. On 17.11.2022, evidence of prosecution witness Rajesh Chandra Mishra (P.W/15) was recorded through video conferencing. Case was fixed on 18.11.2022 for remaining evidence of prosecution witness Lata Meshram, since on 18.11.2022, Lata Meshram was absent, case was fixed for recording of her evidence on 28.11.2022. On 28.11.2022, evidence of Lata Meshram (P.W-8) was recorded. Thereafter, evidence of prosecution was closed. Thereafter, the accused was examined under Section 313 of the Code of Criminal Procedure on 29.11.2022 and then after hearing arguments of the parties on 30.11.2022 judgment was delivered.

5. Thus, we observed inaccuracies that ADPO Mr. B.K. Verma who conducted the trial for the State, for the reasons not known to us chose to not to exhibit the D.N.A. report which was already produced in the Court on



14.11.2022, a fact which is noted by the concerned judge in the order sheet dated 14.11.2022.

6. Even after taking that report on record and signing the note-sheet, concerned judge was also complacent in not marking exhibit on the said report and putting questions to the accused while taking his statement under Section 313 of the Code of Criminal Procedure. For this reason, we are of the opinion that both the trial Court and the ADPO are *prima facie* guilty of negligence and dereliction of duty.

7. Accordingly, we remand this matter for limited purpose of taking evidence on DNA report, permitting the accused to cross-examine the witness and then take additional statements of the accused in relation to DNA report and pass a fresh judgment.

8. Let these proceedings be concluded within three months. Accordingly, we set aside the judgment dated 30.11.2022.

9. We direct that an enquiry be instituted against the conduct of ADPO Mr. B.K. Verma in not conducting the trial properly and not exhibiting the DNA report and also an enquiry be instituted against Mr. Vivek Singh Raghuwanshi for his negligence and dereliction of duty in not marking exhibit on that report and not recording statements of the accused in relation to that DNA report whereas, it was well within his rights to have marked as Court exhibit, and record statements of accused under Section 313 of the Code of Criminal Procedure in relation to that DNA report.

10. Copy of this order be sent to the Director Prosecution to complete enquiry against Mr. Verma for penalty and report the matter to this Court.



Similarly, copy be also forwarded to the Registrar General for taking action against Mr. Vivek Raghuwanshi concerned Special Judge in accordance with service jurisprudence.

11. Let copy of the record be transmitted to the trial Court within seven day from today and the trial Court is requested to conclude the trial within a period of three months from the receipt of remand order.

**(VIVEK AGARWAL)**  
**JUDGE**

**(DEVNARAYAN MISHRA)**  
**JUDGE**

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