IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL CONFIRMATION CASE NO. 4 of 2022
With
R/CRIMINAL APPEAL NO. 1525 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
JAYANTIBHAI @ LANGHO CHIMANBHAI SOLANKI

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Appearance:
MR RONAK RAVAL APP for the Appellant(s) No. 1
MR PV PATADIYA(5924) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 12/12/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

Criminal Confirmation Case No.4 of 2022 is filed seeking confirmation of the death sentence awarded to the accused by the judgment and order dated 17/03/2022 passed in Special (POCSO) Case No. 27 of 2021 by learned Additional Sessions Judge & Special POCSO Judge, Kheda at Nadiad. The accused has been convicted and sentenced

as under:

Conviction	Sentence
Section 363 of the Indian Penal Code.	Rigorous imprisonment for five years with fine of Rs.5,000/-; in default of payment of fine, to undergo simple imprisonment of six months.
Section 376 (AB) of the Indian Penal Code.	Capital punishment with fine of Rs.50,000/-; in default of payment of fine, to undergo rigorous imprisonment of one year.
Section 5 (M) read with Section 6 of the Protection of Children of Sexual Offences Act, 2012 (for short the POCSO Act)	Capital punishment with fine of Rs.50,000/-; in default of payment of fine, to undergo rigorous imprisonment of one year.
The convict-accused is also ordered to pay compensation of Rs.2,00,000/- to the Victim.	

2. The convict has also preferred Criminal Appeal No.1525 of 2024 against said judgment and order of conviction and sentence and therefore, the Criminal Confirmation Case and the said appeal of the convict is heard and decided together by this common judgment.

Case of the Prosecution:-

3. The complainant, Rajuben w/o Sanjaybhai Ravjibhai Solanki, was residing with her family at Lasundra, Vajpayee Nagar, near the canal, Taluka Kathlal, District Kheda, and was doing house hold work. Her

husband works as a driver at Torrent Power in Ahmedabad and they have three children. Among them, the victim daughter is 6 years old. She was enrolled in the 1st standard but due to the schools being closed because of Corona, she was not attending the school. That on 03/03/2021, at around 7:30 a.m., in the morning, her husband had left for his job in Ahmedabad and she alongwith her children were at home. After preparing food and giving it to her children, she left home at around nine 9 O'clock in the morning for the work of picking tobacco leaves in the field near Lakshmipura and her three children were playing near house as there was a wedding of Raijibhai Chaturbhai Solanki's daughters nearby. When the complainant returned home from the field at Five O'clock in the evening, at that time, her daughter was playing in the courtyard. Upon seeing her, her daughter came to her crying and her leggings and inner clothes were found wet and she continued crying and was trembling, as also unable to speak anything. The complainant therefore checked bathroom and found her daughter's leggings lying in wet condition, so also the top was lying in wet condition having bloodstains. Thus, the complainant removed the leggings of her daughter worn by her due to wet and bleeding. Upon checking, the complainant found that blood was coming from her daughter's genital area and she calmly reassured her daughter and asked her to which her daughter told her while crying that "when she left them and went to the field in the morning, after they took lunch, Bhotho, Kiran, and she was playing 'catch and run' under the neem tree in the courtyard; at that time, Langho (Jayantikaka), who lives in our courtyard, was sleeping on a cot in front of his house had called her by saying that he will give you some tamarind (*aambli*).' When she went near his cot, he said, the tamarind (*aambli)* is inside the house and she was asked to come

inside the house where he grabbed her hand and took her to the back area inside his house, behind the partition and then pushed her on the floor, took off the leggings she had worn and thereafter pressed her mouth with one hand and climbed on her and did something wrong act with her. After some time, the blood started coming out of her urinating area and started burning. Thereafter, Langho gave her ten rupees by saying that if she tells this to anyone, he will do this again and she was therefore scared. As per the complainant, her daughter stated these facts to her and thereafter immediately she called her husband and informed about this fact. The complainant also put her daughter's leggings and the top in a bag, and then informed her family members about the incident. Thereafter, her husband came home at around 8:00 p.m. and gave a complaint above the aforesaid incident.

4. The complaint was given by the complainant on 3/09/2021, before Senior Police Sub-Inspector D.C. Raol at Kathlal Police Station. Based on the complainant's report, Kathlal Police registered the offence u/ss 363, 376(AB) of the Indian Penal Code and Sections 5(m), 6 of The Protection of Children from Sexual Offences Act, 2012, at Kathlal Police Station I- CR No. 11204027210133/21. The investigating officer completed the investigation and upon its conclusion, a charge sheet was filed against the present accused in the Sessions Court. This has been registered as POCSO Case No.27 of 2021.

5. Thereafter, the learned Sessions Judge transferred the case against the accused to the Special POCSO Court for the purpose of conducting the judicial proceedings having jurisdiction to try the case. After ensuring

that the accused was provided with copies of the police investigation papers, the charge was framed against him at Exhibit 16 for offences under IPC Sections 363, 376(AB), and under Sections 5(m) and 6 of the POCSO Act. Upon taking the statement of the accused at Exhibit 17, the accused denied the offence and consequently, the prosecution's evidence was taken.

6. The prosecution has produced the following oral and documentary evidence:

(A) Oral Evidence of the Complainant, Victim, and Witnesses:-

Sr. No.	Name of Witness	Details	Exhibit
1	Victim (Witness No. 1)	Victim	18
2	Rajuben Sanjaybhai Solanki (Witness No. 2)	Complainant/ Mother of the victim	20
3	Mukeshbhai Vakhatsinh Damor (Witness No. 6)	Talati cum Mantri, Lasundra	33

(B) Evidence of the Doctor:-

Sr. No.	Name of the Witness	Details	Exhibit
1	Dr. Bhavik Vishnubhai Patel	Medical Officer, CHC, Kathlal	23
2	Dr. Kalpana Dhirenkumar Shah	Medical Officer, Civil Hospital, Nadiad	26
3	Dr. Nirmala Ram Matai	Medical Officer, Civil Hospital, Nadiad	29

(C) Evidence of Panch Witnesses:-

Sr. No.	Name of the Witness	Details	Exhibit
1	Jaydeepsinh Abhesinh Parmar	Seized the clothes of Victim and the accused and Panch witness of the place of offence	36

(D) Evidence of Investigating Officer:-

Sr. No.	Name of the Witness	Details	Exhibit
1	Dharmendrasinh Chandrasinh Raol (Witness No. 8)	Investigating Officer (Sr. PSI, Kathlal Police Station)	47
2	Hardeepsinh Chandrasinh Zala (Witness No. 9)	Investigating Officer (S.P.I., Kapadwanj)	49

(E) Documentary Evidence:-

Sr. No.	Name of the Document	Exhibit
1	Complaint	21
2	Birth Certificate of the victim	34
3	True Copy of Birth Register of Lasundra Gram Panchayat	35
4	Panchnama of the offence place	39
5	Statement of the victim u/s 164 of CrPC	19
6	Police Yadi Medical Examination of the Victim	27

7	Medical Certificate of the victim- Civil Hospital, Nadiad	28
8	Panchnama of seizure of the clothes of the victim	43
9	Panchnama of seizure of the clothes of the accused	46
10	Station Diary	48
11	Police Yadi of Medical Examination of the Accused	30
12	History case papers given by the accused to the doctor, Nadiad	31
13	Medical Certificate of the Accused-Civil Hospital, Nadiad	32
14	Certificate of the victim- Civil Hospital, Ahmedabad	50
15	Certificate of the victim- CHC, Kathlal	24
16	Certificate of the accused- CHC, Kathlal	25
17	Dispatch Note	52
18	FSL Receipt	53
19	FSL Letter	54
20	FSL Report	55
21	FSL Serology Report	56

7. Other than the above, the prosecution has neither produced any documentary evidence nor examined any further oral evidence. The prosecution has submitted a *pursis* confirming that their evidence has been completed. Upon the completion of the prosecution's evidence, the further statement of the accused under Section 313 of the Criminal Procedure Code was recorded. In the said statement, the accused primarily stated that the prosecution's evidence was false, that a false case had been filed against him and that he is innocent. Upon completion of

the arguments from each side, the learned Special Court has recorded the conviction and sentence of the convict-accused as stated in paragraph 1 of this judgment.

8. Heard the learned APP Mr.Ronak Raval appearing for the respondent – State and learned Advocate Mr. P V Patadiya appearing for the convict – accused in the captioned matter.

9. Before examining the case on hand considering the evidence adduced before the learned Special Court and dealing with the rival submissions made by the respective parties, it would be apt to refer the provisions of Criminal Law (Amendment) Ordinance,2018 by which Section 376-AB was inserted after Section 376-A, which reads as under :

> *"376AB. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:*
>
> *Provided further that any fine imposed under this section shall be paid to the victim.*"

With the aforementioned insertion of new Section 376-AB, the provision has been made to an effect that whoever commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but

which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death. The proviso reads that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim. Thus, by the aforesaid new provision in a case of rape on a woman under twelve years of age, minimum sentence of rigorous imprisonment is not less than twenty years, but the same may extend to imprisonment for life would mean natural life of the accused. Thus, in such cases the rigorous imprisonment would not be less than twenty years and the same would be coupled with fine or the court may award death sentence.

10. Learned APP Mr.Ronak Raval appearing for the State would submit that in light of aforementioned amendment, the accused has rightly been convicted and sentence of death penalty for committing rape on a minor girl aged 6 years. He has further submitted that evidence so adduced before the learned Special Court is proved and on the basis thereof, the convict has rightly been imposed a death penalty and hence this Court may confirm the said death penalty and dismissed the appeal preferred by the convict.

11. Whereas, learned counsel appearing for the convict has argued that in the facts of the present case, the conviction of death sentence awarded to the accused is not sustainable. It is submitted that the manner in which the alleged offence is committed is not barbaric and brutal and hence present case does not fall within 'rarest of rare case' to award death sentence. In support of his contentions, learned Advocate for the convict

has relied upon various decisions of the Hon'ble Supreme Court in the cases of ***Bachan Singh Versus State of Punjab*** reported in ***AIR 1980 SC 898*** and ***Machhi Singh & Others Versus State of Punjab*** reported in ***AIR 1983 SC 957***.

12. Reliance is also placed upon the decision of the Hon'ble the Supreme Court in the case of ***Amit Versus State of Uttar Pradesh reported in AIR 2012 SC 1433*** to contend that in absence of having any evidence that the accused may repeat a similar crime in future, the possibility of his reform cannot be ruled out in the coming years looking to the age and under such circumstances, the Hon'ble Supreme Court in the said case relying upon the judgment of ***Rameshbhai Chandubhai Rathod Versus State of Gujarat reported in AIR 2011 SC 803*** converted the death penalty into the imprisonment for life for the remaining term. Reliance is also placed on the judgment of Hon'ble the Supreme Court in ***the case of Panchhi & Another Versus State of U.P reported in (1998) 7 SCC 177*** to explain the circumstance as to when the death penalty is not justified.

13. By making the above submissions, learned advocate for the convict would submit to allow this appeal.

14. At the outset, if the newly inserted Section 376-AB of the IPC is seen, it provides that in a case of rape where the age of woman is under 12 years of age, minimum rigorous imprisonment is provided not less than twenty years which may extend to imprisonment for life which shall

mean natural life and with fine. Therefore, the ratio and the test to award the death penalty in the case of committing rape on a woman below 12 years of age shall be the same as has been laid down in the plethora of decisions prior to the amendment i.e. 'rarest of rare case.'

15. It would be relevant to note that the learned Special Judge has recorded the evidence of the witnesses produced by the prosecution before the Court and after evaluating the same, including the scientific and medical evidence has convicted and imposed the death penalty. Therefore, evidence of the complainant, victim and other relevant witnesses is required to have a glance through.

Evidence of Date of Birth of the Victim – Minor:-

16. It would be apt to note that to prove the victim's date of birth on behalf of the prosecution, Mukeshkumar Vakhantsinh Damor, the Talati-cum-Mantri of Lasundra, has been examined at Exhibit 33 who has deposed that the birth-death register is maintained in the Gram Panchayat office and produced the original birth register for the year 2013, wherein the victim is registered at Serial No. 135/13, according to which the victim's date of birth is 27/10/2013. The victim's birth certificate issued by their office has been produced and assigned Exhibit-34 which also shows the victim's date of birth as 27/10/2013. Likewise, the complainant/victim's mother, Rajuben Sanjaybhai Solanki, examined at Exhibit-20, stated in her evidence that the victim's age is 6 years and she was admitted to Standard 1. Moreover, the Investigating Officer in the present case also verified the victim's certificate and included it in the

investigation papers, which states the victim's date of birth as 27/10/2013. Since the incident occurred on 03/03/2021 and as per birth date of the victim, it is proved that the victim was minor aged 06 years and 1 month at the time of the incident.

17. Statement of the victim under Section 164 Cr.P.C has been recorded by the learned 6th Additional Chief Judicial Magistrate, Kapadvanj vide Exhibit-19, wherein also the following questions-answers were asked to the victim.

"Question:	*Beta (Child), did anything happen to you?*
Answer:	*(Upon asking the present question, the child's expressions changed and she states that, Langho told me I will give Ambaliyo.*
Question:	*Who is this Langho? What is his name?*
Answer:	*His name is Jayanti but they call him Langho... He is Jayanti Langho.*
Question:	*What happened after saying about Ambaliyo?*
Answer:	*(Upon asking this question to the child, the child immediately asked to go out to avoid the conversation and stated I am going to pass urine, I want to pass urine, saying so she went out with her mother. The victim child came back and was seated in the chair) The child answers looking down that Langho told me that Ambaliyo is on the tin in my house, you go into my house. When I went into Langho's house to take Ambaliyo, Langho came into the house behind me and closed the door. Then Langho caught my hand and holding my hand, the room in middle of the ..... there Langho took me by holding my hand.*
Question:	*Then what happened Beta?*
Answer:	*Then Langho opened the zip of his pant.*
Question:	*Then what happened Beta?*
Answer:	*Langho removed my entire pink colored lenghi.*
Question:	*Then what happened Beta?*
Answer:	*I was trying to shout but Langho pressed my mouth with his hand so I could not shout.*
Question:	*Then what happened Beta?*
Answer:	*Then put his private part into my private part.*
Question:	*Then what happened Beta?*
Answer:	*When Langho put his private part into my private part, full blood was coming out and blood started coming out drop by*

drop.

Question: *Then what happened Beta?*

Answer: *I was having too much pain. When Langho was doing such heinous act with me, I was just crying and crying, it was paining a lot and I could not even walk. It happened like I couldn't walk, couldn't sit on the cot and it was hurting a lot.*

Question: *Then what happened Beta?*

Answer: *My Mummy went at eight o'clock, then after some time Langho called me I will give Ambaliyo, then took inside and did heinous act with me and I cried a lot and blood started falling a lot and it started paining extremely then Langho opened the door and left me. Langho made me sleep on the plaster on theground and did heinous act then when he left me, I could not stand up so Langho held hand and made me stand up. Even then blood was falling from my private part (Victim child speaks and shows by gesture) and when I was coming to my house from Langho's house and going to the backyard, blood was falling in the drain also and my lenghi had become fully wet with blood.*

Question: *Then what happened Beta?*

Answer: *Then I hid my blood-stained clothes and there was a lock on my house so I took water from the barrel in my house's backyard and took a bath. Before my Mummy came I had hidden one blood-stained lenghi and had hidden one frock and had hidden another lenghi. Those lenghis have been given in the Police Station.*

Question: *Then what happened Beta?*

Answer: *Then I was just crying and I kept on crying the whole day. Because I couldn't walk and it was paining a lot.*

Question: *Then what happened Beta?*

Answer: *When Langho did heinous act with me, my stomach was hurting a lot and a lot of blood had fallen from my private part inside Langho's house.*

Question: *Then what happened Beta?*

Answer: *When I came to my house from Langho's house, then also blood was falling from my private part.*

Question: *Then what happened Beta?*

Answer: *After doing heinous act with me, Lango gave ten rupees and said that if you tell anyone then I will do like this with you daily. He did this so I told Langho that I will never come to your house in my life.*

Question: *Then what happened Beta?*

Answer: *Then blood was coming from my private part so I kept sitting in the backyard itself until my Mummy came.*

Question: *Then what happened Beta?*

Answer: *My Mummy came home at five o'clock then I was crying so my Mummy asked me why are you crying. Then my Mummy looked*

in the backyard and she saw my clothes I had hidden, and after taking those clothes my mother was asking me. I had hidden clothes because my Mummy would beat me up. Then as blood was coming from my private part and my lenghi was getting spoiled and as blood stains were also seen on the back of the white frock I had worn, my Mummy asked me as to what happened with you. Then I told my Mummy that I will tell you only if you don't tell Papa. Then my Mummy told me that she will not tell Papa. Then I told my Mummy that Langho had put his private part into my private part and I told what Langho had done with me.

Question: *Then what happened Beta?*

Answer: *Picture is over, now you go to your room. (Child plays and says that I want to go home now.)*

Question: *Then what happened Beta?*

Answer: *My Mummy took me to the hospital then my Papa came to the hospital. My Mummy and Papa remained hungry for two days and remained hungry for half a day.*"

18. If the evidence of the victim examined by the prosecution is seen, who is examined at Exhibit-18 and considering the age of the victim who is six years old at the time of incident asked the following questions.

"Question:- *What does your mother do?*

Answer:- *Goes to work. Goes to work of tobacco.*

Question:- *What does your father do?*

Answer:- *Goes to service in Ahmedabad.*

Question:- *When your mother and father go to work in the morning, with whom do you stay?*

Answer:- *I stay with my Moti Mummy (Aunt) and my Moti Mummy gives me food in the afternoon.*

Question:- *What happened with you?*

Answer:- *Langho (Jayanti) took me into his house saying he would give 'Ambali' (tamarind).*

Question:- *Then what happened?*

Answer:- *Langho removed my lenghi.*

Question:- *Then what happened?*

Answer:- *Then laid me on the floor.*

Question:- *Then what did Langho do?*

Answer:- *He slept on top of me.*

Question:- *Then what did he do?*

Answer:- *Then he put his private part into my private part.*

Question:- *Did you have pain?*

Answer:- *I was bleeding.*

Question:- *Did you not shout?*

Answer:- *He had pressed my mouth with hand.*
Question:- *Then did it hurt?*
Answer:- *Yes.*
Question:- *Where did it hurt?*
Answer:- *The witness gestures to the part below the stomach and shows the place where it hurt.*
Question:- *If Langho did this with you, did you tell anyone?*
Answer:- *Yes, told my Mummy.*
Question:- *Did Langho Kaka (Accused) give you anything?*
Answer:- *Yes, Langho gave me ten rupees.*
Question:- *After you told your Mummy what Langho did, where did your Mummy take you?*
Answer:- *To the Police Station.*
Question:- *Then where did she take you?*
Answer:- *Took to all hospitals, Kathlal, Nadiad, Ahmedabad, took everywhere.*
Question:- *Did you tell everything to Doctor Saheb?*
Answer:- *Yes.*
Question:- *What was done with your clothes?*
Answer:- *Given to the police people.*
Question:- *If clothes are shown to you, can you identify?*
Answer:- *Yes.*
Question:- *How many times did Langho (Accused) do this with you?*
Answer:- *Once.*
Question:- *Did the police ask you anything?*
Answer:- *Yes, at that time I dictated everything correctly.*
Question:- *Were you taken to Kapadvanj?*
Answer:- *Yes.*
Question:- *Do you sign or do thumb impression?*
Answer:- *I do thumb impression.*
Question:- *Do you know Langha Kaka (Accused)?*
Answer:- *Yes, he used to live near my house.*"

19. Thus, considering the evidence of the victim-girl, it clearly appears that the accused took her to his house saying he would give *Ambali* when she was playing and then removed the victim's lenghi, laid her on the floor, slept on top of her and put his private part into the genitals of the victim resulted into her bleeding and the accused pressed her mouth with his hand to prevent the victim from shouting and the accused gave ten rupees to the victim.

20. Therefore, now if the statement recorded under Section-164 of Cr.P.C is taken into consideration, the victim has clearly stated therein that the accused lured her to give *Ambali*, took her to his house, removed her lenghi, the accused put his private part into her private part due to which blood was coming out there-from for the whole day and there was inflammation. Thus, considering the above statement also, it appears that the victim was so scared by such heinous act that she had hidden her blood-stained lenghi and frock and when her mother came home from labor work, the victim was crying and seeing her lenghi in blood-stained condition, upon asking, the victim who is a daughter of 6 years tender age told her mother that "she will tell her mother only if she does not tell her Papa and then her Mummy told her that she will not tell Papa." The said victim informed the above fact to her mother and her mother took the victim and filed the complaint immediately on the day of the incident and the medical examination of the victim was conducted. Thus, if the entire evidence of the said victim is taken into consideration, it is clearly proved that the accused who is aged 45 years has taken the minor victim who is aged only 6 years, a girl of tender age who has no understanding of anything, into his house by luring her to give *Ambali* and committed forcible sexual intercourse rape with her. The accused is shown to the child witness on the screen and the witness has identified him. Thus, the evidence of the victim girl supports the case of prosecution in toto.

21. Complainant, Rajuben Sanjaybhai Solanki, who is the mother of the victim has been examined at Exhibit-20. She states in her evidence that the victim is her daughter and was 6 years old at the time of the incident. She was studying in 1st Standard and on the day of the incident

her husband had gone for job at Ahmedabad and the complainant herself had gone for labor work and upon returning in the evening, her daughter was crying, her lenghi and clothes were wet, she was shivering and was not able to speak anything and upon seeing in the bathroom the daughter's lenghi was lying wet and top was also stained with blood and the lenghi worn by the daughter was also contained with blood stains and upon removing the victim's lenghi, she found that blood was coming out from her private part. Thereafter, upon asking the victim calmly she stated the fact that "In the afternoon when they were playing, Langho (Jayanti Kaka) took her to his house saying that he will give *Ambali* and he made me down on the ground in his house , removed her lenghi, pressed her mouth with his hand, climbed upon her and was doing dirty things with her and blood started coming out from the place of passing urine and there was burning sensation and then gave her ten rupees and told that if she tells this to anyone then he will do this again with her and therefore she was scared" and then the complainant took her victim daughter's blood-stained clothes and gave complaint at Police Station and has identified the accused present in the Court. Thus, the said complainant has also given evidence clearly supporting the facts of the Prosecution's case.

Medical Evidence:-

22. The medical examination of the victim was first conducted on the day of the incident itself at C.H.C. Kathlal with police yadi. Prosecution Witness No. 8 Dr. Bhavik Vishnubhai Patel has been examined at Exhibit-23 and he has given such evidence that, the victim was brought with police yadi, samples collected from the victim's body were sent to

FSL and history was noted. Thereafter, she was referred to Civil Hospital, Nadiad for gynec examination and expert opinion. Also, on the day of the incident itself, the accused was brought to C.H.C. Kathlal with police yadi for physical examination. Necessary samples were collected from the body of the accused and sent for FSL examination and the history given by the accused was also recorded; wherein it was stated that "***the victim lived in his neighborhood and he know her for approximately six months. In the morning on 03/03/21 at around 11-00 o'clock, she came and sat on my cot and asked for a 10 rupee note from me, I asked her to come inside the house. I gave her a 10 rupee note and laid her on the ground inside the house and after laying her down and pulled her lenghi down; she was shouting Mummy Mummy. He removed his trouser and inserted a little part of his penis into her vagina and then as she shouted more, he left her and she went to her house. Witness has admitted all this and no force or coercion is made to him.***" Thus, even considering the history of the accused, the fact that the accused committed rape with the victim is clearly proved.

23. The victim has been sent to Nadiad Civil Hospital for examination along with a Referral Note. Dr. Kalpana Dhirenkumar Shah, who conducted the medical examination of the victim, has been examined at Exhibit-26. In her evidence, she has stated that the victim was brought in for a physical examination by a Woman Police Constable, accompanied by the Transfer Yadi from CHC Kathlal. Upon examination of the victim's genitalia part, she noted that the victim's hymen was ruptured at the six o'clock position and that it was ruptured on the posterior wall of her vagina at the six o’clock position, with the fact that there was

bleeding from that site. She further stated that the tearing of the victim's vaginal wall implies that the victim had sustained an injury to her genitalia, and there was bleeding from the site. The injuries sustained by the victim's private parts were of fresh nature. As per her opinion, the injuries to the vaginal area were caused by forcible sexual intercourse. However, in the cross-examination conducted on behalf of the accused, the said Doctor-witness admitted the fact that there are many reasons for a rupture of hymen. She admitted that bleeding occurs when the hymen is ruptured. The Doctor submitted the victim's Medical Certificate and Medical Case Papers vide Exhibit-28. Considering the evidence of the said witness, the tearing of the victim's vaginal wall implies that an injury was sustained to the victim's private parts, and blood was oozing out there-from. The injuries to the victim's private parts were fresh in nature. She has given a clear opinion that the injuries to the vaginal area were caused by the victim being subjected to forcible sexual intercourse. Thus, this fact is clearly substantiated by the aforementioned medical evidence, establishing that the accused committed forcible sexual intercourse with the minor victim on the day of the incident.

Evidence of the Panch Witnesses:

24. The prosecution has examined Panch Witness Jaydipsinh Abhesinh Parmar vide Exhibit-36, regarding the seizure of the clothes of the victim and the accused, and the drawing up of the Panchnama of the place of the offence. In his evidence, he has clearly stated that on 04/03/2021, the Kathlal Police called him to the residence of Chimnabhai Solanki in Bajpey Nagar, Lasundra village, around 14:00 hours. Rajuben Sanjaybhai Solanki and an F.S.L. Officer were also present there. In their presence,

Rajuben pointed out the place of the offence which was situated inside the house of Chimanbhai Gemabhai Solanki, and the police drew a detailed Panchnama of that spot in their presence. At the scene of the offence, reddish stains were observed. F.S.L. Officer present at the spot inspected them and prima facie stated that the stains were of blood. This blood was swabbed using cotton wool and seized for examination in a transparent plastic container. On the same day, Rajuben**,** the mother of the victim, produced the cloths worn by her daughter at the time of the incident wherein one carrot-coloured frock, which showed bloodstains on the front and back portions. One purple-coloured legging, which also showed bloodstains on the front and back portions. These articles were seized in the presence of the Panchas. Likewise on the same day, the accused, Jayanti alias Landho Chimanbhai Solanki, was present at Kathlal Police Station and produced the clothes he worn at the time of the incident was produced wherein a blue and white dotted shirt showing bloodstains. A grey coloured pant also showing bloodstains. Both articles of clothing were seized by the police for the purpose of investigation, after placing slips bearing his as well as second Panch's signatures on them. The witness has produced the Panchnama of the seizure of the victim's clothes vide Exhibit-43, the Panchnama of the seizure of the accused's clothes vide Exhibit-46, and the Panchnama of the scene of the offence vide Exhibit-39. Thus, the evidence of this witness clearly supports the Panchnama drawn by the police.

25. Furthermore, the prosecution has proved the Panchnama drawn by the Investigating Agency through the Panch Witness. In this case, considering the significant evidence, the Site Inspection Report from the

Directorate of Forensic Science, Gandhinagar, Mobile Investigation Van, Kheda-Nadiad, Exhibit-51, reddish stains were found at the scene of the offence in a radius of approximately 1 feet. Upon testing these stains with the 'Blood Detection Kit' present in the Mobile Investigation Van, the result was positive, and the said reddish stains were found to be prima facie blood. The following samples related to the incident were sent for analysis as per the Dispatch register vide Exhibit-52, the blood sample taken by swabbing the reddish stain from the scene of the incident with a cotton thread.

26. The Biological Examination Report relating to these samples is produced vide Exhibit-55, the details of which are as follows:

Parcel No.	Name and description of the sample	Stain description	Result of analysis
B	B-Shirt: Long-sleeved shirt, blue in colour with a white dotted pattern.	Moderate quantity Medium sized scattered brown stains.	Presence of blood was found. Presence of semen, saliva, heirs was not found.
B-1	B-1 Pants: A pants of grey colour	Moderate quantity Medium sized scattered brown stains.	Presence of blood was found. Presence of semen, saliva, heirs was not found.
A	A-Frock: A frock like pink colour with red white and blue designs having short sleeve.	Stains in small quantity, small to medium in size.	Presence of blood was found. Presence of semen, saliva, heirs was not

			found.
A-2	A-2 legging: purple coloured legging	Moderate quantity Medium sized brown stains.	Presence of blood was found. Presence of semen, saliva, heirs was not found.
C	C-Some cotton threads in a plastic beg.	Light brown stains.	Presence of blood was found.

27. Thus, taking into consideration the Biological Examination Report produced vide Exh.-55 along with the Serology Report produced vide Exh.-56, bloodstains were found on the accused's shirt as well as his pants, which were found to be of Blood Group 'O', the blood group of the victim. Similarly, bloodstains were found on the victim's legging and frock, which were also determined to be of Blood Group 'O', the blood group of the victim. Furthermore, the bloodstains found at the scene of the offence in a surrounding area of 1-feet, were also found to be of Blood Group 'O', the blood group of the victim. Thus, considering the aforementioned F.S.L. Examination Report, the fact is clearly established that the bloodstains found at the scene of the incident, on the accused's pants and shirt, and on the victim's frock and legging, match the victim's Blood Group 'O'. This evidence supports the conclusion that the accused lured the victim on the pretext of giving her *aambali*, took her to his house, removed her legging, and forcibly committed rape with her. Due to the said rape, the victim's vaginal wall was ruptured and she sustained injuries to her private parts, and blood was oozing from there which has stained her legging and frock with blood.

Evidence of the Investigating Officer:

28. Investigating Officer Dharmendrasinh Chandrasinh Raol (Sr. P.S.I., Kathlal Pol. St.) is examined at Exhibit-47. In his evidence, he has stated that while he was on duty at Kathlal Police Station, complainant Rajuben Sanjaybhai Solanki appeared before him and narrated the facts of complaint on 03/03/2021, which was reduced into writing. That he has identified his signature as before in complaint, Exh.-2, and an entry of the aforesaid offence was made which is produced vide Exh.-48 and as the said offence falls under POCSO Act, and as the authority to investigate such cases vests with Police Inspector, it has been stated that he has forwarded the said case for further investigation. Thus, the Investigating Officer has registered complainant's complaint as mentioned by the complaint.

29. Another Investigating Officer, Hardipsinh Chandrasinh Jhala (CPI, Kapadvanj) is examined at Exh.-49 who has deposed that upon receiving the investigation into the offence registered at Kathlal Police Station vide C.R. No. 133/2021, he took charge of the investigation and conducted the investigation.

30. Thus, the complainant, the victim and the witnesses have adduced evidence corroborating the facts of prosecution case. Further, statement of the victim as per section-164 of the Cr.P.C. has been recorded by the Addl. Chief judicial Magistrate, Kapadvanj vide Exh.-17 wherein also she has clearly stated that the accused had removed her legging and committed rape on her. The fact which has been stated in the statement

under Section 164 have been stated in the statement before the Court also. Further, the accused was examined, seizure Panchnama of the clothes of accused and victim and the Panchas of the Panchnama of the scene of offence have been supported by the Panchas. Moreover, the Panch Witness examined has given evidence that corroborates the facts recorded in the Panchnamas for the seizure of the clothes of the accused and the victim, as well as the Panchnama of the scene of the offence. Prosecution has also examined Dr. Bhavik Vishnubhai Patel vide Exhibi-23, who has examined the victim on the very day of the incident and medical case papers and history has been produced therein also stated that the accused committed rape on her. Furthermore, the victim was brought for medical examination before Dr. Kalpana Dhirenkumar Shah at Nadiad Civil Hospital and she has adduced evidence and as per her opinion, the injuries to the Victim's vagina are attributed to forcible sexual intercourse having been committed with her.

31. Thus, from the aforesaid facet of evidence, the prosecution has clearly proved that the victim minor girl aged six years has been raped by the accused which constitutes an act falling under Section 5(m) of the POCSO Act, fulfilling the definition of rape under Section 375 of the IPC and thereby the case falls under Section 6 of the POCSO Act.

32. Now, the questions comes for consideration as to whether the case on hand in light of the evidence produced by the prosecution and believed by the learned Special Court falls under the category of '***rarest of rare case***' wherein the sentence of death penalty may be confirmed on account

of aggravating circumstances or any alternative punishment which otherwise is of greater in degree due to having some mitigating circumstances may be imposed?

Legal position / Case Law On the aspect of Awarding Sentence in Rarest of Rare Case:-

33. The Supreme Court in the case of **Machhi Singh (supra),** relying upon the guidelines drawn by the Apex Court in **Bachan Singh (supra)** laid down the test on the individual facts while pronouncing the sentence. In Paragraph Nos.37,38,39, the Apex Court has observed as under:-

> *37. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from Bachan Singh's case:*
>
> *(i) the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;*
>
> *(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the 'crime'.*
>
> *(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*
>
> *(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.*
>
> *38. In order to apply these guidelines inter-alia the following questions may be asked and answered:*

> *(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?*
> *(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?*
>
> *39. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."*

34. In the case of ***Mofil Khan Versus State of Jharkhand reported in (2015) 1 SCC 67,*** the Hon'ble Apex Court has explained the meaning of "***the rarest of rare case***". The relevant portion of Paragraph No.64 is reproduced as under:-

> *"The rarest of the rare case" exits when an accused would be a menace, threat and antithetical to harmony in the society. Especially in cases where an accused does not act on provocation, acting on the spur of the moment but meticulously executes a deliberately planned crime in spite of understanding the probable consequence of his act, the death sentence may be the most appropriate punishment."*

35. In the case of ***Haresh Mohandas Rajput Versus State of Maharashtra reported in (2011) 12 SCC 56,*** the Apex Court has emphasized the connotation "the rarest of the rare". The relevant portion of Paragraph No.56 is reproduced as under:-

> *"The rarest of the rare case comes when a convict would be menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case."*

36. In the case of ***Santosh Kumar Versus State Through C.B.I reported in (2010) 9 SCC 747,*** the Apex Court has explained the philosophy behind "the rarest of the rare case".

The relevant portion of in Paragraph No.98 is reproduced as under:-

> *"Undoubtedly, the sentencing part is a difficult one and often exercises the mind of the Court but where the option is between a life sentence and a death sentence, the options are indeed extremely limited and if the Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser sentence should be awarded. This is the underlying philosophy behind "the rarest of the rare" principle."*

37. In the case of ***Rameshbhai Chandubhai Rathod (supra),*** the Apex Court has held that it is now well settled that as on today the broad principle is that the death sentence is to be awarded only in exceptional cases. The Court deciding the issue has accepted the view by one of the Judge whereby in a similar case of rape and murder of a minor girl below the age of 12 years, the Court has given weightage to the fact that the appellant was a young man only 27 years of age. It was obligatory on the Trial Court to have given a finding as to a possible rehabilitation and reformation and the possibility that he could still become a useful member of the society in case he was given a change to do so. The Apex Court while relying upon the judgment of ***Ramraj Versus State of Chhattisgarh reported in (2010) 1 SCC 573 and Mulla & Another Versus State of Uttar Pradesh reported in (2010) 3 SCC 508,*** has observed that the term "imprisonment for life" which is found in Section 302 of the I.P.C, would mean "imprisonment for the natural life" of the convict subject to the powers of the President and the Governor under Articles 72 and 161 of the Constitution of India or of the State

Government under Section 433-A of the Code of Criminal Procedure, however, converted the capital punishment into the punishment for imprisonment of life. In **Mulla's case (supra),** the Apex Court has said: "*We are in complete agreement with the above dictum of this Court. It is open to the sentencing court to prescribe the length of incarceration. This is especially true in cases where death sentence has been replaced by life imprisonment. The court should be free to determine the length of imprisonment which will suffice the offence committed. Thus, we hold that despite the nature of the crime, the mitigating circumstances can allow us to substitute the death penalty with life sentence.*" Therefore, the Apex Court has given the punishment of life sentence, which may extend to their full life subject to any remission by the Government for good reasons. Thus, relying upon the ratio of ***Ramraj (supra) and Mulla (supra),*** the Apex Court in the case of ***Rameshbhai Chandubhai Rathod (supra)*** maintained the same sentence in the similar terms. Therefore, by the three Judges Bench, the Apex Court recognized that it is obligatory on the Trial Court to have given a finding as to a possible rehabilitation and reformation and the possibility cannot be ruled out that he may be a useful member of the society in case he is given a chance.

38. The Supreme Court in a judgment rendered in ***Shankar Kisanrao Khade vs. State of Maharashtra, (2013) 5 SCC 546,*** examined the entire case law where the penalty of death sentence was

set aside in the case of an offence under Section 376 of IPC. The Court laid down the aggravating circumstances called "crime test", mitigating circumstances called “criminal test” and "the rarest of rare cases test". It was held that the nature, motive, impact of crime, culpability, quality of evidence, socioeconomic circumstances, impossibility of rehabilitation are some of the factors, the Court may take into consideration while commuting the death sentence into imprisonment for life.

39. A useful reference is also made to a decision in case of ***Bhaggi @ Bhagirath @ Naran vs. State of Madhya Pradesh [2024 (0) AIR (SC) 938]*** wherein the Hon’ble Apex Court in similar such circumstances; where the age of the victim was aged seven years and accused was aged forty years committed rape on victim aged seven years wherein the accused was convicted for the offences punishable under Sections 376 AB of the IPC, as also under Sections 3 and 4 and 5(m) and 6 of the POCSO Act and sentenced to undergo death penalty under Section 376 AB of the IPC by the learned Sessions Court concerned which has been modified by the High Court to the imprisonment for life which shall mean imprisonment for natural life and the Apex Court has modified to a sentence of rigorous imprisonment for a term of 30 years which also includes the period of sentence already undergone and the period of set off if ordered by the learned trial Court. Relevant observations made by the Hon’ble Apex Court while discussing the case laws is quoted hereunder:

> *“8. Evidently, the decision in **Mulla’s** case (supra) and a catena of decisions where death sentence was commuted to the imprisonment for life including the decisions in **Bantu alias***

Naresh Giri v. State of M.P.[2]*,* ***Amrit Singh v. State of Punjab***[3] *and* ***Rameshbhai Chandubhai Rathod (2) v. State of Gujarat***[4] *were considered by the High Court while commuting* ***capital sentence to imprisonment for life****. A bare perusal of all those decisions would reveal that those are cases involving rape and murder of young girls aged between 4 to 12 years. It is true that after referring to those decisions the High Court, in the instant case held in paragraph 34 of the impugned judgment thus:-*

xxx xxx xxx

11. In the circumstances obtained in this case there can be no doubt regarding the requirement of deterrent punishment for the conviction under Section 376 AB, IPC. The only question is whether the commutation of capital punishment to sentence of life imprisonment requires further interference. There can be no doubt with respect to the position that on such commutation of sentence for the conviction under Section 376 AB, IPC, the other alternative available is only imprisonment for a period not less than 20 years with fine. This position is clear from the provision under Section 376 AB, IPC which reads thus:-

> *"**376AB. Punishment for rape on woman under twelve years of age.**—Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life, and with fine or with death:*
>
> *Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:*
>
> *Provided further that any fine imposed under this section shall be paid to the victim."*

12. Thus, a bare perusal of Section 376 AB, IPC would reveal that imprisonment for life thereunder means imprisonment for the remainder of the convict's natural life and the minimum term of imprisonment under the Section is 20 years. Now, while considering the question whether further interference with the sentence handed down for the conviction of the offence under Section 376 AB, IPC is warranted, it is only appropriate to refer to a decision of this Court in ***Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka***[5]***.*** *In* ***Shiva Kumar's*** *case (supra) this Court referred to the decision*

of a Constitution Bench of this Court in ***Union of India v. V. Sriharan alias Murugan and Ors.***[6] *and also the decision in* ***Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka***[7]***.*** *Evidently, this Court in* ***V. Sriharan's*** *case (supra), upon considering the question whether imprisonment for life in terms of Section 53 read with Section 45 IPC means imprisonment for rest of life of the prisoner or a convict undergoing life imprisonment has a right to claim remission, held after referring to the decision in* ***Swamy Shraddananda (2)*** *(supra) that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for any specified offence could only be exercised by the High Court and in the event of further appeal only by the Supreme Court. Furthermore, in paragraph 105 of the said decision it was held:- "to put it differently, the power to impose modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court." In* ***Shiva Kumar's*** *case (supra) this Court further took note of what was held by the Constitution Bench in* ***V. Sriharan's*** *case (supra) paragraph 104 as well, which reads thus: -*

> *"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."*

13. After referring to the relevant paragraphs from the said decisions in ***Shiva Kumar*** *this Court held as follows: -*

"13.Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 of the IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433A of Cr.P.C."

14. In view of the decisions referred (supra) and taking note of the position that when once the conviction is sustained under Section 376 AB, IPC the fixed term punishment could not be for a period of less than 20 years. Evidently, the High Court had referred, in paragraph 33 of the impugned judgment, to decisions where minor girls were raped and murdered, but did not pointedly consider whether for the conviction under Section 376 AB, IPC involving commission of rape of victim, aged 7 years not coupled with murder what would be the comeuppance, after deciding to commute the capital sentence.

15. We have taken note of the hapless situation of the victim after being taken to a temple by the petitioner-convict. The evidence would reveal that unmindful of the holiness of the place he disrobed her and himself and raped her. When such an act was done by the petitioner, who was then aged 40 years and X who was then aged only 7 years and the evidence that when PW-2 and PW- 14 reached the place of occurrence, blood was found oozing from the private parts of the disrobed child. The High Court had rightly considered the aggravating and mitigating circumstances while commuting the capital sentence into life imprisonment which going by the provisions under Section 376 AB, IPC means rest of the convict's natural life. For effecting such commutation, the High Court also considered the question whether there is possibility for reformation and rehabilitation of the petitioner and opined that it is not a case in which the alternative punishment would not be sufficient in the facts of the case. But then, it is noted that if the victim is religious every visit to any temple may hark back to her the unfortunate, barbaric action to which she was subjected to. So also, the incident may haunt her and adversely impact in her future married life.

> *16. Then, we are also to take into account the present age of the petitioner and the fact that he has already undergone the incarceration. On consideration of all such aspects, we are of the considered view that a fixed term of sentence of 30 years, which shall include the period already undergone, must be the modified sentence of imprisonment.*
>
> *17. We have already taken note of the fact that while commuting the capital sentence to life imprisonment, the High Court had lost sight of the fact that despite conviction under Section 376 (2) (i) and under Sections 3/4, Sections 5(d)/6 of the POCSO Act, no separate sentences were imposed on the petitioner for the offence under Section 3/4 and 5(m)/6 of the POCSO Act by the Trial Court, evidently, only on the ground that capital sentence is imposed on the petitioner for the offence under Section 376 AB, IPC. However, it is a fact that the said aspect escaped the attention of the High Court. That apart, in terms of the provisions under Section 376 AB, IPC when a sentence of imprisonment for a term not less than 20 years which may extend upto life imprisonment is imposed, the convict is also liable to suffer a sentence of fine which shall be just and reasonable to meet the medical expenses and rehabilitation of the victim which we quantify as Rupees One Lakh and the same shall be paid to the victim with respect to the conviction under Section 363, IPC. In that regard also, there is absolutely no consideration in the impugned judgment."*
>
> (emphasis supplied)

40. Yet in the recent decision, the Hon'ble Apex Court in case of ***Baluru Thippaiah @ Byaluru Thippaiah @ Nayakara Thippaiah vs. State of Karnatak [2025 INSC 862]*** after referring to ***Bachan Singh (supra)*** on the aspect of applying the test to be applied while sentencing the convict and considering the decision in case of ***Ramesh A. Naika vs. Registrar General [2025 SCC OnLine SC 575]*** whereby the factors to be elucidated that ***(a) lack of criminal antecedents; (b) satisfactory conduct in prison; (c) possibility of reformation***; as a criteria, apply to the case like on hand, and partly allowed the appeal

by altering the death penalty into life imprisonment till the last breath in prison; without remission. Relevant observations made in paragraph No.11 to 17 are quoted hereunder:

> *"11. On the aspect of sentencing, the test to be applied is as to whether the conduct of the Appellant-convict meets the standard of 'rarest of rare cases'. This has been the consistent position in confirmation of sentences of death imposed by the trial courts, ever since* ***Bachan Singh v. State of Punjab***[18]. ***Swami Shradhanand v. State of Karnataka***[19]*, introduced a new position wherein the Courts were able to impose sentences that fall short of death but at the same time, keeping in mind the heinousness of the crime by the accused persons, ensure that the society is not put in danger with the possibility of such an accused walking free. In para 10 thereof, it was observed: "The absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the Court."*
>
> *With the judgment in* ***Manoj v. State of M.P.***[20] *came a watershed moment in the criteria of sentencing. This judgment ensured that if and when a person is finally sent to the gallows he is only so sent after due consideration of the entire background of facts and circumstances that have landed the accused person at the precipice of death. Under the direction issued therein, the Court is required to call for reports that detail the social and psychological backdrop of the Appellant-convict. It was held by the three-Judge Bench as follows :*
>
> > *"****249.*** *To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] . Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.*
> >
> > ***250. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An***

illustrative, but not exhaustive list is as follows:

(a) Age

(b) Early family background (siblings, protection of parents, any history of violence or neglect)

(c) Present family background (surviving family members, whether married, has children, etc.)

(d) Type and level of education

(e) Socio-economic background (including conditions of poverty or deprivation, if any)

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any."

12. The High Court did, in accordance with ***Manoj*** *(supra), call for the reports. However, we are of the considered view, that the said reports have not been considered to their full extent. The Probation Report reveals that the Appellant-convict has no antecedents; there is mixed opinion on whether he is suitable for reformation or not. The "Conduct and Behavioural Report" submitted by the Government of Karnataka, Prisons and Correctional Services records that he has "good moral character" and "good conduct" with co-prisoners and prison officials. He has*

also attempted to mend one of the gaps in the fabric of his life i.e., literacy by participating in the Basic Literacy Program organized by the Zilla Lok Shiksha Samiti and passing the same with good rank.

13. The mitigation report reveals difficulties throughout- lack of paternal/maternal love and care which later became extreme protectiveness after the death of his brother, difficulties in learning in school leading to him dropping out, making impulsive decisions in business often leading to losses, breakdown of the marriage with his first wife for the reason that neither quite comprehended issues with substance dependence.

14. Once incarcerated, it appears that mental health struggles have been a constant and unwelcome companion. He considered making an attempt to take his own life on two occasions, one when he found out about the deaths of his entire family and two, when he himself was sentenced to death.

15. The report further concludes that:

(a) the Appellant-convict has the ability to adapt, engage in constructive activities, pursue an education despite past difficulty, continued worry about his daughter (Rajeshwari's) future, shows a notable capacity for reform and personal growth;

(b) the Appellant-convict's continued incarceration has had a negative impact on Rajeshwari, who is really struggling to cope with life. Interactions with her, threw light on a gentle, loving side of the Appellant- convict. She has also reported experiencing auditory hallucinations which is a direct impact of loneliness she has been enduring."

41. In view of the proposition and law laid down by the Hon'ble Apex Court as discussed in the foregoing paragraphs on the aspect of category of the "rarest of rare case" whereby, it has been held that if the convict would be a menace and threat to the harmonious and peaceful coexistence of the society, it would come under the category of rarest of rare case; irrespective of the fact that crime may be a heinous or brutal in nature. Thus, keeping in mind the aforesaid legal aspect equating with the facts of the case on hand, undoubtedly the

sentencing part is a difficult one and requires to undertake such exercise by the Court concerned having jurisdiction to award the sentence; where the option is between a life sentence and a death sentence and the Court concerned finds it difficulty in awarding the sentence, then the appropriate recourse would be to impose the lesser sentence.

42. Thus, in light of the aforementioned legal position, it is implicit clear that the death sentence is to be awarded only in exceptional cases as it is obligatory on the part of the learned Court concerned to give a finding on the aspect of reformation and the possibility that the convict will become a useful member to the society in case he will be given a chance to do so. In nutshell, as per the guidelines indicated in ***Bachan Singh's case (supra)*** which otherwise applies to the facts of each individual case while imposing the death sentence, the Court concerned has to consider the gravity of extreme culpability, the mitigating circumstances, the social economic condition of the offender equating the way and the circumstances in which the crime has been committed; so also the victimisation of the person involved in the crime and the adverse societal impact of the crime in question. All these aspects require to be examined by calling for appropriate report/s and after recording such subjective satisfaction that there appears such extreme and exceptional circumstances leaving no room for the Court except to impose the death penalty.

43. In context to the above discussion, if the facts of the present case is examined, it would appear that convict committed rape on a

minor girl aged six years by calling her to give *Ambli* in his house and while committing rape on her, he pressed her mouth so that she would not be able to shout and in furtherance of such act the convict also gave threat to the victim-girl by asking that if the victim discloses such an act before anyone, he will do it again. Thus, considering the evidence adduced before the learned Special Court, the learned Special Court awarded the death penalty; however while awarding the sentence of death penalty has not taken into consideration the several factors as deliberated in the foregoing paragraphs with any possibility of reformative measures and therefore in absence of any antecedents, the imposition of death penalty deserves to be interfered with as nothing sort of any such material emerges from the record; nor seems to have been pointed out to us from the material which may constrain us to affirm the conclusion arrived at by the learned Special Court.

44. Furthermore, the jail record also shows that convict is not involved in any offence; except the present offence and therefore the test to be applied for while awarding death penalty in such heinous offence as discussed herein above after referring to the catena of decisions of the Hon'ble Apex Court is to observe that there is no criminal antecedents; convict is having good behaviour in prison and there would be chances of reformation. In view of the jail report, no such antecedents are reported and conduct of the convict in the jail is reported to be good; however learned Special Court has not undertaken any such exercise to verify the aspect leading towards reformative measures. Thus, in such circumstance, the proposition laid down by the Apex Court does warrant to be considered while

sentencing which in case requires to be altered to the punishment of imprisonment of life till the reminder of the life.

45. Accordingly, the Criminal Confirmation Case No.4 of 2022 seeking confirmation of the death sentence awarded to the convict - accused by the judgment and order dated 17/03/2022 passed in Special (POCSO) Case No. 27 of 2021 by learned Additional Sessions Judge & Special POCSO Judge, Kheda at Nadiad is answered; however the death penalty / capital punishment imposed upon the convict for the offence punishable under Sections Section 376 (AB) of the Indian Penal Code and Section 5 (M) read with Section 6 of the Protection of Children of Sexual Offences Act, 2012 (for short the POCSO Act) is commuted to the imprisonment of life which shall mean the imprisonment for reminder of life. Rest of the conviction and sentence as awarded by the learned Sessions Court shall remain unaltered.

45.1 Accordingly, Criminal Appeal No.1525 of 2024 preferred by the convict – accused is disposed of in aforesaid terms.

46. Office is directed to forward the copy of this Judgment to the learned Sessions Court concerned to take appropriate steps in accordance with the law.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 15/12/2025 11:16:03