

Manjunathgouda Patil Alias Shashi S/o Shankargouda Vs. State Of Karnataka

Manjunathgouda Patil Alias Shashi S/o Shankargouda Vs. State Of Karnataka

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Court : Karnataka Dharwad

Decided On : Oct-13-2023

Judge : SREENIVAS HARISH KUMAR AND RAMACHANDRA D. HUDDAR

Appeal No. : CRL.A 100214/2021

Appellant : Manjunathgouda Patil Alias Shashi S/o Shankargouda

Respondent : State Of Karnataka

Judgement :

- 1 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE13H DAY OF OCTOBER, 2023 R PRESENT THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR AND THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR CRIMINAL APPEAL NO.100214 OF2021CONNECTED WITH CRIMINAL REFERENCE CASE No.100001 OF2021IN CRL.A.NO.100214/2021 BETWEEN: MANJUNATHGOUDA PATIL @ SHASHI, S/O. SHANKARGOUDA, AGE:

26. YEARS, OCC: AGRICULTURE, R/O. MANNUR, TAL: SAVANUR, DIST: HAVERI. APPELLANT (BY SMT. ANURADHA DESHPANDE, ADVOCATE) AND: STATE OF KARNATAKA, BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, DHARWAD BENCH, DHARWAD, THROUGH HAVERI WOMEN POLICE STATION. RESPONDENT (BY SRI. M. B. GUNDWADE, ADDL. SPP) THIS CRIMINAL APPEAL IS FILED U/S3742) OF CR.P.C, PRAYING THIS COURT TO, CALL FOR RECORDS IN SC NO.142/2018 ON THE FILE OF1T ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE HAVERI AND SET ASIDE THE

JUDGMENT

OF CONVICTION AND

ORDER

OF SENTENCE DATED0701.2021 - 2 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 AGAINST THE APPELLANT/ ACCUSED FOR THE OFFENCE U/S363 376(2) (F), 302, 201 OF IPC AND SECTION4AND6OF POCSO ACT PASSED BY1T ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE HAVERI IN SC NO.142/2018 AND AN

ORDER

OF ACQUITTAL IN FAVOR OF THE APPELLANT THEREBY ALLOWING THE PRESENT APPEAL. IN CRL.R.C. NO.100001/2021 BETWEEN: STATE OF KARNATAKA, BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, DHARWAD BENCH, DHARWAD, THROUGH HAVERI WOMEN POLICE STATION. APPELLANT (BY SRI. M. B. GUNDWADE, ADDL. SPP) AND: MANJUNATHGOUDA PATIL @ SHASHI, S/O. SHANKARGOUDA, AGE:

26. YEARS, OCC: AGRICULTURE, R/O. MANNUR, TAL: SAVANUR, DIST: HAVERI. RESPONDENT (BY SMT. ANURADHA DESHPANDE, ADVOCATE) THIS CRIMINAL REFERRED CASE IS REGISTERED AS REQUIRED UNDER SECTION 366 OF CR.P.C, FOR CONFIRMATION OF DEATH SENTENCE AWARDED TO ACCUSED MANJUNATHGOUDA PATIL @ SHASHI S/O. SHANKARAGOUDA AGED 26 YEARS, OCC: AGRICULTURE, R/O. MANNUR, TQ: SAVANUR, DIST: HAVERI. THE I ADDL. DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE AT HAVERI, HAS PASSED JUDGEMENT OF CONVICTION AND SENTENCE DATED 07/01/2021 IN SPL.S.C.NO.142/2018. THIS CRIMINAL APPEAL AND CRIMINAL REFERRED CASE, COMING ON FOR ADMISSION ON 04/09/2023 AND THE SAME HAVING BEEN HEARD AND RESERVED FOR PRONOUNCEMENT OF

JUDGMENT

THIS DAY RAMACHANDRA D. HUDDAR J., DELIVERED THE FOLLOWING: - 3 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021

JUDGMENT

The appellant in this appeal was prosecuted in the Special Sessions Case (POCSO) No.142/2018 for the offences under Sections 363, 376(2)(f), 302, 201 of the Indian Penal Code, 1860, (hereinafter referred to as the IPC, for brevity) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act, for brevity).

2. The learned I Additional District and Sessions Judge and Special Judge, Haveri as per the judgment dated 07.01.2021, convicted and sentenced the accused/appellant for commission of rape and murder of the victim girl aged 17 years 04 months, the daughter of PW.1 for the offences as follows:

ORDER

The convict is sentenced to undergo Rigorous imprisonment for a period of Seven years and ordered to pay a fine amount of Rs. 25,000/- for the offence punishable U/s. 363 of IPC. In default of payment of fine amount, convict is further ordered to undergo Rigorous Imprisonment for a period of six months. Further the convict is sentenced to undergo life Imprisonment and ordered to pay a fine amount of Rs.50,000/- for the offence punishable U/s.376(2) (f) of - 4 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 IPC and Section 4 and 6 of POCSO Act. In default of payment of fine amount, convict is further ordered to undergo Rigorous Imprisonment for a period of six months. Further the convict is sentenced to death and he shall be hanged by neck till he is dead and ordered to pay a fine amount of Rs.1,00,000/- for the offence punishable U/s. 302, 201 of IPC. In default of payment of fine amount, convict is further ordered to undergo Rigorous Imprisonment for a period of one year.

3. As the accused was sentenced to capital punishment i.e. death sentence, the learned Sessions Judge, submitted reference to this Court for the purpose of confirmation as per the provisions under Section 366 of Cr.P.C. However, the accused who was sentenced to capital punishment has filed the appeal in Criminal Appeal No.100214/2021 by challenging the order of conviction and sentence imposed on him. Accordingly, both Reference Case and the Appeal filed by the accused are heard by us together and both the cases are being disposed off by this common judgment.-. 5 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 Relevant facts of the case 4. The prosecution in the present case has its foundation in the written information stated in the form of complaint lodged on 08.08.2018 at about 2.00 p.m. by PW.1- Basavantagouda Shekaragouda Patil, who is father of the victim, at Women Police Station, Haveri District, Haveri. In the complaint/Ex.P.1, the complainant has stated that, at the address stated in the complaint, he along with his wife and three children namely Vishwanathgouda, deceased/victim girl aged 17 years 04 months and Yallappagouda are residing in the

address stated therein. His elder son is studying in B.Com II and his daughter/victim girl was studying in II PUC Commerce at G.H. College, Haveri. They used to travel to attend their college from Mannur village in KSRTC Bus.

5. It is stated that on 06.08.2018/Monday, his son Vishwanathgouda left the house at 7.30 a.m., and daughter/victim girl left the house at 10.00 a.m. At 7.00 p.m., his son returned to the house. His daughter was expected to return at 6.30 p.m. but she did not return. He enquired with his son. It was told to him by his son that, he met his sister at - 6 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 12.00 noon near the college and she told him that, after getting photocopy (Xerox) she will go to the college. Till 9.00 p.m. he waited for his daughter, but she did not return. Therefore they being scared of the same, enquired with their relatives, friends of the victim girl by making telephone calls, but, they could not trace her whereabouts. Again, they searched for her, as they could not trace her, PW.1 filed a complaint as per Ex.P.1. On the same day, the said complaint was registered in Crime No.0031/2018 at Women Police Station, Haveri and the criminal law was set in motion. PW.35-Smt. Sulochana Garag, the then PSI of Haveri Women Police Station registered the crime, prepared the FIR as per Ex.P.117.

6. On 09.08.2018 at about 11.45 a.m., complainant/PW.1 appeared before Women Police Station, Haveri and informed that, Rural Police Station, Haveri informed him that, one dead body of a girl was found under Varada river bridge and they asked him to identify the same. Accordingly, he went to the said place and identified the dead body as that of his daughter. Pursuant to his say, his statement was recorded and requisition was made to insert Sections 302 and - 7 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 201 of IPC. PW.35 handed over the investigation to PW.43- Bhasu Chawan, the then CPI of Haveri Rural Police Station.

7. PW.43 immediately commenced the investigation, recorded the statement of the informant and other witnesses and deputed his staff for the purpose of tracing the accused. On the same day itself, he requested the RFSL officers to visit the place where the dead body was lying and collected the evidence. With the help of officials, he prepared the inquest panchanama, sent the dead body for post mortem and seized the articles found at the said place.

8. On 11.08.2018 at about 3.00 a.m., PSI Shashidhar and his staff by apprehending the accused, produced him before PW.43 at 3.45 a.m. in the police station. He discretely enquired the accused. The accused told his name as Manjunath Gouda alias Shashi S/o.of Shankaragouda Patil and from 4.00 a.m. to 7.00 a.m., when he was discretely enquired, he gave his voluntary statement admitting the guilt of kidnapping the victim girl, committing rape and murdering her. He also admitted that, he threw the dead body of the victim girl under the bridge of Varada river and tried to burn the dead body by - 8 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 using kerosene and petrol. He admitted that, he transported the dead body in a car to the said place.

9. During the post mortem examination, the doctor found burn injuries on the dead body of the victim girl including head and on private parts. It was opined that, cause of death was head injury and that the deceased had been subjected to ante-mortem rape.

10. The Investigating Officer, after completing the other process of the investigation, filed charge sheet against the accused/appellant. Thus the appellant was charge sheeted of the offences under Sections 363, 376(2)(f), 302, 201 of IPC and Sections 4 and 6 of POCSO Act.

11. In the trial, the prosecution examined in all 44 witnesses as PWs.1 to 44 and got marked 184 documents from Ex.P.1 to P.184 with signatures thereon. M.O. Nos.1 to 42 are also marked on behalf of the prosecution.

12. Smt. Anuradha Deshpande, learned counsel for the appellant/accused submits that, there is no evidence against the accused to show that he really kidnapped the victim girl, took her to his sisters house, committed rape on her and then murdered her. She further submits that, no evidence is placed - 9 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 on record by the prosecution to prove that, the accused transported the dead body of the deceased/victim girl and burnt the same to destroy the evidence.

13. It is submitted that, as there is no incriminating evidence against the accused, the accused is entitled for acquittal. She further submits that, if at all the Court comes to the conclusion of finding him guilty, the punishment imposed on him requires modification as harsh punishment is imposed by the trial Court. Therefore, she craves leave of this Court to allow the appeal of the appellant/accused.

14. Shri. M. B. Gundawade, learned Additional State Public Prosecutor during the course of his argument supported the reasons assigned by the trial Court. He submits that, as it is the case of kidnapping, rape and murder, the punishment imposed by the trial Court is just and proper. It is a heinous offence committed by the accused. The Society in general and the family of the victim in particular is the sufferer because of this heinous offence committed by the accused. No leniency is required to be shown to the accused. He further submits that reference submitted, is to be allowed and the death sentence be confirmed. He prays to dismiss the appeal of the appellant.-. 10 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 15. In support of his above submission, he relies upon the judgment of Honble Apex Court in the case of State of Rajasthan Vs. Jamil Khan¹ stating that it is relevant to the present case. The relevant portion of the said observations read as under: All murders shock the community; but certain murders shock the conscience of the Court and the community. The distinguishing aspect of the latter category is that there is shock coupled with extreme revulsion. What should be the penological approach in that category is one question arising for consideration in this case. What is the scope of consideration of death sentence referred to the High Court under chapter 28 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) is the other question.

16. Relying upon this observation he submits that, the victim girl aged 17 years 04 months was brutally raped and thereafter murdered by the accused. Therefore, there shall not be any modification of sentence imposed by the Sessions Court. Now we have to ascertain whether really the accused has made out grounds to show any leniency in imposing the sentence or 1 (2013) 10 SCC721- 11 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 otherwise. For this, we have to read the evidence recorded by the prosecution.

17. Before discussing other aspects, as it is the case of murder alleged by the prosecution, we have to ascertain whether the death of the victim girl is a homicidal death or not?.

18. To prove the homicidal death of the deceased- victim girl, we have to read the evidence of PW.1 the complainant/father of the victim girl. He lodged a missing complaint and thereafter on getting the information from Haveri Rural Police regarding lying of a dead body of a girl under Varada river bridge, he rushed to the said place and identified the dead body as that of his daughter. PW.2 pancha to the panchanama deposes of lying of finding dead body and preparation of panchanama as per Ex.P.2. So also sketch at Ex.P.25, photographs Ex.P.4 to 13 and inquest panchanama as per Ex.P.15. PW.3-Santosh Guddappa Mallanagoudra was pancha to the scene of offence as per Ex.P.27 and sketch as per Ex.P.28 under which M.O. Nos.6 to 12 was seized. So also under Ex.P.50, M.O. Nos.14 to 23 were seized being the material objects used by the accused in committing the offence and also other articles stained with blood. Further the evidence - 12 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 of PW.15-Shanta W/o.

Basavantagouda Patil, the mother of the deceased/victim girl stated about death of her daughter.

19. PW.34 Dr. Nagabhushan, Forensic Expert conducted the post mortem examination on the dead body of the deceased, submitted the report as per Ex.P.136. PW.34 has also issued a report on examining wooden block used for causing the injuries found on the head of the deceased as per Ex.P.138. He has noticed the following injuries on the dead body: i. Fracture on left side of skull, ii. Animal bites on the left upper and lower limb and iii. Bending of all limbs. 20. There is also an evidence of the Investigating Officer PW.43-Bhasu Chavan regarding commission of rape and murder of deceased coupled with other evidence placed on record by the prosecution, establish the homicidal death of the deceased. Further, the accused himself has admitted before the Police that he has committed the offence and chain of circumstances from enticing away the victim girl till the throwing away of the dead body under the bridge of Varada - 13 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 river. The fact of homicidal death is also not denied by the defence and therefore, the prosecution is able to establish the homicidal death of the deceased.

21. In view of the contentions raised and issues involved, it is necessary for us to take note of the salient features of testimony of material witnesses so also relevant documentary evidence to decide the reference filed by the State as well as the appeal filed by the accused.

22. PW.1 the father of the victim by name Basavantagouda Patil, deposed on the basic and primary facts of the case in his examination-in-chief. It is his evidence that, the deceased victim girl was his daughter. The other witnesses arrayed i.e., CWs.14 and 17 are his sons, wife and relatives. He states the age of the victim as 17 years 04 months and was studying in II PUC Commerce in the year 2018 in the G.H. College, Haveri. He deposed that, everyday his daughter used to attend her college by traveling in KSRTC Bus. She used to leave house at 10.00 a.m. and return at 6.30 p.m. His son was studying in B.Com in the same college.-. 14 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 23. It is his evidence that, as usual on 06.08.2018 his daughter and son went to the college. His son returned to the house at 6.30 p.m., but his daughter did not return. He made an enquiry with friends of his daughter and relatives. But nobody informed about whereabouts of his daughter. Till 2.00 p.m., on 08.08.2018, he waited for his daughter and thereafter lodged the missing complaint as per Ex.P.1.

24. It is his further evidence that, on 09.08.2018 at about 11.00 a.m., Haveri Rural Police informed him that, they had found a dead body of a girl under the bridge constructed across Varada river and asked him to identify the same. Accordingly, he himself and all his family members rushed to the said place near a last pillar wall. At the edge of the said pillar wall, it was noticed that, a dead body of a girl was lying. He came to know that some animals must have eaten the parts of the body. On examination of the physical condition of said dead body he confirmed that the said dead body was of his daughter. It is alleged by him that, some unknown persons might have kidnapped his daughter and killed her and also have burnt the dead body. He requested the police to take action.-. 15 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 25. It is his further evidence that, at the spot itself police conducted the panchanama as per Ex.P.2 in his presence where the dead body was found. The police called the officials of RFSL, Scientific Officer, Forensic Experts and seized M.O. Nos.1 to 4 found at the spot. Police also prepared inquest panchanama as per Ex.P.15 on the dead body of the deceased victim girl between 1.45 p.m. and 3.45 p.m. He put his signature to the same. Police also took photographs as per Ex.P.16 to 19.

26. It is his evidence that, he had last seen his daughter at 10.00 a.m. on 06.08.2018. He noticed the half burnt dead body of his daughter. It is his further evidence that, some unknown persons with an ill will might have killed his daughter and tried to destroy the evidence. Police prepared the panchanama in his presence as per Ex.P.2, so also prepared the panchanama as per Ex.P.15 and seized the ornaments worn by her.

27. On being cross-examined by the defence, PW.1 stated that, he is doing the business in groundnut and cotton. It was his evidence that, his house and accused house are - 16 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 situated side by side. Prior to the said incident, accused had not misbehaved with his daughter. He denied other suggestions.

28. PW.1 speaks with regard to the seizure of the article at M.O. Nos.1 to 4 and clothes worn by the deceased victim girl.

29. The evidence of PW.1 shows that as his daughter did not return to the house on 06.08.2018 from her college, after enquiring for two days, he lodged a missing complaint on 08.08.2018 as per Ex.P.1. On getting information about lying of a dead body of a girl under Varada river bridge, he went to the said place and identified the dead body as of his daughter. Thereafter, he came to know that it was accused who kidnapped his daughter by using the car of one Sharanappa, took her to his sisters house as his sister was not in station and there he committed rape on her, killed her and threw the dead body as stated above. Thus, he was not an eyewitness to the said incident, he had last seen the deceased at 10.00 a.m. on 06.08.2018 when she was going to her college. To that extent the evidence of PW.1 is to be accepted.-. 17 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 30. PW.2 was a pancha to Ex.P.2. This panchanama was prepared by the police in the presence of panchas where the dead body was found lying. He also stated with regard to preparation of sketch of said place as per Ex.P.25 and identified photographs marked at Ex.P.4 to P.13. He has stated with regard to preparation of inquest panchanama between 1.45 p.m. and 3.45 p.m. as per Ex.P.15.

31. PW.3-Santosh Mallanagoudra was called by the CPI, Haveri Rural Police Station on 11.08.2018 and there he noticed the presence of accused. The accused was identified by him. Himself and other panchas were taken to the house of the sister of accused and there M.O. Nos.6 to 12 and M.O. Nos.14 to 25 were seized by the police at the instance of the accused. Though, the aforesaid witness has been cross examined by the defence but to discredit the evidence of this witness, no effective cross examination is directed to him.

32. PW.4-Ramanna Yattinahalli was pancha to Ex.P.56. He speaks that, police snapped the photographs of the dead body of the deceased victim girl as per Ex.P.57 to 62. In his presence only Ex.P.63 was prepared and seized the Can which was used by the accused to carry kerosene to burn the dead - 18 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 body. In his presence Ex.P.64 the sketch was prepared. Even in his presence as shown by the accused panchanama was prepared as per Ex.P.69 from where the accused kidnapped the victim girl. He was also taken to the place where the accident was caused by the accused while using car for transporting the dead body. As per his say, panchanama was prepared at Ex.P.73 and sketch was prepared as per Ex.P.74. Photographs were also taken as per Ex.P.79 to 84. He identified the car and other articles as per M.O. Nos.26 to 30. To disbelieve his evidence no effective cross-examination is directed to him.

33. PW.6-Somanagouda Patil was the person who noticed the dead body on 08.08.2018 at 5.00 p.m., under the said first pillar of Varada river bridge on getting smell from the dead body. It is his evidence that, on getting such a smell, he went to the said place and noticed half burnt dead body of a girl lying under the said bridge. He noticed that, there were no clothes seen below the waist of the said girl. He was frightened himself and noticed that, some unknown persons might have murdered the girl. Thereafter, himself and two others who accompanied him informed Haveri Rural Police through telephone about the fact of noticing the half burnt dead body of - 19 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 a girl. Thereafter on 09.08.2018 they were called to the police station. They went to the police station on 7.30 p.m. Noticing of the dead body by these three persons stated by the witness PW.6 is not denied by the defence. So to say, there is

no convincing cross-examination so as to disbelieve the version given in the examination-in-chief.

34. PW.7-Shashikala Patil, PW.8-Akshata Mashala are the friends of the deceased victim girl. They stated that, on 06.08.2018 as usual, victim girl came to the bus stand of her village and also noticed the presence of deceased at the bus stand. It is their evidence that, on that day, the deceased did not attend the college and she noticed the accused and the deceased talking with each other at Bankapur bus stand near the white car. PW.7 deposed about finding of the dead body of the deceased under the Varada river bridge. PW.8 also deposed in similar terms. Thus, these two witnesses are the last seen witnesses who found the accused and deceased together at Bankapur bus stand talking with each other. Though these PWs.7 and 8 were cross-examined at length by the defence, but it is their consistent evidence that, they - 20 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 noticed the deceased and accused together talking with each other at Bankapur bus stand.

35. PW.9-Shilpa Muddi is the owner of the house in which the sister of accused Smt. Suma was a tenant. It has come in her evidence that, the said Suma went on a tour on 03.08.2018. In the absence of Suma one Manjunathgouda used to visit the house and get it cleaned and switch on the electric light. This Manjunathgouda is none other than the accused.

36. PW.9 had stated that, on 06.08.2018 at about 11.30 a.m. a white car came in front of her house and stopped. From the said car accused and one girl got down. Both went to the house of Smt. Suma. She understood that the said Manjunathgouda and girl may be the relative of Smt. Suma. It is her further evidence that, at about 1.50 p.m., on that day the accused came out from the house and went away in a car and within short time returned to the house of Suma. At that time, her husband came to the house for lunch. The lunch was completed by 2.45 p.m. Herself and her husband came out of the house. At that time, they noticed a parked car in front of the gate of her house. Accused was found carrying a big white - 21 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 bag containing something and he loaded the said bag at the back seat of the car. The accused also brought another bag from the house of Suma and put the same in back seat of the car. The car was bearing registration No.KA-37/M-8904. Herself and her husband had a talk for about 20 minutes. Thereafter, she went inside and slept. At about 4.35 p.m., when she came out of the house, she noticed kerosene Can. At that time, she noticed that accused was carrying fertilizer bag filled with something and went away in the said car. When her husband returned to the house during night hours, both discussed about the conduct of the accused.

37. It is her further evidence that, on 11.08.2018 at about 10.30 a.m. the police along with 4-5 persons came to the house of Suma and asked to give the key. Herself and her husband and neighbour Advocate arrayed as PW.20 went with the Police to the house of Suma, opened the door with key. By that time, accused also came there bowing his head. She was scared. When all went inside, accused told to the police about his act of committing the offence against the victim girl and explained his involvement in the crime.-. 22 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 38. She identified the photographs of the girl whom accused brought with him as per Ex.P.22 to P.24. She was also signatory to Ex.P.27. She identified the photographs as per Ex.P.29 to P.

42. 39. PW.9 is cross-examined at length by the defence. So far as she owning the house in which Suma was a tenant is not in dispute. Though lengthy cross-examination is directed to her, through out her evidence, she is consistent of the act of the accused person of bringing the victim girl in his car on that ill fated day and the accused carrying the bag and putting the same at back seat of the car. When accused came to the house of his sister, he was accompanied with victim girl whom PW.9 has identified. When he was going back he was alone. There was no explanation offered by the accused about the whereabouts of the deceased when he returned in a car with a bag. This fact had to be explained by the accused and accused alone.

40. PW.10 is another tenant under PW.9 and according to his evidence, on 06.08.2018 at about 1.45 p.m., when he was climbing upstairs to go to his house, he noticed the wet cloth in the hands of the accused and accused was found - 23 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 cleaning the stairs. When he enquired about such cleaning, it was informed by the accused that as it was full of dust, therefore he is cleaning. When he crossed the house of Suma, the door was closed. He noticed the presence of white color Maruti Swift Car near the compound. At that time, accused was wearing green color sweater, checks shirt and pant. When he came out of the house, there was no car and the door of Sumas house was locked.

41. It is his further evidence that, on 11.08.2018 at 11.00 a.m., Police brought the accused with them to the house of Suma and he narrated that, how he brought the deceased victim girl, raped her, killed her and burnt her dead body. To that effect he gave his statement before the police. He identified the photographs as per Ex.P.16 to 19. On reading of the cross-examination, presence of PW.10 when police came to the house on 11.08.2018 is not denied by the defence. No effective cross-examination is directed to this PW.10 by the defence.

42. PW.11-Annappagouda Patil is a relative of the complainant and his family and also the accused. So with the - 24 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 help of PW.11 the said car was repaired on that day itself at 8.30 p.m., near Bankapur toll.

43. On getting information about finding a dead body, he went near the Varada river bridge and noticed that it was dead body of a girl. On 11.08.2018 he came to know that, police took the accused to his custody. He is intensively cross examined by the defence. From the evidence of PW.11, it is very much clear that, with the help of this witness accused got repaired the white swift car. There is no denial of this fact by the defence.

44. PW12-Moulali Mannangi is a mechanic at Bankapur toll he repaired the said swift white car bearing registration No.KA-37/M-8904 on 06.08.2018 at about 7.00 p.m., brought by the accused.

45. PW.13-Jaganath Banakar is an important witness who sold a bag to the accused for Rs.20/- on 06.08.2018 at 2.00 p.m. He has stated that, on that day accused came to his shop at 2.00 p.m. and purchased a bag and accordingly he sold the same for Rs.20/-. Thus, from the evidence of PW.13, it is proved that accused purchased a bag from him and paid Rs.20/- towards purchase of a bag.-. 25 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 46. PW.14-Sharanappa Bannikoppa is a Village Accountant and relative of PW.1 and others. According to him accused is his wifes brother. CW.39 who is brother of PW.14 is the owner of said Maruti swift desire car which was used by the accused for the purpose of transportation of the dead body. He has stated that, on 03.08.2018 himself, his wife and children came to Mannur village in the said car and thereafter they went for a tour in Tempo Travel vehicle on the said day itself. When they returned to Haveri on 07.08.2018, it was noticed that, the said car on the left rear side was found damaged. He requested to get it repaired. He came to know that, on 11.08.2018 accused was arrested by the police. He also came to know that accused used the said car for transporting the dead body of the deceased. The fact of using the said car brought by this witness is not denied by the defence.

47. PW.15-Shanta Patil is none other than the mother of the deceased. She speaks in line with evidence of PW.1 in material particulars and stated about the death of her daughter. Evidently she is not an eyewitness to said incident. According to her evidence on the day her daughter went to the - 26 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 college, she called her daughter at 12.00 noon but her mobile phone was found switched off. It is stated that, prior to the said incident accused had not misbehaved with the deceased. To the extent of missing of deceased, her death etc.,

there is no dispute. The evidence of PW.15 can be accepted to the extent that, she has stated about missing of her daughter, thereafter finding her dead body.

48. PW.21-B. B. Arali, was the Head Constable attached to Dy.S.P. office, Haveri and it was he who accompanied accused to the place where accused led him to the spot near Varada river bridge. It is Tammanna, who videographed the proceedings of the panchanama as per Ex.P.48. He also speaks of videographing of the proceedings while preparing the panchanama as per Ex.P.50, P.56, P.63, P.69 and P.115.

49. PW.26-V. L. Hanchinamani, was the Head Constable deputed by his superior officer to search the accused. On 11.08.2018 he himself and the PSI and other staff went near the house of accused and started watching. He deposed that, at 3.00 a.m. accused came out of the house and started moving towards bus stand. Accused was caught hold by the police near the bus stand and was produced before the CPI.-. 27 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 The CPI arrested him. Before the police, accused gave a voluntary statement. Even accused was sent for medical examination to the District Hospital, Haveri. So far as apprehending of the accused, his arrest by the CPI and producing him before the Court is not denied by the defence.

50. PW.27-Sharanabasappa S. Akki was the IMV Inspector at Haveri who mechanically inspected the said Maruti Swift Desire white color car bearing registration No.KA-37/M- 8904 used by the accused and submitted the report as per Ex.P..

119. No effective cross-examination is directed to PW.27.

51. PW.28-Vinod Kumar C., a Toll Administrator having received the letter from CPI, Haveri on 12.08.2018 and furnished the particulars regarding movement of the car bearing registration No.KA-37/M-8904 from the Bankapur toll. He issued a letter as per Ex.P.121. From this document, it is clear that, on that particular day the said car has moved through the said Bankapur toll which is not denied by the defence.

52. PW.30-Virupakshayya N. Nagayyanavarmat, was the SDA of G.H. College, Haveri who issued ID particulars of the deceased victim girl as per Ex.P.124 and furnished the - 28 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 same to the police signed by the Principal Shri. G.R. Shinde. Contents of these documents are not disputed by the defence.

53. PW.34-Dr. Nagabhushan, Forensic Expert who conducted the post mortem on the dead body of the deceased and issued his opinion as per Ex.P.136 to 140. He has stated about the size of the injuries seen on the dead body and also animal bites, decomposition and burns found on the dead body.

54. PW.36-Dr. Basavaraj Talawar, Medical Officer collected the blood samples of mother of the deceased victim girl and conducted the DNA examination. He opines that deceased was the daughter of Shanta.

55. PW.38-Dr. C. Srividya, Scientific Officer of FSL Bengaluru examined two sealed articles submitted in crime for comparison of samples and issued a report as per Ex.P.145, wherein, the report shows that the paint to the said car used by the accused and the samples so examined by her tally with each other.

56. PW.39-Dr. Vani, Scientific Officer examined the plastic can with kerosene and other articles marked at MO No.1 to 5, 13 and 26 and gave report as per Ex.P.138. Her report states that the said can contained the kerosene.-. 29 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 57. PW.40-Dr. Ramappa Katti, Specialist was a doctor examined the accused medically and opined that accused was capable of performing sexual act. He issued a report as per Ex.P.149 which is not denied by the defence. Thus, accused is capable of performing sexual act as per the report of the doctor.

58. PW.41-Vishwanathgouda Patil is none other than the brother of the deceased and deposed with regard to, he attending the college on that ill-fated day, meeting of his sister and also not returning of his sister on 06.08.2018. It is his evidence that, when he enquired his sister i.e, deceased on 06.08.2018 at 11.00 a.m., by calling her over telephone, she informed that she is in the car of her brother and is traveling towards Haveri. At 11.30 a.m. he once again called her and at that time she told that she is in the house of Suma and informed that she will attend the college at 12.00 noon. Thereafter, when he called her, it was noticed that her mobile phone was switched off. He accompanied his family members to see the dead body of deceased. Thus PW.41 was intensively - 30 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 and thoroughly cross-examined by the defence. But, he has withstood the test of cross-examination.

59. PW.42-L. Purushotham, Scientific Assistant, has given his evidence that he examined the blood sample and issued a report as Ex.P.150. He issued reports as per Ex.P.154 to 156. A searching cross-examination is directed to him but he has withstood the test of cross examination.

60. To prove the offence of the accused prosecution relies upon the medical, scientific and other cognate evidence. The first being the post mortem report on the dead body of the victim girl shows the following injuries on the person of the victim girl. Fracture of left side of skull, animal bites seen on left upper and lower limb. Bending of all limbs seen.

61. With regard to detailed description of the injuries, doctor has opined that strangulation of neck cannot be ruled out. The doctor has also noticed injuries

1) fracture of left side of skull,

2) liquefaction of brain tissue. Remarks by Medical Officer:

62. The cause of death is due to shock and hemorrhage due to head injury.-. 31 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 63. PW.34-Dr. Nagabhushan, who was working as Forensic Expert, District Hospital Haveri at the relevant time testifies to the aforesaid post-mortem report. He issued PM report as per Ex.P.136. As per his evidence he sent the stomach, intestine, liver, kidney, blood, swab and vaginal swab for FSL examination. He also has issued Ex.P.138 his opinion after examining the wooden block as under: Injuries are possible with a given weapon. The given injuries might be caused by the given wooden block.

64. This witness was intensively cross examined by the appellant/accused. But, he is consistent about contents of P.M. report submitted by him.

65. PW.31-Chayakumari was working as Assistant Director RFSL Davangere at relevant time has scientifically examined the articles i.e., soil on the dead body, soil near dead body, one veil piece, one top piece and two pieces of plastic bag marked at M.O. Nos.2 to 5 and 13. She has opined that there is presence of human blood with group A on item Nos.1, 4 and 5. She issued a report as per Ex.P.126. The method of examination also has been stated by her. She further deposed - 32 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 that, on 28.08.2018 and on 29.08.2018 articles were received and they were subjected to scientific examination. After examining in all 31 articles she had issued reports as per Ex.P.128, P.130. It is opined that the blood stains so detected in item Nos.1 to 4, 7 to 9, 11 to 20 on serological analysis was found that it was the human blood stain with A group.

66. PW.32-Dr. Bhargavi S M, being in-charge Assistant of RFSL, Davangere had received 4 articles sent by PW.34, scientifically examined them and issued Ex.P.132.

67. PW.33-Dr. Lingegouda, scientifically examined in all 35 articles and issued report as per Ex.P.134. PW.38

being the Scientific Officer, FSL, Bengaluru has compared the paint samples of the said car by examining paint scraping and had issued Ex.P.145. He was of the opinion that white paint scrapings found in article No.8 are similar to white paint scrapings marked at article No.6 on microscopic observation and instrumental analysis. PW.39-Dr. Vani N. W/o. A Murali working as Senior Scientific Officer, FSL, Bengaluru had examined 7 articles received from Haveri Rural Police Station and had issued a detail report as per Ex.P.147. As per this report: - 33 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021

- 1) the sample found in article No.1 i.e., petrol,
- 2) the sample found in article 2, 4 and 7 have responded positive for kerosene and petrol residues,
- 3) the sample found in article No.5 has responded positive for kerosene residues,
- 4) the sample found in article No.3 has responded negative for kerosene and petrol residues.

68. All these witnesses are cross examined but they are consistent about their opinion with regard to scientific examination of the aforesaid articles.

69. As regards the age of the deceased and her mental and physical disabilities, the prosecution led documentary evidence such as Ex.P.125 and examined PW.30-Virupaxayya Nagayyanavarmath. This Ex.P.125 shows the date of birth of victim girl as 14.04.2001. She remained absent to the college from 05.08.2018 to 09.08.2018. Thus, as on the date of offence deceased was aged 17 years 04 months. She has not attended the college on 06.08.2018. This fact is not disputed by the defence. PW.1 the father of the deceased and his wife PW.15-Shanta Basavangouda Patil and her brother PW.41- - 34 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 Vishwanathgouda have specifically stated that deceased used to attend college everyday.

70. It is also noticed that by way of several communications the Investigating Officer sought the medical opinion / comments from the experts.

71. We may also usefully extract the relevant parts of the report of DNA examination carried out by the Forensic Laboratory marked at Ex.P.150. The opinion of the State Forensic Lab, Bengaluru as under: OPINION From the DNA profile results of the samples sent in item Nos.1, 2 and 3, it is found that:

1. The piece of liver sent in item No.3 is of human origin and of female sex.
2. The DNA profile result of the deceased Renuka from whom the piece of liver was collected and sent in item No.3 is matching with the DNA profile results of Shanta W/o. Basavantagouda Patil sample blood sent in item No.1.
3. The DNA profile result of Vishwanathagouda S/o. Basavantagouda Patil sample blood sent in item No.2 is matching with the DNA profile results of Shanta W/o. Basavantagouda Patil sample blood sent in item No.1. THEREFORE, - 35 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 1. The deceased Renuka from whom the piece of liver was collected and sent in item No.3 is included from being the biological daughter of Shanta W/o. Basavantagouda Patil sample blood sent in item No.1.

2. Vishwanathagouda S/o. Basavantagouda Patil sample blood sent in item No.2 is included from being the biological son of Shanta W/o. Basavantagouda Patil sample blood sent in item No.1.

72. As per the DNA result deceased was the daughter of PW.1 and PW.15 and sister of PW.41.

73. The evidence of the few official witnesses related with the process of investigation may also be noticed in the requisite details.

74. The testimony of PW.26-Venkatesh Hanchinamani, the head constable attached to Haveri Rural Police Station is pertinent since the appellant/accused was apprehended by him on 12.08.2018 at 4.00 a.m. when appellant/accused came out of his house and started walking towards bus stand. Accused was identified by him and he was accompanied with other police officials with him. He produced the appellant/accused before the CPI and thereafter appellant/accused was taken to District Hospital, Haveri for medical examination.-. 36 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 75. PW.43-Bhasu Chawan the Investigating Officer of this case on interrogation of appellant accused, voluntarily accused has disclosed of committing the offence in the manner stated by him in his statement.

76. The Investigating Officer has stated about he recording voluntary statement of the accused. He is consistent in his evidence throughout the cross examination that, at the instance of the accused only, the spot panchanama, recovery panchanama, the place of committing kidnapping panchanama, the place where car met with an accident panchanama and recovery panchanamas are carried out in the presence of panchas. Though, the panchas to the said panchanamas and the Investigating Officer were cross-examined at length but they have withstood the test of cross examination.

77. The disclosure statement made by the appellant/accused before the Investigating Officer shows that, at his instance M.Os. are recovered.

78. The officials of the PWD have prepared the sketches which are not disputed by the defence. The said sketches are pertaining to the scene of offence, the place where the dead - 37 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 body was found, the place where the car accident took place etc.

79. The learned Trial Court has referred the testimony of all these witnesses as regards to arrest of the accused and his disclosure statement made by him as per Ex.P.147 where upon the dead body was recovered from the Varada river bridge. Thus, the Trial Court held that the basic facts disclosed by the appellant/accused are proved of, he kidnapping the victim girl, the clothes worn by him were blood stained, which were burnt by him, the dead body of the victim girl was recovered as per the disclosure statement by the appellant.

80. The learned Trial Court also proved the factum of other recoveries at the instance of the appellant/accused. It was also observed by the Trial Court that the place of recoveries was such that it was only within the knowledge of the appellant/accused.

81. As regards to the question of rape and murder of the victim girl, the learned Trial Court made elaborate reference to the post mortem report as per Ex.P.135 and depositions of the Dr. Nagabhushan and other scientific experts particularly - 38 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 concerning the nature of the injuries and the experts opinion in the manner of causing them.

82. As per the doctors opinion there was forcible rape committed on an innocent 17 years 04 months girl extremely cruel and heinous manner. She was raped when she was unconscious. She was treated with extreme cruelty and mercilessly due to which, she suffered severe and grievous head injury and she died due to such injuries. The doctor has also expressed that the vagina of the deceased was ruptured leading to the conclusion that rape was committed on her in a beastly and merciless manner. The statements of doctors and experts were confirmed by post mortem report as well as other reports submitted by the prosecution witnesses.

83. The assertion of the appellant that he was falsely implicated in the matter cannot be accepted, since he did not provide any reason for his false implication nor made any suggestion to the prosecution witnesses.

84. The learned counsel for the appellant/accused with all fairness submits that, the chain of circumstances though prove the offences by the appellant/accused but her grievances is that, this is not a fit case to impose death sentence as the - 39 - NC:

2023. KHC-D:12538-DB CRLA No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 facts of this case do not come under the purview of the rarest of rare case.

85. On over all reading the evidence placed on record and the chain of circumstances, the following are the circumstances which point out the guilt of the accused: i) Deceased victim girl left the house at 10.00 a.m. on 06.08.2018 from Mannur to attend her college at Haveri. ii) PW.7 Shashikala Patil came to Mannur bus stand on 06.08.2018 at 10.00 a.m. and noticed presence of deceased in the bus stand. At that time PW.7 noticed accused standing near compound of his house. iii) Both PW.7 and deceased boarded Bankapur bus iv) At Bankapur bus stand PW.7 saw accused and deceased standing near white color car and both were talking with each other. v) PW.8-Akshata Murnal a friend and classmate of deceased. They together used to travel to their college. They used to have exchange of mobile messages in between them. vi) On 06.08.2018 when PW.8 called deceased at 11.45 a.m., it was told by deceased that she is coming from Bankapur in car of her - 40 - NC:

2023. KHC-D:12538-DB CRLA No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 brother i.e., accused. When again PW.8 called her, it was told by the deceased that she is with accused in the house of Suma sister of appellant/accused and she informed that within 12.00 noon she will reach the college. viii) At 1.00 p.m., when PW.8 came out of the college, she noticed 2-3 missed calls from deceased at 12.30 p.m. When PW.8 called deceased to her mobile, it was found not reachable. viii) The CDRs so collected by the Investigating Officer as per Ex.P.111 to P.113 proves the exchange of calls between the deceased and PW.8 at the relevant time. ix) At 8.00 p.m. on 06.08.2018 when brother of deceased called PW.8 and enquired about whereabouts of his sister, she narrated the aforesaid facts to him. x) PW.9 owner of the house in which sister of accused Suma was a tenant has stated about visiting of accused and deceased to the house of Suma on 06.08.2018 at 11.30 a.m., Both came in a car. xi) At 1.15 p.m., as per the evidence of PW.9 appellant/accused alone went out of house of his sister and immediately returned to the house of Suma. xii) Accused was found carrying bags in a white car bearing registration No.KA-37/M-8904.-. 41 - NC:

2023. KHC-D:12538-DB CRLA No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 xiii) At 4.30 p.m. again accused came to his sisters house and was found carrying a bag filled with fertilizer. xiv) When accused and deceased came to the house, accused alone went back in a car with bags. xv) PW.9 identified the deceased a girl who came along with accused on 06.08.2018. xvi) PW.10-Raghavendra Patil. A neighbour of tenant of Suma has seen accused cleaning stairs with wet clothes at 1.45 p.m., on 06.08.2018. xvii) PW.11 Annappagouda elder brother of accused assisted the accused to repair the damaged car with the help of PW.12 Moulali Mannangi a mechanic. xviii) PW.12 mechanic, repaired damaged car brought by the accused. xix) PW.13 Jagganath sold the bag for Rs.20/- to the accused at 2.00 p.m. on 06.08.2018. xx) PW.14 brought the said car to Mannur and kept the same at Mannur itself and thereafter went on a tour and after return he noticed damage to the car. xxi) After arrest of the accused, he gave voluntary statement. At his instance, the various panchanamas stated above and recovery panchanamas are conducted. M.Os. are recovered at the instance of the accused. He himself took the - 42 - NC:

2023. KHC-D:12538-DB CRLA No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 police where he threw the dead body which was half burnt by him.

86. There were no eye-witnesses in crime of kidnapping, rape and murder and it had been the case of circumstantial evidence. The above noted discussion proves that, it is the accused who has committed the offence against the innocent girl. It can be held that, the prosecution had been successful in establishing the

chain of circumstances linking the appellant/accused with the crime in such a manner that there is no other conclusion except that of his guilt which was possible.

87. Therefore, on the basis of the aforesaid circumstances as rightly held by the Trial Court, on 06.08.2018 at 11.00 a.m, it was accused who kidnapped the deceased victim girl with pre-meditated criminal mentality of kidnapping her, with an intention to secretly and wrongfully using the opportunity of absence of his sister in her house and using the said house as a place for committing the offence. Because of this act of the appellant/accused, an innocent, helpless girl believing that appellant/accused went with him in a car and she was subjected to rape by him. Thereafter, mercilessly repeatedly assaulted her on her head with wooden block. She - 43 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 sustained grievous injuries on her body. Such act was in a barbaric manner. Thereafter accused transported the dead body in a car by filling the same in a bag and threw the said dead body under the Varada river bridge. To destroy the evidence he has half burnt it.

88. As discussed above, this case purely depends upon circumstantial evidence. The witness so examined by the prosecution by name Shashikala and Akshata Somashekhar Masale i.e., PW7 and PW8 being friends of the deceased, have deposed that the deceased and accused were found together at the bus stand. So also, when the brother of the deceased called the deceased on several times on the said ill-fated day, it was informed by the deceased that at 12.00 noon she is going to attend college. Thereafter, when deceased was called by her brother, her mobile phone was found switched off. So also, mother of the deceased also has spoken in similar words in her evidence on oath. Thus, the last seen theory also has been brought on record by the prosecution and it is held by the Honble Supreme Court with regard to the doctrine of last seen theory in the judgment in Crl.Appeal No.859/2011 dated 06.09.2023 in between R.Sreenivasa v. State of Karnataka. If - 44 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 the principles laid down in the above said judgment are applied to the present case on hand, when the deceased and accused were found together in Haveri Bus stand and when it was noticed by the friends of deceased and thereafter what has happened to the deceased has to be explained by the accused himself. More so, the owner of the house has specifically stated with regard to the accused accompanying the deceased to the house of his sister Suma and when he came, he was accompanied with the deceased. When he went away from the house, he alone went in a car with the bags, which were loaded in the back seat of the car. Thereafter the dead body of the deceased found under the Varada river bridge. Therefore, the appellant-accused representing himself to be as a relative of the deceased, took the deceased to his sisters house on a pretext that he wants to take her to his sisters house. There he spoke to the deceased that why deceased is not responding to his mobile messages. At that time, the deceased has conveyed that she is not expected to respond to the said messages. When the accused told that he is in love with her, at that time the deceased stated that he is like a brother to her and tried to go away from the house. At that time, the accused dragged the - 45 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 deceased by using her veil being worn by her. Because of dragging with a veil which was worn on her neck, she became unconscious. Thereafter, he took her to the bedroom and there he not only raped her but also assaulted her by using the wooden plank. Thus, the deceased was last seen alive only in the company of accused. The information furnished by the appellant-accused in the course of investigation do reveal that how he took the deceased to the house of his sister and thereafter committed offence against her and dumped the dead body under the Varada river bridge. Thereafter, he carried a can containing kerosene and burnt the dead body. Even he burnt the clothes being worn by the deceased so also clothes being worn by him, which were stained with blood. Thus, there is a clear evidence to prove that at the instance of the accused only, the said dead body was recovered and he narrated the events before the investigating officer. When he was questioned at the time of recording his statement under Section 313 of Cr.P.C., the appellant-accused did not even attempt to explain or clarify the incriminating circumstances in connecting him with the crime by his adamant attitude of total

denial of everything. In the background of such acts, in the case of - 46 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 Joseph Vs. State of Kerala2 the Honble Apex Court has held as under: Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed. That missing link to connect the accused-appellant, in this case was provided by the blunt and outright denial of every one and all of the incriminating circumstances pointed out which, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of the deceased.

89. So, the aforesaid judgments of the Honble Apex Court are aptly applicable to the facts of the present case. The incriminating links of facts have not been properly explained by the accused-appellant. He being personally taken the deceased along with him and exclusively it was within his knowledge about her whereabouts, he has put a false defence by giving false answers to the Court, when questioned. Thus, in this 2 (2000) 5 SCC197- 47 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 case, the blunt and outright denial of each and every circumstance pointed out which, in our view, with sufficient and reasonable certainty and the facts proved, connect the accused with the death and cause of death of the deceased.

90. Therefore, the aforesaid entire discussion show that the prosecution is successful in proving the offence charged against him under Section 363, 376(2)(f), 302 of IPC and also under the provisions of 4 and 6 of POCSO At.

91. Thus, on over all appreciation of the evidence on record and the surrounding factors, it is satisfied that the prosecution had successfully substantiated its case beyond all reasonable doubt and accordingly the Trial Court has rightly convicted the appellant accused of the offences under Section 363, 376(2)(f), 302, 201 of IPC and Section 4 and 6 of POCSO Act as per the judgment dated 07.01.2021. Death sentence by the trial Court:

92. After recording the conviction as aforesaid, the Trial Court without affording any opportunity to the accused on the same day itself has passed an order on the quantum of sentence.-. 48 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 93. Having heard the learned Public Prosecutor for the State and the learned counsel for the appellant/accused, by relying upon certain observations in the judgment cited before the Trial Court by examining the aggravating factors on record, particularly those relating to the gruesome nature of the crime and also the mitigating factors projected on behalf of the appellant/accused, the learned Trial Court found that the lenient view could not be taken looking to the nature of the crime and, taking the case as rarest of rare, found it is just and appropriate to award death sentence for the offence under Section 302 of IPC. So far as other offences are concerned, the trial Court also awarded other punishment as noticed hereinabove.

94. Taking all the above evidence into consideration, we are of the opinion that the circumstances narrated above have been clearly established. It was the appellant/accused who kidnapped the victim girl in his car on the guise that, he is coming to the college to meet the college authorities with regard to the galata that has taken place with the brother of the victim girl. Without going to the college the accused took the victim girl to the house of his sister. There he asked the - 49 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 victim girl that why she is not answering his messages. He also asked that whether deceased had any affairs with others. He wants to have her. For that victim girl answered that he is like a brother to her. He closed the door. Increased the volume of the television by switching it on. When victim girl tried to go out of the house, dragged her by using the veil

worn by the deceased. Tightened it. At that time victim girl lost her consciousness. He took her to the bedroom, made her to lie down on the bed. Removed her clothes and also removed his clothes and committed rape on her twice. Thereafter, she frightened him that she will inform this incident to her parents and relatives. Therefore, he thought of finishing her. He took the wooden block and repeatedly assaulted the said deceased on her head as she was unconscious. Thus, he killed her. Thereafter, he transported the dead body, threw under the Varada river bridge with an apprehension that he will be apprehended by the police, used kerosene on her dead body and set ablaze.-. 50 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 95. The learned Trial Court has considered all these aspects. We do not find any infirmity in the judgment challenged.

96. While supporting the death sentence, the learned Additional State Public Prosecutor submits that recurrent underlined principles is that in the case of rape and murder of a girl, if death occurs due to rape alone, then death sentence is normally awarded. If rape is followed by separate act of murder, death sentence is countenanced like the present case.

97. On scrutiny of the submission of the learned Additional State Public Prosecutor, in a similar case in Kamta Tiwari Vs. State of Madhya Pradesh³, reported and Vasanta Sampat Dupare Vs. State of Maharashtra⁴, it is held by the Honble Apex Court that where, in the case of rape and murder of a 4 year old girl child, death sentence has to be affirmed. In the judgment of Swamy Shraddananda (2) Vs. State of Karnataka⁵. It is observed that the appellant ought to remain 3 1996 (6) SCC2504 2016 Vol.1 Pg. 253 5 2008 (13) SCC767- 51 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 behind the bars for the remainder of his life without any kind of remission.

98. The factual aggravating circumstances so brought on record by the prosecution in this case are that the conduct of the accused in taking the deceased girl taking advantage of absence of his sister in her house and committed the offence as discussed above. Whether death sentence be maintained or substituted by any other sentence?.

99. Two bold submissions are made by the counsel for the appellant/accused in challenging the death sentence awarded by the Trial Court. It is submitted that the present case is based on circumstantial evidence rather than absolute proof and therefore, benefit of residual doubt ought to be given to the appellant/accused and capital sentence should not be awarded because, the present case may be a rare one but it is not the rarest of rare. Secondly, learned counsel for the appellant/accused has referred to the mitigating factors contending that the appellant deserves to be spared from capital sentence, as he is of young age at the time of commission of crime in question, his economic background, he - 52 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 is an unmarried person, having his parents and there is strong probability of reformation.

100. As against this the learned Additional SPP has highlighted the aggravating circumstances stating that the appellant had kidnapped the victim girl, raped and murdered her and thereafter transported the dead body, tried to destroy the evidence by putting fire on the dead body which was half burnt. It is submitted that, his acts and actions discloses planning and pre-meditated actions and that the ghastly crime was committed in a barbaric manner.

101. Sub Section (3) of Section 354 Cr.P.C., requiring reasons for sentence and special reasons in case of death sentence. The said provision reads as under: Section 354 (3): when the conviction is for an offence punishable with death or in the alternative for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death a special reasons for such sentence. - 53 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 102. In Jagmohan Singh Vs. State of Uttar Pradesh⁶ the Honble Apex Court has answered with regard to the constitutional impermissibility of death sentence. It is held: that the death sentence was reasonable for it would put an end to all the rights guaranteed under clauses (a) to (g) of article 19 (1) of the Constitution of India. Further that the discretion vested in the judges we impose capital punishment was not based on any standards or policy and hence, the provisions suffered from the vice of excessive delegation of legislative function. That the uncontrolled and unguided discretion in the judges we imposed the capital punishment or imprisonment for life was hit by article 14 of the Constitution of India. It is further held that under the article of Constitution, no persons shall be deprived of his life except according to procedure established by law but, the provisions of law did not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital punishment and imprisonment for life.

103. In a reading judgment in Bachan Singh Vs. State of Punjab⁷ the Honble Apex Court stated that: (special reasons) in the context of Section 354(3) Cr.P.C. would obviously mains exceptional reasons 6 1973 (1) SCC207 1980 (2) SCC684- 54 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 founded on the exceptionality grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now at large and clear on a face of Section 354(3) Cr.P.C. is that on conviction for murder and other capital offences punishable in the alternative with death under the penal code, the extreme penalty should be imposed only in extreme case.

104. Certain guidelines are also issued by the Honble Apex Court in Bachan Singh (supra) case. They read as under: (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. (ii) Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime. (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full - 55 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

105. We are absolutely conscious that mitigating circumstances are to be taken into consideration. The said mitigating circumstances as stated by the counsel for the appellant/accused are, he is just aged 28 years, he is unmarried, having his aged parents and other members of the family. There are instances that in such cases the Honble Apex Court has commuted the death sentence and imposing life sentence. It shows that accused after committing rape on the victim girl, as she was unconscious, at that time, he thought that victim girl may inform about the incident to the parents and relatives. Therefore, he thought of murdering her. Thus, causing murder of the victim girl may not be pre-meditated. It must have been sudden thought of the accused. Looking to the background of the accused and also the other circumstances brought on record, we feel that the facts and circumstances of this case do not come under the purview of rarest of rare cases. Therefore, in view of the law laid down by the Honble Apex Court in various judgments, as the case is based upon - 56 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 circumstantial evidence, a lenient view is to be taken in imposing the sentence. We have relied upon the testimony of various witnesses so also considered the mitigating circumstances submitted by the learned counsel for the appellant/accused.

106. In the circumstances, we do not confirm the death sentence awarded by the trial Court in this case. We, therefore, confirm the conviction of accused for the offence of kidnapping, rape and murder under Sections

363, 376(2)(f), 302, 201 of IPC and Sections 4 and 6 of POCSO Act, 2012. While confirming the said sentence of conviction, we propose to commute the death sentence to life imprisonment for a period of 25 years without remission for the offence under Section 302 of IPC and in addition, impose a fine of Rs.10,000/-, in default to suffer RI for one year.

107. For the foregoing reasons, the Criminal Reference Case No.100001/2021 referred by the State for confirmation of death sentence is liable to be rejected and the Criminal Appeal No.100214/2021 deserves to be allowed in part.-. 57 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 108. Resultantly, we pass the following:

ORDER

(i) The Criminal Reference Case No.100001/2021 referred by the State for confirmation of death sentence is rejected. (ii) Criminal Appeal No.100214/2021 filed by the accused is allowed in-part. (iii) The death sentence imposed by the trial Court for the offence under Section 302 of IPC is commuted to Life Imprisonment and consequentially, the accused is sentenced to undergo life imprisonment and also liable to pay fine of Rs.10,000/-. In default of payment of fine, he shall further undergo RI for one year. (iv) The sentence imposed by the trial Court for the offence under Section 363 of IPC to undergo rigorous imprisonment for a period of 7 years and pay a fine of Rs.25,000/- and in default of payment of fine; further ordered to undergo rigorous imprisonment for six months. The sentence imposed by the trial Court for the - 58 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 offence under Section 376(2) (f) and 201 of IPC and Sections 4 and 6 of POCSO Act to undergo life imprisonment and ordered to pay fine of Rs.50,000/- in default of payment of fine, to undergo rigorous imprisonment for six months and the sentence imposed for the offence, are maintained. (v) There shall not be any remission of the sentence so imposed against the accused. (vi) The period already undergone by the accused shall be given set off under Section 428 of Cr.P.C. (vii) All the sentence so imposed shall run concurrently. (viii) The order of the trial Court regarding M.O Nos.1 to 39 and 40 is hereby maintained. (ix) Communicate the copy of this order to the trial Court for issuing modified conviction warrant and also to the concerned Jail Authorities forthwith.-. 59 - NC:

2023. KHC-D:12538-DB CRL.A No.100214 of 2021 C/w. CRL.RC No.100001 of 2021 x) Supply a copy of this judgment to the appellant/accused free of cost. Sd/- JUDGE Sd/- JUDGE SMM List No.:

1. Sl No.: 4