

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF FEBRUARY, 2026



PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL REFERRED CASE NO.2/2024

C/W

CRIMINAL APPEAL NO.2216/2024

CRIMINAL APPEAL NO.2246/2024

IN CRIMINAL REFERRED CASE NO.2/2024:

BETWEEN:

- 1 . THE REGISTRAR GENERAL
HIGH COURT OF KARNATAKA
BENGALURU-560 001. ... COMPLAINANT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

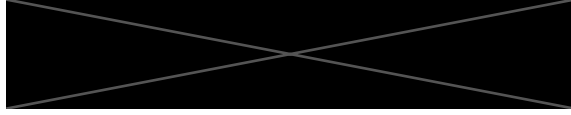
AND:

- 1 . MR. JAYBAN ADIVASI @ JAY SINGH
AGED ABOUT 25 YEARS,

[REDACTED]

- 2 . MR. MUKESH SINGH
AGED ABOUT 23 YEARS,

[REDACTED]



- 3 . MR. MANISH THIRKI
AGED ABOUT 42 YEARS,

[REDACTED]
[REDACTED]
[REDACTED]

- 4.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

... RESPONDENTS

(BY SRI. VIKRAM RAJ A., ADVOCATE FOR R1;
SRI. ASHWIN JOYSTON KUTINHA, ADVOCATE FOR R2 AND R3;
SRI. TEJAS N., ADVOCATE FOR R4
[APPOINTED AS *AMICUS CURIAE*])

THIS CRIMINAL REFERRED CASE IS REGISTERED AS REQUIRED UNDER SECTION 366(1) OF CR.P.C. FOR CONFIRMATION OF THE SENTENCE OF DEATH PENALTY IMPOSED ON THE ACCUSED NO.1 - JAYBAN ADIVASI @ JAY SINGH, AGED ABOUT 25 YEARS, S/O JITENDRA SINGH @ SRIJITH SINGH, R/AT JUDAMADAYAR, SALIHA VILLAGE, KHALDA, PAVAYI TEHISIL, PANNA DISTRICT, MADHYA PRADESH STATE, ACCUSED NO.2 - MUKESH SINGH, AGED ABOUT 23 YEARS, S/O ESHWARI SINGH BIRBAHI, R/AT KALDA BACCHAN POST, PANNA DISTRICT, MADHYA PRADESH STATE AND ACCUSED NO.3 - MANISH THIRKI, AGED ABOUT 42 YEARS, S/O JAGADISH THIRKI, R/AT 3-132, OLD G TYPE, KHULARI, RANCHI, JHARKAND STATE, PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-II (POCSO), D.K., MANGALURU,

CONVICTION SPL.CASE.NO.10/2022 BY THE JUDGMENT OF CONVICTION DATED 29.10.2024 AND ORDER OF SENTENCE DATED 07.11.2024 FOR THE OFFENCES PUNISHABLE UNDER SECTION 120B R/W SECTIONS 376DB, 366A, 377, 376DB OF IPC AND SECTION 6 OF POCSO ACT, 302 AND 201 R/W 34 OF IPC.

IN CRIMINAL APPEAL NO.2216/2024:

BETWEEN:

- 1 . MR. MUKESH SINGH
AGED ABOUT 23 YEARS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 2 . MR. MANISH THIRKI,
AGED ABOUT 42 YEARS,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

... APPELLANTS

(BY SRI. ASHWIN JOYSTON KUTINHA, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
THROUGH MANAGALURU RURAL POLICE STATION
REPRESENTED BY STATE PUBHLC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001.

- 2 . [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

... RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDL. SPP FOR R1;
SRI. TEJAS N. *AMICUS CURIEA* FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGEMENT DATED 29.10.2024 AND ORDER OF SENTENCE DATED 07.11.2024 IN SPL.C.NO.10/2022, PASSED BY THE HON'BLE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-II (POCSO) D.K., MANGALURU, FOR OFFENCES PUNISHABLE UNDER SECTIONS 302, 376DB, 120(B), 366(A), 377, 201 R/W 34 OF IPC, SECTION 6 OF POCSO ACT, AND ACQUITTAL OF THE APPELLANT IN THE ABOVE CASE.

IN CRIMINAL APPEAL NO.2246/2024:

BETWEEN:

- 1 . MR. JAYBAN ADIVASI @ JAY SINGH
AGED ABOUT 25 YEARS

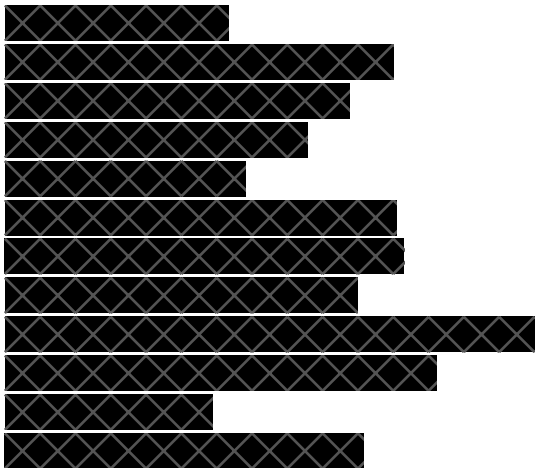
[REDACTED]

... APPELLANT

(BY SRI. VIKRAM RAJ A., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH MANGALRUU RURAL POLICE STATION
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001.

2 . 

... RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDL. SPP FOR R1;
SRI. SANTHOSH N., ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.PC (FILED U/S 415(2) BNSS) PRAYING TO SET ASIDE THE JUDGMENT DATED 29.10.2024 AND ORDER OF SENTENCE DATED 07.11.2024 IN SPL.C.NO.10/2022 PASSED BY THE HON'BLE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-II (POCSO) MANGALURU, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302, 376DB, 120B, 366A, 377, 201 R/W 34 OF IPC AND SECTION 6 OF POCSO ACT AND ORDER THE ACQUITTAL OF THE APPELLANT IN THE ABOVE CASE.

THIS CRIMINAL REFERRED CASE AND APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.01.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV ORDER

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard Smt. Rashmi Jadhav, learned Additional SPP for the complainant/State and Sri Vikram Raj A., learned counsel for respondent No.1, Sri Ashwin Joyston Kutinha, learned counsel for respondent Nos.2 and 3 and Sri Tejas N., learned counsel appointed as Amicus Curie for respondent No.4 in Crl.R.C.No.2/2024. Heard Sri Ashwin Joyston Kutinha, learned counsel for the appellants and Smt. Rashmi Jadhav, learned Additional SPP for respondent No.1, Sri Tejas N., Amicus Curie for respondent No.2 in Crl.A.No.2216/2024. Heard Sri Vikram Raj A., learned counsel for appellant and Smt. Rashmi Jadhav, learned Additional SPP for respondent No.1 and Sri Santhosh N., learned counsel for respondent No.2 in Crl.A.No.2246/2024.

2. The appeals in Crl.A.Nos.2216/2024 and 2246/2024 are filed by the accused and Crl.R.C.No.2/2024 is received from the Sessions Court for confirmation of death sentence. The trial

Judge having considered both oral and documentary evidence convicted accused Nos.1 to 3 having found that they committed the offence of conspiracy under Sections 120B, 366A, 376(A)(D), 377 and 302 read with Section 34 of IPC and also Section 5 and 6 of POCSO Act. The challenge is made by accused Nos.1 to 3 by filing separate appeal questioning the conviction and sentence.

3. The following sentences are imposed against accused Nos.1 to 3:

"The accused No.1 to 3 named Jaiban Adivasi, Mukesh Singh and Manish Thirki are sentenced to death penalty by way of hanging until their last breath for the offences punishable u/Secs.302, 376DB, 120B of IPC and Sec.6 of POCSO Act r/w Sec.34 of IPC.

The accused persons are further sentenced to undergo rigorous imprisonment for a term of 5 years (Five years) and to pay fine of Rs.10,000/- (Rs.Ten Thousand only) each for the offence punishable U/Sec. 366A r/w 34 of IPC and in default of payment fine, they shall further undergo Simple Imprisonment for a period 2 months (Two months) beyond the said period.

The accused persons are further sentenced to undergo rigorous imprisonment for a term of 10 years (Ten years) and to pay fine of Rs.20,000/- (Rs. Twenty Thousand only) each for the offence punishable U/Sec.377 r/w 34 of IPC and in default of payment fine, they shall further undergo Simple Imprisonment for a period 4 months (Four months) beyond the said period.

The accused persons are further sentenced to undergo rigorous imprisonment for a term of 5 years (Five years) and to pay fine of Rs.10,000/- (Rs.Ten Thousand only) each for the offence punishable U/Sec.201 r/w 34 of IPC and in default of payment fine, they shall further undergo Simple Imprisonment for a period 2 months (Two months) beyond the said period”.

4. The Trial Court ordered that the sentences of accused Nos.1 to 3 shall run concurrently. The Trial Court also ordered to pay entire fine amount of Rs.1,20,000/- to P.W.1 and P.W.22 i.e., parents and since the same was inadequate, direction was given to District Legal Service Authority/State Government to pay additional compensation of Rs.3,80,000/- to them under Section 357A of Cr.P.C. read with Karnataka Victim

Compensation Scheme, 2011 and Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 and also directed to submit the entire records pertaining to this proceedings to the Hon'ble High Court of Karnataka for confirmation of death penalty imposed on the accused persons as per the provisions of Section 366 of Cr.P.C . Hence, reference as well as two separate appeals filed by accused No.1 and accused No.2 and 3 are taken up together for common consideration. The accused No.4 absconded during midst of the proceedings of the Trial Court. Hence, the matter is considered only in respect of accused Nos.1 to 3 only, who have faced the trial and suffered conviction and sentence.

5. The factual matrix of case of the prosecution is that on 20.11.2021, the accused Nos.1 to 3 being the workers of Raj Tiles Factory situated at Perari, Vamanjoor, Mangaluru along with accused No.4 conspired in the room of accused No.3- Manish Thirki which is situated in the factory premises to commit the rape on 8 year old deceased victim girl, who is the daughter of P.W.1 and P.W.22, who were also working in the said factory

and they used to stay in the factory quarters on the next day which happened to be a Sunday by taking advantage of holiday to the factory and that there will be no workers in the premises i.e., on 21.11.2021, in furtherance of their common intention between 1.00 to 1.30 p.m., accused Nos.1 to 3 and split up accused No.4 came near the deceased victim girl, who was playing with her brother and sister and gave her chikkies and also gave some coins to purchase eateries and took her inside the factory to brick kiln bearing Room No.1 which was not being used by anybody for several years where CCTV camera was not installed. Firstly, accused No.2 committed rape on the deceased victim girl by removing her shorts and thrown the same outside the room and committed unnatural sexual assault. Then, accused No.3 also committed rape on her. Thereafter, accused No.1 committed sexual assault. Due to which, the victim girl suffered severe bleeding injuries in her vagina. When she was crying out of pain, the accused No.1 closed her mouth with one hand and also pressed her neck with another hand forcefully due to which she died in the spot itself. Thereafter, in order to destroy the evidence of commission of offence, they shifted the

dead body of the deceased victim and placed her dead body in a drainage covered by stone slabs. The charges levelled against accused No.4 is that he was watching outside the said room to give signal to them regarding arrival of anybody and was waiting for his turn to commit sexual assault on the victim and co-operated with accused Nos.1 to 3 and after coming to know about the death of deceased victim girl, body was shifted and he escaped along with accused No.2 from the said spot without giving any information to the complainant. Hence, the accused are booked by setting the law into motion.

6. Having traced the dead body of the deceased victim girl and noticing that private parts and the anus of the victim girl were blood stained and that before committing the murder, she was raped, the mother of the deceased victim lodged complaint before the police and based on the said complaint, Crime No.95/2021 was registered at the first instance for the offence punishable Sections 376 and 302 of IPC and Sections 5 and 6 of POCSO Act. Then the matter was taken up for further investigation and conducted the procedure of drawing of

mahazar at the spot where the dead body was kept after removing the same from the drainage and dead body was sent to hospital for post mortem. The inquest was conducted and post mortem was also conducted on the next day and recorded the statements of C.W.4 and C.W.5 and visited the spot and conducted detailed spot mahazar and summoned the forensic experts from RFSL to collect the evidence of the crime and collected the blood stains found at various spots in the said factory including the spot where the deceased victim was raped and murdered and where the body was hidden, also recovered the shorts of the deceased and collected CCTV footage from the owner of the said factory with the help of CCTV Technician. The Investigating Officer recorded the statement of witnesses and at the first instance, arrested accused Nos.1 and 3 and mobiles used by them were seized after checking CCTV footage and after enquiry, recorded their confession statements. Then, arrested accused No.2 and accused No.4 was split up from the case and seized their mobiles and recorded their voluntary statement. The accused Nos.1 to 4 were subjected to medical examination and they were also taken to the custody after getting the Court

order. The recovery of clothes of the accused were made after getting panch witnesses and seized the clothes of accused Nos.1 to 3 and also chikki packets kept by the accused No.1 in his room by drawing the recovery mahazar. Then proceeded to the place of incident where mahazar was drawn in the place shown by all the accused, then proceeded to the place where the accused No.2 and split up accused No.4 were said to have kept their clothes and the recovery mahazar was drawn in the said place situated at Puttur Taluk. Thereafter, blood samples of all the accused were drawn in the presence of Magistrate for DNA test and also statement of brother of the victim was recorded, post mortem report of the deceased was collected along with viscera, the medical examination reports and biological samples of accused were also collected. On completion of the investigation, the police filed the charge-sheet. The accused persons were arrested and they were in custody till 29.11.2021 and then, they were remanded to judicial custody. Ever since the said date, accused Nos.1 to 3 are still in judicial custody. However, accused No.4 was released on bail and after conclusion of trial, he absconded.

7. The Trial Court having taken note of charge-sheet materials, took cognizance of the offence and secured the presence of accused Nos.1 to 4 and they have been heard and charges were framed and accused did not plead guilty and claimed for trial.

8. The prosecution, in order to prove the case, examined P.W.1 to P.W.30 and got marked 74 documents as Exs.P1 to P74 and 45 material objects were marked as M.Os.1 to 45. Thereafter, the accused Nos.1 to 4 were examined under Section 313 of Cr.P.C. and they denied all the incriminating circumstances and the accused Nos.1 to 4 have not led any evidence. The accused No.4 had participated in trial and after having heard the arguments of both sides, including the learned counsel for split up accused No.4, when the case was posted for judgment, he remained absconded from 04.09.2024 and inspite of issuance of NBW, he could not be secured. Hence, proceeded to consider the matter in respect of accused Nos.1 to 3, since they were in judicial custody and split up charge-sheet is filed against accused No.4 and the case was considered on merits

against accused Nos.1 to 3 and found guilt of the accused. Hence, accused No.1 has filed separate appeal and accused Nos.2 and 3 have filed separate appeal challenging conviction and sentence.

9. Learned counsel for accused No.1 in CrI.A.No.2246/2024 in his argument would vehemently contend that accused No.1 is 25 years old and he is unmarried. The case of the prosecution is that accused Nos.1 to 3 had forceful sexual intercourse. The accused Nos.1 and 3 were arrested on 23.11.2021 and recorded voluntary statement as per Ex.P45. The counsel would submit that role of the accused was suspected on the ground that earlier also there was quarrel in respect of touching the girl. The counsel would vehemently contend that P.W.1 had lodged the complaint in terms of Ex.P1 i.e., the mother of the victim and at the first instance, the case was registered in Crime No.95/2021 against unknown accused persons. The counsel would vehemently contend that case rests upon circumstantial evidences and the prosecution mainly relies upon the evidence of P.W.1 to P.W.30 and documentary

evidence of Exs.P1 to P74 and M.Os.1 to 45. The counsel in his notes of arguments given the details with regard to the events from day one till completion of the investigation. The counsel would vehemently contend that accused No.1 had completely denied all the charges and alleged circumstances. The counsel would vehemently contend that set of circumstances carved out by the prosecution in the charge-sheet was based on three points, mainly previous suspicion, last scene theory and recoveries from the accused person.

10. The main contention of accused No.1 is that his presence in the entire premises is not an incriminating circumstance against him, as he used to work and live in the premises, he being seen in the CCTV is not at all a proof of guilt. The counsel would contend that the prosecution failed to prove the case against accused No.1 and not proved the case beyond reasonable doubt.

11. The counsel, in support of his argument, relied upon the judgment of the Apex Court in **SHARAD BIRDICHAND SARDA vs. STATE OF MAHARASHTRA** reported in **(1984) 4**

SCC 116, wherein the Apex Court has laid down the five tests to be satisfied in a case based on circumstantial evidence:

"1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude every possible hypothesis except the one to be proved, and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

12. The counsel would vehemently contend that in paragraph No.153 of the judgment, the Apex Court has held that we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence. The counsel also brought to

notice of this Court paragraph Nos.153, 155, 156, 178 and 179, wherein the Apex Court has held that a moral conviction, even though motive is strong and genuine cannot amount to a legal conviction and also an observation is made in paragraph No.179 that well established rule of criminal justice is that 'fouler the crime higher the proof' and when the life and liberty of an individual was at stake, the Court has to take note of the material on record, particularly since the accused was given a capital sentence, a very careful, cautious and meticulous approach is necessary to be made.

13. The counsel also relies upon the judgment of the Apex Court in **RAJA @ RAJINDER vs. STATE OF HARYANA** reported in **(2015) 11 SCC 43**, wherein the Apex Court reiterated that in a case of circumstantial evidence, entire burden of proof is purely on the shoulder of prosecution, they have to prove each circumstance beyond reasonable doubt and all circumstances must form an unbreakable chain of circumstances which will implicate the accused for the charges.

Hence, each circumstance has to be dealt independently and tested about its veracity.

14. The counsel in his argument would vehemently contend that father and mother of the deceased child said that they had suspicion against accused Nos.1 to 3, as these people were playing with their child and they had fought with accused on previous occasions. The father was examined as P.W.22, mother was examined as P.W.1 and brother of the deceased was also examined as P.W.21. But, he says that accused Nos.1 to 3 had taken his sister while they were playing. The counsel would vehemently contend that the evidence of these witnesses is not convincing and parents of the deceased have not stated anything about the same in their complaint with regard to the previous behaviour as well as suspicion against them. The counsel also vehemently contend that the suspicion by itself is not an evidence of any sort. Hence, the circumstances cannot be considered as there is no basis for their suspicion. But, the Trial Court has brushed aside the above argument and failed to consider the fact that if the mother of the deceased had doubt

and if she was informed by P.W.5-Deekshitha about her child being seen together with the accused, prior to lodging of complaint, she would have disclosed it at the first instance and she had no reason not to mention it in her statement at the earliest point of time. The Trial Court held that there was conspiracy to commit this offence as there was suspicion based on previous behaviour of the accused persons with the child and that accused used to offer her chikki and chocolate and touching her inappropriately. The Trial Court comes to the conclusion that accused No.1 bought chikki is also an incriminating evidence against him, whereas there is no evidence that the deceased child had consumed chikki. The counsel also would vehemently contend that the Trial Court in paragraph No.65 held that accused No.1 is seen going outside the factory and coming inside the factory holding something in his hand at 11.00 a.m. and suddenly jumps into the conclusion that accused No.1 conspired with other accused and the very approach of the Trial Court is erroneous, particularly with regard to the previous behaviour and suspicion.

15. The counsel would vehemently contend that other circumstances of the prosecution is with regard to last scene theory and relies upon the evidence of P.W.5. It is the case of the prosecution that entire incident took place inside the factory protected by the compound wall. Factory is admittedly not a human-less zone, rather there are more than 30 people living inside the small rooms available inside. By the CCTV footage presented by the prosecution, it becomes clear that people were always moving around very freely. But, the case of the prosecution is that accused No.1 along with other accused was with the deceased and mainly relies upon the evidence of P.W.5. The evidence of P.W.5 is that when her daughter wanted to play with the children, she took her daughter and found Sushmitha, the victim, her sister and brother were playing and she made her daughter also to play along with them. At that time, accused Nos.1 to 3 came in a drunken stage and held victim Sushmitha and her brother, put them on their shoulder and they were dancing. Having noticed the same, she came along with her daughter to her house. It is also her evidence that P.W.1 and P.W.2 have stated that other children came, but Sushmitha did

not return to house and she disclosed the very act of accused Nos.1 to 3. If really, P.W.5 had made such statement with P.W.1 and P.W.22, the complainant would have disclosed the same in the complaint itself. The counsel also would submit that, moreover in CCTV, there is no evidence to show that accused were playing with the deceased. The counsel also would contend that the prosecution relies upon last scene theory by examining P.W.21, who is the brother of the victim. The evidence of P.W.21 is also not credible and contend that statement of the brother was recorded on 15.12.2021. P.W.1 and P.W.22, father and mother never deposed that their son had seen the accused persons taking away the child. But, there was an improvement in the evidence of P.W.21 and answer elicited from the mouth of P.W.21 is clear that while playing, nobody came to the spot. Hence, doubt arises that child had informed the parents. The P.W.1 and P.W.22 in the deposition have not told anything about their younger child witnessing any event connected to the incident. The counsel also vehemently contend that Investigating Officer has recorded the statement of the child after 24 days,

even though the child was taken by the police on 01.12.2021 and 08.12.2021 and has not given any statement.

16. The counsel in support of his argument relied upon the judgment of the Apex Court in **SHANKARLAL GYARASILAR DIXIT vs. STATE OF MAHARASHTRA** reported in **1981 AIR (SC) 765**, the Apex Court in similar factual circumstances, disbelieved a witness, who had not stated certain facts in his first enquiry with the police and it can be safely concluded that police and witnesses had taken enough time and planned and created an eye-witness in the case.

17. The counsel also relied upon the judgment of the Apex Court in **GANESH BHAVAN PATEL vs. STATE OF MAHARASHTRA** reported in **(1978) 4 SCC 371**, wherein the Apex Court has held with regard to the delay in recording Section 161 statement by Investigating Officer and its implications on prosecution case and observed that when the witness could be available for examination and when the Investigating Officer had visited the scene of occurrence or soon thereafter would cast a doubt upon the prosecution case, if

Investigating Officer offers no satisfactory explanation and hence, evidence of P.W.21 who being the last seen witness is an afterthought and well planned addition and the same cannot be even imagined and Investigating Officer has not offered any reason for delay in recording the statement. But, the Trial Court ignored this aspect and also ignored multiple contradictions in the version of prosecution and stated that stray admission is not fatal to the case of prosecution and failed to consider basic human behaviour that if something bad happens, human will pour out all the information which they have. P.W.5 stated nothing on 21.11.2021 and 22.11.2021 and P.W.1 categorically says in the complaint that when she enquired P.W.21, he says that he had no idea about the victim and the child had no reason to hide the same.

18. The third circumstance prosecution relies upon is CCTV and it is clearly visible that accused No.1 was freely moving around. The counsel also brought to notice of this Court CCTV camera Nos.2 and 4 and timings that accused was going out and coming inside the gate along with other persons, who

are not the accused and he was moving freely. The counsel would contend that none of the CCTV footage discloses that accused No.1 is seen in the company of the deceased and there is nothing suspicious in the movement of accused No.1 and he is roaming around with different set of people which will clearly show that he had no knowledge about the incident and his last seen theory does not survive for consideration solely because there is no evidence suggestive of the fact that from 10.28 to 13.00 hours, deceased child appears with her siblings playing around different part of the factory captured in camera Nos.8, 3 and 4. Accused No.1 is never seen together with the child. It clearly shows that all the last scene theory witnesses are lying. In the CCTV footage, deceased child was seen lastly with her siblings at 1.00 p.m. as per camera No.4. Hence, the evidence of P.W.5 is highly doubtful. If P.W.5 had witnessed the accused Nos.1 to 3 playing with the child, he would have definitely stated in the complaint and the same was not found. But, the Trial Court committed an error in coming to the conclusion that complaint and FIR is not an encyclopedia to disclose the same. The Trial Court stated that there were suspicious movements

seen in the CCTV footage and this observation is speculation and without any basis.

19. The fourth circumstance is alleged recoveries i.e., drawing of Ex.P6-recovery mahazar. According to the prosecution those were the dresses worn by the accused at the time of the incident and whether such recovery is proven beyond reasonable doubt. P.W.6-Premanath is said to be the recovery witness to the mahazar. According to him, accused No.2-Mukesh and accused No.1-Jaisingh had shown their clothes and the same was seized. But, whereas Ex.P6 shows that it was about the alleged recovery from accused Nos.3 and 1. So, the entire recovery is doubtful. The witness was also unable to tell the colour of the clothes seized and which cloth belonged to whom and prosecution have not taken any initiative to show the clothes and mark it through the witness. Hence, the prosecution has not proved recovery of clothes.

20. The counsel in support of his argument regarding recovery would submit that the prosecution recovered pant, shirt, underwear which are marked as M.Os.25 to 27 and hair

from underwear as M.O.28 and chikki as M.O.29 and as per the evidence of P.W.6, above mentioned items were seized at the instance of accused No.1. The counsel would submit that no seminal stains were found in the above article and blood stains were not detected in shirt and hair and blood stains were only detected in pant and underwear. The FSL report is inconclusive that no report as to whether it is human blood or animal blood and no blood grouping was done. Hence, the counsel contends that merely because blood stains being found in pant and underwear, the same is incriminating evidence against the accused cannot be considered as conclusive proof against the accused.

21. The counsel in support of his argument relied upon the judgment of the Apex Court in **KANSA BEHERA vs. STATE OF ORISSA** reported in **1987 0 AIR (SC) 1507**, wherein the Apex Court in paragraph No.11 discussed regarding recovery of shirt or dhoti with blood stains which according to the serologist report, were stained with human blood, but there is no evidence

in the report of the serologist about the group of the blood and therefore, it could not positively be connected with the deceased.

22. The counsel also relied upon the judgment of the Apex Court in **MUSTKEEM @ SIRAJUDEEN vs. STATE OF RAJASTHAN** reported in **2011 0 AIR (SCW) 4410** and brought to notice of this Court paragraph No.23, wherein also discussion was made that 'AB' blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellant. The blood group which was found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the later were used for the murder.

23. The counsel also relied upon the judgment of the Apex Court in **RAJA NAYKAR vs. STATE OF CHHATTISGARH** reported in **2024 0 AIR (SC) (CRI) 365** and brought to notice of this Court paragraph No.16, wherein the Apex Court has held that as per the FSL report, the blood stains found on the dagger were of human blood. However, FSL report does not show that

the blood found on the dagger was of the blood group of the deceased.

24. The counsel also relied upon the judgment of this Court, Dharwad Bench passed in **Crl.A.NO.100335/2022** delivered on **26.11.2025** and brought to notice of this Court paragraph Nos.24 and 25, wherein it is observed that before parting with the judgment, we find it necessary to point out one lapse on the part of Investigating Agency in not obtaining the blood grouping report of the deceased in the case. In his evidence, P.W.12-the Investigating Officer, has stated about the recovery of blood stained articles from the scene of crime as well as the seizure of the blood stained clothes on the persons of the deceased and the accused and further FSL report states that the blood was human blood of the 'O' blood group. However, the prosecution has not produced any other material on record to show that those blood stains were that of the deceased and lapses were taken note of and relied upon the judgments of the Apex Court which have been referred (supra) in **MUSTKEEM's** case and **RAJA NAYKAR's** case, wherein it is held that very

purpose of collecting blood stained mud, clothes and other incriminating articles during the course of investigation is to link the circumstantial evidence and to corroborate the guilt of the accused.

25. The counsel also relied upon the judgment of the Apex Court in **AJEET SINGH AND ORS. VS. STATE OF J&K** reported in **2018 0 SUPREME (J&K) 114**. The counsel referring this judgment would contend that, first of all, there is no FSL report, therefore, corroboration of the prosecution version by the so called FSL report does not arise at all. Since, there is no FSL report, it cannot be ascertained as to whether the alleged blood stains found on the apparel blood stains were in any way connected with the deceased and there is no evidence to this effect, the question of the appellants not been able to explain the same does not arise at all.

26. The counsel also relied upon the judgment of the Apex Court in **FAGANURAM @ GOBHA S/O. BISAHURAM vs. STATE OF CHHATTISGARH THROUGH THE POLICE STATION MANPUR, DISTRICT RAJNANDGAON, CG** reported

in **2017 0 SUPREME (CHH) 547**, wherein at paragraph No.9, it is held that when FSL report confirms the presence of blood on the axe so seized but this alone cannot be made a basis to connect the accused with the crime in question, unless it is proved by the report of a serologist that the said blood was human blood and that too of the blood group of the deceased, seizure of blood stained axe is of no significance and brought to notice of this Court paragraph No.11 of judgment of the Apex Court in **KANSA BEHERA's case** (supra).

27. The other circumstance is in respect of DNA evidence and there is no DNA evidence against the present appellant, who is accused No.1 and the same is also acknowledged by the Trial Court, but the Court went on to negate this proof in favour of innocence of the accused and committed an error by observing that the pant and underwear of accused No.1 had blood stains which was of the human origin and 'B' blood group and also by speculating that the accused No.1 might have ejaculated outside and that is why there is no DNA evidence against the accused No.1. The Trial Court has acted upon its belief of guilt/prejudice

being rather than evidence. In paragraph No.62, the Trial Court also made an observation that absence of seminal stains of accused Nos.1, 3 and 4 in the said DNA profile result will not automatically rule out the possibility of accused Nos.1, 3 and 4 involving in the said sexual activity, as there are chances of ejaculation outside the body of the deceased and this observation is erroneous and observation that human blood origin belongs to 'B' group of blood which belongs to the deceased is also erroneous. The FSL which is marked as Ex.P66 does not state that the blood stains found in the above mentioned articles are of human origin and belongs to 'B' group and this observation is purely based on false assumption.

28. With regard to medical examination of accused No.1, the counsel would contend that Dr. Rashmi, who has been examined as P.W.16 has conducted medical examination of accused No.1 and as per Ex.P35, no injuries were found on the private part of the accused or anywhere in the body. Hence, this is not an incriminating evidence against the accused and it shows that accused No.1 is an innocent.

29. With regard to penile sample, it is the case of the prosecution that penile swab of the accused had 'B' blood group traces. But, in the evidence, it had come out that if a person who is of 'B' blood group, his bodily fluid is tested (like penile swab or any other bodily fluid), then it will show 'B' results. The evidence of P.W.13 is also very clear with regard to the said aspect and Ex.P25 as per the evidence of P.W.16, the blood group of accused No.1 is also 'B' positive. Hence, the evidence of P.W.16 and P.W.13 also will not come to the aid of the prosecution.

30. The counsel referring these evidence and also the material on record submits that there is no incriminating evidence against accused No.1. It is contended that the accused No.1 is seen freely roaming around Raj Tiles Factory on the date of the incident. Hence, the accused No.1 is innocent of the alleged offences and there is no material to come to a conclusion that this accused also actively participated along with other accused in committing the offence. Therefore, the counsel prayed this Court to acquit accused No.1. The counsel also would vehemently contend that the Trial Court committed an error in

convicting the accused for the offence invoked against him and contend that imposition of capital punishment is also erroneous and the same not warrants imposing of death sentence and no aggravating circumstances are found. It is also contended that no detailed discussion was made by the Trial Court for imposing death sentence and it is not a case for imposing death sentence and prayed this Court to set aside the conviction and sentence.

31. Learned counsel for the appellants/accused Nos.2 and 3 in other appeal submits that he adopts the arguments of learned counsel for accused No.1 and also submits that the very case of the prosecution is doubtful and no circumstance is proved against accused Nos.2 and 3 and even though FSL report is against accused No.2 that DNA report is positive and the said circumstance only cannot prove the guilt of the accused and other evidence available on record is not trustworthy and each circumstances have not been proved and link also has not been established while appreciating the evidence of the prosecution. Hence, prays this Court to allow the other appeal filed by the accused Nos.2 and 3.

32. Learned counsel i.e., Amicus Curie appearing for the victim in his argument would vehemently contend that the Trial Court has taken note of all the circumstances while convicting the accused. The counsel would contend that the Trial Court even taken note of gravity of the offence and rightly convicted the accused for the death sentence, since the deceased victim was aged about 7 years 7 months at the time of subjecting her for sexual act and that too, subjecting the victim for sexual act by the accused Nos.1 to 3 is nothing but a gang rape and accused No.4 was watching outside when the accused Nos.1 to 3 were subjecting her for cruel sexual act against a girl below the age of 12 years and punishment of death sentence was imposed against accused Nos.1 to 3 having considered the cruel act done by accused Nos.1 to 3 against a minor girl, who is aged about 7 years 7 months and the PM report also clearly discloses voluminous injuries on the private part of the victim and all over the body of the deceased which is nothing but committing the brutal act of rape and later murdered the victim.

33. The learned Amicus Curiae in his further arguments would vehemently contend that though FIR was registered against unknown persons at the first instance at the time of conducting the inquest, the father of the victim made the statement that accused-Manish Thirki and Jay Singh were also working in the factory and from last 3 to 4 months, giving chocolate to his daughter and inappropriately touching her and having noticed the same, he himself and his wife scolded the said accused persons and hence, suspected on these two accused persons in committing the offences while conducting inquest. The counsel also would submit that accused persons were taken to the custody and inquest is also marked as Ex.P3 wherein it is specifically stated about the act of the accused. Having arrested the accused persons, blood samples and penile swab were taken and the blood group of each of the accused is also ascertained. The counsel also submits that on the basis of voluntary statement at Ex.P45, P46, P48 and P49 clothes of the accused were seized which were also blood stained and mahazar was also drawn. The counsel also would submit that the Investigating Officer also collected the blood sample from the

place where the incident has taken place and also where the body was kept after shifting the body from one room to another room. The counsel also would submit that PM report at Ex.P23 discloses there were 16 injuries on the dead body and opinion is also given in terms of Ex.P24. The counsel would submit that the DNA is positive in respect of accused Nos.2 and 4 that seminal stains were found. The counsel also would submit that PW5 evidence is very clear that the accused persons were playing with the victim before committing the sexual act. The counsel also would submit that the brother of PW21 also in his evidence spoken that the accused persons took his sister and after playing, they went to the house, but Sushmita did not accompany them and he also identified accused Nos.1 to 3 and thus, this evidence is also very clear with regard to the last seen theory by PW21 as well as PW5.

34. The counsel also would vehemently contend that the incident was taken place within the factory premises. It is not in dispute that accused Nos.1 to 3 are working in the very same factory and CCTV footage also very clear that all of them were

roaming in the vicinity and the CCTV camera 2, 3, 4, 6 also clearly discloses the very presence of accused persons. The counsel also would submit that PW22 is the father of the victim and PW6, PW7, PW9 are the recovery witnesses and they have supported the case of the prosecution. The counsel also would submit that penile swab which was collected evidenced the fact that the same is B group. The counsel would vehemently contend that the material collected by the IO is substantiated by examining the prosecution witnesses. The counsel would vehemently contend that PW12 categorically deposes that accused No.1 used to purchase chikki from his shop. The counsel also brought to notice of this Court PM report which is marked as Ex.23 wherein it is observed that in abdomen, out of 506 gram, contains 250 grams of undigested food particles mixed with black colour powder particles with no characteristic perceptible odor and the same corroborates with regard to the purchase of chikki from the shop of PW12 on the same day and given to the victim. The counsel also would vehemently contend that the offence is committed against the minor girl under the POCSO Act

as well as under IPC, hence, there is a presumption and the said presumption is not rebutted.

35. The counsel in support of his arguments, relies upon the judgment of the Apex Court reported in **(2025) 2 SCC 399** in the case of **SAMBHUBHAI RAISANGBHAI PADHIYAR vs STATE OF GUJARAT** and brought to notice of this Court the discussion made with regard to presumption under the POCSO Act and in paragraph 33, the Apex Court made an observation is that the deceased was subjected to a brutal sexual assault. The injuries as evidenced in the post mortem report clearly indicate that deceased was subjected to aggressive penetrative sexual assault. Also an observation is made that matching of the blood group coupled with other circumstantial evidence clearly constitute foundational facts for raising presumption under Sections 29 and 30 of the POCSO Act. The counsel referring this judgment would vehemently contend that the Apex Court in detail discussed both oral and documentary evidence placed on record in the case.

36. The counsel would vehemently contend that the prosecution mainly relies upon theory of last seen of the accused with the deceased which was spoken by PW5 and PW21 in the case on hand. Similarly, the Apex Court also discussed that the accused found in the vicinity of the scene of crime at the time of crime and injuries on the covered parts of the accused and also conduct under Section 8 of the Evidence Act and the Apex Court also taken note of matching of blood group. All these aspects have been discussed in this judgment and the same is squarely applicable to the case on hand. With regard to the sentence is concerned, in paragraph 38, the Apex Court taken note of death sentence imposed by the Trial Court and the same has been confirmed by the High Court and held that it is time for us to draw up a balance sheet of the aggravating and mitigating circumstances to decide whether the case falls in the category of rarest of the rare case and also taken note of possibility of reformation and held that crime committed by the appellant was diabolic in character. He enticed the innocent child by tempting him with ice cream and brutally sodomized and murdered the 4 years old child. The appellant also mercilessly strangled the

deceased. The post mortem report clearly indicated that the death was due to asphyxia by throttling. Only a mitigating circumstance is that appellant was 24 years of age when the incident had happened. He had no criminal antecedents and he hails from a low socio-economic household as the mitigation investigation report filed by Ms Komal of Project 39-A, pursuant to the order of this Court dated 05.10.2023 indicates and comes to the conclusion that no possibility of reformation. However, option of life imprisonment is also not foreclosed. The case does not fall in the category of the rarest of rare case and ends of justice would be done and maintaining the conviction substituted the same with that of rigorous imprisonment for a period of 25 years without remission.

37. The counsel also relied upon the judgment reported in **(2022) 9 SCC 81** in the case of **MANOJ PRATAP SINGH vs STATE OF RAJASTHAN** wherein discussion was made with regard to the crime test, criminal test and rarest of the rare test and also discussed with regard to the confirmation of death sentence. While considering the same, the Apex Court taken

note of the scope of reformation and rehabilitation and also discussed that when can be ruled out and if it is extremely brutal and merciless rape and murder of physically and mentally challenged minor of about 7 to 8 years and death sentence is confirmed. The counsel referring this judgment brought to notice of this Court paragraphs 56 and 48.1 wherein held that kidnapping, rape and murder of a physically and mentally challenged 7½ years old girl, challenge as to mental and physical disabilities of the victim, held not sustainable, when the same supported by medical evidence on record and there held no merit in the defence contention that the certificate issued from school to prove her mental caliber could not be relied upon because the person who issued such certificate was never examined. The Court also discussed crimes against women and children and also the POCSO Act. In paragraph 48.1 held that when chronology of the events and steps in the investigation left nothing to doubt that the Investigating Officers and other police officers indeed methodically discharged their duties and every step found to be appropriately and punctually taken and all the relevant processes methodically documented and where the

charge-sheet swiftly presented to the court with all relevant particulars. The Apex Court also taken note that the defence are not tenable with regard to the nature of the offence and also taken note of child rape and murder and conviction under both POCSO and IPC and same is not barred by Section 42 of POCSO Act and held the mandate for awarding punishment which is greater in degree does not correspondingly lead to the proposition that the appellant could not have been convicted of the offence under Section 376 of IPC as also under Section 6 of POCSO and discussed Section 6 as well as Section 42 and imposition of death sentence considering Section 235(2) and 254(3) read with Section 360 of Cr.P.C. and also the mandatory provisions which were explained in paragraph 64. The Apex Court also discussed with regard to the possibility of imposition of death sentence under constitutional validity of Section 302 of IPC and upheld the grounds on which the death sentence imposed in the case of **BACHAN SINGH vs STATE OF PUNJAB** reported in **(1980) 2 SCC 684**.

38. The counsel referring this judgment brought to notice of this Court that the Apex Court in length discussed the last seen theory and taken note that the minor girl who is aged about 7½ years was mentally and physically challenged and considered the report of FSL and defence which was taken was rejected and comes to a conclusion that chain of circumstances is complete. The Apex Court also taken note of death sentence imposed by the Trial Court as well as High Court considering the rival submissions and the scope and width of the appeals and even considered the procedural questions relating to investigation and trial and also discussed that whether concurrent finding of fact requires interference. The counsel brought to the notice of this Court paragraph 53.1 with regard to consideration of prosecution evidence and paragraph 61 wherein the Apex Court upheld the concurrent findings leading to the conviction of the appellant. The Apex Court also discussed in paragraph 62 that whether death sentence be maintained or substituted by any other sentence and while dealing the same also evolution of principles and norms of death sentence was also taken note of and even discussed the protection of life and

personal liberty considering Article 21 of the Constitution of India and even discussed the judgment of **Bachan Singh** in paragraph 72 with regard to the constitutional validity and also taken note of elements of mitigating factors and also the aggravating circumstances in paragraph 87 and affirmed the death sentence of the Trial Court and the High Court and did not accept the mitigating circumstances and considered the aggravating circumstances that is, extreme depravity and barbaric manner of the crime outweighed the mitigating circumstances.

39. The counsel also relied upon the judgment of the Apex Court reported in **(2019) 7 SCC 716** in the case of **MANOHARAN vs STATE BY INSPECTOR OF POLICE, VARIETY HALL POLICE STATION, COIMBATORE** wherein also discussion was made with regard to aggravated penetrative sexual assault by gang of two and sodomy committed on 10 year old girl by tying her hands and murder of her 7 year old brother along with her first by trying to poison them and then by pushing them into canal when they were conscious and death sentence

affirmed and taken note of balance of aggravating and mitigating circumstances are against the appellant. The counsel referring this judgment brought to notice of this Court paragraphs 18, 19, 20, 22, 23 and 24. Ultimately in paragraph 24, discussed that now the question arises is whether the death sentence should be confirmed by this Court and mitigating circumstances in the present case that the accused belongs to a rural area and he is only 23 years old and has no other previous conviction and if let out there will not be a menace to society and also discussed that this is an extremely heinous crime committed ruthlessly and cold bloodedly under aggravating circumstances made out by the High Court clearly outweigh the alleged mitigating circumstances and therefore, it is a clear case for the death penalty to be imposed. The discussion was made with regard to the confirming of the death sentence and also taken note of facts of the case in paragraph 33, wherein held that no doubt that aggravated penetrative sexual assault was committed on the 10 year old girl by more than one person. The 10 year old girl child, who was below 12 years of age, would fall within Section 5(m) of the POCSO Act and also taken note of legislature's realization that

such crimes are on the rise and must be dealt with severely and even extracted the statement of objections and reasons of the amendment is important. In paragraph 34, taken note of the discussion made by the Trial Court and High Court and held that correctly applied and balanced aggravating circumstances with mitigating circumstances to find that the crime committed was cold-blooded and involves the rape of a minor girl and murder of two children in the most heinous fashion possible. No remorse has been shown by the appellant at all and given the nature of the crime and majority accepted the reasoning of the Trial Court and Appellate Court with regard to the death penalty.

40. The learned Amicus Curiae also relied upon the judgment of the Apex Court reported in **(2015) 1 SCC 253** in the case of **VASANTA SAMPAT DUPARE vs STATE OF MAHARASHTRA** wherein also discussion was made with regard to the death sentence and reformation and rehabilitation and possibility wherein also rape and murder of 4 years girl by 47 years old man and concurrent death sentence affirmed as the manner in which the crime was committed did not suggest that

appellant, a history-sheeter, could be reformed and he was likely to remain a menace to society, to prey upon defenceless and there were no other mitigating circumstances found. The counsel referring this judgment brought to the notice of this Court paragraph 38 wherein held that on a critical analysis of the evidence on record, we are convinced that the circumstances that have been clearly established are: that the appellant was seen in the courtyard where the minor girl and other children were playing; that the appellant was seen taking the deceased on his bicycle; that he had gone to the grocery shop owned by PW 6 to buy Minto fresh chocolate along with her; that the accused had told PW 2 that the child was the daughter of his friend and he was going to "Tekdi-Wadi" along with the girl; that the appellant had led to the discovery of the dead body of the deceased, the place where he had washed his clothes and at his instance the stones smeared with blood were recovered; that the medical report clearly indicates about the injuries sustained by the deceased on her body; that the injuries sustained on the private parts have been stated by the doctor to have been caused by forcible sexual intercourse; that the stones that were

seized were smeared with blood and the medical evidence corroborates the fact that injuries could have been caused by battering with stones; that the chemical analysis report shows that the blood group on the stones matches with the blood group found on the clothes of the appellant; that the appellant has not offered any explanation with regard to the recovery made at his instance; and that nothing has been stated in his examination under Section 313 CrPC that there was any justifiable reason to implicate him in the crime in question. Thus, we find that each of the incriminating circumstances has been clearly established and the chain of circumstances are conclusive in nature to exclude any kind of hypothesis, but the one proposed to be proved, and lead to a definite conclusion that the crime was committed by the accused. Therefore, we have no hesitation in affirming the judgment of conviction rendered by the learned trial Judge and affirmed by the High Court.

41. The counsel referring the evidence of particular case and also referring the factual aspects of this case would contend that similar factual aspects found in the case and brought to

notice of this Court paragraph 57 of the said judgment wherein an observation is made that we shall proceed to adumbrate what is the duty of the Court when the collective conscience is shocked because of the crime committed. When the crime is diabolical in nature and invites abhorrence of the collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for justice and the intense indignation at the manner in which the brutal crime is committed. It is also observed that Judges while imposing sentence, should never be swayed away by any kind of individual philosophy and predilections. It should never have the flavour of Judge-centric attitude or perception. It has to satisfy the test laid down in various precedents relating to the rarest of the rare case and also taken note of the case of **MACHHI SINGH vs STATE OF PUNJAB** reported in **(1983) 3 SCC 470**.

The counsel also brought to notice of this Court paragraph 60 of the judgment wherein an observation is made that not only was the rape committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a monstrous burial of her dignity in the darkness. It

is a crime against the holy body of a girl child and the soul of society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner which is nothing but the case of aggravating circumstances. In paragraph 61, it is discussed that while considering the material, found that circumstances would graphically depict, he would remain a menace to society, for a defenceless child has become his prey and found that there are no mitigating circumstances and confirmed the death sentence.

42. The learned counsel appearing for respondent No.2 in Criminal Appeal No.2246/2024 would vehemently contend that the Trial Court has taken note of all the circumstances and brutality of the accused persons having committed the rape on the minor girl who aged about 7 years 7 months and not only raped her, even killed her. The counsel also would submit that

he will adopt the arguments of Amicus Curiae who has been appointed in another connected appeal.

43. The learned Additional SPP appearing for the State defending the sentence of the Trial Court imposing the death penalty brought to notice of this Court Ex.P23-PM report and injuries. The counsel also reiterated that accused No.1 purchased the chikki from the shop of PW12 and the evidence of PW12 also corroborates the case of prosecution. The counsel also brought to notice of this Court the PM report wherein a reference is made while examining the dead body by the doctor in respect of external appearance that eatable chewed gummy material is present in between clinched teeth of right side of the mouth. Evidence of eruption of permanent first molar, central incisors and lateral incisors on all quadrants. Bluish discoloration of finger named Beds are noted. Hence, it is clear that chikki was given to the victim prior to committing the sexual act and murdered and eatable chewed gummy material is present in between clinched teeth of right side of the mouth and the same

establishes the case of the prosecution that before committing the offences, given the chikki.

44. The counsel also in her arguments would vehemently contend that though CCTV does not disclose that taking the child from the place to the place of isolation, but the fact is that accused persons were moving around in the said place. The counsel also brought to notice that this Court that in between the timings of 1 o'clock and 2.54, all these accused persons were not outside the place where the CCTV covers and the offence was committed in between the timings after 1 o'clock and before 1 o'clock, the child was also found, but thereafter child was not found. Both child as well as these accused persons were not found in these timings and CCTV camera very clearly discloses the same.

45. The contention of the learned counsel appearing for accused No.1 is that there was no any DNA against accused No.1 and blood group also only human blood origin 'B' group and also contention of the accused No.1 counsel that penile swab confirms that accused No.1 blood group is also a 'B' group and

the same cannot be accepted for the reason that when the accused was examined by the doctor and doctor has not found any injuries on accused No.1. When such being the evidence available on record, the contention that accused blood group is also 'B' group cannot be accepted. The accused No.1 has not explained the circumstances with regard to the DNA report is concerned as well as blood stains were found is also 'B' group blood which belongs to the deceased. When there was no any injury on accused No.1 and blood stains of the victim were found in the cloth of the accused, very contention of the counsel cannot be accepted.

46. The counsel appearing for the State brought to notice of this Court the CCTV camera details that victim was missing in between 1 o'clock to 2.56 and this time accused were also not found and only after 2.56, the moment of the accused was found. But not found the movement of the victim girl. The counsel would vehemently contend that in Ex.P5, paragraphs 4 to 8, a discussion was made with regard to the seizure. The counsel also would submit that the evidence of PW5 i.e., last

seen evidence, corroborates the case of the prosecution. The accused Nos.1 and 3 were first arrested and in the early morning on 24th, accused Nos.2 and 4 were arrested at Putthur. The counsel would submit that Ex.P64 and P62 i.e., Aadhar card and birth certificate disclose that the victim was aged about 7 years 7 months. The counsel would vehemently contend that having considered the material on record, it discloses that it is a case for rarest of rare case and Court has to take note of the manner in which she was subjected to sexual assault by three accused persons who not only committed sexual assault even taken life of the victim girl and the same was cruel in nature.

47. In reply to this argument, counsel appearing for the accused No.1 would vehemently contend that in the judgment of **SHARAD BIRDICHAND SARDA** referred supra, the Apex Court discussed with regard to the circumstantial evidence is concerned that chain link has to be established. But in the case on hand, not established the chain link. The counsel brought to notice of this Court paragraph 178 of the said judgment. The counsel also would vehemently contend that for having given

chikki, there is no voluntary statement by accused No.1 and the same is an improvement and the contention that the inquest was marked with consent and the same will not take away the defence of the accused and merely marking the same with consent will not create any incriminating circumstances.

48. Having heard the appellant counsel in both the appeals as well as Amicus Curiae representing the complainant and also the counsel represented on behalf of the complainant in connected appeal and also the contentions of the counsel appearing for the State for confirmation of death sentence and to uphold the conviction or acquittal, this Court has to consider the principles laid down in the judgments referred supra and also the factual aspects of the case. Having considered the same, the points that arise for consideration of these cases are:

1. Whether the appellants in both the appeals have made out the ground to set aside the conviction for the offences invoked against them and whether the Trial Court committed an error in coming to the conclusion that the prosecution has proved the case beyond reasonable doubt?

2. Whether the reference sent by the Trial Court for the confirmation of death sentence requires the confirmation of the same and whether it is a case for confirming the death sentence or substituting the other sentence considering the material record if this Court comes to the conclusion that conviction is sustainable in law?
3. What order?

Point Nos.1 and 2:

49. Having considered the submissions of the respective counsels and also the grounds urged in the appeal and also the principles laid down in the judgment, this Court has to analyze both oral and documentary evidence available on record. The very charges levelled against accused persons are that accused No.1 to 4 have conspired together on 20.11.2021 to commit rape on the deceased minor girl by taking her to a secluded place and on the next day, in furtherance of the said conspiracy and common intention, procured the minor deceased victim for the purpose of committing sexual assault when she was playing within the premises of Raj Tiles factory and took her inside the

brick burning kiln, room No.1 of the factory and accused No.4 was watching outside of the said room when accused Nos.1 to 3 were subjecting the victim girl for forceful sexual act even though having the knowledge that the said girl is a minor. Thus, it is an offence against the minor child having unnatural sexual intercourse and committed the sexual act and in the process of the same, took the life of the victim girl. In order to screen the evidence of the offence, the accused persons shifted the dead body of the deceased to another room and after watching the movement of the general public, thrown the dead body of the victim into a drainage beneath the stone slabs in a hind portion of the Raj Tiles factory. This Court has to analyze both oral and documentary evidence available on record to come to a correct conclusion.

50. PW1 who is the mother of the victim girl stated that PW22 is her husband and their origin is from Jharkhand State and the victim is the first daughter of them. She also revealed that they are also the employees of the Raj Tiles factory and there were 25 to 30 persons working in the said factory. Accused

Nos.1 to 3 are also working in the very same factory and having acquaintance with each other. It is her evidence that 21.11.2021 was a Sunday and having holiday. All her children went to play in the factory premises and other children came back at around 3 o'clock, but, the victim girl did not accompany them and other children did not inform anything. Then PW1 started searching for the daughter, but did not find her. Hence, she woke up her husband and both of them searched, but did not find the victim girl. However, later on they found the dead body of the victim girl while searching in the drain below the slab and noticed the injuries on her private part. It is also noticed that the dead body was having only t-shirt on the body and inner wear was not there. Considering the position of the dead body, PW1 analysed that she was subjected to sexual act and then committed the murder. Thus, immediately, herself and her husband went to the police station and lodged the complaint in terms of Ex.P1. It is the evidence of PW1 that accused Nos.1 to 3 were giving chocolate and other snacks to the victim girl and they were inappropriately touching her. When the same was noticed earlier, both of them quarreled with the accused persons and

hence, PW1 suspected the role of accused persons in the said act. It is also her evidence that she found the inner wear near the dead body at the distance and the same was seized by drawing the mahazar and identifies the same. After accused were apprehended, she went and identified them.

51. This witness was subjected to the cross-examination. In the cross-examination, she deposed that she cannot tell the distance of the factory premises and where the body was found and the same was not visible from the rooms of the factory premises. The accused was having acquaintance with her last one year of this incident and also admits that when the police called all other factory workers, these accused persons were not there. On the same day, she came back from the police station at around 7 o'clock and once again went to the police station. It is elicited that some persons are known to the fact that accused persons were giving chikki to her daughter but cannot tell the name of the persons who knows the same. It is her evidence that 3 weeks prior to this incident, quarrel was taken place between them and accused Nos.1 to 3. It is suggested that she

is falsely deposing that accused No.1 was giving chikki and the said suggestion was denied. In the cross-examination by the counsel for accused No.2, it is elicited that from their room, the place of the dead body was not visible. It is suggested that accused No.2 is no way connected to this crime and the said suggestion was denied. So also, the similar cross examination was made by the counsel for accused No.3 and the said suggestion was also denied and the said counsel adopted the cross examination of accused Nos.1 and 2.

52. In the cross examination made by the counsel appearing for accused No.4, it is elicited that no watchman was appointed in the factory and also admits that accused No.4 was shown after 2 days of the incident. It is suggested that she did not witness accused No.4 in the police station and the said suggestion was denied. It is suggested that accused No.4 is no way connected to this crime and the said suggestion also denied.

53. PW2 is the mahazar witness in respect of Ex.P2 wherein he identifies his signature as Ex.P2(a) - Spot mahazar. In the cross-examination, it is elicited that T-shirt was found on

the body of the girl and no inner wear, thereafter covered her body by using the cloth. He made the statement before the police that Dothi and other cloth was put on the body and also admits that police took the factory workers at that time. The counsel appearing for accused No.2 also elicited that at the time of drawing the mahazar, people were there inside the factory. The accused No.4 counsel suggested that police did not enquire him and other persons with regard to that who and how many children were playing and the same was denied.

54. PW3 in her evidence says that herself, her uncle and the wife of her uncle were residing in the house of her uncle. CW9 to 16 are neighbours of her uncle and having acquaintance with CW1 and CW2. It is also her evidence that she is having acquaintance with accused Nos.1 to 3 and they were working in the same factory. PW1 was having 4 children and victim girl is first daughter of PW1. It is her evidence that on 21.11.2021, herself, CW11 to 14 were talking at around 5.30 and at that time, CW1 and CW2 came and told that 4 children went to play and only 3 of them came back and first daughter did not turn up.

At that time, CW14 told that all the 4 were playing inside the factory. CW12 also went inside the factory for searching and he also went to accused Nos.1 to 3 to enquire about the same, but, they were sleeping by consuming liquor and then, all of them went for searching the child. PW1 came and told that body is found near the drainage, then, immediately they went to the spot and removed the same and found only t-shirt on the body and innerwear was not found and there were injuries on the mouth and also the private part, so also on the neck, chest portion and also on the cheek. They brought the dead body and put the cloth on it and immediately informed her uncle CW15 and he also came to the spot and thereafter police came to the spot and drawn the mahazar on 22.11.2021 and she had signed the said mahazar and police have seized the inner wear and also collected the blood stains found at the spot and also seized 3 coins of Rs.5/-, chikki packet, plastic bag and identifies the same as MO1 and MO2 and also identifies her signature. Having noticed the position of the dead body, it found that she was subjected to sexual act.

55. It is elicited from the counsel for accused No.1 that police who came to the factory premises took the male persons who are residing in the factory premises and accused Nos.1 to 3 also went along with them. It is also her evidence that she had informed the police that CW12 told that accused Nos.1 to 3 had consumed alcohol and they were inside their room. It is also her evidence that when she gave statement to the police on 22.11.2021, at that time, accused persons were there in the police station. It is suggested that in her presence, not seized any article and the same was denied.

56. The counsel appearing for accused No.2 elicited that inside the factory premises, there are CCTVs and when they asked to see the CCTV, factory owner denied the same. The factory is at the distance of 15 to 20 feet from her house. It is suggested that similar type of MO1 coins even outside the factory premises also could be available and witness says that these coins were seized by the police at the spot. It is suggested that MO1 and MO2 are not seized and the same was denied. A

suggestion was made that she was not present at the spot and the same was also denied.

57. The counsel appearing for accused No.4 elicited that she had read the contents of the mahazar and then signed the same and police took the photographs. It is suggested that she is deposing falsely before the Court and the same was denied. In further examination by Public Prosecutor, the witness says that near the place where the body was found, there is no CCTV.

58. PW4 in his evidence, says that he is also the resident of factory premises and the workers of the factory were almost outsiders and CW1 and CW2 are also working in the very same factory and staying in the accommodation provided to them. Accused Nos.1 to 3 are also working in the factory and they are staying in the room. Accused No.4 was working at Putturu. The victim was the first daughter of the PW1 and PW22. It is his evidence that on 21.11.2021 at around 5.30, he himself, CW10 and CW11 were talking near their house and CW1 and CW2 came and informed that their elder daughter has not returned to the home and then they started searching. Accused Nos.1 to 4,

after consuming the alcohol, were sleeping in their respective rooms. CW9 screamed and called them and all of them went and found the dead body of the victim girl near the drainage and also found the injuries on her private part, face and chest and all over the body and found only the T-shirt and not found the inner wear. Thereafter, he himself and CW1 and CW2 went to police station.

59. This witness was subjected to the cross examination. In the cross examination, the counsel for accused No.1 elicited that he went and verified the room of accused and also nearby the said room and when he went to call the accused persons to search the child, inspite of his efforts to wake up them, they did not wake up. The police came to the spot and took the factory employees and he gave the statement on 22.11.2021 when the police came near the factory. The counsel for accused No.2 suggested that on that day, he was not at the spot and the same was denied. The suggestion was made that he is falsely deposing that when he tried to wake up the accused persons, they did not wake up and said suggestion was denied. He admits when the

cross-examination was made by the counsel for accused No.4 that police had informed that accused No.4 was working at Putturu. The Court also put the question that how accused No.4 came to the factory premises and the witness says that accused No.3 called accused No.4 and he says that he did not make the statement that accused No.4 was working at Putturu with regard to the areca nut work. He says that he did not make the statement before the police that accused No.3 called accused No.4, but he says that accused Nos.1 to A3 and accused No.4 had consumed alcohol and sleeping. It is suggested that for the first time, he is deposing the same and the same was denied. It is suggested that he was not aware of the occupation of accused No.4 as what work he is doing and the said suggestion was denied.

60. PW5, in her evidence says that CW13 is her mother and CW15 is her husband and having a daughter and all of them are residing in the Raj Tiles factory rented premises. The factory is located at the distance of 20 feet. She deposed that she is having acquaintance with PW1 and PW22 and also with their

children. She also stated that PW1 and her husband are also working in the said factory and they are having 4 children and the victim is aged about 8 years who is the elder daughter of PW1 and PW22 and all of them were playing along with her daughter. She also stated that she also having acquaintance with accused Nos.1 to 3 and they are also working in the said factory and also staying in the room.

61. PW5 further deposed that that on, 21.11.2021, at around 12.45, she gave food to her daughter and her daughter claims that she wants to play with victim girl. Hence, she took her daughter to the victim girl wherein her sister and brother were playing and made her daughter to play along with them. The accused Nos.1 to 3 came to the spot consuming alcohol and they started dancing taking victim girl and also her brother on their shoulder. Hence, she brought her daughter back to home. At around 5.30, when she was talking along with PW4 with her mother and PW3, PW9 and CW11, PW1 and PW22 came and informed that her elder daughter did not turn up to home and enquired her and she informed about the very act of accused

Nos.1 to 3. PW4 also went to verify with the accused persons and all of them also started to search. PW4 came and informed that all accused persons were sleeping under the influence of alcohol and he made an attempt to wake up them, but they did not wake up. Thereafter, they noticed the inner wear of the victim girl and also heard the screaming sound and immediately all of them went and found the dead body of the victim girl and they also found injuries on the mouth and also on the chest and near the eyes. They also found only T-shirt on the body and no innerwear and having noticed the same, PW5 fainted. It is also her evidence that along with accused Nos.1 to 3, one more person was there and she identifies all the accused persons.

62. This witness was subjected to the cross-examination. In the cross-examination by the counsel for accused No.1, it is elicited that her daughter was playing inside the factory premises. Having taken note of the sketch she cannot identify the place and also says that she went to police station on 23.11.2021 and she did not notice the accused persons. It is suggested that having come to know that accused Nos.1 to 3

arrested, she falsely deposing that she found the accused persons playing with victim girl and also her brother and the said suggestion was denied.

63. In the cross-examination by the counsel for accused No.2, it is elicited that Raj Tiles factory is having CCTV. But witness says that the same is in the entry only and the persons who are coming and going to the factory will be found. It is suggested that the place where the children were playing was also visible in the CCTV and the same was denied. The counsel for accused No.3 also suggested that she did not inform PW1's children to go to house and she did not say but was there for 15 minutes along with her child. It is suggested that accused No.3 is no way connected to the incident and the same was denied. The counsel appearing for the accused No.4 put the question that when accused Nos.1 to 3 were dancing with the victim girl, whether the same was informed to PW1 when she came and enquired her and replied that the same was informed. It is also her evidence that she was not having any acquaintance with another accused, hence she did not inform about other person.

It is suggested that 4 persons were not present at the spot and hence, the same was not informed to the police and the said suggestion was denied. It is suggested that accused No.4 had not accompanied along with other accused and the same was denied. It is suggested that she is deposing falsely before the Court as someone else told her and the same was denied. A suggestion was made in respect of the presence of the accused No.4 that she did not inform PW1 and the said suggestion was denied. It is suggested that she is falsely deposing that at around 12.45, she took her daughter to the premises to play along with PW1's children and said suggestion was denied. It is her evidence that when the police called and questioned her, she informed the same to the police. It is suggested that she is falsely deposing that accused No.4 also present and was not connected to this incident and the same was denied.

64. P.W.6 is the witness for recovery of cloth. In his evidence, he says that he is having acquaintance with P.W.1, her husband and also their children. That on 21.11.2021, when he was proceeding towards the bridge, his brother's daughter i.e.,

P.W.3 called and informed him that P.W.1's daughter was subjected to rape. Immediately he rushed to the spot and found the dead body in the drainage. P.W.1 and others were also present. He found T-shirt on the dead body and no inner wear and found the injuries on her right side cheek as well as injuries on her private part. Hence, he suspected that she was raped and murdered. He himself took P.W.1, her husband, C.W.4 and C.W.5 to the police station and informed the police and P.W.1 lodged the complaint. That on 25.11.2021, police called him to the police station and C.W.16 was also along with him. Thereafter, all the four accused persons took them to Raj Tiles Factory. First they took them to the room of accused No.3 and he had produced the cloth, which he was wearing on the particular date i.e., T-shirt and innerwear. The accused No.1 took them to his room No.3 and he also produced his cloth. He found chikki and empty arrack packet and the same was seized and mahazar was drawn in terms of Ex.P.6 and he identifies his signature as Ex.P.6(a). He also signed the mahazar Ex.P.7 and identified his signature as Ex.P.7(a) and so also he had signed

the mahazar Ex.P.8 regarding clothes, which have been received from the hospital.

65. This witness was subjected to cross-examination. In the cross-examination by accused No.1 counsel, he says that police, accused and other panchas came to the factory in police jeep. A suggestion was made that none of the accused have showed the spot and also accused did not take him and police to their room and he is deposing falsely before the Court and the said suggestion was denied. It is also suggested that in his presence, police have not seized any article belonging to the accused and the same was denied. However, he says that he cannot tell the colour of the cloth, which was seized and also cannot tell the cloth belongs to which accused.

66. The accused No.2 counsel also cross-examined this witness. Similar suggestion was made that the accused did not take him and the police to any of the room and also to the particular place and he had signed Exs.P.6 and 7 in the police station and the same was denied. However, he admits that he is doing sand business and hence, having touch with the police.

67. The accused No.4 counsel also cross-examined this witness and a suggestion was made that he did not read the contents of the mahazar. But the witness says that after police explained the contents, he had signed the same. He also says that police while conducting the mahazar took the photographs. It is suggested that he is falsely deposing before the Court and the same was denied. He says that when the police seized the clothes, which were received from the hospital, at that time he is also found in the photograph. It is suggested that accused No.4 was not present at the time of seizure and the same was denied.

68. This witness was further examined by the prosecution. In the further chief evidence, he identifies the cloth of accused Nos.3 and 1 as M.O.22 to M.O.24 and M.O.25 to M.O.27, respectively and also seizure of chikki from the house of accused No.1 i.e., M.O.29. This witness was further cross-examined that he cannot identify the cloth and the same is deposed earlier and the said suggestion was denied.

69. P.W.7 is the witness to recovery of cloth of accused Nos.2 and 4. He deposes that on 27.11.2011, he himself and

C.W.18 were called to the police station. Both the accused took them to their place of residence and accused No.2 produced blue colour pant, shirt and innerwear that he was wearing at the time of the incident. Accused No.4 also produced pant, shirt, jacket and innerwear. The same was seized by drawing the mahazar in terms of Ex.P.9 and he himself and C.W.18 signed the same. He also identifies the photographs and says accused Nos.2 and 4 producing of cloth is also found in the photograph and the very presence of C.W.18 also discloses the same in those photographs. The photograph is marked as Ex.P.10. He says that photograph clearly depicts that accused Nos.2 and 4 took them and photographs Exs.P.11 to 14 are marked.

70. The accused No.2 counsel cross-examined this witness and answer is elicited that surrounding the said house, other houses are also located. He also says that outside the said outhouse, there were three rooms. The witness was suggested that he had signed the mahazar in the police station and he admitted the same, but he volunteers that clothes are seized and sealed in the place, where it was seized. It is suggested that

accused Nos.2 and 4 have not led them to the spot and not seized any cloth and the same was denied.

71. The accused No.4 counsel also got elicited the answer that he cannot tell the exact time of visiting the spot and also cannot tell the police van number. He admits that he is seeing Exs.P11 to 14 for the first time. This witness was also further examined and in respect of cloth of accused No.2, M.O.38 to M.O.40 are marked and so also in respect of accused No.4. M.O.42 to M.O.45 are marked and he identifies the cloth. Accused No.2 counsel put the suggestion that in the earlier evidence he has deposed that he cannot identify the cloth and the same was denied.

72. P.W.8 is the witness with regard to the recovery of mobile from accused Nos.1 and 3. In his evidence, he says that accused Nos.1 and 3 took them to their house where they were residing in the accommodation provided by the factory. He says that he was called to the police station on 21.11.2021 and 23.11.2021. It is also his evidence that accused Nos.1 and 3 were found in the police station. It is also his evidence that two

mobile phones were seized from the accused persons and he had signed the mahazar i.e., Ex.P.15 and identifies his signature as Ex.P.15(a). Out of two mobiles, one is from Vivo company and another mobile company he cannot remember. It is also his evidence that on 24.11.2011 also he was called to the police station and by that time, along with accused Nos.1 to 3, accused No.4 was also present in the police station and two mobile phones were seized. He cannot tell the name of particular accused, but identifies his signature as Ex.P.16(a) and phones are marked as M.O.3 and M.O.4 and other two phones are marked as M.O.5 and M.O.6.

73. In the cross-examination, accused No.1 counsel got elicited that all male persons who are working in the factory were taken to the police station and he cannot tell the contents of Exs.P.15 and 16. It is suggested that he is falsely deposing that M.O.3 to M.O.6 were seized by the police from the accused and the said suggestion was denied.

74. The accused No.3 counsel got elicited the answer that he is staying at a distance of 2 kilometres from the factory

and the factory owner called him at around 7.30 p.m. and informed him about the incident and then he came to the factory. It is suggested that no incident was taken place inside the factory and the same was denied.

75. P.W.9 is also a recovery witness of accused Nos.2 and 4. In his evidence he says that accused No.2 and 4 were working in his arecanut garden and accused No.2 left the job after some time. He says that police came to him that accused Nos.2 and 4 were involved in rape and murder case. He had shown the room in which they were residing and the police took them to their custody. Again on 27.11.2021, the police brought both the accused and both of them produced their clothes. He is one of the signatory to the document Ex.P.9 seizure mahazar and he identifies Ex.P.10 photograph and accused Nos.2 and 4 are in the said photograph.

76. The accused No.2 counsel cross-examined this witness. He admits that accused No.2 came back to the house two days back and was staying along with accused No.4. It is suggested that cloth belonging to accused No.2 were not there in

the house and the same was denied. It is suggested that accused Nos.2 and 4 have not worked with him and the said suggestion was denied.

77. The accused No.4 counsel also cross-examined this witness and he says that Sunday is holiday to the workers. However, daily 2 to 3 persons were working. He says that if any other persons comes to the outhouse, it will come to his knowledge. That on 23.11.2021, when the police came, he was in the house. It is his evidence that on 23.11.2021, during daytime, accused No.4 worked with him. It is suggested that accused No.4 was not arrested on that day and the same was denied. That on 27.11.2021, both the accused came along with police and both of them went inside the room at the first instance.

78. P.W.10 is the businessman and he says that they have provided residential accommodation to the workers, who are from outside the State. Among them P.W.1 and P.W.22 were also working in the factory. Accused Nos.1 to 3 who are present before the Court were also working in their factory. He came to

know about the incident on 21.11.2021 and immediately he had been to the place of occurrence. The police asked him with regard to the ownership, names and details of the neighbours and he complied with the requirement of the police. He identifies the notice given to him by the police, which is marked as Ex.P.17. It is also his evidence that he has furnished copies of certain documents to the police along with a covering letter and the same is marked as Ex.P.18. That on 22.11.2021, the police came to his factory and inspected the CCTV footage and they have collected the footage after getting downloaded it to a DVR and pendrives by drawing the mahazar in terms of Ex.P.19 and his signature is also found and marked as Ex.P.19(a). This witness was not subjected to cross-examination.

79. P.W.11 in his evidence says that they have installed the CCTV camera to the Raj Tiles factory in 2018-19 and he himself is maintaining the same. That on 21.11.2021, at around 7.00 p.m., he was called to Raj Tiles factory and he downloaded the backup of the footage from 10.00 a.m. to 6.00 p.m. and also put the same to the pendrive and also given the DVR and he has

given the certificate. It is also his evidence that mahazar was drawn to that effect in terms of Ex.P.19 and his signature is also marked and he gave the certificate, which is marked as Ex.P.20. The DVR and pendrive were packed and sealed he identifies the pendrive and DVR as M.O.7 and M.O.8. The DVR and pendrive were also played before the Court, which is already marked as M.O.8.

80. This witness was subjected to cross-examination. In the cross-examination, he says that after the spot mahazar, police got the footage and got downloaded the same. It is his evidence that Ex.P.19 was typed in police station. It is suggested that M.O.8 is created and the same was denied.

81. P.W.12 is the person, who sold the chikki to accused No.1. He says that P.W.1 and C.W.2 daughter are also customers of his shop. He says that accused No.1 was working in factory and he is also his shop customer. It is his evidence that on 21.11.2021, accused No.1 came to his shop and purchased the chikki and on the same day, he came to know that daughter of C.W.1 and C.W.2 was murdered. In the cross-examination, it

is elicited that the employees of the factory used to come and purchase the things from his shop. This accused was also a customer of his shop. He used to sell chikki based on demand. He admits that even others also used to purchase chikki from his shop. It is also his evidence that he purchased chikki not only on 21.11.2021, but on other days also he had purchased the same.

82. P.W.13 is the Scientific Officer, RFSL, Mangaluru. In his evidence he says that on opening article No.1, it contained a preservative which was marked by Investigating Officer as 4A. On opening article No.2, it was air dried blood soap blotted filter paper, which was marked by Investigating Officer as U. On opening article No.3, it was nail clippings, which was marked by Investigating Officer as W1. On opening article No. 4, it was pubic hairs, which was marked by Investigating Officer as W2. On opening article No.5, it was penile swab, which was marked by Investigating Officer as W3. On opening article No.6, it was nail clippings, which was marked by Investigating Officer as XI. On opening article No.7, it was pubic hairs which was marked by Investigating Officer as X2. On opening article No.8 it was penile

swab marked as X3 by Investigating Officer. On opening article No.9, it was nail clippings marked as Y1. On opening article No.10, it was penile swab marked as Y2. Article No.11 was penile swab marked as Y3. Article No.12 was nail clipping marked as Z1. Article No.13 was pubic hairs marked as Z2 and article No.14 was penile swab marked as Z3. It is his evidence that he examined the articles for blood stains using benzidine and phenolphthalein test as primary test and further confirmed by conducting Takayama Crystal test. He conducted test for seminal stains using Florence test and Acid Phosphatase test. He has conducted Haematoxyline - Eosin test for Spermatozoa. He has conducted test for skin tissues by taking scrapings on slide and he has done microscopic observation by staining with Haematoxyline and Eosin. By conducting the above tests, he detected the blood in article Nos.U, W3, X3, Y3, and Z3, which were of human origin and of 'B' blood group. Seminal stains were not detected in article Nos.W1, W2, W3, X1, X2, X3, Y1, Y2, Y3, Z1, Z2 and Z3. Skin tissues were not detected in article Nos.W1, X1, Y1 and Z1. After examination, he issued a test report on 16.12.2021 along with specimen seal. He identifies the

report as Ex.P.21 and his signature as Ex.P.21(a). The specimen seal is marked as Ex.P.22 and his signature is marked as Ex.P.22(a).

83. This witness was subjected to cross-examination. In the cross-examination by accused No.1 counsel, it is elicited that blood group can be determined from body fluid. Penile swab contains body fluid. If a penile swab is collected from the person having 'B' blood group, his swab also shows 'B' blood group. The safest period to collect penile swab to ascertain blood group depends upon the body hygiene of the person.

84. The accused No.2 counsel also cross-examined this witness. A suggestion was made that he did not conduct any test and without conducting any tests, he has issued a false report and the same was denied. The accused Nos.3 and 4 counsel adopt the cross-examination of accused Nos.1 and 2 counsel.

85. P.W.14 is the Associate Professor working in Forensic Medicine Division, KMC Hospital, Mangaluru. His evidence is that on 22.11.2021, he and C.W.29 Dr. Rashmi K.S. received requisition from Mangaluru Rural Police Station to conduct

autopsy on the dead body of the victim girl and hence, they conducted the autopsy and procedure of autopsy was videographed by a local videographer. He says that on external examination, it was the body of a girl child weighing 32 kgs. and the body was preserved in cold chamber. The face was swollen and congested. It is his evidence that white frothy discharge was seen at left nostrils. Eatable chewed gummy materials was present in between clinched teeth of right side of the mouth. There was evidence of eruption of permanent first molar, central incisors and lateral incisors on all quadrants. The external injuries noted are as follows:

- a. Diffuse swelling seen over forehead.*
- b. Abrasion of 2.5 x 1.5 cm seen over center of forehead.*
- c. Contusions of 4 x 1 cm present over mucosal surface of upper lip and 3 x 1 cm seen over lower lip.*
- d. abrasion of 2 x 1 cm seen lateral to outer canthus of left eye.*
- e. Abrasion of 1 x 0.5 cm seen 1 cm below the injury No.'d'.*
- f. linear abrasion of 1 cm below the injury No.'e' on the upper part of left cheek.*

- g. Abrasion of 2 x 1 cm seen on the lateral part of left cheek 3 cm away from tragus of left ear.*
- h. Abrasion of 1 x 1 cm seen over post auricular area of right ear.*
- i. Abrasion of 1 x 1 cm seen over lateral aspect of right side of neck, 6 cm below right ear lobule.*
- j. Multiple abrasions present over an area of 4 x 5 cm present over front part of neck away midline ranging from 0.5 x 0.5 cm to 3 x 0.5 cm on left side of neck, situated 7 cm above suprasternal notch and 4 cm below the chin.*
- k. Abrasion of 1 x 0.5 cm seen over suprasternal notch.*
- l. Graze abrasion of 3 x 2 cm outer aspect of left elbow Joint.*
- m. Linear abrasion of 2 x 0.2 cm placed vertically over medial aspect of left ankle joint*
- n. Obliquely placed abrasion of 6 x 0.2 cm seen over anterolateral aspect of lower part of right leg.*
- o. Multiple abrasions seen over an area of 3 x 2 cm on dorsum of right foot ranging from 0.5 cm to 1 x 1 cm.*
- p. Abrasion of 2 x 1 cm seen along mid line over lower part of nape of neck.*

All the above injuries are ante mortem and fresh in nature.

86. With regard to abdomen is concerned, he says that mouth injuries were described in paragraph No.5(c). Stomach

and its contents weighed 506 grams and contained 250 grams of undigested food particles mixed with black colour powder particles with no characteristic odor. The preliminary opinion of the doctor is that the deceased died due to asphyxia as a result of compression of neck structures by hand secondary to throttling (manual strangulation) following forceful penetrative sexual act. He issued the final opinion after receiving the report in terms of Ex.P.23. The findings of the DNA profiling issued by State FSL, Madivala, Bengaluru was taken note of wherein, it was detected on item No.41 (blood stains on the filter paper). DNA profile result of seminal stains detected on item No.52 (underwear of Muneem Singh) is identical and matching with DNA profile result of Muneem Singh and Smt. Geetha Bai, sample blood scent of item No.56. Y – Chromosomal DNA profile results of the seminal stains detected on item Nos.32 and 39 (Vulval swab and dried smear slides of vaginal swabs) are identical and matching with Y – Chromosomal DNA profile result of Mukesh Singh i.e., sample sent in item No.54. Based on the autopsy findings, chemical examiners report, DNA profiling report issued by the SFSL and Histopathological report, opined

that the deceased died due to asphyxia as a result of compression of neck structures by hand secondary to throttling (manual strangulation) following forceful penetrative sexual act and issued the final opinion to the Investigating Officer as per Ex.P.24 and identifies his signature as Ex.P.24(a).

87. The accused No.1 counsel says no cross-examination. Accused No.2 counsel suggested the witness that he has not collected any swab from the dead body and the same was denied. The accused No.3 counsel says no cross-examination and the accused No.4 counsel suggested that the presence of seminal stains in one's own underwear is normal and the same is admitted.

88. P.W.15- Sri Vishwavijetha S.K is the Doctor. In his evidence, he says that he has received requisition from the Court on 10.12.2021 seeking assistance for collection of blood samples of accused persons for the purpose of DNA analysis. On 13.12.2021 at 04.00 p.m., he reached the Court along with staff and the accused persons were also present and collected 3 ml. each blood samples in a vacutainer from accused Nos.1 to 4

and then, sealed it separately and handed over the same to the Investigating Officer in the presence of Hon'ble Magistrate. At the time of collection of blood samples, Identification Forms of each accused persons were prepared and affixed signature in all the Identification Forms and attested the photographs of each accused persons. The witness also identifies the form of accused Nos.1 to 4 which are marked as Exs.P29 to P32 with respective signatures as Exs.29(a), 30(a), 31(a) and 32(a). The accused No.1 counsel says no cross. The accused No.2 counsel suggested that if the blood is preserved with preservatives, there is no time limit for conducting the examination. It is suggested that no blood samples were collected from accused No.2 and the same was denied. The counsel for accused Nos.3 and 4 says no cross-examination.

89. P.W.16 is the Doctor, who is a Senior Specialist. In her evidence, she says that she has examined the accused-Manish Tirki and his secondary sexual characters were well developed. On local examination, the penis was found normal. Foreskin was circumcised. Scrotum found pendulous. Both the

testis was present and were adult size. Sensational reflex were normal, there were no injuries deformity or disease noted. It is also her evidence that she collected nail clipping, pubic hair, penal swab and blood for grouping. The samples were sealed for RFSL analysis and given opinion that there is nothing to suggest that above person is incapable of performing sexual act and issued the certificate in terms of Ex.P33. In respect of other accused-Mukesh Sing, similar tests were conducted and certificate was issued in terms of Ex.P34. In respect of accused No.1-Jayban Adivasi @ Jaya Singh, same tests are conducted, collected the samples and issued the certificate in terms of Ex.P35. So also in respect of other accused-Muneem Singh, issued the certificate in terms of Ex.P36 and respective counsel submits that no cross-examination.

90. P.W.17 is the Assistant Executive Engineer, who prepared the spot sketch and the same is marked as Ex.P37 and this witness was not cross-examined.

91. P.W.18 is the Sub-inspector of Police, who receives the complaint on 21.11.2021 at 7.00 p.m. She deposes that

C.Ws.1 and 2 appeared and made the statement in Hindi and got translated the same to Kannada and invoked the offences under Sections 376 and 302 of IPC and Sections 5 and 6 of POCSO and issued the FIR. The complaint and FIR are marked as Ex.P1 and Ex.P4 and her signature is identified. No cross-examination on the evidence of P.W.18.

92. P.W.19 in his evidence says that he was part of spot mahazar and recovery of clothes of accused Nos.1 and 3 and also recovery of clothes of accused Nos. 2 and 4. He also states that he took out photographs of these process and given the certificate in terms of Ex.P38 under Section 65(B) of the Evidence Act. The photographs are also marked as Exs.P10 to P14. In respect of recovery of accused Nos.1 and 3, the document is marked as Ex.P39, photographs and DVD as Exs.P40, P41 and P42. It is also his evidence that having produced CCTV clippings, DVR and pen drive, a mahazar was drawn in terms of Ex.P19 and he also signed the same and his signature is marked as Ex.P19(c). In the cross-examination, suggestion was made that when the accused persons were there

in the custody, they were taken to different places and photos were taken and mahazar was not drawn in the spot and the same was prepared in the police station and no articles were seized. These suggestions were made by accused No.1 counsel and the same was denied. The accused No.4 also made similar suggestions and the same was denied. The counsel for accused Nos.2 and 3 also adopted the same.

93. P.W.20 in his evidence says that he had received a call from C.W.46 and informed about complaint lodged by C.W1. Having registered the case, appointed two staffs and sent them to the spot and directed to protect the scene of offence. It is also his evidence that he immediately visited the spot and found the dead body and on the dead body, only T-shirt was there, below the waist, there were no clothes. It is also his evidence, he reached the spot at 8.15 p.m. and found the injuries on the private part as well as near left ear, left cheek, neck and scratch marks on the chest. He found C.W.2, C.W.15 and C.W.16 at the spot. The dead body was in the drainage and the same was removed and in the scene of occurrence, found the blood stains.

He also found an innerwear at the distance of 20 feet from the spot and came to know that the same belongs to the victim. Having noticed the dead body and there was commotion by the public, shifted the body to Wenlock Hospital and protected the scene of crime to get the FSL people and mahazar was drawn on the same day between 8.15 to 9.00 p.m. in the presence of panchas and the same is marked as Ex.P2. He also requested RFSL people to come to the spot and also request was made to provide CCTV footages from 10.00 a.m. to 6.00 p.m. and directed to produce DVR and recorded the statement of C.W.4 and C.W.5. That on 22.11.2021, conducted inquest in the presence of panch witnesses and drawn the mahazar in terms of Ex.P3. RFSL Experts came to the spot and mahazar was drawn in terms of Ex.P5 and also found innerwear and the same was seized, sealed and identified as M.O.9 and signature is also identified. C.W.9 had shown the place of incident and RFSL Expert inspected the spot and found the dead body and blood stains and the same was seized. The RFSL Expert also seized three coins of Rs.5/- denomination and a plastic material by drawing the mahazar in terms of Ex.P5 and identified the same

as M.O.1 and M.O.2 and signatures as M.O.1(b) and M.O.2(b). The RFSL Expert also collected blood stains and the same was sealed and packed.

94. In the further chief evidence, identifies the report Ex.P43. The RFSL people collected the blood stains from all the four angles and the same was seized and identified as M.O.10 to M.O.21 and their respective signatures are also marked and recorded the statement of C.W.6 to C.W.12 and C.W.36 to C.W.38. He says that CCTV camera, DVR and pen drive are produced before him and mahazar was drawn in terms of Ex.P19. He also collected the certificate in terms of Ex.P20 under Section 65(B) of Evidence Act and collected details of movement and directed to get the assistance of C.W.24 to identify the persons, who are moving and recorded the further statement of C.W.1 and pen-drive and DVR were subjected to PF. It is also his evidence that on 22.11.2021, C.W.45 gave the report in terms of Ex.P44 and recorded the statement of C.W.24, C.W.13 and C.W.14 and suspected that people, who are working in the factory itself have committed the offence. It is also his evidence

that, it has emerged that victim girl was found at 1.00 p.m. and accused Nos.1 to 4 were playing along with her and the same came to his knowledge during investigation and the same was witnessed by C.W.14 and also came to know that earlier accused Nos.1 to 3 misbehaved with the child. On perusal of CCTV clippings, it is seen that accused Nos.1 to 3 and other two persons were entering inside the factory and their mobile location was also found and directed C.W.21 to produce accused Nos.1 to 3 and the other 2 persons, who are found in the CCTV clippings. Accused Nos.1 and 3 were brought to the police station on 23.07.2021 and recorded their voluntary statements, since they admitted the guilt and arrest procedure was also done.

95. It is also his evidence that by drawing mahazar in terms of Ex.P15, mobile phones of accused Nos.1 and 3 were seized i.e., M.O.3 and M.O.4 and subjected to PF. The accused Nos.1 and 3 in their voluntary statement have stated that they will produce the clothes, if they accompany them and the said portion in the voluntary statements are marked as Ex.P45 and

Ex.P46. It is also his evidence that he requested to prepare the sketch and came to know that accused Nos.2 and 4 went to Puttur after committing the offence and hence, collected the details and sent the police personnel and apprehended and produced both of them by giving report in terms of Ex.P47. He identifies accused Nos.2 and 4 and says that he seized the mobile phones of accused by drawing mahazar in terms of Ex.P16 and identified the same as M.O.5 and M.O.6 and the same were subjected to PF. On the same day, he recorded the statement of C.W.22. It is his evidence that accused Nos.2 and 4 gave voluntary statement and stated that, if they are taken to the spot where they have kept the clothes, they will produce the same and the said portion of voluntary statements are marked as Ex.P48 and Ex.P49. It is also his evidence that accused were produced before the Doctor for examination and received the report in terms of Exs.P33, P34, P35 and P36 and accused persons were taken to police custody. It is also his evidence that in the presence of C.Ws.15 and 16, accused persons were taken to the spot and mahazar was drawn in terms of Ex.P6. It is also the evidence of witness that accused No.3 led them to his room

and produced pant, shirt and innerwear and the same are seized and marked as M.O.22 to M.O.24 and respective signatures are also marked. Accused No.1 also took them to his room and produced pant, shirt and innerwear and the same are marked as M.O.25 to M.O.28 and it is the evidence of the witness that accused No.1 also produced chikki and the same is marked by drawing the mahazar in terms of Ex.P6 and subjected to PF. It also the evidence that at the time of inquest, seized some articles and the same is produced and mahazar was drawn in terms of Ex.P8 and samples 1 to 7 and 13 were packed and identified the same as M.O.30.

96. It is also the evidence of P.W.20 that on the basis of statement of C.W.40, samples were sealed and packed and identifies the same as M.Os.30, 31, 32, 33, 34, 35, 36 and 37 and they were subjected to PF. It is his further evidence that he has sent sealed articles to the RFSL and recorded statement of C.Ws.15, 16, 39 and 40 and for collecting blood samples, a request was made to the Court and also collected the inquest report and employer was given instructions to give details and

recorded the statement of C.Ws.21, 25 and 26 and also received the information given by C.W.21 which is marked as Ex.P18. That on 27.11.2021, accused Nos.2 and 4 in terms of their voluntary statement led them to their room in the presence of C.W.17 and C.W.18 and produced their clothes and two hairs which were seized and packed, including blue colour jeans pant, brown colour innerwear and identified the same as M.Os.38 to 41. The accused No.4 also produced blue colour jeans pant, red colour shirt, blue colour jacket and brown colour innerwear, the same are seized, packed and identified the same as M.Os.40 to 45 and also says that photos were taken during the said seizure and produced Ex.P10-photo and witness also signed mahazar Ex.P9 and says that certificate is obtained from the concerned under Section 65(B) in respect of Ex.P38 and also recorded the statement owner of the house of accused Nos.2 and 4. That on 30.11.2021, blood samples of accused Nos.1 to 4 were collected with the permission of the Court and the same was seized and sent to FSL and acknowledgement is produced as Ex.P50. It is also his evidence that he collected the documents in respect of factory on 02.12.2021 by issuing notice and the same are

marked as Exs.P51 and P52 and also identifies Exs.P53 and P54. It is his evidence that on 03.12.2021, collected the medical report from the police as per Exs.P33 to P36. That on 04.12.2021, he has sent the seized articles to the RFSL through C.W.42. It is his evidence that on 08.12.2021, to record the evidence of C.W.3, sent his staff to Children Welfare Committee. That on 13.12.2021, accused Nos.1 to 4 were produced before the Court and in the presence of Magistrate, blood samples were collected and the same was sent to the FSL for DNA test which are marked as Exs.P55 to P60. It is also his evidence that on 21.12.2021, he has received the report from the RFSL and also the samples. That on 23.12.2021, accused Nos.1 to 4 blood sample reports in terms of Exs.P25 to P28 are received and got the sketch in terms of Ex.P37 from C.W.35 and subject to the DNA report, charge sheet was filed. It is also his evidence that he has requested to furnish the details of age of the victim girl and received the document in terms of Exs.P62 and P64. He also received the RFSL report in terms of Exs.P65 and P66.

97. This witness was subjected to cross-examination. In the cross-examination, he admits that, in order to enter the factory, there are two gates and one small gate. He also admits that there is no security guard in the gate. He also admits that CCTV is found in 8 places and the same is not disclosed in the sketch. He also admits that there were 39 workers, out of which 25 are the employees residing in the said premises. He admits that in the complaint, at the first instance, not suspected the role of anyone and for the first time, he suspected the role of accused No.1 on 22.11.2021. It is suggested that in the CCTV, movement of accused No.1 was not found and the same was denied. It is suggested that he is falsely deposing that accused No.1 was found in the place where the children were playing and the said suggestion was denied. It is suggested that accused No.1 has not given any voluntary statement and M.Os.25 to 29 are not shown by him and the same was denied. The accused No.2 counsel also cross-examined this witness. He admits that when he found 5 persons in CCTV along with accused Nos.1 to 3 and in respect of other 2, he did not make any enquiry. He admits that he has not given any notice to the owner of

premises, wherein accused Nos.2 and 4 were apprehended. It is suggested that he has not recorded the voluntary statement and also not drawn the mahazar and the same was denied. The accused No.3 counsel also put similar questions in the cross-examination and the same was denied and so also, it is suggested that accused No.3 has not given any voluntary statement in terms of Ex.P46 and also not produced any M.Os. and the same was denied. Similar question was asked by accused No.4 counsel and he admits that he examined Mohan of Madhya Pradesh and another person from Jharkhand, who is aged about 32-33 years in respect of this case. It is suggested that due to political pressure, he implicated accused Nos.2 and 4 and they were not arrested and the said suggestion was denied.

98. P.W.21 is the brother of the victim. In his evidence, he says that the victim is his elder sister and she passed away. He also says that they used to play inside the factory premises. It is his evidence that while playing, accused Nos.1, 2 and 3 took his sister Sushmitha and after playing game, he went to house, but Sushmitha did not accompany him and he identifies accused

Nos.1, 2 and 3 before the Court. This witness was subjected to cross-examination. In the cross-examination, it is elicited that their parents were working in Raj Tiles Factory and on the date of incident, except himself, his sisters and elder sister Sushmitha, no others were playing and number of persons were working in the tiles factory and he is not having acquaintance with all of them. He says that he came to know the name of accused Nos.1, 2 and 3 only when they informed their names. He says that the place where they were playing was not visible to their parents, however, they were playing inside the compound. He admits that no other person came to the place where they were playing. When he went back, parents asked about Sushmitha and he did not disclose the same to parents where she went. It is also elicited that while playing, accused Nos.1 to 3 did not come to the place where they were playing.

99. P.W.22 is the father of the victim. He says that he is working along with his wife from the last 3-4 years in the same factory and identified accused Nos.1 to 3 and says that they are working in the same factory and he has acquaintance with

accused No.4. He also says that accused Nos.1 to 3 are staying in a room which is inside the compound. It is his evidence that all his children went to play within the factory premises and after having food, he was sleeping and when his three children came back to house, Sushmitha did not turn up and his wife informed him and both of them went to search her, but found the dead body at around 6.00 p.m. in the drainage and found only T-shirt, but no innerwear and there were injuries on the body, including on her private part and back and some of them told him to lodge complaint. Hence, he went and lodged the complaint and police came to the spot and found the innerwear of her daughter and he has signed mahazar Ex.P2. He came to know that his daughter was raped and murdered and suspected the role of accused Nos.1 to 3, since earlier also they used to give some chocolate and other items and used to touch her and there was galata between him and accused. Thereafter, police arrested accused Nos.1 to 4.

100. In the cross-examination by accused No.1 counsel, he says that police took two persons, who were inside the

compound to police station, including accused Nos.1 to 3 and Mohan and Santhosh were also working along with them. He also says that before arresting accused Nos.1 to 3, he informed the police about suspicion against them. It is also his evidence that accused Nos.1 to 3 were touching his daughter by giving chocolate was not only known to him and his wife, but others were also aware of the same. But, quarrel between accused Nos.1 to 3 was not known to others. It is suggested that, he is falsely deposing that accused Nos.1 to 3 were touching her daughter by giving chocolate and the said suggestion was denied. The cross-examination of accused No.1 counsel was adopted by accused No.2. The counsel for accused No.4 cross-examined this witness and he says that he came to know the name of accused No.4 through police and he does not know anything about him. It is suggested that he was having doubt against Mohan and Santhosh and the same was denied.

101. P.W.23 in his evidence says that he came to know about rape and murder and he was enquired after 8 to 10 days of the incident. He speaks about giving the premises for lease

and handing over the documents Exs.P51 to P54. This witness was not cross-examined.

102. P.W.24 is the Supervisor of Raj Tiles Factory. In his evidence, he says that police came to the spot in connection with this crime and verified the CCTV. The CCTV clippings are transferred from DVR to pen drive through CCTV Technician and handed over to Investigating Officer and police have drawn the mahazar in terms of Ex.P19 and identified DVR as M.O.8 and pen drive as M.O.7 and the same is in respect of timings 10.00 a.m. to 6.00 p.m. on 21.11.2021. This witness was also not cross-examined.

103. P.W.25 in his evidence says that C.W.1 and C.W.2 were screaming that they did not find their daughter. On search, they found the dead body in the drainage and removed the same and only top was there on the dead body of the victim and below the waist, no clothes and found blood stains and injuries on the body and the police came and took the dead body. On the next day, they were called to police station and then brought them to factory premises and himself, Nonaiah and Shobha showed the

place. It is also the evidence that underwear was found at a distance of 25 feet from the dead body. C.W.1 says that the same belongs to her daughter and police seized the same and also collected the blood stains at the spot. There was a room behind the place where the innerwear was found and in the said room, found 3 coins, chocolate packet and also hair. The police seized the same and drawn the mahazar in terms of Ex.P5 and identified the signature as Ex.P5(c). The witness also identifies M.O.1, M.O.9 and M.O.2. The accused counsel have not cross-examined this witness and says no cross.

104. P.W.26 is the Senior Scientific Officer, RFSL, Mangaluru. In his evidence, he says that after having received the articles, did not find any poison, sedatives, drugs or alcohol in the articles and issued the certificate in terms of Ex.P65 and identifies the signature as Ex.P65(a) and this witness was not cross-examined.

105. P.W.27 Police Constable in his evidence says that he handed over 38 sealed packets to FSL as per the direction and produced the acknowledgment in terms of Ex.P50. It is also his

evidence that on 13.12.2021, he has received 4 sealed articles and handed over the same to FSL on 14.12.2021 and produced the acknowledgement in terms of Ex.P60. It is suggested by counsel for accused No.2 that no articles were handed over to FSL and the said suggestion was denied. Accused Nos.1, 3 and 4 counsel says no cross.

106. P.W.28, who is the Senior Scientific Officer, DNA Section, State Forensic Science Laboratory, Madiwala deposes that she has assisted more than 550 cases and reported more than 500 cases. Her qualification is M.Sc., M.Phil and PHD in Biochemistry. It is her evidence that on 01.12.2021, the police personnel has submitted 52 sealed intact articles to the DNA section along with case file and details of articles received in first case are given and so also details are given in respect of second case. She also deposes that she extracted the DNA from all the 56 articles, quantified, diluted and subjected to test and result was analyzed. As per the result, blood stains were detected on item Nos.2, 5, 8, 9, 11, 13, 16, 17, 18, 19, 21, 28, 41, 47, 48, 49, 50, 51 and 52. Blood stains were not detected on item

Nos.1, 3, 4, 6, 7, 10, 12, 14, 15, 20, 22, 23, 24, 25, 26, 27, 29 to 40 and 42 to 46. Seminal stains were detected on item Nos.32, 39 and 52 and seminal stains were not detected on item Nos.1 to 31, 33 to 38 and 40 to 51. DNA profile result of blood stains detected on item No.41 is of human origin and female sex. DNA profile result of seminal stains detected on item No.52 is identical matching with DNA profile result of Muneem Singh's sample blood sent on item No.56, so also DNA profile results of seminal stains detected on item Nos.32 and 39 are identical matching with DNA profile result of Mukesh Singh's sample blood sent on item No.54. So also, Autosomal and Y-Chromosomal DNA profile result of Jayan Adivas @ Jaya Singh, Mukesh Singh, Maneesh Tirki and Muneem Singh sample blood sent in items Nos.53, 54, 55 and 56 respectively are shown in Annexure-I and Annexure-II. It is the evidence that based on DNA profile result, it is confirmed that one female individual is included from being the contributor of blood stains detected in item No. 41. Muneem Singh's sample blood sent in item No.56 is included from being the contributor of seminal stains detected in item No.52 and so also, Mukesh Singh's sample blood sent in item No.54 is included

from being the contributor of seminal stains detected in item Nos.32 and 39. It is also the evidence of this witness that DNA profiling report issued by her is already marked as Ex.P66 and identifies her signature as Ex.P66(a). So also, Annexure-1 is marked as Ex.P67 and the signature as Ex.P67(a), Annexure-2 is marked as Ex.P68 and signature as Ex.P68(a) and sample seal is marked as Ex.P69 and signature as Ex.P69(a). The identification forms of Jayban Adivasi, Mukesh Singh, Maneesh Tirki and Muneem Singh are already marked as Exs.P29 to P32. The forwarding notes of these accused are marked as Exs.P70, P71, P72 and P73.

107. This witness was subjected to cross-examination. The counsel for accused No.1 says no cross-examination. In the cross-examination of accused No.2 counsel, it is suggested that since there is lapse of 16 months, there will be no positive result in the report and the same was denied. Suggestion was also made that due to lapse of time, she could not obtain a correct result and the same was denied. It is also suggested that she has not properly examined item Nos.54, 32 and 39, the same

was denied and also suggested that examination she has conducted does not connect with accused No.2 and the same was denied. The accused No.3 counsel says no cross. The counsel for accused No.4 suggested that item No.56 does not relate to accused No.4 and the same was denied and also suggestion was made that he is not qualified to issue DNA report and the same was denied.

108. The other witness is P.W.29-Police Inspector. In his evidence, he says that on 22.11.2021 he has verified the CCTV camera and DVR and found suspicious movement of some of the persons. Hence, directed to give report and also verified the pen drive and given the report and he identifies the signature in the report as Ex.P44(b) and pen drive is marked as M.O.7. It is his evidence that he has verified the CCTV footage and at that time, C.W.24 was along with him and he verified all 8 CCTV cameras and not found movement of persons in camera No.1. In camera 2, movement of accused Nos.1, 3 and 4 was found and in camera No.3, the victim was playing along with other children at 11.28 hours and found movement of accused after 2.54 to 2.56

hours and except the victim girl, other children are found upto 2.56 p.m. In camera No.4, from 11.59 to 12.21 p.m., movement of accused Nos.1 to 3 is also found. From 12.52 to 1.00 p.m., movement of victim and other three children is found and the accused No.2 took the bag and moved. The accused Nos.1 and 3 were found at 2.56 p.m. and from 03.52 to 5.38 p.m., parents of the victim and children were found. So also, movement of the brother of victim at 2.57 p.m. was found in camera No.6 and the victim was found playing till 1.00 p.m. in camera No.4. It is also his evidence that in respect of accused Nos.2 and 4, a memo was given to apprehend the accused and they left station at 10.00 p.m. and reached at 11.15 p.m. and found the accused Nos.2 and 4 in sit out place of Mohammed Kalandar's house and apprehended them and given the report in terms of Ex.P47 and identified the signature as Ex.P47(b).

109. In the cross examination of accused No.1 counsel, it is elicited that in camera No.2, apart from accused Nos.1, 3 and 4, others were also seen. But, in camera No.2, accused Nos.1, 3 and 4 were not found together and in camera No.4 apart from

accused Nos.1 to 4, others were also found and accused Nos.1 to 4 were not found together in any of the cameras. In the cross-examination by accused No.4 counsel, suggestion was made that CCTV was created for the purpose of this case and the same was denied. He says that accused Nos.2 and 4 were not known to him earlier and no sign or symbol to identify them. It is suggested that he has not accompanied accused Nos.2 and 4 and called accused to the police station and made them to stay for a period of 1 week and they have been implicated in the case and the said suggestion was denied. The accused No.2 counsel makes the submission that cross-examination of accused Nos.1 and 4 counsel is adopted and so also, accused No.3 counsel says he adopts the cross of accused No.1 counsel.

110. P.W.30 is the women Police Constable. In her evidence, she says that as per the order of the Investigating Officer on 04.12.2021, she took 13 sealed envelope cover and 4 sealed plastic bottles to RFSL and after having handed over the same, produced the acknowledgement in terms of Ex.P74. The accused Nos.1 and 4 counsel says no cross. The accused Nos.2

and 3 counsel made the suggestion that not handed over any articles to RFSL, Mangaluru and the same was denied.

111. We have perused the evidence of prosecution witnesses and the evidence of prosecution witnesses P.Ws.1 to 30 in sum and substance is considered by us and this Court has to analyze the evidence available on record. Having considered the evidence of these witnesses, this Court has to analyze whether the Trial Court has committed an error in convicting and imposing death sentence on the accused and whether it requires interference for acquittal or for reducing the sentence. Having considered the gravity of the offence, the sentence imposed must commensurate with the gravity of the offence and the nature of crime. Considering the said aspect, this Court has to consider both oral and documentary evidence available on record.

LAW SET IN MOTION

112. The law is set in motion in this case by giving complaint at Ex.P1. P.W.22 is the father and P.W.1 is the mother of the victim, who went and lodged the complaint with the police

in terms of Ex.P1, wherein they have stated that her elder daughter Sushmitha, who is aged about 8 years was subjected to rape and murder. In Ex.P1-complaint it is narrated by the mother-PW1 that her children went to play at around 12.00 noon and when three children came back at 3.00 p.m., the victim-Sushmitha did not come back and immediately she started searching her but she did not find her daughter. Thereafter, she informed the same to her husband who was sleeping and both of them started searching in the factory premises and after a long search, they found the dead body of their daughter-Sushmitha at 6.00 p.m. in the drainage and there was no cloth below the waist and found only T-shirt on the upper part and innerwear was not there and found injuries on the private part and all over the body. Hence, they lodged the complaint stating that in between 12.00 to 3.00 p.m., someone might have taken her daughter by persuading her and committed forcible rape on her and in order to screen the evidence, put her dead body in the drainage and requested to take action.

113. Having perused Ex.P1, it is clear that complainant made the statement in Hindi language and the same is translated between 7.00 to 7.30 p.m. and the same is recorded by PW18 and registered the case in Cr.No.95/2021. In order to substantiate the same, PW18 in her evidence deposed before the Court that she received the complaint from PW1 and recorded the statement and issued the FIR in terms of Ex.P4 and identified the signature at Ex.P4(a) and Ex.P1(a) i.e., FIR and complaint. This witness was not subjected to cross-examination. But, no dispute that the law was set in motion since PW1 spoken about giving of complaint in paragraph 3 of her chief evidence and no denial also in the cross-examination.

CIRCUMSTANTIAL EVIDENCE TO LINK THE CRIME

114. The case is rest upon the circumstantial evidence. Hence, this Court has to consider whether chain link is established to come to a conclusion that these appellants/accused persons were involved in the crime.

115. The counsel appearing for accused No.1 in his argument would contend that there is no material about the

presence of accused No.1 in the entire premises and the same would not be an incriminating circumstance and the same cannot be accepted. The counsel for accused No.1 totally denied the involvement of this accused. The counsel appearing for other accused i.e., accused Nos.2 and 3 also adopted the arguments of the counsel appearing for the accused No.1 with regard to the circumstances is concerned.

116. The counsel for the appellant/accused No.1 relied upon judgment of Apex Court reported in **(1984) 4 SCC 116** in the case of **SHARAD BIRDICHAND SARDA vs STATE OF MAHARASHTRA**. In that judgment, the Apex Court observed that in a case of circumstantial evidence, five steps should be satisfied which read thus:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be proved and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

117. The counsel also relies upon the judgment of the Apex Court reported in **(2015) 11 SCC 43** in the case of **RAJA @ RAJINDER vs STATE OF HARYANA** wherein also the Apex Court reiterated that in a case of circumstances evidence, the Court has to be satisfied the following circumstances:

1. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

118. This Court also would like to rely upon the recent judgment of the Apex Court in a case of **SUBRAMANYA vs STATE OF KARNATAKA** reported in **(2023) 11 SCC 255** wherein also, the Apex Court discussed with regard to the satisfaction of the Court in connection with the circumstantial evidence is concerned in paragraphs 47 and 48 which reads thus:

“The following conditions must be fulfilled before a case against an accused can be said to be fully established by the prosecution:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The Supreme Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence.

In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused."

119. When the case is filed by the prosecution, entire burden is on the prosecution and each circumstances must be proved beyond reasonable doubt and that circumstances must form a unbreakable chain of circumstances which will implicate the accused for the charges and each circumstances has to be

dealt independently and tested about its veracity and no reasonable doubt exists in the prosecution case when all circumstances are put together.

120. Keeping these principles laid down in the judgments referred supra by the counsel appearing for accused No.1 as well as the principles laid down in the judgment of the Apex Court which referred by this Court, this Court has to examine the circumstantial evidence to comes to the conclusion that whether the said circumstances proves the case against the accused in the light of the grounds which have been urged in both appeal as well as submissions made by the respective counsel during the course of arguments.

PREVIOUS SUSPICION

121. The first circumstances relied upon by the prosecution is with regard to the previous suspicion. The counsel appearing for the appellants would vehemently contend that with regard to the previous suspicion is concerned, in Ex.P1, the same is missing. The previous suspicion is manipulated for the purpose of this case and there was no such any incident. The

counsel would submit that father and mother of the deceased said that they had suspicion against accused Nos.1 to 3 as these people were misbehaving with their child earlier and they were also playing with their child. Hence, they quarreled with the accused persons on previous occasion. The counsel brought to notice of the contents of the complaint at Ex.P1 wherein the previous suspicion is missing.

122. This Court has to examine whether the statement is made by PW1 at Ex.P1 there was any suspicion or not and the same is missing. However, this Court has to take note of the statement of PW22 who is the father of the deceased. He made the statement at the time of conducting the inquest of the dead body on 22.11.2021. On finding the dead body in the previous day, inquest was conducted on the next day. In column number IX of the inquest, the father-PW22 made a specific averment that he is working in the factory wherein also accused Nos.1 to 3 were working. From last 3 to 4 months, accused persons used to give chocolate to his daughter and touching her body. When the same was noticed by himself and his wife, both of them scolded

accused Nos.1 to 3 and hence, suspected the role of the accused in the alleged incident. This is found in the inquest statement when inquest was made on 22.11.2021. When such statement was made, Panchayathdars who were present also requested the IO to enquire about the same and the said statement is found in the last portion of inquest. With regard to suspicion is concerned, Court has to see the evidence of PW1 and PW22. No doubt, the said suspicion is not found in Ex.P1. But Court has to see that whether PW1 has spoken about the same or not.

123. PW1, with regard to the suspicion is concerned, reiterated the same in her chief evidence in paragraph 4. No doubt, the same is denied during the course of cross-examination of PW1 making the suggestion that no such incident was taken place and not scolded accused Nos.1 to 3. But it is very clear that they suspected the role of accused Nos.1 to 3 on the very next day while conducting the inquest. The very contention of the counsel for the appellants that in the complaint, it is not found and the same cannot be accepted since the Court also cannot expect the same while lodging the

complaint itself and the statement made before the police at the first instance is not an encyclopedia and the same is observed by the Trial Court while considering the case and each and every circumstances cannot be expected while setting law in motion since people who have lost their child would be blank and under distress.

124. The other witness is PW22, who is the father of the deceased. In his evidence in paragraph 3, he says that he was also having the suspicion against the accused and reiterated that earlier also, the accused used to give chocolate and other things to his daughter and touching her body inappropriately and in this connection, there was a quarrel between them. In the cross examination of this witness, he says that prior to arresting of accused No.1, he has stated about suspicion against him. PW22 not only says giving of chocolate and misbehaviour known to him and his wife but also says that some of them also aware of the same, but scolding accused Nos.1 to 3 was not known to the others as they were not there. A suggestion was made that no such incident was taken place and there was no any suspicion

and the same was denied. The counsel for accused No.4 during the course of cross-examination suggested that suspicion was there against Mohan and Santhosh and the same was denied and the evidence of PW1 and PW22 are consistent with regard to earlier incident.

125. Having taken note of evidence of PW1 and PW22, it discloses that there is no contradictions in their evidence about the previous conduct of accused Nos.1 to 3. It has to be noted that PW22 made the statement before the Police while conducting the inquest on the very next day, thus, there was no such delay. Hence, the contention of the counsel for the accused that contents of Ex.P1 does not disclose the suspicion cannot be accepted and Court also cannot expect the same when everything is contained in the complaint Ex.P1 and law is set in motion by filing Ex.P.1.

LAST SEEN THEORY

126. The other circumstance is last seen theory. The prosecution relies upon the evidence of PW5 as well as PW21. PW5 is the lady from neighbourhood where she stated that she

has seen accused Nos.1 to 4 playing with the deceased. The prosecution relies upon the evidence of PW5 wherein she categorically deposes that on the particular date of incident, when her daughter wanted to play having noticed Sushmitha and other children of PW1 and PW22 were playing, she brought her daughter and made her to play along with them for 15 minutes after providing food to her. At that time accused Nos.1 to 3 came with the influence of alcohol and started dancing having Sushmitha and her brother on their shoulder and thereafter she brought her daughter back. It is also her evidence that when herself, PW4, her mother and PW3 and CW9 and CW11 were talking at around 05.30, parents of the deceased came and informed that Sushmitha did not turn up after playing. Hence, she informed that accused Nos.1 to 3 were dancing along with deceased. It is her evidence that PW4 who was present at the spot on revealing the same went to enquire accused Nos.1 to 3 entering the factory premises. But he came and told that all of them under the influence of alcohol are sleeping and made his efforts to awake them, but they did not wake up. With regard to this last seen theory is concerned, counsel for accused No.1

questioned this witness and witness says that she went to police station on 23.11.2021 and she did not notice whether accused were there in police station or not. The suggestion was made that on 23.11.2021 after the arrest of accused Nos.1 to 3, she made the statement that they were playing with deceased and dancing and the said suggestion was denied. The counsel for accused No.2 not disputed the same. But the counsel for accused No.3 elicited that while taking her daughter back, she did not inform the children of PW1 to go to house. In the cross-examination of PW5 by the counsel for accused No.4 it is elicited that at around 05.30 on 21.11.2021 when PW1 came and enquired, she told that accused persons were dancing with the deceased. It is suggested that she did not inform the presence of accused No.4 to the police and the said suggestion was denied. It is also suggested that for the first time, she is witnessing accused No.4 before the Court and the same is denied. Having considered this evidence, it is clear that when PW1 came in search of her child, she informed the same, as a result, PW4 went to enquire them but they were sleeping having consumed the alcohol.

127. This Court has to take note of the evidence of another witness i.e., PW21 who is the brother of the victim. In his evidence, he says that he along with other sisters was playing on the particular date and he says that accused Nos.1 to 3 took his sister while playing, they went back to the home. But Sushmitha did not accompany them. This witness was cross examined. In cross examination, he says that except himself, his sisters, others were not playing and he came to know the name of these accused when they disclosed the same. This admission is very clear that no one came while they are playing. Parents also enquired about Sushmitha when she did not accompany them. But he did not inform the parents about Sushmitha. It is important to note that PW21 says that accused Nos.1 to 3 did not come to the spot. Having considered the evidence of PW21 with regard to the last seen theory of these accused persons, his evidence not inspires the confidence of the Court and only it appears as improvement that accused Nos.1 to 3 took his sister Sushmitha and his statement was recorded after 24 days. Apart from that, on enquiry nothing is revealed to his mother when he came back with other sisters.

128. This Court has to take note of the evidence of PW3 and PW4. PW3 in her evidence, says that on 21.11.2021, herself, CW11 to 14 were talking at around 05.30 p.m. near her house and at that time parents of the Sushmitha came and informed that daughter did not turn up to home. At that time, she stated that all the 4 children were playing inside the factory. The same was disclosed by CW14 also. She also says that CW12 went to search for them entering inside the factory and he came and told that accused Nos.1 to 3 were sleeping with the influence of alcohol and CW12 went to enquire accused Nos.1 to 3. In the cross examination of this witness, the counsel for accused No.1 elicited that CW12 informed the police that accused were sleeping and not denied that he went and enquired accused Nos.1 to 3. Even counsel appearing for accused Nos.2 to 4 also not denied the same while cross-examining the witness.

129. The Court has to take note of evidence of PW4. PW4 in his evidence says that accused Nos.1 to 3 are also the employees of the same factory and they are staying in the accommodation given by the employer. His evidence is also very

clear that on 21.11.2021 at around 05.30 when he himself, CW10 and CW11 were talking near his house, PW1 and PW22 came and informed that their daughter did not turn up to the home. Thereafter, he went inside the factory and he also visited the room of accused Nos.1 to 4 wherein he saw that they were sleeping and immediately he heard the hue and cry. In the cross examination of this witness it is elicited that he also went to room of accused persons and checked the room and he was having acquaintance with the accused and hence, he went to call them to search the child. He made all his efforts to make them to awake, but they did not wake up. Hence, the evidence of PW3, PW4 and PW5 is very clear that PW5 informed about playing of the children and accused Nos.1 to 3 were also playing with children. The same was informed to parents and consequently PW4 made his efforts to enquire with accused Nos.1 to 3 and make them to wake up, but he could not wake up and the same is also spoken by PW3. Hence, it is clear that at around 05.30, PW5 informed the same. But the very contention of the counsel appearing for the accused that if that is the case, PW1 would have informed the same immediately with the police

and narrated the same in Ex.P1. This Court already pointed out that when PW1 was already in the pathetic condition since she lost her daughter and she is under distress and shock and the Court also cannot expect the same. But the fact is that PW22, father had disclosed the previous incident even at the time of conducting the inquest itself and the same will not go to the very root of the case of the prosecution as contented by the counsel for the appellants and the same cannot be accepted.

REPORT OF CCTV FOOTAGE

130. Now, the other circumstance is with regard to the report of CCTV footage which is marked as Ex.P44 in connection with the very presence of the accused persons in the vicinity of the factory premises. It is not in dispute that incident was taken place within the factory premises that too in a remote place. The main contention of the counsel that in CCTV footage, it is clearly visible that accused No.1 is freely moving around i.e., in camera No.4 at 12.16 and at 12.21 also discloses the same. Even at 13.42, in camera No.2 disclosed that Mukesh and Jayban Singh proceeding towards the room so also at 13.43 with other persons. At around 14.56, coming back to factory premises and

the same is disclosed in camera No.4 and so also in camera No.2 proceeding towards the room and so also in camera No.3. In none of the CCTV footage, accused No.1 is seen in the company of the deceased and there is nothing suspicious in the movement of accused No.1 and he is roaming around with different set of people which will clearly show that he had no knowledge about the incident.

131. The counsel also submitted that Sushmitha was playing with the children at around 10.28, 11.44 and 11.28 and Sushmitha and her brother Somanath and other children coming inside at 12.52 a.m. and also at 01.00 a.m. It is visible that they are playing outside the gate as well as inside the gate. Hence, it is clear that the deceased was within the premises between 10.28 to 13.00 hours playing with her siblings. Accused No.1 is never seen together with the deceased as per the footage. The counsel also not disputes the fact that the deceased was last seen at 13 hours. It is the case of the prosecution that in between 13.00 to 13.30 hours, the deceased was subjected to sexual act and committed the murder. In this regard, this Court

has to consider the report of the CCTV footage which is marked as Ex.P44 and not found any movement in camera No.1 either the victim and accused persons during this time. But in camera No.2, it is clear that accused-Manish Thirki was proceeding at 13.32 hours. He was proceeding towards the office and the Munim also at 13.39 hours proceeding towards the office. Even at 13.40 he was proceeding towards the room and Munim also proceeding at 13.42 along with accused No.1 proceeding towards office room and accused No.1 also proceeding towards the room at 14.56. Camera No.3 discloses that victim was playing at 11.28 a.m. but accused Manish Thirki was proceeding towards the room at 14.54 and so also the accused Jayban Singh at 14.56 and victim was not found. At 14.56 hours, 4 children were there except victim. The Camera No.4 also discloses that accused Manish Thirki, Jayban Singh were entering inside the gate and going out from the gate. Accused No.1 came back at 12.21 and at 13.00 hours, all the children were playing. Accused Manish Thirki was proceeding along with one Harivaran and so also Munim at 13.43 hours. In between 01.00 to 01.30 p.m., there was no movement of these accused persons. The witness-PW29

in his evidence also spoken that on the instructions of the police on 22.11.2021, pen drive and DVR clippings were taken and he gave the report in terms of Ex.P44. He categorically deposes that in camera No.2, the very presence of accused Nos.1, 3 and 4 was found in between 01.32 to 02.56 p.m and also their moment was found from 02.54 to 02.56. Also found the movement of accused Nos.1 to 3 from 11.59 to 12.21 and movements of the accused Nos.1 to 4 were found only after 01.43. Accused No.2 was moving along with bag. Accused Nos.1 and 3 found after 02.56 and victim was there till 01.00 p.m. and thereafter she was not found. Hence, it is clear that the very presence of victim was there till 01.00 p.m. and thereafter her presence was not found. In between 01.00 to 01.30 p.m., the very presence of accused nos.1 to 3 is missing and they started moving only after 01.30 and this timing matches with the case of the prosecution and no explanation by the accused persons in 313 statement.

132. The main contention of the learned counsel for accused No.1 with regard to CCTV is concerned is that, accused No.1 is not found with the deceased in any of the cameras and

he was moving freely, but not denied the fact that he was very much present in the premises. Accused No.1 was not found along with the deceased cannot be a ground to disbelieve the case of the prosecution. The fact that the child was playing in the very same vicinity from 11 o'clock till 1 o'clock in the said vicinity is not in dispute. The learned counsel for accused No.1 has not stated anything about missing of accused No.1 in between the timings of the alleged crime. No doubt, the learned counsel contend that in CCTV many other people movements are also there and timing of movement is not odd as it was Sunday. Merely because accused No.1 was moving along with other accused and other public, cannot take away the case of the prosecution in the absence of explanation in between the timings as contended by the prosecution having committed the offence.

133. With regard to CCTV footage collected, the Court has to take note of the evidence of P.W.10, who is the partner of Core Clay Bricks and Tiles. P.W.10 in his evidence, he categorically says that on 22.11.2021, the police came to factory and inspected the CCTV footage and collected the footage after

getting downloaded it to a DVR and pendrives under the mahazar in terms of Ex.P.19. There was no any cross-examination by the defence disputing the same. P.W.11, who is doing the business of CCTV Sales and Service says that, he was called upon by the police and asked to give CCTV footage from 10.00 a.m. to 6.00 p.m. of 21.11.2021. The same was downloaded and put the same in pendrive and he had handed over the same to the police and also given the certificate. He identified his signature in Ex.P.19 mahazar for seizure of the same and also the certificate under Section 65B(4) of the Evidence Act Ex.P.20 and his signature as Ex.P.20(a). His evidence is very clear that pendrive and DVR were packed and sealed. The pendrive and DVR are marked as M.O.7 and M.O.8 and even DVR was played in the Court and got confirmed the same. In the cross-examination, an answer is elicited that when he went to the factory, the police collected the CCTV footage by downloading the same and except the suggestion that DVR and pendrive are created, nothing is elicited from the mouth of this witness.

134. P.W.24, who is the Supervisor of Raj Tiles Factory, reiterates that police came and verified the CCTV footage and got the same transferred to the DVR and pendrive. The same was done through the technician Javed Afthar and mahazar was done in terms of Ex.P.19 and he is also one of the signatory to the seizure of the same. He categorically deposes that between 10.00 a.m. to 6.00 p.m., events are captured in the CCTV. This witness was not cross-examined.

135. Having considered the material available on record, particularly Ex.P.19, the evidence of these witnesses and M.O.7 and M.O.8 i.e., DVR as well as pendrive, the witnesses have spoken and the same is not seriously disputed, except contending that the accused persons were not found along with the deceased. There is a clear evidence of Section 65B(4) certificate in terms of Ex.P.20 and CCTV footage also recovered in the presence of the witnesses and the witnesses have spoken about the same and the Court can rely upon the same as admissible in evidence. Hence, it is very clear that in terms of the CCTV footage, the accused persons were very much present

in the location where the crime was committed and their movement was also found along with other persons, including the accused and in between the timings 1.00 p.m. to 1.30 p.m., their movement is not found and the alleged crime according to the prosecution is in between 1.00 p.m. to 1.30 p.m. Hence, CCTV footage also comes to the aid of the prosecution and hence, the contention of the learned counsel for the appellants cannot be accepted.

RECOVERY OF CLOTH OF THE ACCUSED AT THE INSTANCE OF THE ACCUSED.

136. According to the prosecution, having apprehended the accused persons, their voluntary statement was recorded and clothes were seized at the instance of accused Nos.1 and 3 as well as accused Nos.2 and 4 and to that effect, mahazar was also drawn. The pant of accused No.1 was marked as M.O.25, shirt was marked as M.O.26, underwear was marked as M.O.27, hair from underwear was marked as M.O.28 and the chikki recovered from the room of accused No.1 was marked as M.O.29. No doubt, the blood stains were not detected in the shirt and hair. But blood stains were detected in pant and underwear

of accused No.1. The learned counsel would submit that no seminal stains were found in those articles and contend that FSL report is inconclusive and that there is no report as to whether it is human blood or animal blood and no blood groupings was done. The learned counsel contend that the blood stains found in pant and underwear of accused No.1 is incriminating against accused No.1, cannot be accepted when there is blood grouping.

137. The learned counsel in support of his arguments relied upon the judgment of the Apex Court in the case of **Kansa Behera** (supra) and brought to the notice of this Court paragraph No.11, wherein discussion was made with regard to the recovery of shirt or dhoti with blood stains. There is no evidence in the report of the serology about the group of the blood and therefore, it could not positively be connected with the deceased. Few small blood stains on the clothes of a person may even be of his own blood, especially if it is a villager putting on these clothes and living in villages. The learned counsel also relied upon the judgment of the Apex Court in the case of **Mustkeem @ Sirajudeen** (supra) and brought to the notice of

this Court paragraph No.23, wherein it is held that AB blood group which was found on the clothes of the deceased does not by itself establish guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. The fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable to come to a conclusion that the latter were used for the murder.

138. The learned counsel also relied upon the judgment of the Apex Court in the case of **Raja Naykar** (supra) and brought to the notice of this Court paragraph No.16, wherein it is held that as per the FSL report, the blood stains found on the dagger were of human blood. However, the FSL report does not show that the blood found on the dagger was of the blood group of the deceased. The learned counsel also relied upon the Division Bench judgment of Dharwad High Court rendered in **Crl.A.No.100335/2022** dated 26.11.2025. The learned counsel referring these judgments would vehemently contend that merely because FSL report is positive about the blood stains

found in the pant and underwear of accused No.1, the same cannot be a conclusive proof.

139. The learned counsel also would submit that with regard to DNA is concerned, the Trial Court committed an error by observing that the pant M.O.25 and underwear of accused No.1 had blood stains, which are of human origin and 'B' blood group and also by speculating that accused No.1 might have ejaculated outside and that is why there is no DNA evidence against accused No.1. The Trial Court committed an error in paragraph No.62 that absence of seminal stains of accused Nos.1, 3 and 4 in the said DNA profile result will not automatically rule out the possibility of accused Nos.1, 3 and 4 involving in the said sexual activity, as there are chances of ejaculation outside the body of the deceased. The learned counsel would submit that blood stains found itself cannot be a ground to convict the accused. Ex.P.66 is of human origin and belongs to 'B' group of blood which belongs to the deceased. The observation that these blood stains establish the presence of accused Nos.1 to 4 and their involvement in the crime, is

erroneous. The medical examination of accused No.1 conducted by P.W.16 Dr. Rashmi concluded that no injuries were found on the private part of accused No.1 or anywhere in the body. Hence, the same is not incriminating material and it clearly shows the innocence of accused No.1. In respect of penile sample is concerned, it is very clear that blood group of accused No.1 is 'B' positive and deceased blood group is also 'B' group. The learned counsel contend that the evidence of P.W.13 as per Ex.P.21 penile swab serology report shows that in the penile swab of accused No.1, 'B' blood group was present and 'B' blood group was detected in accused No.1's blood because his blood group is 'B' positive and hence, the circumstances is not incriminating. This argument cannot be accepted for the reason that even though his blood group is 'B', but on examination of accused No.1 by P.W.16 doctor, as per Ex.P.35, no injuries were found on the private part of accused No.1 or anywhere in the body. If any injuries were found on accused No.1, then this argument could have been accepted. But there are no injuries and hence, the question of his blood group of 'B' blood stains were found in his pant and underwear cannot be accepted. But

'B' blood group of the deceased was found in the innerwear as well as pant, which was worn by accused No.1. No doubt, in respect of accused No.2 and 4 only, DNA test is positive and in respect of accused Nos.1 and 3, DNA is not positive. That will not take away the case of the prosecution and there was no any explanation on the part of accused Nos.1 to 3 with regard to human blood of deceased was found on their cloth in 313 statement.

140. The other contention that blood group was not ascertained cannot be accepted. Ex.P.24 addressed by the Associate Professor and District Medico-Legal Consultant, Department of Forensic Medicine and Toxicology is clear that final opinion was sought as to the cause of death of Kumari Sushmita. Clinical exam analysis report is also given. The medical examination of blood grouping of accused Nos.1 to 4 was done. The blood group of accused No.1 is 'B' positive and blood group of Munim Singh accused No.4, is also 'B' positive. But accused Nos.2 and 3 are 'A' positive. Hence, the contention that blood grouping was not done cannot be accepted. DNA

documents Exs.P.29 to 32 are marked. It is important to note that the evidence of P.W.15 is very clear that he received the requisition for collection of blood samples of accused persons for the purpose of DNA analysis and 3 ml. blood samples of accused Nos.1 to 4 was collected, sealed and packed. The same was got marked as Exs.P.29 to 32. The collection of blood sample is not disputed and there was no cross-examination. Only accused No.2 counsel suggested that if the blood is preserved with preservatives, there is no time limit for conducting the examination and suggestion was made that no blood samples were collected from accused No.2 and the same was denied. But no dispute with regard to the collection of blood is concerned and blood grouping of each accused is done and accused cannot blow hot and cold that accused No.1 blood group is 'B' positive and cannot contend that blood grouping was not done.

141. It is important to note that P.W.13 speaks about conducting of examination including pubic hair, penile swab and nail clippings and the same are marked and after examination, detected the blood in article Nos.U, W3, X3, Y3 and Z3, which

were of human origin and of 'B' blood group. Hence, it is clear that on examination found that it is a human origin of 'B' blood group and given the report in terms of Ex.P.21. No doubt, accused No.1 counsel got elicited that blood group can be determined from body fluid and if a penile swab is collected from the person having 'B' blood group, his swab also shows 'B' blood group. The evidence of P.W.14 is very clear that one female individual is included from being the contributor of the blood stains detected on item No.41 (blood stains on the filter paper). DNA profile result of seminal stains detected on item No.52 (underwear of Muneem Singh) is identical and matching with DNA profile result of Muneem Singh. Blood stains of item No.56 so also DNA profile results of the seminal stains detected on item Nos.32 and 39 (vulval swab and dried smear slides of vaginal swabs) are identical and matching with DNA profile result of Mukesh Singh S/o Eeshwari Singh. A suggestion was made that he has not collected any swab from the dead body and the same is denied by P.W.14. In the cross-examination by accused No.4 counsel, a suggestion was made that the presence of seminal stains in one's own underwear is normal and the same is

admitted. Hence, it is very clear that blood stains were found in the respective clothes. Though DNA is not positive against all the accused, but material available on record is very clear and so also the evidence of P.W.28 Senior Scientific Officer. Her evidence is very clear that as per the result, blood stains were detected on item Nos.2, 5, 8, 9, 11, 13, 16, 17, 18, 19, 21, 28, 41, 47, 48, 49, 50, 51 and 52. DNA profile result of blood stains detected on item No.41 is of human origin and female sex. DNA profile result of seminal stains detected on item No.52 is identical matching with DNA profile result of Muneem Singh's sample blood sent on item No.56 and so also in respect of Mukesh Singh's sample, blood sent on item No.54. As there was no DNA profile matching with accused No.1, accused No.2 counsel cross-examined her and suggestion was made and the same was denied and so also accused No.4 counsel made the suggestion and the same is denied, since there was a DNA against accused Nos.2 and 4.

142. Now, this Court has to consider the evidence of recovery witnesses with regard to seizure of clothes at the

instance of accused Nos.1 and 3 as well as accused Nos.2 and 4. P.W.6 in his evidence categorically deposes before the Court that he found the t-shirt on the body of the deceased and also found innerwear at a distance from the dead body and articles were seized. The evidence of P.W.6 is very clear that on 25.11.2021, police called him to the police station and C.W.16 was also present and accused No.3 took them to room No.2 and he had produced t-shirt, innerwear and accused No.2 took them to room No.3 and he had produced his clothes. Apart from that, chikki and arrack packets were seized by drawing the mahazar in terms of Ex.P.6 and also pointed out the place where they committed the act and mahazar was drawn in terms of Ex.P.7. The clothes which were brought from the hospital were also seized by drawing mahazar in terms of Ex.P.8. In the cross-examination, except suggestion that they did not produce any cloth and also not pointed out the place where they committed the murder, nothing is elicited. Only suggestion was made that even not seized any articles in the police station. But only answer is given that he cannot tell the colour of the cloth. It is elicited that he is doing the sand business and having connection with police.

Except these answers, nothing is elicited and no enmity. Accused No.4 counsel suggested that accused No.4 was not present and the same was denied. M.O.22 to M.O.24 and M.O.25 to M.O.27 are marked and chikki packet is also marked as M.O.29.

143. The other witness is P.W.7, who is a witness for recovery from accused Nos.2 and 4. P.W.7 says that the accused persons were there in the police station and accused led them to their house and accused No.2 produced his pant, shirt, innerwear and accused No.4 also produced his pant, shirt and jacket and mahazar was drawn in terms of Ex.P.9 and C.W.18 signed the same and photos were also taken. He identifies photos as Ex.P.10. Accused No.2 counsel elicited in the cross-examination that there are other houses surrounding the said house and suggestion was made that no clothes are seized and the same was denied. In the cross-examination by accused No.4 counsel, got elicited that he is seeing Exs.P.11 to 14 photographs for the first time and suggestion was made that the clothes M.Os were not seized and the same was denied. With regard to the recovery of clothes is concerned, nothing is elicited

from the mouth of P.W.6 and P.W.7 and their evidence is consistent that accused only led and produced the clothes. P.W.8 speaks with regard to the seizure of mobiles from accused Nos.1 and 3 and mahazar was drawn in terms of Exs.P.15 and 16. With regard to seizure of mahazar is concerned, nothing is elicited in the cross-examination of this witness. P.W.9 also speaks about recovery from accused Nos.2 and 4 regarding seizure of cloth from accused Nos.2 and 4 and he also identifies his signature in Ex.P.9 and also photograph Ex.P.10. This witness speaks about accused No.2 left the job, but accused No.4 was working with him and accused No.2 used to come to the house of accused No.4. A suggestion was made that no clothes were found in the room and the same was denied and nothing is elicited in the cross-examination of P.W.9 regarding recovery of clothes at the instance of accused Nos.2 and 4.

144. Having considered the evidence of P.W.6, P.W.7, P.W.8 and P.W.9, it is very clear that not only seized the clothes from the respective accused persons, but recovery of mobile was also made. The prosecution proved the recovery of blood

stained clothes from accused Nos.1 to 4. But accused No.4 is not subjected to conclusion of the trial and he absconded after the trial was over. Having taken note of the material available on record with regard to the recovery, the prosecution proved the case and blood stains were also found and merely because DNA was not found in respect of some of the accused persons, the same cannot be a ground. The contention that no blood grouping was done cannot be accepted and report Exs.P.25 to 29 is very clear and the contention that no report as to whether it is human blood or animal blood cannot be accepted. DNA report is very clear with regard to the blood group of the deceased is 'B' group and principles laid in the judgments referred by the learned counsel for the appellants will not come to the aid of the appellants.

145. This Court also would like to rely upon the judgment of the Apex Court in the case of **BALWAN SINGH v. STATE OF CHHATTISGARH AND ANOTHER** reported in **(2019) 7 SCC 781**, wherein the effect of failure to establish origin of blood as being of human origin and/or its blood group, on the prosecution

case is discussed. Law was also summarized and held that the same has to be ascertained in the facts and circumstances of each case and there is no fixed formula for the same. In paragraph No.21, referring the judgment of the Apex Court in the case of **JOHN PANDIAN v. STATE** reported in **(2010) 14 SCC 129**, the Apex Court held that evidence of recovery of weapons was credible. The Forensic Science Laboratory report had disclosed that the blood was of human origin. The Court proceeded to conclude that since the evidence of recovery of weapon was proved to the satisfaction of the Court, it was sufficient that the prosecution had proved that the blood stains were of human origin, even though the blood group could not be ascertained. But in the case on hand, blood group of each of the accused is ascertained and even the victim's blood group is also ascertained. In paragraph No.23 of the said judgment it is held that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that blood found on the articles is of human origin though, even though the blood group is not proved

because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match. In the case on hand, accused blood group is ascertained and so also the blood group of the deceased that the same is of human origin and hence, the very contention of the learned counsel for the appellants cannot be accepted. The recovery is proved and FSL report also supports the case of the prosecution and the very contention that the Trial Court committed an error cannot be accepted.

146. The other recovery is chikki packet M.O.29 from accused No.1. It is important to note that P.W.12 in his evidence categorically deposes that on the particular date, accused No.1 only purchased chikki from his shop. No doubt, in the cross-examination he says that others also purchase chikki from his shop. But his evidence is very clear that on 21.11.2021, accused No.1 came and purchased chikki. On the very same day, he came to know that daughter of P.W.1 and P.W.22 was murdered.

He says that the victim girl also used to come and purchase from his shop. It is not the evidence of P.W.12 that on that day the victim girl had purchased the chikki, but accused No.1 had purchased. This court has to take note of the evidence of P.W.14, doctor, who conducted the post mortem along with Dr. Rashmi. His evidence is very clear that he found 250 grams of undigested food particles mixed with black colour powder particles with no characteristic odor. His evidence is very clear that face was swollen and congested and eatable chewed gummy materials was present in between clinched teeth of right side of the mouth. It is also the case of the prosecution that accused No.1 used chikki to take the victim and this material i.e., eatable chewed gummy material was present in between clinched teeth of right side of the mouth of the deceased as well as 250 grams of undigested food particles mixed with black colour powder particles with no characteristic odor. This substantiate the case of the prosecution that prior to committing the sexual act on the victim, accused No.1 purchased chikki. But it was around 1.00 p.m. and the child might have had breakfast in the morning and when the same was had in the morning,

digested food would be there. But in the case on hand, 250 grams of undigested food particles mixed with black colour powder particles were found. Apart from that, even in the teeth eatable chewed gummy materials were present in between clinched teeth of right side of the mouth and the same substantiate the contention of the learned counsel appearing for the State that by providing the chikki, she was subjected to sexual act.

147. Having considered overall evidence available on record and also the principles laid down in the judgments referred supra by the learned counsel for the appellants and also considering the material available on record, the Trial Court rightly comes to the conclusion that all this chain link establishes the very act of accused persons in committing rape on the girl, who is aged about 7 years 7 months. The evidence of witness is very clear that injury is on the private part of the victim. P.W.14 doctor evidence is also very clear that the victim girl had sustained injuries, which is mentioned in paragraph No.5 of the doctor's evidence, which reads as follows:

- a. Diffuse swelling seen over forehead.*
- b. Abrasion of 2.5 x 1.5 cm seen over center of forehead.*
- c. Contusions of 4 x 1 cm present over mucosal surface of upper lip and 3 x 1 cm seen over lower lip.*
- d. abrasion of 2 x 1 cm seen lateral to outer canthus of left eye.*
- e. Abrasion of 1 x 0.5 cm seen 1 cm below the injury No.'d'.*
- f. linear abrasion of 1 cm below the injury No.'e' on the upper part of left cheek.*
- g. Abrasion of 2 x 1 cm seen on the lateral part of left cheek 3 cm away from tragus of left ear.*
- h. Abrasion of 1 x 1 cm seen over post auricular area of right ear.*
- i. Abrasion of 1 x 1 cm seen over lateral aspect of right side of neck, 6 cm below right ear lobule.*
- j. Multiple abrasions present over an area of 4 x 5 cm present over front part of neck away midline ranging from 0.5 x 0.5 cm to 3 x 0.5 cm on left side of neck, situated 7 cm above suprasternal notch and 4 cm below the chin.*
- k. Abrasion of 1 x 0.5 cm seen over suprasternal notch.*
- l. Graze abrasion of 3 x 2 cm outer aspect of left elbow Joint.*

m. Linear abrasion of 2 x 0.2 cm placed vertically over medial aspect of left ankle joint

n. Obliquely placed abrasion of 6 x 0.2 cm seen over anterolateral aspect of lower part of right leg.

o. Multiple abrasions seen over an area of 3 x 2 cm on dorsum of right foot ranging from 0.5 cm to 1 x 1 cm.

p. Abrasion of 2 x 1 cm seen along mid line over lower part of nape of neck.

All the above injuries are ante mortem and fresh in nature.

148. The evidence of the doctor is very clear that cause of death is due to asphyxia as a result of compression of neck structures by hand secondary to throttling (manual strangulation) and also forceful penetrative sexual act. This very evidence clearly discloses that the victim was subjected to forceful penetrative sexual act and death was due to strangulation and hence, it is a clear case of homicide and subjecting the child for sexual act, that too by a group of persons i.e., accused persons. It is a case of gang rape against a minor girl, who is aged about 7 years and 7 months. The Trial Court in minute taken note of the material available on record and hence, the very contention of the accused counsel that even

though the prosecution failed to establish the case, the Trial Court convicted accused persons erroneously, cannot be accepted. The material available on record establishes the chain link in a case of circumstantial evidence and the principles laid down in the judgments referred supra with regard to circumstantial evidence is concerned, pancha sheela ought to be in favour of the prosecution and the same is established and the Trial Court has not committed any error in coming to such a conclusion.

149. Now the issue before this Court is with regard to imposing of death sentence on the accused and whether the same commensurate with the gravity of the offence or it is on the higher side and whether it could be considered for lesser the punishment. This Court has to take note of aggravating circumstances and mitigating circumstances while imposing the capital punishment. Now this Court has to consider the grounds urged in the reference, which this Court has received for the consideration of death sentence and also take note of factual aspects of the case whether the Trial Court has committed an

error in imposing the capital punishment and keeping in mind the principles laid down in the judgments referred supra by the learned amicus curiae, analyse the material whether the capital punishment commensurate with the facts of the case or it requires interference of this Court to modify the same.

150. The learned counsel for the respondent/complainant i.e., amicus curiae, relied upon the judgment of the Apex Court in the case of **Vasanta Sampat Dupare** (supra), wherein the Apex Court discussed with regard to the reform/rehabilitation and also the possibility of, when ruled out by circumstances of the criminal and the crime and also taken note of circumstance of the criminal and also the crime i.e., rape and murder of 4 year girl by a 47 year old man and concurrent death sentence affirmed as the manner in which the crime was committed did not suggest that appellant, a history-sheeter, could be reformed and he was likely to remain a menace to society and held that it is a rarest of rare cases and fit for imposition of death sentence. There are no mitigating circumstances. It is an act of taking advantage of absolute innocence. It is not only betrayal of

individual trust, but also betrayal of social trust. The act is an anathema to social balance. The act of appellant shocks judicial conscience, conscience of society and has a menacing effect on Society. The girl died due to profuse bleeding due to forcible sexual intercourse and deliberate assault.

151. The other Apex Court judgment relied upon by the learned amicus curiae is in the case of **Manoharan** (supra) in respect of aggravated penetrative sexual assault by gang of two and sodomy committed on 10 year old girl by tying her hands and murder of her 7 year old brother along with her, first by trying to poison them and then by pushing them into canal when they were conscious and death sentence was affirmed. The Apex Court taken note of that balance of aggravating and mitigating circumstances are against the appellant and taken note of legislative intent reflected in 2019 Amendment of POCSO Act is that crimes against children are on rise and must be dealt with severely. Life imprisonment means imprisonment for natural life. For aggravated penetrative sexual assault on a child below 12 years of age, minimum sentence has been increased to 20 years

and death sentence has also been introduced in the amendment. The contention that appellant was 23 years of age at the time of occurrence and belongs to poor family, had aged parents, a first time offender and he was not mastermind of present crime and was not initially involved in kidnapping, though later joined and mitigating circumstances were all taken note of. But held that in the cases of rape, sodomy and murder of minor, the Court has to see the statement of objects and reasons and Sections 5(m) and 6 of the POCSO Act. Legislative intent and severity of punishment in case of crime against minors due to increase in number of such crimes was taken note and taken note of rape and sodomy of 10 year old girl and murder of her 7 year old brother and per majority, confirmed the death sentence.

152. The learned counsel also relied upon the Apex Court judgment in the case of **Sambhubhai Raisangbhai Padhiyar** (supra), wherein the Apex Court taken note of as per certain injury indicated in the post mortem report, deceased was subjected to aggressive penetrative sexual assault. There also found an injury on the prepuce of the penis of the accused. The

Apex Court also taken note of matching of the blood group coupled with other circumstantial evidence and invoked the presumption under Section 29 and 30 of the POCSO Act. The Apex Court also taken note of conduct of the accused and regarding death sentence, discussed with regard to substitution with that of fixed term without remission of 25 years, when possibility of reformation of accused not completely ruled out. The learned counsel also relied upon the Apex Court judgment in the case of **Manoj Pratap Singh** (supra), wherein it is discussed with regard to the death sentence, whether to be confirmed/imposed, or, not, upon appreciation of crime test, criminal test and rarest of the rare test and taken note of scope of reformation and rehabilitation, when can be ruled out. Extremely brutal and merciless rape and murder of physically and mentally challenged minor of about 7-8 years, wherein also death sentence is confirmed.

153. Having taken note of the principles laid down in the judgments referred supra, this Court has to take note of the judgment of the Apex Court in the case of **MUKESH AND ANOTHER v. STATE OF NCT OF DELHI** reported in **AIR 2017**

SC 2161, wherein the case of rape and murder was considered. This Court can look into the case of the Apex Court in the case of **KARTAR SINGH v. STATE OF PUNJAB** reported in **(1994) 3 SCC 569**, wherein it is held that right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Article 21 of the Constitution protects right to life which is the most precious right in a civilized society. The guidelines on mitigating factors has to be taken note of as discussed by the Apex Court in the case of **BACHAN SINGH v. STATE OF PUNJAB** reported in **(1980) 2 SCC 684**. In the judgment referred supra in the case of **Vasanta Sampat Dupare**, with regard to plenary power to mould relief under Articles 32 and 142 particularly, a discussion is made in paragraph No.27 that we must also recognize the evolution of our own constitutional culture. Contemporary Indian society no longer conceives criminal punishment purely in retributive terms. The goal of reformation, repeatedly affirmed in our jurisprudence, presupposes that the legal system will not foreclose the prospect of moral regeneration unless every

procedural assurance of accuracy and fairness has first been scrupulously observed.

154. Having considered the principles laid down in the judgments, this Court has to take note of the factual aspects of the case:

- (i) It is not in dispute that the incident was taken place in the broad daylight on 21.11.2021 in between 1.00 p.m. to 1.30 p.m.
- (ii) The accused persons were present in the very same vicinity and it was pre-planned to have forcible sexual intercourse on the child, knowingly well that she is below the age of 12 years.
- (iii) The accused No.1 had also purchased chikki from the shop of P.W.12 on the particular date and given the same to the victim to secure her and accused No.1 had done the same previously and was witnessed by the parents and was scolded.
- (iv) It is a case of gang rape and all accused Nos.1 to 4 with an intention to satisfy their lust had an eye on the girl, who is aged about 7 years 7 months, below the age of 12 years, wherein strict punishment is provided in view of the amendment made to POCSO Act.

- (v) The accused persons forcibly committed the sexual act on the victim girl one by one and the same is a brutal act and even taken the life of the victim and thrown the dead body in the drainage to screen the evidence.

155. Now this Court has to examine whether it is a fit case and comes within the purview of rarest of rare case. While considering the same, the Court has to take note of the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of **Bachan Singh** (supra) while dealing with the capital punishment, wherein it has laid down the guiding principles to award death penalty. The Hon'ble Apex Court in the case of **MACHHI SINGH AND OTHERS v. STATE OF PUNJAB** reported in **(1983) 3 SCC 470** has reiterated some principle of law, which are followed by Hon'ble Apex Court and also the respective High Courts in the later judgments wherein made the principles into two different compartments, firstly, aggravating circumstances and secondly, mitigating circumstances.

156. The mitigating circumstances enumerated in the said judgment of the Hon'ble Apex Court are as follows:

- (i) The manner and circumstances in and under which an offence was committed, for example, extreme or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.
- (ii) The age of the accused is a relevant consideration, but not a determinative factor by itself.
- (iii) The chances of the accused not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.
- (iv) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.
- (v) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peek of human behaviour, in the facts and the circumstances of the case, the accused believed that he was morally justified in committing the offence.
- (vi) Where the Court upon proper appreciation of evidence is of the view that the crime was not

committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

- (vii) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

157. The aggravating circumstances which warrant death penalty enumerated in the judgment are as follows:

- (i) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
- (ii) The offence was committed while the offender was engaged in the commission of another serious offence.
- (iii) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device

which clearly could be hazardous to the life of more than one person.

- (iv) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
- (v) Hired killings.
- (vi) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
- (vii) The offence was committed by a person while in lawful custody.
- (viii) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.
- (ix) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
- (x) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece

staying with a father/uncle and is inflicted with the crime by such a trusted person.

- (xi) When murder is committed for a motive which evidences total depravity and meanness.
- (xii) When there is a cold-blooded murder without provocation.
- (xiii) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

158. The Apex Court in the case of **HARESH MOHANDAS RAJPUT v. STATE OF MAHARASHTRA** reported in **(2011) 12 SCC 56**, has held that the death sentence may be warranted where the victims are children and helpless women and the crime committed is most cruel, inhuman, extremely brutal, and diabolic. The Apex Court in its judgment in the case of **RAJENDRA PRALHADRAO WASNIK v. STATE OF MAHARASHTRA** reported in **2012 (2) SCC (Cri.) 30**, upheld the death sentence awarded by the Trial Court in a case of rape and murder of a child aged 3 years by a person aged 31 years. The Apex Court in the case of **B.A.UMESH v. REGISTRAR**

GENERAL OF HIGH COURT OF KARNATAKA reported in **2011 (1) SCC (Cri.) 801**, held that to award death penalty, there must be something uncommon about the crime, which renders the sentence of imprisonment for life inadequate. The Court after drawing balance sheet of aggravating and mitigating circumstances to take note that the scale of justice tilts in favour of the prosecution and there are no mitigating factors favouring the accused to reduce the sentence and then only the Court has to award the capital punishment if mitigating circumstances not found in the case. The Apex Court in the case of **K.P.TAMILMARAN v. THE STATE BY DEPUTY SUPERINTENDENT OF POLICE** passed in **SLP (Cri.) No.1522/2023, dated 28.04.2025**, to strike a balance between the imprisonment as well as the death sentence, where in a case of murder of a young couple and both of them were administered poison in full view of a larger number of villagers. The masterminds and the main preparators of this macabre act were none other than the father and the brother of the girl Kannagi. The reason behind the murder of this young couple was

that Kannagi belongs to the 'Vanniyar' community, had dared to marry Murugesan, who was a 'Dalit' from the same village.

159. Having considered the principles laid down in the judgments referred supra and also the judgments relied upon by the learned amicus curial, this Court has to analyze the material on record. In the case on hand, the accused persons were working in a factory and in order to satisfy their lust, they aimed at a helpless minor girl, aged about 7 years 7 months as per the documents. This Court has opined that it is a case of rarest of rare case and comes within the aggravating circumstances of point Nos.(i), (iv), (vi) and (x) to (xiii).

160. This Court would like to list out the reasons for coming to a conclusion that it is a case of aggravating circumstances:

- (i) The victim girl was aged about 7 years and 7 months. The accused persons with an intention to satisfy their lust, formed themselves and had an eye on the girl, who is below the age of 12 years even when stringent punishment is provided under the POCSO Act.

- (ii) The accused persons formed themselves having an eye on the girl and gathered in a deceitful manner securing her providing a chikki, which was purchased from the shop of P.W.12.
- (iii) The accused Nos.1 to 3 have subjected her for sexual act continuously in a brutal manner, which has resulted in injuries on the private part of the child and the same is noticed by the doctor while conducting the post mortem.
- (iv) The victim was innocent, helpless and also a child and victim was having trust with the accused persons, who are residing in the very same locality and she accompanied the accused when chikki was given to her.
- (v) The accused persons have committed gang rape on a minor girl, who is aged about 7 years and 7 months continuously, without caring for her life and satisfied their lust in a brutal manner.
- (vi) The accused persons not only committed forcible sexual act i.e., aggravated sexual act, but further taken the life of the girl. The same shocks not only the judicial conscience but even the conscience of the society.

- (vii) The accused persons not only committed the murder, but in order to screen the evidence, took the body to another room and watched the movement of the public in the premises and thereafter, to screen the evidence, shifted the body and thrown the same into a drainage and while searching the girl, found that the legs of the victim was appearing in the drainage.

161. Having considered all these factors into consideration and materials available on record, even this Court has to strike balance between mitigating circumstances and aggravating circumstances. No doubt, the accused persons are young aged and the same cannot be a ground to come to a conclusion that they could be imprisoned for life and age is not a determinative factor by itself and except this circumstance, there is no other mitigating circumstances. The accused persons inhumanely in a brutal manner subjected the victim girl, who is aged about 7 years and 7 months for continuous sexual act one by one, without caring the life of the victim and the same is nothing but a barbaric act of gang rape. The Court has to take note of human values while imposing the death sentence as discussed in

relation to Article 21 of the Constitution in the case of **Manoj** (supra). At the same time, take note of principles laid down in the judgments in the cases of **Bachan Singh** and **Machhi Singh** (supra) as well as the judgment in the case of **Haresh Mohandas Rajput** (supra) where the victims are children and helpless women and the crime is most cruel, inhuman, extremely brutal and diabolic. The Court also has to take note of the judgments, which have been relied upon by the learned counsel appearing for the complainant/amicus curiae i.e., in the case of **Manoj Pratap Singh** (supra), **Manoharan** (supra) and also **Vasanta Sampat Dupare** (supra), wherein it was rape and murder of a 4 year old girl by 47 year old man. In the case of **Manoharan** (supra), not only committed the sexual act on the girl, who is aged about 10 years and even committed the murder of a 7 year old boy, who is the brother of the girl. In the case of **Manoj Pratap Singh** (supra), the Apex Court has taken note of extremely brutal and merciless rape and murder of physically and mentally challenged minor of about 7-8 years.

162. In the case on hand, victim is not mentally disabled, but here is a case of gang rape by accused Nos.1 to 3 along with accused No.4. But accused No.4 was not subjected to decision of the Trial Court as after the trial he had escaped. Having taken note of all these factors into consideration, this Court is of the opinion that the sentence of life imprisonment renders inadequate. After considering the material on record and drawing balance sheet of mitigating circumstances and aggravating circumstances, the scale of justice tilts in favour of the prosecution and there are no mitigating circumstances favouring the accused to reduce the sentence, since it is a gang rape on a minor girl, who is aged about 7 years and 7 months. The Court has to take note of the manner in which the criminal act was committed and the Trial Court has taken note of all these matters into consideration and such act was done against a minor girl aged about 7 years and 7 months and it is nothing but a crime against the society at large. If lesser sentence is imposed, it will give a wrong message to the society and public at large and this act of subjecting the minor girl to satisfy their lust would be encouraged and such act has to be curbed with

iron hands. Hence, we are of the view that the Trial Court has not committed any error in imposing the death sentence and it requires confirmation as sought by the Trial Judge. Hence, the points are answered accordingly.

Point No.3:

163. In view of the discussions made above, we pass the following:

ORDER

- (i) Crl.A.No.2216/2024 and Crl.A.No.2246/2024 are dismissed, confirming the death sentence imposed by the Trial Court in allowing Crl.R.C.No.2/2024.
- (ii) The accused Nos.1 to 3 shall be hanged by their neck till death.
- (iii) The judgment of conviction dated 29.10.2024 and order of sentence dated 07.11.2024 in Spl.C.No.10/2022 passed by the Court of the Additional District and Sessions Judge, FTSC-II (POCSO), Mangaluru, is confirmed.
- (iv) The Registry is directed to furnish a copy of this judgment to accused Nos.1 to 3 through jail authorities free of cost and inform them of

their right to appeal to the Hon'ble Supreme Court and transmit the records to the Trial Court along with a copy of this judgment.

- (v) The Registry is directed to pay the fee of Rs.10,000/- to the amicus curiae Sri Tejas N for effective rendering of his service in assisting the Court in disposal of the case.
- (vi) The Registry is directed to send the records to the Trial Court to retain the same for continuation of trial of accused No.4, who is absconding.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

ST/SN/MD