

**Omkarmurthy @ Murthy Vs. State Of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/1233909](https://sooperkanoon.com/1233909)

**Court :** Karnataka

**Decided On :** Mar-31-2022

**Judge :** B.Veerappa and S Rachaiah

**Appeal No. :** CRL.A 184/2020

**Appellant :** Omkarmurthy @ Murthy

**Respondent :** State Of Karnataka

**Judgement :**

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 31<sup>ST</sup> DAY OF MARCH, 2022 PRESENT THE HON'BLE Mr. JUSTICE B. VEERAPPA AND THE HONBLE Mr. JUSTICE S. RACHAIAH CRIMINAL APPEAL No.184/2020 BETWEEN: OMKARMURTHY @ MURTHY, S/O NAGARAJAPPA, AGED ABOUT 32 YEARS, R/AT LINGADAHALLI, MALLIPATNA HOBLI, ARAKALGUDU TALUK, HASSAN DISTRICT - 573 102. ...APPELLANT (BY SRI HASHMATH PASHA, SENIOR COUNSEL FOR SRI NASIR ALI, ADVOCATE) AND: STATE OF KARNATAKA, BY TUMAKURU RURAL POLICE, REPRESENTED BY SPP, HIGH COURT OF KARNATAKA, BENGALURU - 560 001. ...RESPONDENT (BY SRI K. NAGESHWARAPPA, HCGP) 2 THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED

JUDGMENT

OF CONVICTION DATED 08.10.2010 AND

ORDER

OF SENTENCE DATED 12.10.2010 PASSED BY THE I ADDITIONAL SESSIONS JUDGE, TUMAKURU IN S.C.NO.52/2008 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376, 302 AND 201 OF IPC. THIS CRIMINAL APPEAL COMING ON FOR HEARING THIS DAY, B.VEERAPPA J., DELIVERED THE FOLLOWING:

## **JUDGMENT**

The appellant/accused filed the present criminal appeal against the judgment of conviction and order of sentence dated 8/12-10-2010 made in S.C. No.52/2008 on the file of the I Additional Sessions Judge, Tumkur, convicting and sentencing him for the offences punishable under Sections 376, 302 and 201 of IPC. By the impugned judgment, the trial Court sentenced the appellant/accused to undergo imprisonment for life and to pay fine of Rs.30,000/- for the offence punishable under Section 302 of IPC and sentenced to undergo Simple Imprisonment for seven years and to pay fine of Rs.20,000/- for the offence punishable under Section 376 of IPC and to undergo Simple Imprisonment for two years and to pay fine of Rs.10,000/- for the offence punishable under Section 201 of IPC, with default sentences. 3

2. It is the case of the prosecution that the accused is the resident of Lingadahalli, Mallipatna, Arakalagud taluk, Hassan district and the deceased Sahana, aged about 8 years is the resident of Oorukere village in Tumkur district and the mother of the accused and mother of the deceased are sisters and though they are residing in different villages in different districts, the accused used to come to the house of the deceased. About 20 days prior to the date of the alleged incident, the accused has come to the house of the deceased and started to reside in the house of the deceased itself. When things stood thus, on 18.11.2007 in the morning, the mother of the deceased had left the village to go to attend the marriage at Gubbi and similarly, the father of the deceased had left the village to go to temple at Mayasandra village. At the time of parents leaving the house, the deceased, her elder sister - Keerthana, aged about 12 years and accused were

only present in the house of the deceased at Oorukere village and accordingly, mother of the deceased had asked the accused to take care of her daughters till she return back to the house. After the parents of the deceased Sahana left the house, at about 11.00 a.m. on the same day, the accused had taken Sahana on the bicycle 4 saying that he would purchase chocolate for her and accordingly, he went towards the shop by taking Sahana on the bicycle and he purchased chocolate for Sahana in the shop of PW.24 - Rathnaiah Shetty and thereafter he alongwith Sahana went towards garden land of father of the deceased situated nearby the village and in the garden land, he committed rape on Sahana forcibly. Thereafter to screen off from the sexual assault, the accused committed the murder of the deceased by suffocating her neck. Thereafter, in order to destroy the evidence of murder including rape, he buried the dead body in the said garden land of father of the deceased itself by digging a pit and returned back to the house alone. When he returned back to the house, Hemalatha @ Keerthi, elder sister of Sahana asked about whereabouts of Sahana and accused told that she is playing a game in front of house of one Manjayya. Thereafter, the father of the deceased has returned back to the house at 2.00 p.m. and when he asked about the whereabouts of Sahana, the accused told him that Sahana is playing in front of house of one Manjayya. Accordingly, father of the deceased Sahana went there, but Sahana was not at all present in front of house of Manjayya and he started to search about Sahana. At that 5 time, the accused also went by taking bicycle of neighbours of Oorukere village to search about Sahana and ultimately, he left the Oorukere village on the same day itself and reached the house of his maternal grand-mother residing elsewhere. On the same day i.e., 18.11.2007, father of the deceased filed a missing complaint and accordingly, the case has been registered in Tumkur Rural Police Station in Crime No.331/2007 and investigation was taken up by the CPI, Tumkur Rural circle and ultimately on 22.11.2007, father of the deceased filed one more missing complaint stating that the accused also found missing from 18.11.2007. However, on the same day i.e., on 22.11.2007, the CPI, Tumkur Rural Police had come to the garden land of Nagaraju along with the accused and the accused gave voluntary statement before the CPI and admitted the guilt and also admitted that he buried the dead body in the garden land of Nagaraju by committing rape on her. Thereafter in presence of the Tahasildar and

Panchas, the dead body was removed from the pit. The CPI after completion of investigation, has filed the charge sheet against the accused for the offences punishable under Sections 376, 302 and 201 of IPC. 6

3. The jurisdictional Magistrate exercising the powers under Section 207 of the Code of Criminal Procedure, committed the case to the Court of Sessions. The learned Sessions Judge secured the presence of the accused and framed the charge against the accused for the offences punishable under the provisions of Sections 376, 302 and 201 of IPC and read over and explained to the accused in the language known to him, who pleaded not guilty and claimed to be tried.

4. After completion of evidence of the prosecution witnesses, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. The accused denied all the incriminating evidence adduced against him, but not adduced any defence evidence.

5. Based on the aforesaid pleadings, the learned Sessions Judge framed following two points for consideration: i) Whether the accused has committed murder of the deceased Sahana by committing forcible rape on her ?. 7 ii) If yes, whether accused is responsible for the destroy of the evidence of the murder ?.

6. The learned Sessions Judge considering both the oral and documentary evidence on record, has answered both the points in the affirmative holding that the accused has committed rape on the deceased and subsequently murdered her by suffocating her neck and thereafter in order to destroy the evidence, has buried the dead body in the garden land of father of deceased. Accordingly, the learned Sessions by the impugned judgment of conviction and order of sentence, has convicted and sentenced the accused for the offences punishable under Sections 376, 302 and 201 of IPC. Hence, this appeal is filed by the appellant/accused.

7. We have heard the learned Counsel for the parties.

8. Sri Hashmath Pasha, learned senior counsel for the appellant/accused mainly contended that the impugned judgment of conviction and order of sentence passed by the trial Court, convicting and sentencing the accused for the offences

punishable under Sections 376, 302 and 201 of IPC, is without any basis and 8 cannot be sustained. He would further contend that the conviction of the accused for the offence under Section 376 of IPC for the rape on the deceased, is without any basis and cannot be sustained in view of the provisions of Section 53-A(2) of the Code of Criminal Procedure. The said section clearly depicts that a person who is accused of rape should be examined by a medical practitioner so as to afford the evidence as to the commission of such sexual assault by the alleged accused at the earliest point of time. In the instant case, the prosecution has failed to get examine the accused by the medical practitioner at the earliest point of time. In the absence of examination by the medical practitioner, the impugned judgment of conviction in so far as convicting the accused for the offence punishable under Section 376 of IPC, is without any basis.

9. The learned senior counsel for the appellant/accused would further contend that in the statement recorded under the provisions of Section 313 of the Code of Criminal Procedure, no question was put to the accused about the commission of rape, thereby fair opportunity was not given to defend the case. He would further contend that the doctor/PW.23 who conducted the 9 post-mortem examination on the dead body of the deceased, has opined that the death was due to asphyxia and the possibility of rape cannot be ruled out. Ex.P13 - FSL report clearly depicts that presence of seminal stains were not detected in item Nos.3.1, 3.2, 3.3, 4.1, 4.2, 4.3 and 7 {one frock, one nickker, one langa, one underwear, one T-shirt, Pant and vaginal swabs (in plastic container)}. Absolutely, there is no material to convict the accused for the offence under Section 376 of IPC. He would further contend that the Post-mortem report of the victim also does not speak about the alleged committing of sexual assault by the accused. He would further contend that the alleged recovery of two silver ankle chains from the inner pocket of the underwear of the accused, after lapse of five days from the alleged date of incident appears to be doubtful. Therefore, the conviction of the accused for the offence under Section 376 of IPC cannot be sustained.

10. The learned senior counsel for the appellant/accused would further contend that the impugned judgment of conviction passed by the trial Court, in so far as convicting the accused for the offences under Sections 302 and 201 of IPC, is

without any basis 10 and cannot be sustained. In the absence of any material, the finding of the trial Court that accused committed murder of the deceased purely on the basis of recovery at the instance of the accused, cannot be sustained. The trial Court has not at all put all the incriminating circumstances to the accused while examining him under the provisions of Section 313 of the Code of Criminal procedure, thereby the sentence imposed is excessive and disproportionate to the gravity of the charge and cannot be sustained. Therefore, he sought to allow the criminal appeal.

11. In support of his contentions with regard to rape, learned counsel relied upon the judgment of the Honble Supreme Court in the case of State of H.P -vs- JAI LAL AND OTHERS reported in (1999)7 SCC280(paragraph-18), wherein it is held that an expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Court with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Court to form its independent judgment by the application of the said criteria to the facts proved by the evidence of the case. The credibility of such a witness 11 depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.

12. Per contra, Sri K. Nageshwarappa, learned Addl. SPP for the State while justifying the impugned judgment of conviction and order of sentence passed by the trial Court, has contended that when the parents left the house on the unfortunate day i.e., on 18.11.2007 to attend the function, only the deceased, accused and PW.14 were present in the house. Admittedly, the same has not been denied by the accused either in the cross-examination of the prosecution witnesses or in the statement recorded under the provisions of Section 313 of the Code of Criminal Procedure. Admittedly, PW.6 and PW.14 have last seen the deceased with the accused on 18.11.2007. He further contended that PW.24 is the shop owner, in whose shop, the accused has purchased chocolate on the same day. PWs.3,7,15, 16, 17, 18, 19, 20 and 24 in the categorical terms have stated that they have last seen the deceased with the accused together and nothing is elicited in their cross-examination to disbelieve their statements. He would further contend that PWs.25 and 26 apprehended the accused. PW.30 is 12 the

Investigating Officer, who recorded the voluntary statement of the accused and based on the voluntary statement, MOs.6 and 7 (guddali and pikasi) were recovered under Ex.P4 - mahazar. PWs.2 and 5, who are panch witnesses for Ex.P4, have supported the case of the prosecution. He further contended that the Tahasildar and the Investigating Officer went to the garden land of father of the deceased, where the accused shown the place where he killed Sahana and buried the dead body and thereafter the dead body of the deceased was got exhumed under Ex.P2/mahazar and Ex.P3/inquest panchanama. The mahazar witnesses - PWs.1 and 4 supported the case of the prosecution. The entire material on record clearly depicts that the accused involved in the commission of rape on the deceased and has committed murder and in order to destroy the evidence, he buried the dead body. The trial Court considering the oral and documentary evidence on record, has rightly convicted the appellant/accused for the offences punishable under Sections 376, 302 and 201 of IPC. Therefore, he sought to dismiss the criminal appeal. 13

13. In view of the rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration in the present criminal appeal are:

1. Whether the trial Court is justified in convicting and sentencing the appellant/accused for the offence punishable under the provisions of Section 376 of IPC, in the facts and circumstances of the case ?.
2. Whether the trial Court is justified in convicting and sentencing the appellant/accused for the offences punishable under the provisions of Sections 302 and 201 of IPC ?.

14. We have given our thoughtful consideration to the arguments addressed by the learned counsel for the parties and perused the entire material including the original records carefully.

15. This Court being the Appellate Court in order to re- appreciate the entire material on record, it is relevant to consider the evidence of the prosecution witnesses and the material documents relied upon:

14. (i) P.W.1/Nataraju is junior uncle of the deceased. He deposed that the accused had come to house of his elder brother/Nagaraju about 15 days prior to the incident. On 18-11-2007, he learnt missing of Sahana. His brother and himself have searched Sahana, but not found. Accused also went to search Sahana, but not returned. Later on 22-11-2007, the accused was in Police Station and from him, one pair of Anklet was seized by Police under Mahazar Exhibit P-1. MO-8 is the Silver Anklet. Accused confessed that he has killed Sahana and took all of them to land and shown the place where dead body was buried. Thereafter, dead body was exhumed and the Police drew the spot mahazar - Ex.P-2 and the inquest panchanama - Ex.P3. The articles - MOs-1 to 5 (sample mud and clothes of the deceased) were seized by the Police. He supported the case of the prosecution. (ii) P.W. 2/ S.Rajanna has deposed that he is Panch for recovery of Guddali and Pickaxe (Mos.6 and

7) under Mahazar - Ex.P4. Accused took Police to the land of Nagaraj, where he shown the place of burial of dead body of Sahana. Police 15 exhumed the dead body. Thereafter, accused produced MOs.6 and 7 from pump house, which were seized under Ex.P4/mahazar. He supported the case of the prosecution. (ii) P.W. 3 - Praveen Kumar deposed that father of the deceased Nagaraj is his uncle. On 18-11-2017 at 10-30 a.m., he saw accused taking Sahana on Cycle towards garden. His mother asked accused to leave Sahana with her, but accused took her to garden land. At 11 AM, he went towards land and found that accused was carrying pickaxe. He spoke to accused. He told that he has some work in garden. He further deposed that the Police and Tahsildar got exhumed the dead body. He has signed Exhibit P-2 - Spot Mahazar. Police seized Mud (MO-1 and MO-2), MO-3 to 5 (Cloths of Sahana) and MO-6 and MO-7 (Gudali and Pickaxe). He supported the case of the prosecution. (iii) P.W. 4 - Rajanna.K, who is the Panch for Exhibit P-1- Mahazar has deposed that on 22-11-2007 while he was going in front of Tumkuru Rural Police Station, Police called him to Police Station and in police station accused was there 16 and from the accused, Police seized MO-8 Pair of Silver Anklet. Thereafter, the accused took Police to point out where the dead body was buried. Tahsildar also had come to land of Nagaraj. Police got exhumed the dead body and prepared Exhibit P-3 Inquest Mahazar. He has signed Exhibit P-3 Inquest. Police took sample Mud MO-1 and MO-2 from the

spot. He supported the case of the prosecution. (iv) P.W. 5 - Chandranna, who is Panch for Exhibit P- 4 has deposed that Accused produced MO-6 and MO-7 from Pump House of Nagaraj and they were seized under Mahazar Exhibit P-4. He supported the case of the prosecution. (v) P.W. 6 - Pavithramma, who is mother of deceased Sahana has deposed that her husband is Nagaraj and they had two children by name Keerthana and Sahana. Sahana was aged about 8 years. About twenty days prior to death of Sahana, accused who is her sister's son had come to her house and resided in their house. On 18-11-2007 at 8-30 AM she had been to attend marriage in Gubbi. Her husband Nagaraj went to Temple at Mayasandra. Her Children - 17 Keerthana & Sahana and accused alone were in house and she asked accused to take care of her children. She returned at 4.00 PM to the house and in the house only Keerthana was there and when she enquired about Sahana, she told that accused took Sahana to provide Chocolate, but not returned. They all searched for her. Accused asked for a cycle to search Sahana. He took cycle and went out, but not returned. On 21- 11-2007 a missing Complaint was lodged in Tumkuru Rural Police Station that both accused and Sahana are missing. Exhibit P-5 is the said Complaint. Later, on 22-11-2007 accused was brought to Police Station. Accused confessed killing of Sahana. Accused took the Police to the place where dead body was buried. Police got exhumed the dead body and it was decomposed. He identified MOs.3 to 5, the garments of Sahana, MO-6 Gudali, MO-7 Pickaxe and MO -8 Pair of Silver Anklet. He supported the case of the prosecution. (vi) P.W. 7 - Shivaram deposed that he knew Nagaraj. His house is about 100 ft. to his house. He had seen 18 accused in the house of Nagaraj since about a month. On 18- 11-2007 at noon accused took Sahana on Cycle to get Chocolate, but thereafter not seen. After three days accused, he came to Police Station. Accused shown the place of dead body and Police got exhumed the dead body of Sahana. He supported the case of the prosecution. (vii) P.W. 8 - Venkatesh, who is resident of Oorukere village, has deposed that he knew the deceased Sahana and his parents. He knew accused since 15-20 days prior to 18-11-2007. On 18-11-2007, the family members of the deceased were searching for Sahana and he had also searched for deceased. After 3-4 days later, accused was brought to Police Station. Accused told Police that he has killed Sahana and buried the dead body. Police and Tahsildar had come to land of Nagaraj and got

exhumed the dead body. He identified MO-3 to 5 / Cloths of deceased. He supported the case of the prosecution. 19 (viii) P.W. 9 - Nagesha deposed that Nagaraj (father of the deceased) is his uncle and Nagaraj had two children - Keerthana and Sahana. About 20 days back, accused was in the house of Sahana. On 18-11-2007 Sahana was missing and all were searching for Sahana. Accused also went in search of Sahana, but not returned. On 22-11-2007 Police brought accused to Police Station and thereafter they brought him to garden Land. Police and Tahsildar were present. Accused confessed before Police. Police got exhumed the dead body of Sahana. He identified Mos-3 to 5/garments of Sahana. He supported the case of the prosecution. (ix) P.W. 10 - Dakshinamurthy, who is Panch for Exhibit P-2 has deposed that he knew Nagaraj and he is from same Village. On 22-11-2007, he was in his land. Police and Tahsildar came to garden of Nagaraj. Accused was also brought by Police. Accused shown the place of murder of Sahana and where he has buried. Dead body was exhumed. Police took MO.1 - soil taken nearby the pit and MO.2 - soil 20 taken from the pit and seized under Mahazar- Exhibit P-2. He supported the case of the prosecution. (x) P.W. 11- Subramanya deposed that he knows Nagaraj and his two children - Keerthana & Sahana and also accused. On 18-11-2007, Sahana was missing. On 22-11-2007 Police brought accused to the garden land of father of the deceased and had shown where the dead body was buried. Police exhumed the dead body and drawn Panchanama. Police collected MO-1 and MO-2- Sample Mud and MO-3 to MO-5 the Cloths of Sahana. He identified the dead body as that of Sahana. He supported the case of the prosecution. (xi) P.W. 12 - Revanna Rudrappa, who is Pancha for Exhibit P-6 - Mahazar has deposed that he knows Nagaraj and his children Keerthana and Sahana and also accused. On 23-11-2007 he learnt about the murder and burial of dead body of Sahana in the garden. Accused took the police to the garden and shown the place of burial and the Police got 21 exhumed the dead body. Police prepared Mahazar Exhibit P-6. He supported the case of the prosecution. (xii) P.W. 13 - Thimmaiah, who is Panch for Ex.P6 - Mahazar has deposed that he knows Nagaraj and his daughters Keerthana and Sahana. Sahana died about 12 years prior to his examination. Along with Police, accused had come and accused shown the place of burial of dead body and it was exhumed. He is a witness to Exhibit P-6 Mahazar. He supported the case of the

prosecution. (xiii) P.W. 14 - Hemalatha @ Keerthi, who is elder sister of Sahana deposed that herself and Sahana are sisters. Sahana was studying in 3rd Standard. Accused is their relative and he was in her house. On 18-11-2007 at 11 AM accused took Sahana to get her Chocolate, but he alone came back and Sahana did not come back. When asked, he told she is playing near Manjaya's house and has not come back. Her father came at 2 PM from temple and her mother came at 7 PM after attending marriage. Her parents searched for Sahana, but not found. Accused took Bicycle saying that he 22 would search Sahana, but he did not come back. Later learnt that accused killed Sahana and buried her dead body in the garden. Police got exhumed dead body of Sahana. MO-3 to MO-5 are Cloths of Sahana. He supported the case of the prosecution. (xv). P.W. 15 - Jayamma deposed that she knows Nagaraj of her village. He had two daughters by name Keerthana and Sahana. She also knows accused and he was in the house of Nagaraj. She saw accused taking Pickaxe and Guddali, which were in pump house. After hour later he brought back them and kept in pump house and went away. At that time, she was working in her land which is adjacent to the land of father of the deceased. MOs-6 and 7 are Pickaxe and Guddali. Evening she came to know that accused has buried the dead body of Sahana. He supported the case of the prosecution. (xvi) P.W. 16 - Parvathamma deposed that she knows Nagaraj and his daughters Keerthana and Sahana. Her land and land of Nagaraj are adjacent. She saw at about 10-11 23 AM accused taking Sahana on bicycle towards Nagaraj land, and when she questioned as to why taking her, for which he told that to provide tender coconut, he was taking her. At 12 noon, she saw accused alone going on bicycle. At 2 PM, she told this fact to Sahana's father. Later she learnt that accused has killed Sahana and buried the dead body in the land. She supported the case of the prosecution. (xvii) P.W. 17 - Nandan has deposed that he knew Nagaraj and his two daughters Keerthana and Sahana. On 18-11-2007 (Sunday), he had gone to graze cows. In the land of Nagaraj, he saw accused digging a pit by removing mud and later accused gone towards pump house with Pickaxe and Gudli. Accused asked time and he told it was 12 noon. He supported the case of the prsoecdution. (xviii) P.W. 18 - Prathap deposed that he knows Nagraj and his daughters and Sahana is no more. On 18-11-2007 Nagaraj and others were searching for Sahana, but she was not found. At 6 PM Keerthi

came and asked for Cycle to search Sahana. Accused took Bicycle to search Sahana, but 24 not returned. After 4 days, Police brought the accused and then, he learnt that accused has raped and murdered Sahana and buried the dead body and from the place shown by accused, dead body was exhumed. He supported the case of the prosecution. (xix) P.W. 19 - Mallikarjuna deposed that on 18-11-2007 at 11 AM he was going with Buffaloes and then he saw accused taking Sahana on Bicycle. After one hour, accused alone was going. He talked to accused and then, accused told him that he has left Sahana near the house of Manjaya. On 22-11-2007 Police came with accused and from the place shown by him in the garden land, the dead body was exhumed. He supported the case of the prosecution. (xx) P.W. 20 - Nataraju deposed that he knew Nagaraj and his daughters Keerthana and Sahana and also accused. On 18-11-2007 while he was in shop, he saw accused taking Sahana on Bicycle. At 12 or 12:30 PM accused alone returned on Bicycle. In the evening, father of the deceased was searching for Sahana. On 22-11-2007 police brought 25 accused and accused shown the place where he had killed Sahana and buried. Dead body was exhumed and he identified the dead body. He supported the case of the prosecution. (xxi) P.W. 21- Siddappa, who is the Junior Engineer has deposed that as per the requisition of Tumkuru rural police on 21-08-2008 he prepared Sketch of spot as per Ex.P7 as shown by PC-416. He supported the case of the prosecution. (xxi) P.W. 22 - Yadunandankumar has deposed that in the year 2002, father and mother of the accused were working in his company. In the year 2007, Nagaraj and Nagesh had not come in search of accused. He was treated as hostile to the case of the prosecution. (xxii) P.W. 23 - Dr. Y.N. Nagarajaiah has deposed that as per the requisition of Tumkuru Executive Magistrate on 22-11-2007, he conducted post mortem examination over dead body of Sahana on 23-11-2007. Ex.P-9 is the PM report and Ex.P-10 is the final opinion given after receipt of FSL26report. He opined that cause of death was due to Asphyxia and possibility of rape cannot be ruled out. He supported the case of the prosecution. (xxiii) PW.24 - Rathnaiah Shetty, who is the owner of provision store has deposed that about one year and ten months back accused had come to his shop at 11 AM with the girl Sahana and purchased Chocolate of Rs.2/- and took child on Cycle and went away. In the evening, he learnt that father Nagaraj was searching for child. Later, he learnt that

accused has killed child and buried the dead body. He supported the case of the prosecution. (xxiv) P.W. 25 - T.Prasannappa, who is H.C.No.274 has deposed that on 23-11-2007, he alongwith PSI, PC-416, produced the accused before court. He supported the case of the prosecution. (xxv) P.W. 26 - Ramaiah, who is H.C. 136 has deposed that on 21-11-2007, CPI has deputed him along with PC416 to trace girl Sahana and accused. On 27 information that accused is in Lingadahalli, they went there and asked and learnt that he has gone to his grand mother's house at Bemathi Village and accordingly, they went there and brought accused and produced before the CPI on 22.11.2007 as per the report - Ex.P14. He supported the case of the prosecution. (xxvi) P.W. 27 - Shashikala , who is the Woman Police Constable No.32 deposed that she wrote mahazar Ex.P-1 in police station as per the say of CPI and then accused produced pair of Anklet MO-8 and the same was seized under Ex.P-1 Mahazar. He supported the case of the prosecution. (xxvii) P.W. 28 - Umashankar, who is the PSI has deposed that on 22-11-2007, accused told that he has kept Pickaxe and Gudli (MOs.6 and

7) which were used to bury the dead body of Sahana, in the pump house and they were seized under mahazar Ex.P-4. He supported the case of the prosecution. 28 (xxviii) P.W. 29 - H.C.Nagaraj, who is the Police Inspector has deposed that on 10-12-2007 he took up further investigation of the case from PW-30 and drawn Sketch Ex.P-7 and on 31 01-2008 filed the charge sheet against accused. Later he obtained FSL reports - Ex.P-11, P-12 and P-13. Ex.P-10, the final opinion of doctor was produced before court. He supported the case of the prosecution. (xxix) P.W. 30 - H.Subbanna, who is the Investigating Officer has deposed that on 22-11-2007 he took up investigation from PSI PW-32 and on the same day at 2 PM, HC-136 produced accused before him and he interrogated him and recorded his voluntary statement as per Ex.P-15 and seized MO-8 pair of anklet found in person of accused under mahazar Ex.P-1 and continued investigation. In his presence, dead body of the deceased was removed from the place shown by the accused. He supported the case of the prosecution. (xxx) P.W. 31 - Y.T.Basavaraju, who is the relative of Nagaraj has deposed that he had come to Urukere village on 29 22-11-2007. He was present at the time of exhumation of dead body and drawing of Ex.P-2 mahazar and saw seizure of MO-1 to MO-5 and he is also panch for Ex.P-3 Inquest. He supported the case of the prosecution.

(xxxi) P.W. 32- C.H. Ramakrishnaiah, who is the PSI has deposed that on 21-11-2007 at 12 noon, Nagaraj father of missing girl Sahana, has presented a written complaint, upon which he registered FIR in crime No.331/2007. On 22- 11-2007 at 12 noon, the said Nagaraj gave one more complaint about causing death of Sahana by accused and therefore he added offences under section 302 and 201 of IPC and submitted FIR as per Ex.P-26. Ex.P-5 is the Second Complaint. Further investigation was taken over by CPI. Ex.P- 27 is the first missing complaint given by Nagaraj. He supported the case of the prosecution. (xxxii) P.W. 33 - Mahammed Nayeem, who is PC No.732 has deposed that on 5-12-2007 he carried the dead body of Sahana to Govt.Hospital Tumkuru for post mortem examination. After post-mortem examination, doctor gave 30 MO-3 to 5 clothes and they were produced before Investigating Officer and they were subjected to PF Ex.P28. Later doctor gave sample semen and produced before the Investigating Officer and subjected to PF Ex.P-29 and also doctor gave sample mud - MO-1 and 2 and they were subjected to PF Ex.P-30. He supported the case of the prosecution. (xxxiii) P.W. 34 - G.Bhaskar, who is the PC No.416 has deposed that on 21-11-2007 CPI deputed him and HC- 136 to trace accused and accordingly on 22-11-2007, he traced the accused at Beemathi village and apprehended him and produced before the Investigating Officer on the same day. On 21-01-2008, he has shown place of occurrence to Junior Engineer to draw Sketch. He supported the case of the prosecution. (xxxiv) P.W. 35 - Vishnuvardhana is the Investigating Officer. He deposed that on 20-12-2007 he took up further investigation from CPI Nagaraj PW-29 and filed remand application time to time and got extended 31 judicial custody of accused. He sent the seized articles for FSL. He has collected CDs (Ex.P24) and 8 photos (Ex.P-16 to 24). Further investigation was given to PW-29. He supported the case of the prosecution. (xxxv) P.W. 36 - V.Patharaju is the Thasildar and Taluk Executive Magistrate. He deposed that as per the order of Sub-Divisional Magistrate under section 176 (3) he got exhumed the dead body of Sahana and conducted inquest and inquest report is at Ex.P-3 and gave requisition to conduct Post-mortem examination over dead body. He supported the case of the prosecution. (xxxvi) P.W.37-Murali.S.N., who is the Photographer of Police Department has deposed that on 22- 11-2007 as per the requisition of police, he has taken photographs of

dead body and video of exhumation proceedings of dead body of Sahana. Photos are at Ex.P-16 to Ex.P-23 and video cassette is at Ex.P24. He supported the case of the prosecution. 32 Based on the aforesaid oral and documentary evidence, the learned Sessions Judge proceeded to convict and sentence the appellant/accused for the offences punishable under the provisions of Sections 302, 376 and 201 of IPC.

16. The gist of the prosecution case is that mother of the accused and mother of the deceased are sisters and the accused used to visit the house of the deceased quite often. About 20 days prior to the date of the incident, accused came to the house of the deceased. On an unfortunate day i.e. on 18.11.2007 in the morning, mother of the deceased left the house to go to attend the marriage at Gubbi and father of the deceased had left the house to go to temple at Mayasandra village. At the time of leaving the home, the mother of the deceased instructed the accused to look after her daughters viz., Sahana, aged 8 years and Keerthana, aged about 12 years. It is further alleged that thereafter at about 11.00 a.m. on the same day, the accused took Sahana on the bicycle and purchased the chocolate for Sahana in the shop of PW.24 and thereafter, they went to the garden land belonging to father of Sahana and accused committed rape on Sahana forcibly 33 and thereafter murdered her by suffocating her neck for the reason that she should not disclose the matter of rape to anybody. It is further alleged that in order to destroy the evidence of murder and rape, he buried the dead body in the said garden land by digging a pit.

17. Admittedly deceased was a child aged about 8 years and the incident occurred on 18.11.2007 i.e., prior to the enactment of POCSO Act, which came into force w.e.f 19.06.2012. As per the provisions of Section 376 of IPC as it stood as on the date of the incident, whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and

special reasons to be mentioned in 34 the judgment, impose a sentence of imprisonment for a term of less than seven years.

18. In order to prove the case of the prosecution with regard to rape, the doctor who examined the victim - deceased has to analyze the medical evidence and scientific evidence and come to conclusion whether there are any signs of rape on the victim and whether the accused was capable of doing the same. A careful perusal of the entire evidence of the prosecution witnesses, it clearly depicts that except the last seen theory of the deceased with the accused together, there are no eye witnesses to the scene of occurrence with regard to the rape by the accused on the deceased. The provisions of Section 53-A(2) of the Code of Criminal Procedure clearly depicts that the registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:- (i) the name and address of the accused and of the person by whom he was brought; (ii) the age of the accused; 35 (iii) marks of injury, if any, on the person of the accused; (iv) the description of material taken from the person of the accused for DNA profiling; and (v) other material particulars in reasonable detail. The provisions of Section 53-A(3) of the Code of Criminal Procedure depicts that the report shall state precisely the reasons for each conclusion arrived at.

19. Admittedly in the present case, the accused has not been examined by the Doctor - Medical Practitioner as contemplated under the provisions of Section 53-A(2) of the Code of Criminal Procedure. It is also not in dispute that while recording the statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure, it is the duty of the prosecution to put all incriminating circumstances to the accused to provide an opportunity to defend him. In the present case, questions were not put to the accused in the proper perspective with regard to rape on the minor girl while recording his statement under the provisions of Section 313 of the Code of Criminal Procedure. 36

20. PW23 - Dr. Y.N. Nagarajaiah, Senior Specialist, District Hospital, Tumkur, has deposed that on receipt of requisition from the Circle Inspector and Taluka Magistrate with a request to exhume the dead body of the deceased and to

conduct post- mortem examination and to give opinion, he along with his colleague Dr. Nagapushpa went to the place of burial situated at Oorukere village and found the body was buried in the southern edge of the land. It was body of a small female child, aged about 8 years. It was in the prone position. Left limbs were below and right limbs were higher and there was foul smelling and the body was decomposed. They collected the soil in the bottle. The exhumation was conducted between 6 p.m. and 7 p.m. As they could not conduct post-mortem examination on the same day, they shifted the body to District Hospital, Tumkur Mortuary and conducted the post-mortem examination on the next day (23.11.2007) between 1.15 p.m. and 3.15 pm. He further deposed that initially, opinion as to cause of death was kept reserved for want of chemical examiners report from FSL. The doctor further deposed that FSL report received on 30.7.2008. As per the FSL report, presence of seminal stains were not detected in 37 item Nos.3.1, 3.2, 3.3, 4.1, 4.2, 4.3 and 7 and contents of item No.5 were decomposed. After analyzing the aforesaid FSL reports, they were of the considered opinion that the death is due to asphyxia and possibility of rape cannot be ruled out.

21. Admittedly, the colleague of the PW23 i.e. Nagapurshpa was not examined. In the Post Mortem report - Ex.P9, the opinion as to cause of death was kept reserved for want of chemical examiners report from FSL. Ex.P10 is the opinion of the doctor (PW23), wherein the doctor after analyzing the FSL reports, has opined that the death was due to asphyxia and the possibility of rape cannot be ruled out. Ex.P13 is the FSL report and the Scientific Officer after examination of the articles sent for FSL examination, has opined that presence of seminal stains not detected in item Nos.3.1, 3.2, 3.3, 4.1, 4.2, 4.3 and item No.7 (frock, nickker, langa, underwear, T.shirt, pant and vaginal swabs) and contents of item No.5 were decomposed. Thereby except the opinion of the doctor, there is no other material to prove whether it was rape by the accused. In the absence of any material produced and in the absence of the oral and documentary evidence 38 including medical and scientific evidence, merely based on the probable opinion of the doctor, the accused cannot be convicted for the offence under Section 376 of IPC as his evidence is merely advisory in character.

22. Our view is fortified by the dictum of Honble Supreme Court in the case of State of H.P. -vs- Jai Lal and others reported in (1999)7 SCC280 wherein at paragraph-18, it is held as under: 18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. 39 The said material aspect of the matter has not at all been considered by the learned Sessions Judge and proceeded to convict the accused under the provisions of Section 376 of IPC only on the possibility opinion expressed by PW23 - Doctor. The doctor opined that death was due to asphyxia and possibility of rape cannot be ruled out. The FSL report clearly depicts that the presence of seminal stains was not detected in item Nos.3.1, 3.2, 3.3, 4.1, 4.2, 4.3 and 7. In the circumstances, the learned Sessions Judge is not justified in convicting the accused for the offence under the provisions of Section 376 of IPC and the same is liable to be set aside.

23. It is undisputed fact that on the date of the incident the deceased Sahana, PW14 - Hemalatha @ Keerthi (elder sister of Sahana) and the accused were alone in the house as stated by PW6(mother of the deceased) and PW.14 (elder sister of the deceased). It is also not in dispute that the deceased was last seen with the accused by PW.6 and PW.14. Apart from PW6 and PW14, PW3 - Praveenkumar has deposed that on the date of the incident, accused and the deceased came on a bicycle and his 40 mother was talking with the accused and also asked the accused as to where he is taking Sahana, for which he informed that he is taking Sahana to garden to get tender coconut to her, thereby it is clear that he is a eye witness for last seen together of the deceased with the accused. Nothing has been elicited in his cross- examination to disbelieve the same.

24. PW7 - Shivaram of the same village deposed that he knows the father of the deceased and his house is 100 feet away from the house of deceased and on 18.11.2007, the accused was taking Sahana in his bicycle and he has seen the same and when he asked, for which the accused informed that he want to get chocolate to Sahana. Since Sahana has not come back, parents of the deceased and others searched for her and he also searched and after three days, he came to know that the deceased was murdered and buried in the garden land of Nagaraju (father of deceased). He identified MOs.2 to 5 and specifically stated in the cross-examination that he has seen the accused and the deceased going on bicycle and accused informed him that he want to get the chocolate to the deceased. Nothing has been elicited in his cross- 41 examination to disbelieve his evidence with regard to last seen of the deceased with the accused.

25. PW14 is the elder sister of deceased who deposed on par with the complainant and stated that on 18.11.2007 at about 11.00 a.m., accused taken Sahana along with him on his bicycle ensuring to get chocolate to her. At about 1.00 p.m., accused only returned home and when she enquired where is her sister, he informed that she is playing near Manjaiahs house. Thereafter she asked to get Sahana. At about 02.00 p.m., when her father returned from Mahadeshwara Temple, he also enquired the accused where is Sahana and he also received the same answer that she went to play near Manjaiahs house. Thereafter, all of them started searching and the accused requested her father to get bicycle to search Sahana. Accordingly, they got cycle from one Pratap of the same village and the accused left the place, but he did not come back. Thereafter, her father lodged a complaint to the jurisdictional Police about missing. After two days, the Police brought the accused and on enquiry, accused informed the Police that in view of the old enmity, he killed her sister - Sahana and buried in the garden land. 42 Nothing has been elicited in her cross-examination to disbelieve her statement.

26. PW15 - Jayamma has also last seen the deceased with the accused when they were going on bicycle and she also witnessed that on the relevant day, the accused was taking MOs.6 and 7 (guddali and pickaxe) to the garden land of Nagaraju, father of the deceased. After half an hour, the accused came back and

kept both equipments in the pump house. She identified MO.6 and 7 and she further stated in her cross-examination that accused alone went to the garden land of Nagaraju along with MOs.6 and 7. She denied the suggestion that she has not seen the accused taking MOs.6 and 7 with him on that day. She supported the case of the prosecution.

27. PW16 - Parvathamma has deposed that she knows the father and mother of the deceased and her land is adjacent to the land of Nagaraju, father of the deceased. She further deposed that about 1 years back at about 10 - 11 a.m. the accused taken Sahana on his bicycle and when she questioned the accused, he answered that Sahana is suffering from fever, thereby he wants to get tender coconut to her. At about 12 O clock he came alone. At about 2 O clock, when father of Sahana enquired, for which she informed that the accused has taken Sahana on his bicycle and came back alone. Thereafter she came to know that accused killed the deceased Sahana by suffocating her neck and buried her. Nothing has been elicited in her cross-examination to disbelieve her statement.

28. PW17 - Nandan and PW18- Prathap also deposed on par with PW16 and supported the case of the prosecution. Nothing has been elicited in the cross-examination of PWs.17 and 18 to disbelieve their statements.

29. PW19 - Mallikarjuna deposed that he knows the deceased and the accused. He further deposed that on 18.11.2007 at about 11.00 a.m. when he was taking buffaloes, at that time accused was taking Sahana on his bicycle and thereafter accused alone came back and when he enquired about Sahana, for which he informed that Sahana was playing near Manjaiahs house. He supported the case of the prosecution. Nothing has been elicited in his cross-examination to disbelieve his statement. 44

30. PW20 - Nataraju also deposed about last seen theory of the deceased with the accused on bicycle on 18.11.2007 and at 12.30 p.m., he has seen only accused returning. Thereafter he came to know that accused killed the deceased and buried.

31. PW24 - Rathnaiahshetty, a petty shop owner also deposed that about 1 year 1 months back at 11.00 a.m. both the accused and Sahana came to his shop and accused purchased chocolate for Rs.2/- and thereafter, he has taken Sahana along with him on the bicycle and evening he came to know that Sahana was missing and thereafter he came to know that accused killed and buried Sahana. He identified the accused. Nothing has been elicited in his cross-examination to disbelieve his statement.

32. A careful perusal of aforesaid oral and documentary evidence, it clearly depicts that last seen theory of the deceased with the accused on the unfortunate day, has been proved. It is not in dispute that on 22.11.2007, on the complaint made by father of the deceased that the accused was also missing from the date of the incident, the Police apprehended the accused and produced 45 before PW30 - Investigation Officer, who deposed that he had recorded voluntary statement of the accused and recovered MOs.6 and 7 at the instance of the accused under Ex.P4 Mahazar. The witness to the Mahazar - Ex.P4 also supported the case of the prosecution.

33. PW36 - V. Patharaju, Tahsildar, Sira Taluk deposed that on the basis of letter from Assistant Commissioner dated 22.11.2007 to exhume the dead body of the deceased, he went to the Police Station and at that time, accused was present and there were three persons as Panch witnesses. Accordingly, he went to the spot and got exhumed the dead body of the deceased Sahana. He further deposed that PW23 - Dr. Y.N. Nagarajaiah examined the dead body and accordingly Mahazar was drawn as per Ex.P2 and Inquest Mahazar was also conducted in the presence of PWs.1 and 4, who fully supported the case of the prosecution. Thereby the prosecution proved that last seen theory and recovery at the instance of accused.

34. It is also not in dispute that the accused alone had exclusive knowledge where he killed and buried the deceased, 46 thereby he has taken PW30 - Investigation Officer, PW36 - Tahsildar, PW23 - Doctor to the garden land of father of the deceased and shown the exact place, where he buried the deceased and there on the instructions, the body was exhumed. Thereby the fact of murder of the

deceased and burying the dead body in the garden land of the father of the deceased is within the knowledge of the accused. In the present case, the accused has not offered any explanation in the statement recorded under the provisions of Section 313 of the Code of Criminal Procedure, for the incriminating circumstances appearing against him with regard to committing murder of Sahana and burying the dead body in the garden land belonging to father of the deceased. He has also not disputed recovery of Mos.6 and 7 (Guddali and Pickaxe) at his instance as per Ex.P4. Thus, he has not discharged the burden as contemplated under the provisions of Section 106 of Indian Evidence Act. Thereby adverse interference has to be drawn against the accused.

35. Our view fortified by the dictum of Supreme Court in the case of Prahlad -vs- State of Rajasthan reported in (2020)1 47 SCC (Cr.) 381, wherein the Honble Supreme Court held at paragraph-11 as under:

11. No explanation is forthcoming from the statement of the accused under Section 313 Cr PC as to when he parted the company of the victim. Also, no explanation is there as to what happened after getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused.

36. Further, Ex.P11 - report of the chemical examiner reveals that stomach, brain, blood, part of skin flap from neck region not detected the poison. But, it is not the case of the defence also that the death was due to consumption of poison. Hence, much importance need not be given to Ex.P11. But it is clear from Ex.P11 that death is due to other than consumption of poison.

37. The material on record clearly depicts that after committing the murder of the deceased, accused buried the dead body by digging a pit in the garden land of father of deceased. PW6 - Pavithramma (mother of the deceased), PW.7 - Shivaramu, 48 PW.8 - Venkatesh, PW.9 - Nagesh, PW.10 - Dakshinamurthy, PW.11 - Subramanya, PW.14 - Hemalatha (elder sister of the deceased) and PW.31 - Y.T. Basavaraju have deposed that when the Police brought the accused to the village, they were also present and the accused has taken Tahasildar,

Police Officers and Panchas to the garden land of the Nagaraju and the accused showed the place where he buried the dead body of the deceased. The Tahasildar asked PW.3 and PW.10 to remove the dead body and accordingly, they have removed the dead body and it was decomposed. Photos and video has also been taken in the place where the dead body was removed from the garden land of Nagaraju. PW.37 - P.C. No.676 has taken the photographs and video of the spot where the dead body was removed and the evidence of PW.36 and PW.37 corroborates to the case of the prosecution that the accused has buried the dead body for destroying the evidence of murder.

38. The learned Sessions Judge recorded a finding that video also exhibited in the open Court and it can be seen that the accused himself has taken the Police Officers, Tahasildar, panchas 49 and doctor to the spot and he himself showed the spot where the dead body was buried and it was removed in presence of Tahsildar, Police Officers, Doctor and Pancha Witnesses. However, it is not the case of the defence that the dead body removed in his presence from the garden land of father of the deceased, is not the dead body of Sahana. Thereby, it clearly establishes that the accused has buried the dead body of Sahana in the garden land of Nagaraju. The photos produced at Ex.P16 to P.23 and the video at Ex.P24 show the presence of Police Officers, Tahsildar, Doctor and Panch Witnesses while removing the dead body along with the deceased. The evidence of PWs.36 and 37 including the evidence of PW30 - Investigation Officer supports the case of the prosecution. The Post-mortem report coupled with the evidence of the doctor depicts that the death of the deceased was due to asphyxia. Both the oral and documentary evidence including medical and scientific evidence clearly depict that the accused committed the murder of the deceased by suffocating her neck and buried the dead body in the garden land of father of the deceased. Thereby, the prosecution proved its case beyond reasonable doubt 50 about the involvement of the accused in homicidal death of the deceased Sahana, aged about 8 years.

39. On re-appreciation of the entire oral and documentary evidence on record, it clearly depicts that there are sufficient material to show that the accused alone killed and buried the deceased, thereby the provisions of Sections 302 and 201 of IPC would attract.

40. As already stated supra, there is no accuracy in the opinion given by the doctor with regard to committing of rape. The evidence of the Doctor (PW.23) coupled with the Post Mortem report only depict that the possibility of rape cannot be ruled out. The Court cannot convict an accused based on the possibilities. The mere suspicion would not be sufficient, unless the circumstantial evidence tendered by the prosecution leads to the conclusion that it "must be true" and not "may be true" and all the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge. We find difficult to held that the prosecution proved in the case on 51 hand with regard to rape on the deceased by the accused so as to attract the provisions of Section 376 of IPC.

41. At this stage, it is also relevant to state that while Section 53-A of the Code of Criminal Procedure is not mandatory, it certainly requires a positive decision to be taken. There must be reasonable grounds for believing that the examination of a person will afford evidence as to the commission of an offence of rape or an attempt to commit rape. If reasonable grounds exist, then a medical examination as postulated by Section 53-A(2) of the Code of Criminal Procedure must be conducted and that includes examination of the accused and description of material taken from the person of the accused. Admittedly in the present case, there are no reasonable grounds believing that the accused has committed the rape.

42. It is well settled that there is no embargo on the Appellate Court reviewing the evidence upon which an order of conviction is based. However, the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, 52 one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. On re-appreciation of the entire material on record, we find that the prosecution failed to prove the commission of the alleged rape on the deceased by the accused so as to attract the provisions of Section 376 of IPC.

43. For the reasons stated above, we answer the points raised in the present criminal appeal as under:

1. The 1st point raised in the present criminal appeal is answered in the negative holding that the trial Court is not justified in convicting and sentencing the appellant/accused for the offence punishable under the provisions of Section 376 of IPC, in the peculiar facts and circumstances of the case.

2. The 2nd point is answered in the affirmative holding that the trial Court is justified in convicting and sentencing the appellant/accused for the offences punishable under the provisions of Sections 302 and 201 of IPC. 53

44. In view of the above we pass the following:

#### ORDER

(i) The criminal appeal is allowed in part. (ii) The impugned judgment of conviction and order of sentence dated 8/12-10-2010 made in S.C. No.52/2008 on the file of the 1st Addl. Sessions Judge, Tumkur, in so far as convicting the appellant/accused for the offence punishable under Section 376 of IPC and sentencing him to undergo imprisonment for seven years with fine and default sentence, is hereby set aside. The appellant/accused is acquitted of the offence punishable under Section 376 of IPC. (iii) The impugned judgment of conviction and order of sentence in so far as convicting the appellant/accused for the offences punishable under Sections 302 and 201 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.30,000/- for the offence punishable under Section 302 of IPC and to undergo Simple Imprisonment for two years and to pay fine of Rs.10,000/- for the offence 54 punishable under Section 201 of IPC with default sentences, is hereby confirmed. (iv) Both the sentences shall run concurrently. Sd/- JUDGE Sd/- JUDGE Gss\*