

Yallappa Vs. The State Of Karnataka

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Court : Karnataka Kalaburagi

Decided On : Apr-06-2023

Judge : S.Sunil Dutt Yadav and Ramachandra D. Huddar

Appeal No. : CRL.A 200069/2020

Appellant : Yallappa

Respondent : The State Of Karnataka

Judgement :

- 1 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 R IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE6H DAY OF APRIL, 2023 PRESENT THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV AND THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR CRIMINAL APPEAL No.200069 OF2020C/W CRIMINAL REFERENCE CASE No.200001 OF 2020 IN CRL.A No.200069 OF2020 BETWEEN:

1. YALLAPPA S/O.MAHADEVAPPA SEDAM AGE:

34. YEARS, OCC: TAILOR R/O. YAKAPOOR VILLAGE NOW RESIDING AT SULEPETH VILLAGE TQ:CHINCHOLI VILLAGE DIST: KALABURAGI - 585 307. APPELLANT (BY SRI. RAJESH G. DODDAMANI., ADVOCATE) AND:

1. THE STATE OF KARNATAKA THROUGH SULEPETH POLICE STATION, NOW REPRESENTED BY ADDL. SPP HIGH COURT OF KARNATAKA, AT KALABURAGI - 585 107.-. 2 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
2. SMT. RAZIYA BEGUM W/O. AKHTAR MIYAN AGE:

36. YEARS, OCC: HOUSEHOLD R/O. YAKAPUR VILLAGE TQ: CHINCHOLI, KALABURAGI DIST DE FACTO COMPLAINANT/RESPONDENT NO.2. RESPONDENTS (BY SRI.PRAKASH YELI, ADDL. SPP., FOR R1, SRI ISWARAJ S. CHOWDAPUR., ADVOCATE FOR R2) THIS CRL.A FILED U/S.374 (2) OF CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT

AND SENTENCE DATED 13.03.2020 PASSED IN SPL.C.POC SO NO.4/2020 BY THE II ADDL. DIST. AND SESSIONS JUDGE AT KALABURAGI FOR CONVICTING THE APPELLANT/ ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SEC.366(A), 376(2)(I) 302, 201 OF IPC AND U/SEC. 6 IF POC SO ACT, 2012. THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON 16.03.2023, PRONOUNCED

JUDGMENT

ON 16.04.2023 CONFIRMING THE

JUDGMENT

DATED 13.03.2020 OF II ADDL.SESS IONS JUDGE, KALABURAGI IN SPL.CASE NO.4/2020 AND RESERVED FOR `

ORDER

S ON SENTENCE' on 19.04.2023. IN CRIMINAL REFERENCE CASE NO.200001/2020: BETWEEN:

1. THE II ADDL. SESSIONS JUDGE AT KALABURAGI (BY SPECIAL PUBLIC PROSECUTOR) COMPLAINANT VS. AND:

1. YALLAPPA S/O. MAHADEVAPPA SEDAM AGE:34 YEARS OCC: TAILORING WORK R/O: YAKAPOOR VILLAGE, - 3 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 NOW RESIDING AT SULEPETH VILLAGE TQ: CHINCHOLI DIST: KALABURAGI2 SMT. RAZIYA BEGUM W/O.AKHTARMIYA AGE:MAJOR R/O.YAKAPOOR VILLAGE TQ: CHINCHOLI, DIST:KALABURAGI ACCUSED (BY SRI RAJESH G. DODDAMANI,. ADVOCATE FOR R1, SRI. ISWARAJ S.CHOWDAPUR. ADVOCATE FOR R-2) SRI. S.R.KADLOOR SATYANARAYANACHAR, APPOINTED AS AMICUS CUROEA) THIS CRL.RC REGISTERED AS PER THE PROVISIONS OF SEC.366 OF CR.PC FOR CONFIRMATION OF DEATH SENTENCE TO THE ACCUSED YALLAPPA MAHADEVAPPA SEDAM BY THE

JUDGMENT
AND

ORDER

DATED1303.2020 PASSED BY THE II ADDL. SESSIONS JUDGE AT KALABURAGI IN SPL.CASE (POCSO) NO.04.2020. THESE CRL.A AND CRL.RC HAVING BEEN HEARD `ON SENTENCE' AND RESERVED FOR `

ORDER

S ON SENTENCE' ON1904.2023 COMING ON FOR PRONOUNCEMENT OF `

ORDER

S ON SENTENCE', THIS DAY, RAMACHANDRA D. HUDDAR, J., PRONOUNCED THE FOLLOWING:

JUDGMENT

The appellant in the above appeal was prosecuted in the Special Sessions Case (POCSO) No.4/2020 for the offences under Section 366(a), 376(a)(b), 302, 201 of Indian Penal Code (`IPC for short) and under Sec.4, 6, 8 of the Protection of

Children from Sexual Offences Act, 2012 (for short `POCSO Act).- 4 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
2. The learned II Additional Sessions Judge at Kalaburagi as per the judgment dated 13th March 2020, had convicted and sentenced the appellant for the offences of rape and murder of a victim girl, aged 8 years, the daughter of PW.1 for the offences as under: the accused is sentenced to DEATH for the offence punishable under Sec.302 of Indian Penal Code and under Sec.6 of POCSO Act, 2012 R/w. Section 376(2)(i) Indian Penal Code. The accused shall be hanged by neck till he is dead. Acting under Sec.235(2) of Cr.P.C., the accused is sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.50,0000/- (Rupees fifty thousand) for the offence punishable under Sec.366(A) of Indian Penal Code and in default to pay fine, he shall undergo rigorous imprisonment for a period of two years. Acting u/s.235(2) of Cr.PC the accused is sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.50,000/- (Rupees Fifty thousand) for the offence punishable under Sec.201 of Indian Penal Code and in default to pay fine, he shall undergo rigorous imprisonment for a period of two years. Further acting under section 33(8) of the POCSO Act, 2012 and according to the guideline NO.12 of NALSAs compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018, the maximum - 5 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 compensation awardable for loss of life is R.10.00 lakh. This Court vide order dated 13.12.2019 has awarded interim compensation of Rs.2.50 lakh to the parents of deceased, therefore, a direction is issued to District Legal Services Authority to pay remaining compensation of Rs.7,50,000/- (Rupees seven lakh fifty thousand only) to the parents of the deceased. Send a copy to DLSA to arrange for payment of compensation. If the compensation is already paid by the DLSA in part, DLSA shall pay the remaining compensation to the parents. If the entire compensation is already paid again the parents of deceased are not entitled for compensation from the DLSA

3. As 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 of Sec.366 of Cr.PC. However, accused who was sentenced to capital punishment has filed the appeal challenging the order of conviction and sentence recorded against him by the trial Court. Accordingly, appeal preferred by the accused has been heard by us together and is being disposed of by this common judgment.

4. The facts leading to the aforesaid conviction and sentence of the accused are as follows: - 6 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 A girl (hereinafter referred to as `deceased victim girl) aged about 8 years was residing with her parents at Yakapura village. Her parents had four children i.e. one son and three daughters. Deceased victim girl was third daughter to her parents and was studying in 2nd Standard. PW.1 being the mother of the deceased victim girl submitted a complaint to the police on 2.12.2019 stating that, on the said date at about 9.00 a.m. herself, her neighbours by name Mehaboob Sab, Khanisa Begum W/o.Rafiq Miya together went to attend their coolie work at Garagpalli village. She returned to her house at 5.00 p.m. On her return to her house, she did not notice the presence of her daughter i.e. victim girl in the house. Therefore, she went in frantic search of her missing daughter. She went near the Kirana shop of Ramalinga S/o.Sharanayya Kalal and enquired with Padmavathi PW.2 about her daughter. PW.2 told that, the accused Yellappa S/o.Mahadevappa Sedam resident of Yakapoor village presently resident of Sulepet brought PW.1s daughter to her Kirana shop along with his brothers children by name Bhagyashree D/o.Shankar Sedam and Madesh S/o.Shankar Sedam at about 4.00 p.m. She also - 7 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 told that he purchased `Kurkure for them and took the children along with him.

5. It is further stated in the complaint that, thereafter, PW.1, her brother Imran S/o.Nazeer Miya Upashya and Irfan S/o.Yusuf Miya Jamadar and three other persons together went near Anganawadi School situated at Yakapoor. At that time, one Chinnumiya S/o.Jaleelmiya (PW.14) came on his tractor by driving the same. PW.1 and two others stated above enquired PW.14 about PW.1s daughter-

victim girl whether he has seen her stating that she is not seen in the house or anywhere. It is further stated in the complaint that, the PW.14 told them that, about 5.30 pm, he has noticed that behind the Anganawadi School on the canal bund, the said Yellappa Sedam and the victim girl were found sitting. Therefore, PW.1 and others went towards Anganawadi School and searched for victim girl. But, they did not find her there. When they were so searching, PW.3 Shanthakumar S/o.Sharanayya Talawar asked them to search for the victim girl in the bushes so grown there behind the Anganawadi School. They started searching under the bushes with the help of torch. When they were so searching with the help of torch, they noticed the dead body of a girl lying naked - 8 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 on the ground under the custard apple bush in an unusual state. They identified the dead body as that of daughter of PW.1. According to PW.1, the incident might have occurred between 6.00 p.m. and 6.30 p.m.

6. It is alleged in the complaint Ex.P1 that, the accused on the guise of providing `Kurkure to the victim girl might have lured her and thereafter took her towards the said bushes behind the said Anganawadi School a deserted place, must have committed rape on her forcibly. Further, to destroy the evidence, must have removed her clothes and must have killed her by smothering by putting his hands on her mouth and nose. As PW.1 is not well conversant with the Kannada language, she has given her statement before Police both in Hindi and Kannada languages.

7. When PW.27, Timmaiah S/o.Ballayya, the then PSI of Sulepet Police Station at 8.30 p.m. on 2.12.2019 was in the Police Station received a telephone call that at Yakapoor somebody has kidnapped a girl. Therefore, PW.27 along with his staff went to Yakapoor village and noticed gathering of people near Masjid. CW.7, CW.8 and their family members - 9 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 informed that, some unknown persons have kidnapped the deceased victim girl. On enquiry, it was informed that while searching, PW.1 came to know that accused has brought her victim daughter along with his brothers children,

purchased `Kurkure from the Kirana shop and went towards his brothers house with the children along with the victim girl. She has informed the said fact so stated in the complaint to PW.27.

8. This PW.27 noticed lying of the naked body of victim girl under the said bush. He asked his staff to guard the dead body, came back to the police station. Based upon the statement given by PW.1 as per Ex.P1, registered the crime in Crime No.112/2019 and set the criminal law in motion by preparing FIR as per Ex.P28 and sent the same to the jurisdictional Magistrate through his staff. As it was a heinous offence, therefore, he handed over investigation to PW.32 Shankara Gouda Veeranagouda Patil, the then CPI.

9. PW.32, on taking up investigation and as per the directions of the Superintendent of Police, took the authorization memo as per Ex.P44, verified the records. In the meantime, it was directed to shift the dead body to the Sedam - 10 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 Hospital mortuary. PW.32 went to the said mortuary at about 7.30 a.m. on 3.12.2019 and secured the inquest Panchas so also other witnesses i.e. PW.20-Shrikant S/o.Mohan, PW21 Seethu Rathod S/o.Bhamla, and PW.22 Ishwar S/o.Sidram conducted the inquest Mahazar as per Ex.P6 between 7.30 a.m. and 9.00 a.m. on the dead body of deceased victim girl. Sent the dead body for post mortem and directed his staff to hand over the dead body to the parents of the deceased after the post mortem.

10. At 11.30 a.m., PW.32 visited Yakapoor village and secured the presence of Panchas i.e. CW20 and 21 and prepared the spot mahazar as per Ex.P15 between 11.30 a.m., and 12.30 p.m. as shown by PW.1, seized the Chudidhar pant and top of the deceased as per MO nos.1 and 2 so marked. Took the photographs as per Ex.P4 and P5. Recorded the statements of witnesses i.e. CWs 2 to 4, Padmamma W/o.Ramlingayya, Shantkumar, S/o.Shivaraya and Shivasharanappa S/o.Shivaraj CWs.6-father of victim, CW.7- Yusufmiya S/o.Babumiya, CW.8-Hasinabegum, W/o. Meheboobsab and CW.9 Shridevi W/o.Annarao on the same day. CW.32-Shankargouda S/o.Veeranagouda and his staff - 11 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 apprehended accused and produced him at 2.00 p.m. before him along with the report. He recorded voluntary statement of accused. In the voluntary statement, accused informed him that he has hidden his inner wear in the bushes and produce the same if he is taken there. The said portion is marked at Ex.P45. He secured the panchas i.e. CW.33 and 34. Accused lead PW.32 and staff to Yakapoor to the house of his younger brother and brought a shirt and pant and produced before PW.32. He prepared the seizure Panchanam Ex.P20 in the presence of Panchas and the said shirt and pant are marked at MOs 3 and 4.

11. Accused also lead IO behind Anganawadi school near the bushes and produced his inner wear and he seized the same under Ex.P21 and prepared the Panchanama between 4.30 p.m. and 5.30 pm. The said inner wear is marked at MO5. He took the photographs as per Ex.P22 and P23. Thereafter, sent the accused for medical examination and thereafter, along with remand application accused was produced before the Court.-. 12 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
12. PW.32 on 4.12.2019, visited Yakapoor village recorded the statements of CWs.5-Shivasharanappa, CW.8- Yusufmiya and CW.15-Babumiya and he received Ex.P29 and Ex.P32 on the same day. In the meantime, on 3.12.2019, he sent the collected samples to the doctor for RFSL examination at Kalaburagi and FSL, Bengaluru. He requested CW.25 Engineer to prepare the sketch of the scene of offence. He requested CW.26-Lavanya, Asst.Engineer, GESCOM to issue certificate about the supply of electricity at the time of alleged incident and CW.23-Naganna, Head Master, GHPS, R/o.Yakapoor to issue the school records of victim girl.

13. On 5.12.2019, he visited Sulepet police station and recorded the statements of his staff, CW.33-Shrikant and CW.42-Timmayya S/o.Ballayya. He received Ex.P19, the copy attendance register to know whether victim girl has attended the school on 2.12.2019 so also as per Ex.P27 he received the certificate of GESCOM.

14. On 7.12.2019, he sent CW.3 to 5 police personnel to the Court to record the statements by the Magistrate under Sec.164 of Cr.PC and received the copies of the same. On - 13 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 16.12.2019, visited the Sulepet Police Station and recorded the statement of CW.6-Babumiya and took acknowledgement from C.W.40-Nataraj and 19.12.2019 and received the copy of statement from the Court. On 19.12.2019, visited Sulepet p.s. and recorded CW.39-Ishwar and CW.40-Nataraj and on 25.12.2019, received E.P24-covering letter and Ex.P25-RTC extract so also Ex.P37- Certificate(CD) under Sec.65(B) of Evidence Act. On 26.12.2019, after completion of investigation and after obtaining the records, he filed the charge sheet against the accused person. It is his evidence that 26.12.2019 he received Ex.P34 and Ex.P35 FSL reports and submitted the copies for final opinion. On 28.1.2020 he received report from the doctor i.e. final opinion 31.1.2020 received Ex.P30 and Ex.P36 and forwarded all the documents to the Court.

15. After filing the charge sheet, the Special Court to deal with POCSO cases took cognizance of offence. Copies of police papers were furnished to the accused as contemplated under Sec. 207 of Cr.PC. After hearing both the side, the learned Sessions Judge Special Court framed charges against the accused persons for the offences 366(A), 376(A)(B), 302, 201 of Indian Penal Code and Secs.4, 6, 8 of POCSO Act.-. 14 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 16. The accused pleaded not guilty. His defence was of total denial. His defence appears to be that, he has been falsely implicated because of animosity between PW.8-Yusufmiya and himself. The said PW.8 is the paternal uncle of deceased victim girl, accused being a tailor has left the job from PW.8, on that grudge, a false complaint is filed against him and he has been falsely implicated.

17. To substantiate the allegations made against the accused, prosecution in all examined 33 witnesses from PWs.1 to 33. Apart from oral testimony of aforesaid 33 witnesses, the prosecution has relied upon documents marked from Ex.P1 to P46 with respective signatures thereon and MOs No.1 to 5.

18. The learned trial court, after closure of the evidence of the prosecution, questioned the accused under Section 313 of Cr.PC so as to enable him to answer the incriminating circumstances appearing in the evidence of the prosecution. He denied his complicity in the crime and did not choose to lead any defence evidence on his behalf except submitting that he has not done anything, police assaulted him and filed a false case.-. 15 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

19. The learned trial court, on hearing the arguments, and on perusal of oral and documentary evidence convicted the accused as stated hereinabove. This judgment of conviction and sentence has been challenged by appellant-accused on the following grounds: That, the impugned judgment and order of conviction and sentence so recorded by the trial Judge is contrary to law, facts and evidence on record. No proper reasons are assigned in awarding the said sentence. Only on the basis of the oral evidence of the witnesses who are closely related, the conviction has been ordered. As per the FSL report, the clothes of the accused and deceased are blood stained. However, it is not forthcoming as to whose blood was present. Therefore, there is a serious lacuna in the case of the prosecution. Evidence of PW.4-Shivasharanappa cannot be accepted on the ground that he has given evidence that at about 7.30 p.m. accused bought cigarette and his clothes were dirty. This evidence cannot be accepted. The chain of circumstances are not only not proved and there are bristling inconsistencies and contradictions in the evidence of the prosecution therefore, amongst other grounds, with a leave to urge some other - 16 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 grounds at the time of arguments it is craved to acquit the accused-appellant.

20. After filing this appeal, the learned Additional SPP took notice of this appeal. The trial court records are secured.

21. We have heard the learned Public Prosecutor, Sri Prakash Yeli at length who took us through the evidence on record and made his submissions and rendered valuable assistance to us both on facts and on law. So also, learned counsel Sri Kadloor Sathyanarayanachar being appointed as Amicus Curiae also advanced

his arguments and we may add, very ably and fairly. Similarly, we also heard Sri Rajesh G.Doddamani, learned counsel on behalf of the accused- appellant.

22. The case is entirely based on circumstantial evidence which has been summarized by the trial court in its judgment after coming to the conclusion that the chain of circumstances un-mistakenly and undoubtedly pointed to the guilt of the accused. The trial court has enumerated aggravating circumstances in its judgment. The learned trial Judge in his judgment, has observed that, there were no mitigating - 17 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 circumstances, and therefore, proceeded to award the capital punishment against the accused/appellant.

23. In the first place, medical evidence in our view leaves no manner of doubt about the `factum delicti that the deceased victim girl aged 8 years was first subjected to rape and was thereafter, killed. The inquest Panchanama Ex.P6 indicates that victim girl was subjected to rape and thereafter strangled or was smothered. It also indicates that, eyes closed, mouth open, teeth seen. Ex.P6 inquest Panchanama was prepared on 3.12.2019 on the following day of the incident as the dead body was noticed during night hours on 2.12.2019. PW.32, Shankarananad V.Patil the then PSI conducted the inquest Panchanama in the mortuary as per Ex.P6 in the presence of Panchas. Inquest Panchanama also shows that there was removal of the skin below the neck, legs were straight and on the left knee and on the right leg below tibia there were abrasions. There were number of injuries noticed on the body of the deceased during the post mortem examination by PW.25 Dr.Sharanamma. Those injuries are as follows as noticed in Ex.P32.-. 18 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 A dead female girl aged 8 years having on the mortuary table, moderately built and nourished. Rigor mortis present in lower limbs, partially present in the upper limbs. Frothing seen at both nostrils.

1. Abrasion 0.2 x 0 cm on the upper chest left side.

2. Abrasion on the left scapular region 5.6 cm long 3. Multiple abrasion over the left upper back 4. Abrasion mouth over the left index finger, left knee, right leg.

24. The cause of death is shown as asphyxia secondary to smothering as per the preliminary certificate Ex.P33 issued by the Medical Officer, Govt. General Hospital, Sedam, Dist:Kalaburagi. The aforesaid injuries found on the person of the deceased indicate that the victim girl was subjected to forcible, carnal as well as sexual intercourse which she appears to have resisted. It also appears from the injuries of the deceased that force was used against the girl for satiation of his lust by the criminal. The girl appears to have been mercilessly assaulted while being molested. There were abrasions as noticed in the PM report which were ante mortem. Neither in the trial Court nor before us, the fact of rape having been committed on the deceased or she having been subjected to carnal intercourse nor the fact that the victim had received - 19 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 homicidal death was challenged on behalf of the accused. Therefore, as pointed out earlier, the medical evidence and the inquest Panchanama prepared about the condition of the person of the deceased leaves no manner of doubt that the victim girl had been subjected to forcible rape and carnal intercourse and received homicidal death.

25. As per the evidence of the medical officer PW.25 Dr.Sharanamma the cause of death of was due to asphyxia secondary to smothering. Inquest report shows constriction of the neck. According to PW.5 the medical officer, rigour mortis was present in lower limbs, partially present in the upper limbs. Frothing seen in both nostrils, an abrasion measuring 0.2 x 0.1 cms. Over the upper chest and left side. Abrasion over the left scapula region measuring 5 to 6 cms in length, multiple abrasions over the left upper back. Abrasion marks over the left index finger, left knee and right leg. Fresh hymeneal tear was present. Observing all this, after satisfied from the injuries on the person of the deceased victim girl and the medical evidence that the deceased victim girl was subjected to rape and thereafter killed, the question to be decided is as to who was - 20 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 responsible to commit these crimes of rape and murder on the deceased victim girl?..

26. In the absence of eye witnesses the prosecution has relied upon the circumstantial evidence. The circumstances mainly relied upon on behalf of the prosecution to bring home the guilt of the accused are as follows: (1) PW.1 complainant has got four children and deceased victim girl was her third child aged 8 years studying in 2nd standard. (2) Accused is the brother of one Shankar Sedam and often used to visit Yakapur. (3) On 2.12.2019, accused visited the house of his brother Shankar. PW.12 Usha Shankar the sister-in-law of accused was asked by the accused to prepare the hot water to take bath. He brought Bhajis and jam fruit with him. Accused took the children of PW.12 Usha and deceased victim girl to the shop to purchase `kure. PW.12 served food to the accused. Accused went out of the house at about 5.00 p.m. along with deceased on 2.12.2019.-. 21 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 (4) On 2.12.2019, accused went to the kirana shop of PW.2 Padmamma at 4.00 p.m. along with deceased and his brothers children to purchase `kure and bought the same for deceased victim girl and his brothers children. (5) PW.1 Razia Begum came in frantic search of her daughter deceased victim girl. PW.14 Chinnu Mia s/o.Jaleel Mia informed PW.1, CW.7-Aktharmiya and CW.8-Yusufmiya that when he was coming on his tractor by driving the same, he noticed that accused and victim girl were sitting together on the canal bund behind Anganawadi school. (6) PW.3 Shanthakumar came to know from PW.14 Chinnu Mia that both accused and deceased victim girl were sitting together behind the said Anganawadi school on the bund. (7) On 2.12.2019 at 7.00 pm. when PW.4 Shivasharanappa s/o.Shivaraj was in his pan shop - PW.1 and her family members came in search of victim daughter. (8) At 7.30 p.m., accused came near the pan shop of PW.4 and bought cigarette. His clothes were dirty. On - 22 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 enquiry by PW.4 accused informed him that he is coming from lands, but, he has

no lands at Yakapura village. (9) At 7.30 p.m. on 2.12.2019 accused was found standing near Hanuman temple in toor dal crop at Yakapura smoking cigarette. At that time, PW.5 Mabumiya s/o.Mehaboobmiya a friend of accused noticed accused smoking cigarette. At that time, accused informed his friend PW.5 that he has raped and killed victim girl and requested to help him. He is ready to pay fine to the victims parents. (10) PW.6 Akhtarmiya S/o.Babumiya father of deceased victim girl came to know accused took his child to purchase kurkure at 4.00 p.m. (11) PW.9 - Shridevi W/o.Annarao has seen accused coming towards panshop. She informed that accused is being searched by PW.1 and her family members. (12) Accused left the tailoring shop of PW.11 Babu Miya S/o.Khaja Miya at 1.50 p.m. on 2.12.2019 stating that he wanted to go to village.-. 23 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 (13) PWs 1 to 12 so examined in this case knew the accused and his profession. Accused is not a stranger to any of these witnesses. (14) There is recovery of his inner wear at his instance. (15) PW.1 and other witnesses have noticed the presence of dead body of victim girl under the said bushes behind the Anganawadi School at the time of search. (16) Accused when he was near the pan shop on hearing the conversation of informing about presence of accused in front of the pan shop, tried to go away from the said place but, was caught hold by the people. (17) The accused on enquiry, initially informed that some two persons have kidnapped the victim girl. (18) About kidnapping of victim girl, it was informed to the Sulepet Police. (19) On getting such information of kidnapping, police came to Yakapur and noticed the catching hold of the accused by the people of Yakapur. (20) The Sulepet police apprehended the accused and enquired.-. 24 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 (21) On the following day, the accused was produced before PW.32 and before whom, accused gave his voluntary statement.

27. In order to appreciate the involvement of the accused in the crime due to the existence of the aforesaid circumstances, it would be necessary to prove the existence of the aforesaid circumstances beyond reasonable doubt and exclude the possibility of any third person committing the crime.

28. PW.1- Razia Begum, the mother of the deceased victim girl has reiterated the contents of the complaint in her evidence on oath. According to her, accused is resident of Sedam and brother of accused is staying at Yakapur. She heard that accused often used to visit his brothers house. She further states that on 2.12.2019, when she returned from her coolie work at about 5.00 p.m., she noticed the absence of victim girl and it was informed that at 4.00 p.m. accused brought deceased victim girl and two children of Shankar to purchase kurkure and went back. When PW.1 searched for deceased in the entire village, CW.3 informed that behind Anganawadi near - 25 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 canal the deceased was sitting with accused at 4.30 pm. When they did search with the help of torch light in the bushes near Sithaphal tree they saw leg and a dead body of her daughter. The dead body was naked and the clothes of the deceased were lying at a distance. She submitted a statement/complaint as per Ex.P1. She identifies the clothes being worn by the deceased at MO1 to 3. According to her evidence, accused kidnapped her daughter, committed rape on her daughter and killed her.

29. Though lengthy cross-examination is directed to her, but, she has stated about missing of her daughter, noticing of her daughters dead body lying naked and she was subjected to rape and murder.

30. PW.2 Padmamma being the owner of Kirana shop also speaks about visiting of accused to the Yakapura village to the house of the younger brother of the accused. She says, on 2.12.2019, at about 4.00 p.m. accused brought deceased victim girl and children of his younger brother and purchased three pockets of Kurkure. She came to know that PW.1 and her relatives were searching for deceased victim girl. She informed - 26 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 CW.11 Hasinabegum and family members that at 4.00 pm., accused purchased kurkure for deceased and children of his brothers. She too has been subjected to severe cross- examination. With regard to existence of canal behind Anganawadi, it is admitted by her.

31. PW.3 Shanthakumar, is an agriculturist and knows PW.1 and her children. According to his evidence, PW.1 and her family members were searching deceased as she was missing. It is CW.3 informed that at about 5.00 pm. He saw the deceased sitting with accused behind Anganawadi thereafter, he too searched and he came to know that accused came near the pan shop of CW.8 and at that time, they were moving towards Hanuman temple. Accused came from opposite direction and they noticed that clothes of the accused were dirty. Intimation was given to the police and at about 9.00 p.m. police came. He too has noticed the dead body at 10.00 p.m. with the help of torch in the said bushes. Though severe cross examination is directed to this PW.3 but, he is consistent in his evidence with regard to what he has noticed so stated in the examination-in-chief.-. 27 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

32. PW.4 Shivasharanappa, is the owner of the Pan shop from whom as per his evidence, on 2.12.2019, accused purchased cigarette at 7.00 p.m. at that time, he noticed that the clothes of the accused were dirty. On enquiry, accused told that, he came from his lands but, he has no lands in his village. There was dirt and toordal crop left on the head and clothes of the deceased. He also came to know of missing of deceased girl and came to know about sitting of accused, sitting with deceased behind Anganawadi at 11. p.m. he came to know the dead body of the deceased was found near the bushes near Anganawadi. He too has been cross-examined but, nothing worth is elicited from the mouth of witness.

33. PW.5 Babu Miya S/o.Mehaboob Miya is an important witness in this case as per the prosecution. According to his evidence, accused is his friend. He is doing tailing work in the village. Wife of deceased has left the company of accused. He too states that, younger brother of deceased is residing at Yakapur and accused consumes alcohol. He further states that, on 2.12.2009 at about 7.00 p.m. when he was near Hanuman temple he noticed that accused was behind the temple in toor crop land and was smoking. Looking at PW.5-Babu Miya - 28 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
accused came near him and informed him that he has committed rape on deceased and killed her to conceal the evidence. The clothes of the accused were

dirty and he was under shock. He further states that accused requested him to rescue him and he will pay fine to the parents of the deceased. He asked the deceased and why but accused did not narrate anything then he went inside the village.

34. The learned SPP submits that it is an extra judicial confession of the accused before PW.5 to whom accused has stated about the commission of offence by him. Therefore, his evidence has to be accepted.

35. PW.5 is directed with intensive cross-examination by the defence counsel. But, about confession so given by accused before PW.5 is not properly denied in the cross-examination. The other factual features which are not relevant are brought on record in the cross-examination. With regard to admissibility or inadmissibility of such a confession statement, we are going to discuss about the same in our further discussion.-. 29 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

36. PW.6 Akhtar Miya is none else than the father of victim girl. He speaks on par with the contents of his statement before the police under Sec.161 of Cr.pc. He being a hearsay witness no much value can be attached except getting knowledge about the so called commission of offence of committing rape and murder of deceased victim girl.

37. PW.7 Yusuf Miya, is a tailor under whom it is stated that accused used to work. According to his evidence, on 2.12.2019, accused has left his tailoring shop. He came to know about the missing of deceased girl and he is the paternal elder uncle of deceased. The other aspects have been brought on record in the cross-examination.

38. It is the defence of the accused that, there was ill will or animosity between this PW.7 and accused because of the profession therefore, through PW.1 a false complaint is lodged and accused is falsely implicated. To prove the said defence, nothing is elicited from the mouth of PW.7 with regard to the animosity so put forth by the accused in between himself and PW.7. PW.7 has denied all these suggestions so directed to him.-. 30 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
Therefore, the motive of false implication of accused is ruled out as per the evidence of PW.7.

39. PW.8 Haseena Begum is the grand mother of deceased who also came to know about the missing of her grand daughter and got knowledge that accused when he was brought near the Masjid she came to know that, accused raped and murdered deceased victim girl. Though lengthy cross- examination is directed to her but, nothing worth is elicited. She admits that accused was not acquainted with her family members. That does not mean that accused did not know the deceased. When accused alleged to have taken deceased along with his brother children to kirana shop to purchase kurkure, he must be well acquainted with the deceased. Therefore, the suggestion so directed does not help the defence.

40. PW.9 Shridevi wife of Annarao is examined to prove that she knows accused and other witnesses who are examined in this case. She speaks with regard to purchase of kurkure by the accused for the children of his brother and deceased and also purchase of cigarette by him. She came to know of crime being committed by the accused on deceased. She too has - 31 - NC:

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been subjected to severe cross examination but, nothing worth is elicited.

41. It is the evidence of all the witnesses that on 2.12.2019, it was drizzling during evening hours. This fact is not denied by the defence.

42. PW.10 Mehaboob Sab, is a person who is running kirana shop and a hotel opposite to Masjid in Yakapura village. He too states about searching of deceased who was found missing by PW.1 and her relatives. On suspicion, they were searching accused and deceased. They noticed the presence of dead body under the bushes with the help of torch. Though this PW. 10 is severely cross examined, except denial nothing is elicited.

43. PW.11 Babu Miya s/o.Khaja Miya is running a tailoring shop with whom the accused was working. He states that on 2.12.2019, accused came to his shop at

10.00 a.m. and stitched 1 pant and went back at 2.00 p.m stating that he wanted to go the village. This fact is not denied in the cross- examination directed to PW.11. Except denial, nothing is elicited. That means from the evidence of PW. 11, it is very - 32 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 much clear that on 2.12.2019 accused returned to Yakapura village after stitching one pant.

44. PW.12 Usha a vital witness in this case. According to her evidence, on 2.12.2019, accused came with Bhajis and jam fruits to her house at 3.00 p.m. and along with him he took deceased and her children to buy Kurkure. Thereafter, accused came back and she served food. Accused had the food and gave fruits to the deceased. At 5.00 pm. Accused went out of the house along with the deceased. That means this PW.12 being the sister-in-law of the accused is a last seen witness of deceased and accused. To disprove the same, except denial, nothing is elicited. No animosity or ill-will is established in between PW.12 and accused.

45. It is the defence of accused that, he is resident of Sulepet and there was occasion to visit Yakapura. But, PW.12 his own sister-in-law has spoken about his visit to her house by the accused on 2.12.2019. In view of her concrete evidence spoken to throughout the cross-examination proves that accused had been to Yakapur village at 3.00 p.m to his - 33 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 brothers house. Nothing worth is elicited from the mouth of PW.12 to disbelieve her evidence.

46. PW.13 is inquest Pancha to Ex.P6 so also PW.15 Sabia Begaum. These two witnesses were very much present when inquest Panchanama was written and there was seizure of clothes under Ex.P6 and photographs were taken as per Ex.P4 and 5.This PW.13 is also a Panch witness.

47. Though lengthy cross-examination is directed against PWs 13 and 15, but, nothing worth is elicited to disbelieve their version given in their examination. Their evidence is corroborated by the evidence of PW.32 IO. There is no inconsistency or discrepancy in the evidence PW.13 and 15 so as to disbelieve their version so spoken to by them.

48. From the evidence of PWs.13 and 14 inquest Panchas, Inquest Panchanama is duly proved in accordance with law. PW.14 Chinnumiya is also one of the important witnesses in this case who has noticed sitting of accused and deceased near canal bund behind Anganawadi school when he was moving in the tractor. He informed the said fact to PW.1 and others. The factum of he seeing accused and deceased - 34 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 together is not properly denied in the cross-examination. It is brought on record that there was enmity between PW.8 and accused and because of that accused has been falsely implicated. But, PW.14 deposed ignorance about the same. He too says with regard to the noticing of the dead body etc.

49. From the evidence of CW.18, it can be stated that he is also one of the witnesses who has last seen the accused and deceased together. PW.16 Naganna is Headmaster who has issued the birth particulars of deceased as born on 21.03.2011. He has issued Ex.P16 to 19 and he is signatory to Ex.P.20 Mahazar so also photographs Ex.P22 and 23. On perusal of evidence of PW.16, he is consistent about issuing the birth particulars of deceased victim girl which is not denied by the prosecution. Except the denial nothing is elicited.

50. PW.17 Md.Rafiq being the Village Accountant is the pancha to Ex.P20 under which the pant and shirt are seized in his presence so also the underwear of accused was seized under Ex.P21. He identified photographs as per Ex.P22 and P23. He identifies RTC extracts Ex.P.25. With regard to seizure of these articles nothing is elicited so as to disbelieve the - 35 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 version given in the examination-in-chief. Therefore, the evidence as per Ex.P.25

coupled with evidence of PW.32 the seizure of pant, shirt and underwear is duly proved in accordance with law.

51. PW.18-Giriraj was Junior Engineer in PWD who has prepared Ex.P26 the scene of offence sketch which is not denied properly by defence. That means evidence of Giriraj Veerashety, JE of PWD is to be believed.

52. PW.19 Lavanya D/o.Subhash was Asst.Engineer GESCOM, Sulepeth Section who has issued Ex.P27 there was electricity supply at Yakapura village from 6.00 p.m. to 11 p.m. Thus, there was uninterrupted power supply to Yakapur village. This fact is not denied by the defence. So to the extent of issuing Ex.P27 with regard to supply of electricity by the GESCOM authorities, we believe his evidence.

53. PW.20 Shrikant S/o.Mohan is the Police Constable(PC957 working in Sulepet Police Station who went to the Yakapura village at about 9.00 p.m. along with PSI and noticed the missing of a victim girl. There was allegation that she was kidnapped. He further says CW.3-Chinnumiya came and - 36 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 informed that accused was sitting behind the Anganawadi School on the canal bund along with the deceased. He has taken the photographs as per Ex.P2 to 5. So the visit of PW.22 to Yakapur village on 2.12.2019 at 9.00 p.m.along with other staff is spoken by PW.20 which is not denied by defence.

54. PW.21 Seethu Rathod PC563of Sulepet Police Station carried Ex.P28 F.I.R to the Magistrate. This fact is not denied by the defence in a proper manner. He has done his duty of reaching the FIR to the Judicial Magistrate. PW.22 Eshwar PC of Sulepet carried the viscera and articles collected by IO and delivered to RFSL and he carried Hyoid bone and delivered to pathology dept. GIMS, Kalaburagi. This fact is also not duly denied by defence. PW.23 Nataraj P.C of Sulepet P.S. carried the articles collected at the time of post mortem examination to FSL, Bengaluru on 16.12.2009. Except the denial nothing is elicited by the defence.

55. PW.24 Dr.Vijayakumar Shivasharanappa medically examined the accused and given the opinion that accused is a potent person and capable of performing sexual intercourse. He also has issued the DNA report. They are marked at Ex. P30 - 37 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 and 31. The contents of these documents are not denied by the defence. From these documents, it is very much clear that accused is potent and capable of performing sexual intercourse. The blood sent at item no.1 and 2 from Medical Officer, Sedam is identical with DNA Profile and matching with item No.7 so sent.

56. PW.25, Dr.Sharanamma conducted the post mortem and issued the post mortem report so also DNA profile as per Ex.P31 of accused. We have already discussed the contents of P.M. Report. She also speaks about FSL Report marked as Ex.34 and 36. She has given evidence with regard to cause of death of deceased as asphyxia secondary to smothering. She has issued preliminary certificate as per Ex.P3. The contents of these documents are not denied by the defence in a proper manner.

57. PW.26 Mahesh Chowhan is photographer who has taken photographs Ex.P2 to 5, 7 to 15, 22 and 23 so also Ex.P38 to 41. He has taken the said photographs at the instance of the IO and supplied the same to IO at the time of filing charge sheet. The contents of these photographs and the - 38 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 pictures seen on them is not denied by defence in a proper manner.

58. PW.27 Thmmayya PSI who went to Yakapur village on receipt of information about kidnapping of a girl and also noticed the dead body of the deceased having been raped and murdered. He apprehended the accused, recorded the statement of PW.1 and came to the Police Station and registered the crime and set the criminal law in motion. Though he has been severally cross- examined by the defence but, he has withstood the test of cross-examination. Nothing worth is elicited from this witness so as to disbelieve the version in examination-in-chief.

59. PW.28 Vijaymahantesh Mathapathi was CPI of Sulepet Circle who sent CWs.2, 3 and 5 to JMFC Court for recording statements under Sec.164 of Cr.P.C. He denied all the suggestions so directed to him. Thus sending of CW.2, 3 and 5 statement under Sec.164 Cr.P.C. is proved through this witness.

60. PW.29 Dr.Rajashree, Professor and HOD, Pathalogy Dept.GIMS, Kalaburgai has spoken about the issuance of - 39 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 Ex.P43. This Ex.P43 is a report containing impression of hyoid bone and no fracture is seen. There is no cross-examination directed to this witness by the defence. Thus, contents of Ex.P43 are admitted by the defence.

61. PW.30 Raghavendra B.G. is the Senior Scientific Officer in RFSL, Kalaburagi who issued Ex.P35- FSL report. This Ex.P35 is the test report of one shirt and one pant wherein it is noticed that article 2 the pant of accused was stained with blood. It is submitted that the blood stain found on pant to whom it belongs is not proved. When seizure of pant belonging to accused is not denied, now defence cannot deny that the said blood is not of his. All along the said pant was with him till its seizure. During cross-examination, PW.30 has denied the suggestion that he has issued a false report.

62. PW.31 Mallikarjun S/o.Manikappa who has issued Ex.P34. Ex.P34 is the test report of articles such as stomach and its contents, portion of heart, kidney, liver, lungs, spleen and preservative-saturated sodium chloride solution of deceased. Contents of these documents are not denied by the defence. Except denial nothing worth is elicited.-. 40 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

63. PW.33 -L.Purushothama is the in-charge Asst.Director and Technical Manager, DNA Section State FSL, Bengaluru. He speaks with regard o scientific examination of seven sealed intact articles sent by IO. He gives opinion as under:

1. The blood sent in item no.1 and 2 are human origin and of female sex.

2. The seminal stains were detected on item no.14, 15 and 17 and are of human origin.
3. The seminal stains were not detected on item no.9 to 13 and 16.
4. The skin tissue was detected on item no.7 and was of human origin and of female sex.
5. The epithelial cells were detected on item no.12 and were of human origin and of female sex.
6. The blood swab sent in item no.3, blood serum sent in item no.6 and fungal infected mouth swab sent in item no.8 were not taken up for DNA profile examination.
5. The fungal infection occurred due to the presence of moistures that is improper drying of swab by the M.O.
7. The DNA profile result of seminal stains detected on item no.14, 15 and 17 are identical and matching with that of the DNA profile result of accused from whom the sample blood was collected and at item no.4 and 5.
8. The DNA profile result of skin tissue detected on item no.7 is identical and matching with that of the DNA profile result of the deceased (xxx) from whom the post mortem blood was collected during post mortem and sent in item no.1 and 2.
9. The DNA profile result of epithelial cells detected on item no.12 is identical and - 41 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 matching with that of the DNA profile result of the deceased(xxx) from whom the post mortem blood was collected during post mortem and sent in item no.1 and 2

6. Therefore based on chemical examination results and DNA profile examination results it is concluded that, 1. Accused is included from being the contributor of the seminal stains detected in item no.14, 15 and 17.

2. The deceased (xxx) is included from being the contributor of skin tissue detected on nail clippings collected from the accused and sent in item no.7 and 3. The deceased (xxx) is included from being the contributor of epithelial cells detected in item no.12. According to his evidence, Ex.P31 DNA report and its contents are true. In the cross-examination, he admits that IO has not sent the blood grouping of accused and deceased along with the case file. When other evidence is placed on record, the question is that whether is it necessary to send the same, the answer would be not necessary.

64. PW.32 IO Shanakragouda Patil arrested the accused, took his voluntary statement and seized incriminating articles at his instance and after collecting the documents, filed the charge sheet. Though he has been severely cross examined, but, nothing worth is elicited so as to disbelieve the statements - 42 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 given in the examination-in-chief. It is not the case put up on behalf of the accused in the cross-examination to any of the witnesses nor even stated by the accused when he was examined under Sec.313 of Cr.PC, that he is not responsible for the offence. Even in answer to the last portion put to the accused in Sec.313 Cr.PC statement, whether he wanted to say anything more, his answer was that because of animosity or ill will he has been falsely implicated and he had nothing to say.

65. No animosity or ill-will is established in the cross examination of any witnesses to falsely implicate him. That means, no witness had any animus to implicate the accused falsely. In fact, none of the witnesses have directly implicated the accused for his involvement in the said offences. They have stated only what they have observed on the day of incident about the presence of the accused at Yakapura village, visiting the house of his brother Shankar along with the deceased taking away of his brothers children and deceased to the kirana shop to buy kurkure and thereafter returning to the house of his brother along with deceased giving food and fruits to her and coming out of the house along with the deceased.-. 43 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 Thereafter, searching of the deceased, information furnished by the tractor driver

and others, noticing the deceased and accused sitting together behind the Anganawadi school on canal bund and thereafter, purchase of cigarette by him from the pan shop and confession before his own friend about the commission of the offence, catching hold of accused by the villagers of Yakapur and coming of police etc..

66. In our view, if anything had happened to the deceased in between 5.00 p.m. and 7.00 p.m. on 2.12.2019, it was within the exclusive knowledge of the accused as he was all along with the deceased victim girl from afternoon onwards. The onus is therefore on the accused to explain. Not only the accused has not offered any explanation as to how the deceased victim girl met the unfortunate fate but, the conduct of the accused is inculpatory.

67. It has come in the evidence of witnesses that it is accused who took the deceased from the house of his brother which has been spoken to by PW.12 Usha after having food along with him. He went behind the Anganawadi school and sat with the deceased on the canal bund.-. 44 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

68. In the cross-examination directed to some witnesses, it is suggested that deceased was playing on the bank of canal along with other children and she fell down in the canal and died. It is the strange defence put forth by the accused for the simple reason that PM report never says that deceased victim girl died because of drowning in the canal. If really such a defence is to be accepted, on 2.12.2019 itself, the dead body was found under the bushes and no witness has stated that the clothes lying near the dead body were wet or there were any marks of drowning by the deceased in the said canal. It is the strange defence being put forth by the accused which is not duly proved in accordance with law.

69. Consistent evidence has been adduced by the witnesses touching all the circumstances so narrated about. Thus, connecting link of commission of a crime by the accused is established. The natural conduct of the accused in telling his friend PW.5 that he has committed rape and to destroy the evidence he has killed the deceased victim girl and he is ready to pay the fine to the parents itself goes to establish about his committing the crime. It is one of the strongest circumstances -

45 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 against accused about his involvement in the crime. No doubt, extra judicial confession if brought on record by the prosecution as the connecting link, it has to be scrutinized properly. Friendship between PW.5 and accused is not denied by him. It is normal conduct of a person to inform any of the shocking news or a message to the friend instead of his own relatives. PW.5 his own friend is the person before whom accused has confessed. Neither in the cross-examination nor in the examination under Sec.313 of Cr.PC when the opportunity was afforded to him, accused tried to explain which per se proves his guilty mind.

70. The story that deceased victim girl was with accused is confirmed by the evidence of various witnesses so spoken before the Court. There is absolutely no cogent reasons to disbelieve the above evidence which has been rightly found trustworthy by the trial court. The conduct of the accused is also noteworthy. Kurkure was purchased by him and was given to victim girl as stated by the shop owner PW.2 Padmamma thereafter, he goes to his brothers house, took the food there. At that time, deceased victim girl was with him. After taking food, accused and victim girl came out of the house. Accused - 46 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 took her to the canal bund behind the Anganwadi school. Both were found sitting together by the aforesaid witnesses. That means he had sufficient time to take the victim girl to a lonely place behind the Anganawadi school. The aforesaid circumstances can be called and different facets of the principle circumstance i.e. last seen together has been proved and denial of those proved incriminating circumstances itself is an additional proof against accused as law laid down by the Honble Apex Court in the case of Pershadi Vs. State of Uttar Pradesh reported in AIR 1957 SC211 71. So far as extra judicial confession before PW.5 is concerned, certainly without any doubts, the substance of his statement so spoken to before the Court about guilt of the accused virtually and confessing of committing rape and murdering of victim girl is duly proved. In the instant case, confession aforesaid substantially implicate the accused to tarring himself with his own brush,

is satisfied. The above confession has been made before PW.5 - his friend. We do not find any reasonable ground to disbelieve PW.5s evidence. The evidence of PW.5 and other prosecution witnesses whose - 47 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 evidence is discussed hereinabove would be the last persons to falsely implicate innocent person.

72. The aforesaid circumstances fully establish that the deceased victim girl was last seen with the accused. It can be said that circumstance was very strong and spoken to by the witnesses in their respective evidences. The extra judicial confession of the accused before PW.5 when taken into consideration, lent support to the circumstantial evidence and also the explanation given by the accused was found to be false. Thus, it is held that in such a case, the aforesaid charges levelled against the accused, are proved. However, we want to make it clear that, the Court may take into consideration such confession and thereby make it evident on which the court may act, but, it does not say that the confession amounts to proof. In other words, there must clearly be other evidence and confession is only one element in the consideration of other facts proved in the case and then it can be put into scale and weighed with other evidence. The confession of accused can be used only in support of other evidence and it cannot be made foundation of a conviction.-. 48 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

73. If all these factual features are put together coupled with position of law, we do not find any factual or legal error in the judgment of conviction passed by the trial court.

74. In the judgment of the Apex Court reported in 1994 SCC (Crl.) 176 in the case of Deonandan Mishra vs. State of Bihar, the Honble Apex Court observed with regard to the proof of offence of murder on the basis of circumstantial evidence as follows: It is true that in a case of circumstantial evidence, not only should be various links in the chain of evidence be clearly established, but, the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But, in a case like this where the various links as stated above have

been satisfactorily made out and the probable assailant with the reasonable definiteness and in proximity to the deceased as regards time and situation, and he offer no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which complete the chain.

75. In this case also, the circumstances narrated above point to the guilt of the accused, therefore, the accused as stated above ought to have offered explanation which is - 49 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 wanting. Besides, the manner in which offence was committed and the injuries which were inflicted on the person of the minor girl, would not have escaped the attention of the accused as he was all along present with her. Thus, as there is no explanation, the observations made in Deonandan Mishras case supra are applicable to the facts of this case.

76. The next circumstance which requires consideration in the chain of circumstances pointing to the guilt of the accused is the recovery of the clothes; mainly the underwear at the instance of the accused himself from the scene of offence. On 3.12.2019 accused was arrested. During his police custody, PW.17 Mr.Rafiq S/o.Malangashaha being the Village Accountant and CW.3 Police drew the Mahazar Ex.P20. Under this Panchanama, seized the pant and shirt of the accused. This PW.17 is the signatory to the said seizure Panchanama marked as Ex.P20. Thereafter, accused led the Police and Panchas behind Anganawadi near bushes and produced his underwear. At that time, police drew the mahazar Ex.P21 and seized underwear. PW.17 is the Pancha to the said seizure panchanama also. The said shirt and pant were sent to the chemical analyzer for analysis and report of the analyzer - 50 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 Ex.P35 discloses the presence of human blood stain on articles 1 and 2. Further, test report of the FSL and the DNA profile results marked Ex.P31 show that the blood sent at item no.4 and 5 is included from being the contributor of seminal

stains detected on item no.14,15 and 17, these item nos. 14, 15 and 17 are vulval swab taken out from deceased victim girl, underwear of accused and bottom pant collected from the crime scene. While marking these documents, no objection is being raised by the defence.

77. It is argued that blood of the accused was not sent for chemical analysis therefore there is lacuna. Merely because the blood group of the deceased victim girl and the accused were not sent would not render the circumstance to discard the chain of circumstance. It was underwear of the accused that was seized at his instance and it is accused who ought to have explained that how his underwear was found at scene of offence. Unless accused had explained as to how his underwear came to be stained with his own blood and semen, the finding of the underwear of the accused at the scene of occurrence is a linking circumstance which completes the chain being established against the accused. The furor which the incident - 51 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 had created in the locality must have prevented the accused from taking away the said underwear from the scene of offence and prevented him from washing the underwear.

78. On reading the entire evidence so placed on record by the prosecution both oral and documentary, we have found that there was no possibility of the outsider or any third person other than the accused coming to the place of offence and committing the offence of rape and murder. The presence of the accused at the place of offence and his conduct which was not only strange but also unusual on that day goes a long way to indicate the involvement of the accused in the offence in question. We have absolutely no doubt in our mind that the aforesaid facts establish chain of circumstances which point finger only at the accused. We, therefore, have absolutely no hesitation to confirm the conviction of the accused for the offences punishable under Section 366(a), 376(a)(b), 302, 201 of Indian Penal Code and under Secs.4, 6, 8 of POCSO Act 2012.-. 52 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
79. We, therefore, now have to deal with the question of punishment or the

sentence to be imposed on the accused. The trial Court has awarded DEATH sentence to the accused. Accordingly, we pass the following :

ORDER

The Judgment of conviction dated 13.03.2020 passed by the II Additional Sessions Judge, Kalaburagi in Special Case (POCSO) No.4/2020 is hereby confirmed. In view of confirmation of judgment of conviction passed by the Special Court, now we have to deal with the question of punishment or the sentence to be imposed on the accused as the Special Court has awarded death sentence. To hear on sentence, call on 11.04.2023. Sd/- JUDGE Sd/- JUDGE Sk/- - 53 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 SSDYJ & RDHJ1207.2023

ORDER

ON SENTENCE Heard both sides on the question of sentence so also, the learned amicus curiae. In the meantime, the reports from the learned Prl.District and Sessions Judge, Kalaburagi and Belagavi, Probation Officer, the Chief Superintendent of Hindalga Jail, Belagavi and Kalaburagi, report from the Doctor are received. The reports are called to know the antecedents of accused, his conduct in jail and his present health condition so also, his family background. Accordingly, the respective authorities have submitted their reports. We have scrupulously perused the same.

2. On behalf of the prosecution, the learned Public Prosecutor pressed for confirmation of the capital punishment so imposed by the trial Court on the ground that the crimes which are committed by the accused on a minor helpless girl are, to say the least, very brutal in nature and the accused does not deserve any sympathy. According to his submission, the sentence in this case should be deterrent to the others who would venture to commit such offence. According to him, in - 54 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 order to satiate his lust, has behaved in a very beastly manner and, therefore, the death sentence awarded by the trial Court should be confirmed by this Court. In

support of his contention, the learned Public Prosecutor has cited following decisions of the Hon'ble Supreme Court some of which being relevant, deserve our consideration.

1. Shiva Kumar @ Shiva @ Shivamurthy vs. State of Karnataka 2023 Live Law (SC) 252 2. 2017 SAR (Cr.) 96 3. The said decisions speak with regard to the consideration of death penalty and powers of the Constitutional Courts to exercise the power of imposing a modified or fixed- term sentence by directing that a life sentence, as contemplated by 'Secondly' in Sec.53 of the IPC shall be of a fixed period of more than 14 years, for e.g. of 20 years, 30 years and so on.

4. As against this submission, Sri Rajesh Doddamani, the learned counsel for accused contended that the accused is - 55 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 having his family i.e. his wife and children. He is a poor young person. He has no criminal antecedents. Therefore, he submits that a lenient view may be taken in imposing the sentence. In our view, the existence of the family of the accused is not a factor which is an extenuating circumstance for awarding the lesser punishment under the law. The Hon'ble Supreme Court of India in *Sevaka Perumal vs. State of Tamil Nadu*¹ have laid down the law in that respect. The learned counsel for the appellant also relied upon the following judgments of the Supreme Court in support of his submission and craves that a lenient view may be taken while imposing the sentence in view of the grounds so stated in the appeal memo as well as the other factors like family background of the accused/appellant, no criminal antecedents of accused, poverty as well as having wife and children. The following are the judgments cited by the learned counsel for the appellant/accused:

1. *Lochan Srinivas vs. The State of Chhattisgarh* (Crl.appeal No.499-500 of 2018)
2. *Sachin Kumar Singhraha vs. State of Madhya Pradesh* (Crl.Appeal 473-474 of 2019) reported in 2019 Cr.R470 (SC)) 1 (1994) SCC (Crl.) 176 - 56 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
3. *Viran Gyanlal Rajput Vs. the State of Maharashtra* (Criminal Appeal No.1558-

1559 of 2018) reported in 2019(1) SCC Cri.708.

4. Irappa Siddappa Murgannavar vs. State of Karnataka (Cri.Appeal No.1473-74 of 2017 disposed on 8.11.2021.

5. We have scrupulously perused the said judgments. The said judgments also lay down the principle with regard to the sentencing of accused persons depending upon the aggravating circumstances of the crime and the mitigating circumstances of the criminal. In all these judgments, the Hon'ble Supreme Court have commuted the death penalty into life imprisonment by relying upon the mitigating and aggravating circumstances so brought on record in those cases.

6. Sri Kadloor Sathyanarayanachar, learned amicus curiae appointed in this case also relied upon the following citations and assisted the Court very ably in coming to the conclusion with regard to imposition of sentence.

1. Ajay Pandit and anr.v. State of Maharashtra ((2012) 8 SCC43 - 57 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020

2. Udham and Ors. V. State of MP ((2019) 10 SCC300 3. Saibanna v. State of Karnataka ((2005) 4 SCC165 4. Manoj and Ors. V. State of MP ((2023) 2 SCC353 only head notes extending upto 32 pages. (by U.U.Lalit, S.Ravindra Bhat (Auth.), Bela M.Trivedi, JJJ) 5. Sundar @ Sundarrajan v. State by Inspector of Police (2023 Livelaw (SC)

217) 6. Sahebrao Arjun Hon V.Raosaheb S/o.Kashinath and Ors ((2022) AIR (Cri.)

920) 7. CBI vs. Sakru Mahagu Binjewar and ors. ((2019) 20 SCC102 8. Sachin Kumar Singhraha vs. State of M.P. (2019) 8 SCC3717. On scrupulous reading of the judgments stated supra, they speak with regard to the sentencing policy and exercise of judicial discretion which is always guided by various considerations such as seriousness of the crime - the circumstances under which the crime was committed - the antecedents of the accused. It is laid down that, the Court is required to go by the principle of the proportionality. It is - 58 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 further laid down that if undue sympathy is shown by reducing the sentence to the minimum, it may adversely affect the faith of the people in efficacy of law.

8. The principles laid down can very well be made applicable to the present facts of the case.

9. So far as the sentence is concerned, under Section 354 (3) of Cr.P.C, it is clear that in case of conviction, for offence punishable with death or alternately, with imprisonment for life, the life imprisonment is a rule while the capital punishment is an exception. That means, 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, 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. It is now settled law that where maximum punishment that could be awarded under a provision is, death penalty, the Courts are required to independently consider facts of each case and determine a - 59 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 sentence which is the most appropriate and proportional to the culpability of the accused.

10. The 'crime test', 'criminal test' and 'rarest of rare test' are certain tests evolved by the Hon'ble Supreme Court. The tests basically examine whether the Society abhors such crimes and whether such crimes shock the conscience of the Society and attract intense and extreme indignation of the community. Cases exhibiting premeditation and meticulous execution of the plan to murder by levelling a calculative attack on the victim to annihilate him/her have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, helpless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where, after ghastly murder displaying deprived mentality, the accused are shown no remorse, death penalty has been imposed by the Hon'ble Supreme Court in various judgments. Where it is established that, the accused is a hardened criminal and has committed murder in

a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be menace to the Society, the Hon'ble - 60 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 Supreme Court has not hesitated to confirm the death sentence.

11. Unfortunately, a woman, in our country, belongs to a class or group of Society who are in a disadvantaged position on account several social barriers and impediments and have, therefore, been a victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined, they are; mother, daughter, sister and wife and not mere play things to be exploited for obscene purposes. They must have the liberty, the freedom and of course independence to live, the roles assigned to them by nature so that the Society may flourish as they alone have the talent and capacity to shape the destiny and character of men anywhere and in every part of the world. Rape is thus not only a crime against the person of a woman (Victim), it is a crime against the entire Society. It destroys the entire psychology of a woman and pushes her into deep - 61 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 emotional crisis. It is by her only sheer Will Power that, she reintegrates herself in the Society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is therefore, the most hatred crime. It is a crime against basic human rights and is also violative of the victim's most cherished fundamental rights, namely, the Right to Life contained in Article 21.

12. In this case, a child aged 8 years is a victim in the hands of the accused. Under the various provisions of Law, the age of responsibility has been fixed at different levels. However, under Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the JJ Act'), the age of juvenility is 18 years or below.

13. The POCSO Act, 2012 is a gender-neutral legislation. It defines a 'child' as any individual below 18 years and provides protection to all children from sexual abuse. Definition of 'child sexual abuse' is comprehensive and encompasses the following:

1. Penetrative sexual assault.

2. Aggravated penetrative sexual assault 3. Sexual assault 4. Aggravated sexual assault - 62 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 5. Sexual harassment 6. Using child for pornography purpose 7. Trafficking of children for sexual purposes.

14. The above offences are treated as 'Aggravated', when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-- vis a child. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life and fine and now as per the amendment capital punishment.

15. The offence of rape occurs in Chapter-XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'sexual offence', which encompasses Sections 375, 376, 376A, 376B, 376C and 376D. 'Rape' is defined under Section 375 of IPC. Sections 375 and 376 have been substantially changed by Criminal Law Amendment Act, 1983 and several new sections were introduced by the new Act. They are; Sections 375, 376, 376A, 376B, 376C and 376D.

16. In this case, it is proved that accused has not only committed rape on minor victim child but also, to suppress the evidence of commission of rape, he has murdered her. The - 63 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 offence of rape is violation with violence of the private person of a woman - an - outrage by all means. By the very nature of the offence, it is an obnoxious act of the highest order. The physical scar may heal but, the mental scar will always

remain.

17. In view of all these factual features so narrated supra, have been proved the brutal act of the accused in the commission of the crime. In Bachan Singh's case², the Constitution Bench of the Hon'ble Supreme Court has laid down the categories of cases in which, the death penalty would be imposed and laid down the broad guidelines without attempting to formulate rigid standards as in that case, it would put fetters on the judicial discretion.

18. In the subsequent decision of the Supreme Court in the case of Machhi Singh vs. State of Punjab³, the Hon'ble Supreme Court indicated the type of cases which fall within the exceptional clause without introducing any type of cases which would fall within the exceptional clause without introducing any rigidity in order to avoid any attempt to fetter judicial discretion. The cases/the judgments cited by the learned public 2 (1980) 2 SCC684 3 1991 CrI.L.J439 - 64 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 prosecutor, no doubt concern the cases where the offence of rape and murder were committed on minor helpless girls. In this case, a child of 8 years was ravished and accused committed rape on her and murdered her to conceal the evidence of rape. Accused took her on the guise of providing 'Kurkure' and he pre-planned the said dastardly act.

19. As per the reports submitted by the various authorities stated supra, he is a young person, addicted to bad vices. Because of his conduct, his wife and children have left his company and they have started to reside at Bengaluru. It is reported that, during his stay with his wife and children he was addicted to bad vices and always was under the influence of alcohol and under the said influence, he committed the offence. The Probation Officer has opined that, if the accused is acquitted and then there is every chance of committing similar offences. As per the Police Report, accused was a tailor by profession at Sulepet and residing separately. He used to visit his mother's house at Yakapoor now and then.

20. So far as the report of the Chief Superintendent of Jails is concerned, so far, his conduct in the Jail is 'good'. He is - 65 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 having aged mother who is ailing and brothers who are also alcoholics. For the last two years, his second brother Shankar is bed-ridden and his wife Usha is doing work and maintaining her family. His sister Ragini is married and residing in her matrimonial home happily. The accused is a poor person. The information so collected by the PO is, whatever the accused earned from his tailoring profession, he used to spend for his bad vices. So far as his health condition is concerned, the Doctor has opined his health is generally good. He has no physical or mental illness as per the report of the Doctor dated 18.3.2023 issued by Belagavi Institute of Medical Sciences (BIMS). The only mitigating circumstance is that, he is having small children. But, evidently, his wife and children are not residing with him.

21. On over all reading of the reports from various authorities, what we feel is, there are certain mitigating factors if we can call them so which deter us from resorting to the extreme penalty of death against this accused. His poverty and having small children and committing the offence under the influence of alcohol may be the mitigating circumstance.-. 66 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
22. As law laid down by the Hon'ble Supreme Court of India (Bachchan's Singh's case) reiterated in Macchi Singh's case, the court has to consider, and balance the aggravating circumstances against extenuating circumstances before awarding the death penalty.

23. In a recent decision of Hon'ble Supreme Court of India in Rajaram Yadav vs. State of Bihar, the Hon'ble Supreme Court observed that the extreme penalty of death must be given only in the rarest of rare cases where the aggravating circumstances are such, the extreme penalty meets the ends of justice. This case is though based upon the circumstantial evidence but, the witnesses who have seen the company of deceased victim with accused have specifically spoken before the Court about seeing both victim and accused together. In a shortest length of time, the victim was found dead and thereafter, it was noticed that she was raped and murdered.

24. In view of facts so brought on record in this case and also the mitigating circumstances stated above and also in view the judgments of the Hon'ble Supreme Court of India cited by - 67 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 the learned Public Prosecutor, learned amicus curiae as well as learned counsel for the appellant, a lenient view is to be taken while imposing the sentence. In this case, the presence of the accused on the day of incident in Yakapoor village is proved. We have relied upon the testimony of various witnesses so also considered the mitigating circumstances submitted by the learned counsel for the parties.

25. The Appellant was convicted by order of this Court dated 06.04.2023 after which matter was adjourned, reports obtained as referred to supra and after affording sufficient opportunity of hearing, an order of sentence is passed by this order and ensuring that the grievance that the trial Court had passed order of conviction and sentence on the same date has been addressed.

26. 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 both for the offence of rape under Sec.366(a), 376(a)(b), 302, 201 of IPC and under Secs.4,6,8 of the POCSO Act, 2012. While confirming the said sentence of conviction, we propose to commute the 'death - 68 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020 sentence' to 'life imprisonment' for a period of 30 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.

27. For the foregoing reasons, Reference Case No.200001 /2020 is liable to be dismissed and Criminal Appeal No.200069/2020 deserves to be allowed in-part. Resultantly, we pass the following:

ORDER

(i) The Reference Case No.200001/2020 referred by the State for confirmation of death sentence is dismissed. (ii) Crl.Appeal No.200069/2020 filed by the accused is allowed in-part. Accused is sentenced to undergo life imprisonment for a period of 30 years and also liable to pay fine of Rs.10,000/-. In default of payment of fine, he shall further undergo RI for one year.-. 69 - NC:

2023. KHC-K:3808 CRL.A No.200069 of 2020 C/W CRL.RC.NO.200001 of 2020
(iii) There shall not be any remission of the sentence so imposed against the accused. (iv) The period already undergone by the accused shall be given set off under Section 428 of Cr.PC. (v) The order of the trial Court regarding disposal of MO Nos.1 to 5 is hereby maintained. (vi) Communicate the copy of this order to the trial Court for issuing modified conviction warrant and also to the Chief Superintendent of Jail, Hindalga Central Jail, Belagavi and Kalaburagi, forthwith. (vii) Registry is directed to disburse the admissible fees to the Amicus Curiae. Supply a copy of the judgment to the accused free-of-cost. Sd/- JUDGE Sd/- JUDGE Sk/-

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