



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **A JUDICIAL REVIEW OF DNA AS EVIDENCE – A CASE COMMENT ON HARISHCHANDRA SITARAM KHANORKAR V. STATE OF MAHARASHTRA**

Authored By - Ravani Ukti Nayudu

## **BACKGROUND**

DNA, or deoxyribonucleic acid<sup>1</sup>, is the hereditary material in humans and almost all other organisms. An important property of DNA is that it can replicate, or make copies of itself. This is critical when cells divide because each new cell needs to have an exact copy of the DNA present in the old cell. Except for identical twins, no two people have the same DNA.

The relevance of DNA to crime lies in the identification of victims and criminals. The following details, which are included in the brochure published by the Directorate of Forensic Services<sup>2</sup>, help to explain its position in the criminal justice system.; *DNA evidence is playing a significant role in sexual assault and child abuse cases throughout the country, to convict the guilty as well as to exonerate the innocent...DNA is a blue print of life. It remains same in all body cells of an individual throughout his/her life. Therefore, DNA evidence collected from a crime scene can be used to link a suspect to a heinous crime.*

Considering the fact that DNA evidence is fundamentally biological and has the potential to significantly assist the Indian criminal justice system, it is still regarded to be only supporting evidence. Under Indian law, the admission of DNA evidence is deemed to be corroborative rather than conclusive. However, there has been a change in the global outlook on DNA evidence, where it is now viewed as a major scientific advancement which aids in exoneration of persons from wrongful conviction. This perspective has been developed and is progressively implemented by the Innocence Project, which is a nonprofit legal organisation headquartered at New York, The United States of America.

This outlook has been recently acknowledged by the Hon'ble High Court of Bombay, and it has

---

<sup>1</sup> <<https://medlineplus.gov/genetics/understanding/basics/dna/>> accessed 6 July 2023

<sup>2</sup> <<http://dfs.nic.in/pdfs/Pamphlet%20.pdf>> accessed 6 July 2023

been talked about in a recent Bar & Bench article<sup>3</sup> headlined *DNA test has ability to exonerate wrongly convicted and to identify guilty: Bombay High Court*. According to the piece, in addition to the victim's testimony, the court also accepted scientific evidence in the form of DNA reports as reliable proof of the guilt of the accused.

The paper will discuss on the facts leading to the case, the role of DNA evidence in forming the case and an analysis of the legal position of DNA evidence.

## CASE DETAILS

CASE TITLE	Harishchandra Sitaram Khanorkar v State of Maharashtra
CASE NUMBER	Cr.A.No. 470 of 2019
DATE OF THE ORDER	December 15 2022
JURISDICTION	Hon'ble High Court of Judicature at Bombay, Nagpur Bench
CORAM	<ul style="list-style-type: none"> <li>• Hon'ble Justice Rohit B. Deo</li> <li>• Hon'ble Justice Urmila Joshi-Phalke</li> </ul>
AUTHOR OF JUDGEMENT	Hon'ble Justice Urmila Joshi-Phalke
APPELLANT	Harishchandra Sitaram Khanorkar
RESPONDENT	State of Maharashtra, through Police Station Officer, Police Station Hudkeshwar, Nagpur
COUNSEL FOR APPELLANT	<ul style="list-style-type: none"> <li>• Shri A.S. Dhore, Advocate</li> <li>• Shri Sheikh Sohailuddin, Advocate</li> <li>• Shri Yash Bangale, Advocate</li> </ul>
COUNSEL FOR RESPONDENT	Shri M.J. Khan, Additional Public Prosecutor
ACTS AND SECTIONS INVOLVED	Section 376(2)(f)(j)(i)(n) of the Indian Penal Code

<sup>3</sup> Narsi Benwal, '[Rape cases] DNA test has ability to exonerate wrongly convicted and to identify guilty: Bombay High Court' *Bar and Bench* (16 December 2022) <<https://www.barandbench.com/news/rape-cases-dna-test-ability-exonerate-wrongly-convicted-identify-guilty-bombay-high-court>> accessed 5 July 2023

## FACTS OF THE CASE

The facts of the case will be studied under the following categories;

- I. Incidents leading to the crime
- II. Police Procedures and Investigation
- III. Background of Appeal

### **I. Incidents leading to the crime**

1. The mother of the victim was working as a domestic help in the house of the accused, who she used to treat as her brother. Her daughter (the victim) was staying along with the family of the accused. She further stated that after her second marriage, the daughter continued to stay with the accused.
2. On 28-11-2013, the daughter came to her home complaining of abdominal pain. She called the accused and the three rushed to the hospital. It was discovered there that the daughter was 7 months pregnant.
  - a. She inquired about it with her daughter, and it was revealed that when she was in ninth grade, the accused forcibly engaged in sexual intercourse with her; this engagement occurred 3 to 4 times, as a result of which she conceived and subsequently delivered a child. Bal Kalyan Samiti was handed custody of the child.
3. On 02-12-2013, the mother had lodged a report at Hudkeshwar police station and subsequently became an informant to the case.

### **II. Police Procedures and Investigation**

- The police registered the offence against the accused as Crime No.370/2013.
- After registration of the crime, the Investigating Officer visited the alleged spot of the incident and drew the spot panchnama.
  - » He collected the blood samples of the victim and her child, and the accused in a DNA kit and forwarded it for medical examination.
  - » Along with this, he collected the medical report of victim.

- After completion of investigation, the officer submitted the charge sheet against the accused.

### **III. Background of Appeal**

1. The learned trial court framed the charge vide Exhibit 6.
2. On the basis of the evidence presented, the court found that the prosecution's case was solid and found the accused guilty of the following offence;
  - Section 376(2)(f)(j)(i)(n) of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.25,000/- in default to simple imprisonment for a period of one year.

## **ISSUE**

The paper will explore one specific issue in depth, namely the admissibility of DNA evidence. Going forward, only this specific issue will be used to advance the discussion.

## **ARGUMENT OF APPELLANT**

- The victim told the Medical Officer that she was in a romantic connection with a boy named Rajan. The said relationship may have contributed to the pregnancy.
  - » In this regard, the accused cannot be found guilty only on the basis of DNA evidence.

## **ARGUMENT OF RESPONDENT**

- The victim's testimony, which is well-collaborated by the medical evidence and DNA report, demonstrates that the accused was the one who had engaged in sexual intercourse with the victim which resulted to her pregnancy.

## **OBSERVATIONS OF THE COURT**

The following analysis will document the court's observations made during the case hearing.

1. Apart from the testimony of the victim, the prime evidence on which prosecution relied upon is the scientific nature in the form of DNA report.

2. The victim further testified that after registration of the crime, blood samples of hers and of her child were taken.
  - The Investigating Officer testified that he obtained the DNA kit from the forensic lab and forwarded the victim as well as the child for obtaining the blood samples, and of the accused in a sealed condition and forwarded the DNA kits to Chemical Analyzer along with the requisition letter. He also received the DNA report which he filed on record along with the charge-sheet.
3. On examination of the Assistant Chemical Analyzer, the following facts were revealed;
  - On 05-12-2013, he received the requisition letter along with the DNA kits. Prior to that, requisition was received for obtaining the DNA kit from Hudkeshwar police station.
  - On 06-12-2013, the DNA kits containing the samples were received at the office and were duly sealed along with the forwarding letter and identification forms.
  - The DNA analysis was performed using the PCR (Polymers Change Reaction) test, and 16 distinct tests were performed, the entire procedure of which was detailed by the examiner during cross-examination.
    - » He collected DNA from blood samples and used the PCR method to amplify it. He used electro phoresis on a genetic analyzer to obtain an electro pherogram, and then compared the profiles and completed the report.
    - » As per the DNA report, the accused and the victim are identified as the biological parents of the child that the victim gave birth to.
4. The court rejected the appellant's contention that the victim had a romantic relationship with Rajan by pointing out that she was living with the accused, who had apparently driven her to the hospital. Given these facts, it is possible that the accused made up the incident in order to protect himself.
5. The DNA evidence, which was regarded as scientific expert evidence and proven by the prosecution, reinforced the victim's testimony.
  - On 05-12-2013 itself, the victim, new-born baby and accused were referred to the Medical Officer for obtaining of their blood samples, which is established by exhibits 82-84, being the identification forms prepared by the officer.

- » On the very next day (06-12-2013), the samples were forwarded to Forensic Lab for analysis.
- The evidence proves that the analyser performed the said DNA examination using the PCR test, and based on the results, he concluded that the accused and the victim are the biological parents of the child who was born to the victim

## HOLDING & DECISION

The court in its finality held that,

- *We do not find any reason to interfere with the impugned judgment even on the point of quantum of sentence.*
- *Considering all these factors no case for acquittal as well as for lesser punishment is made out. The appeal is devoid of merits.*

**Decision** – The Criminal Appeal was dismissed by the Hon'ble High Court.

## ANALYSIS AND CONCLUSION

As previously noted, DNA evidence is admissible under Indian law, however it is seen as more corroborated evidence rather than definitive evidence.

This holding was adopted in the recent cases of Abbas Asmat Ali<sup>4</sup> and Swamy B.<sup>5</sup>, in which the accused was charged with raping and impregnating a child, and DNA tests revealed that the blood samples of the accused and foetus did not match. The holding was strongly supported by the following argument: *the DNA test cannot discredit the victim's account of how the accused forcedly performed sexual actions on her.*

In this regard, it is important to take note of the statement made by the Honourable Supreme Court in the case of Krishna Kumar Malik<sup>6</sup>, which is referenced in the case of Sunil v. State of Madhya Pradesh (2016) as follows;

---

<sup>4</sup> Press Trust of India, 'DNA Test In Rape Case Corroborative, Not Conclusive Evidence: Bombay High Court' *NDTV* (30 July 2022) <<https://www.ndtv.com/india-news/dna-test-in-rape-case-corroborative-not-conclusive-evidence-bombay-high-court-3208208>> accessed 7 July 2023

<sup>5</sup> Sucheta Sarkar, 'Karnataka HC | In sexual assault cases, DNA report favouring the accused will not automatically absolve such accused of the offences so alleged' SCC Online Blog (11 October 2022)

<<https://www.sconline.com/blog/post/2022/10/11/karnataka-high-court-dna-report-not-gospel-of-truth-sexual-assault-cases-minor-children-evidence-corroboration-legal-news-and-updates-legal-research/>> accessed 7 July 2023

<sup>6</sup> Krishna Kumar Malik v State of Haryana (2011) 7 SCC 130

*A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered.*

The legal position<sup>7</sup> of DNA examination may be summed up as follows;

DNA test may be performed during an inquiry by the police if they believe it will provide proof that the crime was committed. This proof may then be presented during a trial as expert testimony. Based on his expertise and subject knowledge, the expert must persuade the court of the mode of conduct, authenticity, and accuracy of the findings. The Court may form an opinion based on the findings, which it may then accept if it seems likely in light of other evidence.

However, in the case at hand, even though the DNA report favoured the victim, the court's observations on the value of DNA evidence should be noted. The information that follows is excerpts taken from the judgement in discussion;

*... the DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. Modern DNA testing can provide powerful new evidence unlike anything known before DNA technology as a part of forensic science and scientific discipline not provide any guidance to investigation but also supplies the Court accurate information about the tending features of identification of criminals...*

The court also cited the case of *Mukesh and another Vs. State (NCT of Delhi)*, where the Hon'ble Supreme Court noted the importance of DNA evidence. The court stated that,

*"216. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a party of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.*

*217. Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must. (Emphasis supplied by us)"*

---

<sup>7</sup> A part of viewpoints are inspired from the following source; Dipa Dube, 'Determining the Applicability of DNA Evidence in Rape Trials in India' (2014) 2(1) SSRN  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2492014](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492014)> accessed 6 July 2023

Despite this positive development, there needs to be a determined effort made to incorporate DNA evidence into legal proceedings as it is still underappreciated.

Some of the reasons why the judiciary cannot securely depend on DNA evidence are discrepancies or illogical conclusions, inadequate samples, incorrect preservation techniques, excessive examination delays, instrument malfunctions, etc. which have been identified as substantial barriers to relying on DNA evidence in court.

But one major factor that can be cited is the general underappreciation of DNA evidence. It has occasionally been observed that the Courts quickly disregard DNA results in the presence of other evidence. Therefore, the court will give greater importance and weight to the parties' behaviour, motivations, discrepancies in their claims, etc. than to scientific findings.

Altering this perception is necessary in order to improve and strengthen the criminal justice system in India. As stated in the above-mentioned publication of the Directorate of Forensic Sciences; *Properly collected biological samples from crime scene will result in sufficient amount of DNA that can be compared with reference sample confirming the presence or absence of a suspect at the scene of the crime.*

This necessitates two crucial actions; the first may be directed at the infrastructure, where steps may be taken to provide thorough training for handling DNA examination procedures, while the second may be directed at the legal community, where sufficient awareness and understanding may be fostered among them in order for them to understand the specifics of DNA technology. These actions, together with those that are related to them, can help appreciate the genuine probative value of DNA reports.