



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL CONFIRMATION CASE NO. 02 OF 2024

The State of Maharashtra,
Through the Police Station Officer,
Police Station, Kalamna, Dist. Nagpur.

... PETITIONER.

// VERSUS //

Guddu Chhotelal Rajak,
Aged about 40 years, Occ. Labour,
R/o. Plot No.78, Devi Nagar, Aajri
Maajri, Wanjra, Kalamna, Nagpur,
(At Present in Central Jail, Nagpur)

... RESPONDENT.

WITH

CRIMINAL APPEAL NO. 322 OF 2024

Guddu S/o. Chhotelal Rajak,
Aged about 40 years, Occ. Labour,
R/o. Plot No.78, Devi Nagar, Aajri
Maajri, Wanjra, Kalamna, Nagpur,
(At Present in Central Jail, Nagpur)

... APPELLANT.

// VERSUS //

1. State of Maharashtra, through
Police Station, Kalamna, Dist. Nagpur.
2. XYZ Victim,
In FIR No.634/2022, Dtd. 6/11/2022
Registered with Police Station Kalamna,
Nagpur.

... RESPONDENTS.

Shri D. V. Chauhan, Sr. Advocate & Public Prosecutor a/b. Shri A.B.Badar, APP and Ms. Deepali Sapkal, APP.

Shri A.S.Mardikar, Sr.Advocate a/b Shri Shivkumar Dwivedi, Ms Shreya Rastogi, Ms Manasa Ramakrishna, Mr.S.A.Siddique, Mr.S.S. Ali, Shri Ved Deshpande, Shri D.P.Singh, Ms Punam Pisurde, Advocates for Appellant.

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE ORDER : 22/04/2025

DATE OF PRONOUNCING THE JUDGMENT : 11/11/2025

JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard.

2. In the Crime No.634 of 2022 registered for the offences punishable under Sections 302, 307, 323, 182, 193, 194, 196, 203, 120-B of the Indian Penal Code (hereinafter referred to as “IPC”) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act, 2012”) and under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015, on filing of the charge-sheet, the trial was conducted and the accused herein Guddu Chhotelal Rajak has been convicted by the Special Court (POCSO) and District Judge-3 and Additional Sessions Judge, Nagpur vide order dated 21/05/2024 for the offences punishable as follows :

- i) Under Section 302 of IPC – sentenced to suffer death and to pay fine of Rs.50,000/- (Rs.Fifty Thousand only), in default to suffer further Rigorous Imprisonment for 05(Five) years.
- ii) Under Section 376(2)(f), 376(2)(n) of IPC and Section 6 of the POCSO Act, 2012.
- iii) Under Section 6 of the POCSO Act, 2012 - to suffer death and to pay fine of Rs.50,000/- (Rs. Fifty Thousand) only, in default to suffer further Rigorous Imprisonment for 05 (Five) years.
- iv) Under Section 307 of IPC - sentenced to suffer imprisonment for life and to pay fine of Rs. 10,000/- (Rs. Ten Thousand) only, in default to suffer further Simple Imprisonment for 02 (Two) months.
- v) Under Section 323 of IPC - sentenced to suffer Rigorous Imprisonment for 01 (one) year and to pay fine of Rs.1000/- (Rs. One Thousand) only, in default to suffer further Simple Imprisonment for 01 (one) month.
- vi) Under Section 182 of IPC - sentenced to suffer Rigorous Imprisonment for 06 (Six) months and to pay fine of Rs.1000/- (Rs. One Thousand) only, in default to suffer further Simple Imprisonment for 01 (One) month.
- vii) Under Section 193 of IPC - sentenced to suffer Rigorous Imprisonment for 06 (Six) months and to pay fine of Rs.1000/- (Rs. One Thousand) only, in default to suffer further Simple Imprisonment for 01 (One) month.

- viii) Under Section 194 of IPC - sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- (Rs. Ten Thousand) only, in default to suffer further Simple Imprisonment for 02 (Two) months.
- ix) Under Section 196 of IPC - sentenced to suffer Rigorous Imprisonment for 03 (Three) years and to pay fine of Rs.15,000/- (Rs. Fifteen Thousand) only, in default to suffer further Simple Imprisonment for 01 (One) month.
- x) Under Section 203 of IPC - sentenced to suffer Rigorous Imprisonment for 02 (Two) years and to pay fine of Rs.5000/- (Rs. Five Thousand) only, in default to suffer further Simple Imprisonment for 01 (One) month.
- xi) Under Section 75 of the Juvenile Justice (Care and Protection of Children), 2015 - sentenced to suffer Rigorous Imprisonment for 03 (Three) years and to pay fine of Rs.5000/- (Rs. Five Thousand) only, in default to suffer further Simple Imprisonment for 01 (One) month.
- xii) Under Section 120-B of IPC - sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- (Rs. Ten Thousand only), in default to suffer further Simple Imprisonment for 02 (Two) months.

(The accused has been acquitted of the offence punishable under Section 201 of IPC.)

3. Since the accused is sentenced with the punishment of death, the proceeding is referred to this Court for confirmation under Section 366(1) of the Code of Criminal Procedure.

4. The convict has also filed an appeal raising a challenge to the judgment and order dated 21/05/2024 (Exh.299). The confirmation and the appeal, accordingly, were heard together. As per the order of this Court dated 24/03/2025, the convict had been allowed to attend the proceedings through Video Conferencing.

5. The case of the prosecution is as follows : *(As the present case is under the provisions of the POCSO Act, the victim herein will be referred as “victim girl” and her sister will be referred as “N” or “PW-1”.)*

6. One Ashwini Durgaprasad Deshbhratar, maternal aunt of the victim lodged FIR No.634 of 2022 dated 06/11/2022 (Exh.125) against Kaushalya Piparde, Santosh Piparde, Dashrath Piparde and Kalpana Piparde.

7. Accordingly, the crime was registered for the offences punishable under Sections 305, 306, 376 of the Indian Penal Code read with Sections 3 and 4 of the POCSO Act. Thereafter, the above-referred accused were arrested and during the investigation the names of the convict and Ashwini Durgaprasad Deshbhratar, who lodged FIR, were added. Subsequently, Kaushalya Piparde (stepmother of the victim), Santosh Piparde (brother of Kaushalya), Dashrath Piparde (father of

Kaushalya) and Kalpana Piparde (wife of Santosh Piparde) were discharged.

8. The investigation of the crime was conducted by PW-25 API Chanda Dandwate. During the investigation, it was revealed that the victim girl was the elder daughter of the accused. He has a younger daughter named 'N', and a son named Gaurav. The mother of these three children died prior to the incident by committing suicide. Thereafter, the accused married his second wife namely 'Kaushalya'. The discharged accused are the relatives of Kaushalya. Santosh Piparde is her brother, Dashrath Piparde is her father and Kalpana Piparde is the wife of Santosh Piparde.

9. On the fateful day, PW-18 PSI Manoj Raut was on night duty from 05/11/2022 to 06/11/2022. He received a phone call at around 07:30 a.m. that a girl had hanged herself. This call was by PW-4-Nilkanth Ambadare. He took an entry in the station diary and proceeded to the spot. Upon arrival, Guddu Rajak was present there. PW-18 entered the house and saw the victim girl hanging by a rope tied to the hook. Some suicide notes were lying around her, in which, it was written that all the four discharged persons are responsible for her death. Thereafter, the absconding accused Ashwini Deshbhratar, who is the maternal aunt of

the victim girl, arrived on the spot and she lodged a report against all the discharged accused persons.

10. During the house search of the accused conducted on 09/11/2025, PW-25-IO seized a mobile phone having two sim-cards recovered from one rice container. She seized the note-books of the victim girl as the evidence of natural handwriting of the victim girl. She also seized the mobile phones of the discharged persons.

11. She inspected the mobile of the accused Guddu Rajak, in which, she found photos of the incident wherein the victim girl was alive and was standing on a stool and had a rope around her neck. The accused was also seen talking to her. She also found photographs of the suicide notes, seized from the spot, taken in the month of October 2022. Thereafter, she obtained the CDR's of the accused.

12. Then she recorded the statement of the younger daughter 'N', who stated about the incident that her father, i.e. accused, caused the victim girl to stand on a stool and tied a rope around her neck. He later removed the stool, which caused the death of the victim girl.

13. The postmortem report reveals that the victim girl was raped. Thus, the PW-25-IO added Section 376 of IPC. From the statement of the younger daughter 'N', it was found that she and her siblings used to be beaten mercilessly by the accused, therefore, Section 323 of IPC and Section 75 of Juvenile Justice Act, 2015 were added. Then she sent all the seized samples and mobile phone to the Chemical Analyzer and also sent the suicide notes along with the natural handwriting to the Handwriting Expert. After completion of the investigation, she submitted a charge sheet before the Court.

14. Thereafter, a trial was conducted in the Special Court (POCSO) and DJ-3 and Additional Sessions Judge, Nagpur. To bring the guilt of the accused home, the prosecution examined in all 25 witnesses, which are as follows: -

Prosecution Witnesses

(reproduced from the Trial Court Judgment)

RANK	NAME	NATURE OF EVIDENCE	EXHIBIT
PW 1	Victim	Victim	Exh.20
PW 2	Santosh Dashrath Piparade	Victim Uncle	Exh.42
PW 3	Sarika Santosh Kosarkar	Neighbours of the victim	Exh.46
PW 4	Nilkanth Tulshiram Ambadare	Social worker witness	Exh.49
PW 5	Dr Deepak Janardhan Sangle	Medical Officer, Doctor/Asstt. Professor, Forensic Medicine Department, IGGMC, Nagpur	Exh.51
PW 6	Dr Vishwajit Vishwanath Bobde	Casualty Medical Officer, IGMC, Nagpur	Exh.60

PW 7	Mahadeo Ramchandra Parate	Panch Witness	Exh.63
PW 8	Dipak Kumar Keshrilal Vishwakarma	Panch Witness	Exh.65
PW 9	Satish Govindrao Nipane	Witness Shopkeeper	Exh.68
PW 10	Aarti Santosh Piprade	Witness	Exh.69
PW 11	Naresh Madhukarrao Revatkar	Head Constable B.N. 4492	Exh.72
PW 12	Vidya Shalikram Budhbaware	Headmistress of the Victim	Exh.76
PW 13	Sapna Bhaiyalal Mate	Ladies Police Naik B.N. 609	Exh.80
PW 14	Pawan Fulsingh Pawar	Police Hawaldar B.N. 14233	Exh.91
PW 15	Dr Dipti Anil Chand	Medical Officer	Exh.101
PW 16	Sanjay Panchram Patel	Panch Witness	Exh.105
PW 17	Suresh Timaji Barve	Police Hawaldar B.N. 771	Exh.111
PW 18	Manoj Arjun Raut	Police Sub Inspector	Exh.122
PW 19	Anand Gajanan Malkar	Head Constable	Exh.127
PW 20	Yogita Dnyaneshwar Kose	Witness	Exh.134
PW 21	Golu Gokul Sinha	Photographer	Exh.151
PW 22	Dr Prajakta Subhash Pathe	Scientific Officer, Regional Forensic Science Laboratory, Cyber Department	
PW 23	Shivaji Pandurang Virkar	Handwriting expert, State examiner of Documents, CID, Nagpur	Exh.197
PW 24	Ravikumar Maroto Kulsange	Police Constable (Cyber)	Exh.205
PW 25	Chanda Hanumantrao Dandawate	Investigating Officer	Exh.214

15. Further, the Prosecution has relied upon the following documents: -

Documents relied upon by Prosecution

(reproduced from the Trial Court Judgment)

Sr. No.	Exhibit Number	Description
i.	Exh. 21 / PW 1	Statement of the victim u/sec.164 of the CrPC
	Exh.22 to 40/ PW1	Photographs
ii.	Exh. 43/ PW 2	Form 6 of agricultural land
iii.	Exh. 44/ PW 2	Form No. 18 of Agricultural Land
iv.	Exh. 45/ PW 2	Map of the Agricultural land
v.	Exh. 52/ PW 5	Requisition for Postmortem
vi.	Exh. 53/ PW 5	Provisional Postmortem Report
vii.	Exh. 54/ PW 5	Memorandum of Postmortem Examination
viii.	Exh. 55/ PW 5	Viscera Form (seven pages)
ix.	Exh. 56/ PW 5	Requisition dt. 20.01.2023 of the police station
x.	Exh. 57/ PW 5	Answer regarding the query
xi.	Exh. 58/ PW 5	Opinion as to the final cause of death
xii.	Exh. 59/ PW	Forensic Medical Examination Report
xiii.	Exh. 61/ PW 6	Requisition to examine Nandini
xiv.	Exh. 62/ PW 6	Query Report
xv.	Exh. 64/ PW 6	Spot Panchnama
xvi.	Exh. 66/ PW 8	Suchanapatra
xvii.	Exh. 67/ PW 8	Seizure panchnama
xviii.	Exh. 73/ PW 11	Intimation from Mayo
xix.	Exh. 74/ PW 11	Requisition for recording the statement of the Victim girl
xx.	Exh. 75/ PW 11	Statement of the Victim Girl
xxi.	Exh. 77/ PW 12	Letters dt. 12.11.2022 issued by the police to the Headmistress of the victim girl
xxii.	Exh. 78/ PW 12	Letters Dt. 15.11.2022 issued by the police to the Headmistress of the victim girl
xxiii.	Exh. 79/ PW 12	Extract of attendance register
xxiv.	Exh. 81 to 84/ PW 13	Property search and seizure panchnamas
xxv.	Exh. 85/ PW 13	Letter Dt. 7.11.2022 issued to the CA office
xxvi.	Exh. 86/ PW 13	Order of Police Station dt. 7.11.2022
xxvii.	Exh. 87 & 88/ PW 13	Invoice Receipts from the CA office
xxviii.	Exh. 89 (admitted)	Inquest Panchnama
xxix.	Exh. 92/ PW 14	Letter for the medical examination of the accused
xxx.	Exh. 93/ PW 14	Carbon copy of B form

xxxvi.	Exh. 94/ PW 14	Seizure panchnama of B form
xxxvii.	Exh. 95/ PW 14	General Diary Details
xxxviii.	Exh. 102/ PW 15	Letter dt. 8.12.2022 to provide documents
xxxix.	Exh. 103/ PW 15	Requisition dt.16.01.2023 calling query report
xl.	Exh. 104/ PW 15	Requisition dt. 20.01.2023 calling query report
xli.	Exh. 196/ PW 16	Intimation letter to panch
xlii.	Exh. 107/ PW 16	Notice of shantinagar Dahan Ghat
	Exh. 108/ PW 16	Birth Certificate of the victim girl
xliiii.	Exh. 109/ PW 16	Electric Bill
xliiii.	Exh. 110/ PW 16	Spot Panchanama
xl.	Exh. 112/ PW 17	Order dt. 29.11.2022 appointing NPC Suresh Barve to deposit cloths to the CA
xli.	Exh. 113/ PW 17	Letter dt. 20.11.2022 of p.st Kalamna
xlii.	Exh. 114/ PW 17	Acknowledgment receipts of Regional Forensic Science Laboratory, Nagpur.
xliii.	Exh. 115/ PW 17	General Diary Details
xliiii.	Exh. 116/ PW 17	Letter Dt. 30.12.2022 of the p.st Kalamna
xliiii.	Exh. 117 & 118/ PW 17	Acknowledgment receipts of Regional Forensic Science Laboratory, Nagpur
xliiii.	Exh. 123/ PW 18	Station Diary Entry
xliiii.	Exh. 124/ PW 18	Report
xliiii.	Exh. 125/ PW 18	Printed FIR
xliiii.	Exh. 126/ PW 18	Special Report
li.	Exh. 128/ PW 19	Letter dt. 13.11.2022
lii.	Exh. 129 A to 129 D/ PW 19	Photographs of accused.
liii.	Exh. 130/ PW 19	Certificate u/sec. 65-B of Indian Evidence Act.
liiii.	Exh. 137 (admitted)	Certificate u/sec. 65-B of Indian Evidence Act.
liv.	Exh. 138 (admitted)	Seizure memo of Sandisc Cruzer Blade 32 GB.
lv.	Exh. 139 (admitted)	Certificate u/sec. 65 B of Indian Evidence Act.
lvi.	Exh. 140 (admitted)	Seizure memo of Sandisc Cruzer Blade 32 GB
lvii.	Exh. 152/ PW 21	Letter issued to Golu Photo Studio
lviii.	Exh. 153/ PW 21	Seizure panchnama of pen drive
lix.	Exh. 154 to 157/PW21	Photographs
lx.	Exh. 158/PW21	Bill of pen drive
lxi.	Exh. 159/PW21	Bill of photographs
lxii.	Exh. 160/PW21	Certificate u/sec.65-B of Indian Evidence Act
lxiii.	Exh. 161/PW21	Pen drive
lxiv.	Exh. 162/PW21	Envelope of a pen drive
lxv.	Exh. 163/PW21	Envelope of pen drive
lxvi.	Exh.164/PW21	In camera statement of Nandini
lxvii.	Exh.172/PW22	Chain of custody form
lxviii.	Exh.173/PW22	Letter by Forensic Laboratory
lxix.	Exh.179/1 to	Printouts

	179/17/PW22	
lxx.	Exh.180 to 184/PW22	Photographs
lxxi.	Exh.185/PW22	CA report
lxxii.	Exh.186 to 190/PW22	Photographs of suicide note
lxxiii.	Exh.196/PW22	Hard disk
lxxiv.	Exh.198 & 199/PW23	Letters calling report about handwriting on suicide note
lxxv.	Exh.200/PW23	Letter
lxxvi.	Exh.201 & 202/PW23	Note Book of deceased girl
lxxvii.	Exh.203/PW23	Report
lxxviii.	Exh.204/PW23	Statement of some of the reasons
lxxix.	Exh.206/PW24	Letter to Cyber police dt.25.12.2022
lxxx.	Exh.207/PW24	Mobile Inspection and extraction of data Panchnama
lxxxi.	Exh.208/PW24	Letter to Cyber police dt.26.12.2022
lxxxii.	Exh.209/PW24	Hard disc hash value panchnama
lxxxiii.	Exh.210 & 211/PW24	Hash value
lxxxiv.	Exh.211/PW24	Certificate u/sec.65-B of Indian Evidence Act
lxxxv.	Exh.215 & 216/PW25	Arrest/Court surrender form of Kaushalya Piparde and Dashrath Piparde
lxxxvi.	Exh.217/PW25	Intimation letter
lxxxvii.	Exh.218/PW25	Station diary entry
lxxxviii.	Exh.219/PW25	Arrest/Court surrender form of Santosh Piparde
lxxxix.	Exh.220/PW25	Arrest/Court surrender form of Kalpana Piparde
xc.	Exh.221 & 222/PW25	Intimation letters to Aarti Piparde
xc.	Exh.223/PW25	Station diary entry
xcii.	Exh.224/PW25	Letter issued to CMO Mayo
xciii.	Exh.225/PW25	Property search & seizure form
xciv.	Exh.226/PW25	Sexual assault report of Santosh Dashrath Piparde
xcv.	Exh.227/PW25	Crime detail form of Santosh Piparde
xcvi.	Exh.228/PW25	Station diary entry
xcvii.	Exh.229/PW25	Station Diary Entry
xcviii.	Exh.230/PW25	Letter calling SDR, CDR, name and address location
xcix.	Exh.231/PW25	Acknowledgement receipt
c.	Exh.232/PW25	Intimation letter
ci.	Exh.233/PW25	Arrest/Court surrender form of accused
cii.	Exh.234/PW25	Intimation letter
ciii.	Exh.235/PW25	Regarding letter of addition of sections

civ.	Exh.236/PW25	Station diary entry
cv.	Exh.237 & 239/PW25	Letters
cvi.	Exh.240/PW25	Station diary entry
cvii.	Exh.241/PW25	Intimation letter
cviii.	Exh.242/PW25	Letter for postmortem report
cix.	Exh.243/PW25	Letter calling medical report
cx.	Exh.244/PW25	Letter
cxi.	Exh.245/PW25	Letter to CA office for viscera
cxii.	Exh.246/PW25	Viscera report
cxiii.	Exh.247/PW25	Bone tissue report
cxiv.	Exh.248/PW25	Letter for recording statement u/sec.164 Cr.P.C.
cxv.	Exh.249/PW25	Letter calling treatment papers
cxvi.	Exh.250/PW25	Letter for supplementary statement
cxvii.	Exh.251/PW25	Letter for hard disc, pen drive and memory card
cxviii.	Exh.252 & 253/PW25	Invoice & Bill
cxix.	Exh.254/PW25	Letter for hash value
cxx.	Exh.255/PW25	Intimation letter to Panchas
cxxi.	Exh.256/PW25	Pen drive hash value panchnama
cxxii.	Exh.257/PW25	Intimation to Panchas
cxxiii.	Exh.258/PW25	Intimation to Panchas
cxxiv.	Exh.259/PW25	Letter for pathology report
cxxv.	Exh. 262/PW25	Prepaid Customer Application form (Caption form) of the accused
cxxvi.	Exh.263/PW25	CDR of accused
cxxvii.	Exh.264/PW25	Tower Location
cxxviii.	Exh.265/PW25	Prepaid Customer Application form (Caption form) of Ashwini
cxxix.	Exh.266/PW25	CDR of Santosh
cxx.	Exh.267/PW25	Prepaid Customer Application form (Caption form) Santosh
cxxxi.	Exh.268/PW25	Call record of Santosh and Ashwini
cxxxi.	Exh.269/PW25	Discharge Section 169 of CrPC
cxxxi.	Exh.270/PW25	Addition of Section

16. The learned Special Judge, after hearing both the parties and scrutiny of evidence in detail, passed the impugned judgment and order convicting the accused for the offences as under: -

Sections 302, 307, 376(2)(f), 376(2)(n), 323, 120-B, 182, 193, 194, 196, 203 of the IPC r/w Sec. 6 of POCSO Act, 2012 r/w Sec.75 of Juvenile Justice Act, 2015.

17. The accused is punished with the death penalty. Accordingly, this reference under section 366(1) of Cr.PC is made to this Court for confirmation. Accordingly, the confirmation as well as the appeal filed by the accused are heard together.

18. At this juncture, it will be appropriate to refer to Section 366 of the Code of Criminal Procedure for ready reference:

'366. Sentence of death to be submitted by Court of Session for confirmation.— (1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.'

19. The Hon'ble Supreme Court of India in the cases of *Bachan Singh v. State of Punjab*, reported in (1980) 2 SCC 684 and *Mohinder Singh v. State of Punjab*, reported in (2013) 3 SCC 294 has held that the legislature has provided valuable safeguards of the life and liberty of the subject in cases of capital sentences. The provisions in this regard seek to ensure that where, in a capital case, the life of the convicted person is at stake, the entire evidential material bearing on the innocence or guilt of the accused and the question of sentence must be scrutinized with utmost caution and care by a superior Court. It is further held that the High Court, while dealing with the reference, should consider the proceedings

in all its aspects and come to an independent conclusion on the material on record apart from the views expressed by the Sessions Judge. The confirmation of death sentence cannot be based only on the precedents and/or aggravating facts and circumstances of any other case.

20. The learned Public Prosecutor and Senior Advocate Shri D.V. Chauhan submitted that, in the present case, the crime has been committed by the accused without any provocation, rather it was pre-planned, predetermined and in a cool and calculated manner.

21. On the other hand, learned Senior Advocate Shri. Anil Mardikar submitted that the evidence on record is insufficient to prove the allegations against the accused and that the case of the prosecution must stand on its own legs, to base conviction.

22. It is the case of the prosecution that in the night of 06/11/2022, at about 2:30 a.m., the accused, under the pretext of creating a false scene of suicide of victim girl, with the object of falsely implicating the four discharged accused, compelled the victim girl to stand on a stool and fasten a rope around her neck. Thereafter, the accused deliberately kicked the stool away and forcibly removed her hand from the iron rod which she was holding for support in an attempt to save herself, thereby causing her death.

23. The prosecution has examined total 25 witnesses. According to the prosecution, the most crucial and relevant witness is PW-1. The prosecution has also heavily relied upon documentary evidence by way of photographs, allegedly clicked by PW-1, in a blue coloured vivo Mobile Phone of the accused to establish the allegations against the accused.

24. Before appreciating the oral testimony of PW-1, we will first deal with the evidence establishing the fact of death of the deceased by hanging.

25. According to the prosecution, PW-4 Nilkanth Ambadare is the family friend of the accused. In his evidence, he deposed that on 06/11/2022, at about 06:00 a.m. the accused came to his house and informed him that the victim girl had committed suicide by hanging herself. He then made a phone call to Police Station, Kalamna and gave information about the incident.

26. On such information, PW-18 PSI Manoj Raut took entry in the station diary and went to the house of the accused with staff. He saw that the victim girl was hanging by a rope tied to a hook. PW-18 then called two persons as panch witnesses and conducted spot panchnama. He found a stool and chits lying there. The girl was hanged with a yellow

nylon rope. Her tongue was protruded and sticky substance was coming out of her nose. He prepared a spot panchnama (Exh.64), obtained thumb impression of the accused on the panchnama as it was about the seizure of suicide notes and stool.

27. PW-7 Madhav Parate (panch witness) corroborated the evidence of PW-18 that he prepared panchanama Exh.64 in the presence of another panch Sarika. In cross-examination, nothing could be brought to negate the testimony of PW-18 and PW-7.

28. The defense admitted the inquest panchnama Exh.89 which shows the mouth of the victim girl was open while tongue came out and a yellow coloured nylon rope was seen around the neck of the victim. Thus, the inquest panchanama *prima facie* shows that the victim girl died due to hanging.

29. The evidence of PW-5 Dr.Deepak Sangle, who conducted post-mortem along with Dr.Shreya, shows that Rigor mortis was present and generalised. He stated that on examination, there was evidence of dribbling of saliva from mouth, which is one of the signs of ante-mortem hanging. Cynosis was present over both finger, nails and lips, which is one of the signs of asphyxia due to hanging. It was ante-mortem. He opined

that injury mentioned in the column 17 i.e. ligature mark present around the neck above thyroid cartilage, running obliquely, upward and backward deficient on nape of neck, is ante-mortem injury.

30. His evidence further shows that lungs and brain both were oedematous and congested. He thus, opined that injury No.1 mentioned in column 17 is sufficient to cause death in ordinary course of nature individually. He then prepared a final post-mortem report (Exh.54) concluding that the post-mortem findings are consistent with death due to hanging.

31. During his cross-examination, he admitted that PM Report Exh.54 does not bear his signature on every page. However, he states that his fellow doctor has signed every page of the report and therefore his signatures are not necessary on each and every page. He admits that there is no reference of rope in Exh.57. However, according to us, absence of such reference will not affect the prosecution's case.

32. Therefore, on the basis of the evidence of PW-4, PW-7, PW-18, PW-5 and the inquest panchnama, it can be safely held that the victim girl died due to hanging.

33. Now, therefore, a question arises whether it is a case of suicide or a death homicidal in nature.

34. According to the prosecution, in the intervening night of 06.11.2022, the accused awakened PW-1 and the Victim Girl from their sleep and took them to the temple room (*Devghar*). The accused then directed PW-1 to take photographs of the victim girl's purported suicide execution, under the guise that such photographs were required to falsely implicate the discharged accused. Accordingly, PW-1 clicked pictures of the incident with the accused's blue coloured vivo mobile phone.

35. Learned defense counsel submitted that PW-1 is an unreliable eyewitness to the incident as there are various material contradictions and improvements in her testimony. It is further submitted that there was a delay in recording the statement of PW-1.

36. On the other hand, learned Public Prosecutor submitted that PW-1 was present at home at the time of the incident. It is submitted that the omissions and contradictions are minor in nature and do not shatter her overall evidence.

37. In light of the rival contentions, let us examine the oral evidence of PW-1, who is the younger sister of the victim girl and second daughter of the accused. She was 12 years old at the time of offence, and therefore, before taking her oral evidence into consideration, it will be beneficial to reiterate the law as regards the evidentiary value of a child testimony.

38. The Hon'ble Supreme Court of India, in the case of *Pramila v. State of U.P.*, reported in (2021) 12 SCC 550, has observed thus: -

“5. Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to 12 years certainly has reasonably developed mental faculty to see, absorb and appreciate. In a given case the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the courts have regularly held that where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the court is satisfied with regard to the reliability and genuineness of the evidence of the child witness. PW 2 was examined nearly one year after the occurrence. The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth.

6. The evidence of a child witness and the manner of its consideration has been dealt with in State of M.P. v. Ramesh [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] , as follows : (SCC p. 792, para 14)

“14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored,

the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

39. In the case of *State of Maharashtra vs. Vivek Gulabrao Palatkar* (Criminal **Confirmation Case No.02/2023**), this Court has observed thus: -

*“33. In terms of Section 118 of the Indian Evidence Act, a child witness is competent to depose, unless the Court considers that he is prevented from understanding the questions put to him. The learned trial Judge has made a preliminary enquiry and on satisfaction recorded the evidence of child witnesses. There can be no straight jacket rule or formula that whether the evidence of child witness is to be relied or otherwise. It depends upon the facts and circumstances of each case but, certainly the Court must be cautious while accepting the evidence of the child witnesses. The observations of Supreme Court in above referred case of **Pradeep** are relevant, which reads as under :*

“9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care caution.”

40. From the above-referred observations, it can be culled out that under Section 118 of the Indian Evidence Act, a child witness is competent to testify if capable of understanding questions. The evidence of a child witness, even if sole, can form the basis of conviction, but it requires ‘heightened scrutiny’ to rule out tutoring or fabrication. Corroboration is not a legal requirement but a matter of caution.

Ultimately, the Court must carefully examine the reliability, truthfulness, and consistency of such testimony before relying on it.

41. In the teeth of the above-referred law, let us examine the deposition of PW-1.

42. Since PW-1 was a minor, before recording her oral testimony, the learned Additional Sessions Judge put certain questions to her to ascertain whether she understands the importance of oath or not. And, on satisfaction that the witness understands the sanctity of oath, the same was administered to her before recording her oral testimony.

43. In her oral testimony, she states that the incident occurred on 06/11/2022. There was Deewali holidays during that time. On the date of the incident at 10:00 p.m. they were sleeping in front hall. The victim girl was sleeping on the cot. She, her brother and father were sleeping down on the floor. In the night, the accused took her and the victim girl to a room where shrine is kept. Her father wanted to take photographs of hanging of the victim. He wanted to take those photographs in order to implicate Santosh (a discharged accused). Her father asked her to click those photographs. She clicked the photographs with a blue coloured mobile phone of her father.

44. She further narrates the incident and states that her father had hanged a yellow coloured rope in the hook. The said rope was for goats. The accused made the victim stand on the plastic stool and put noose of the rope around the victim girl's neck. Her father pushed the stool on which the victim girl was standing. At that time the victim's legs had come down. That time the victim girl was saying "*Don't kill me*". Thereafter her father again made the victim girl stand on the stool and again pushed the stool. At that time the victim was holding an iron bar. At that time also the victim girl was saying "*Don't kill me*". At that time the victim girl was crying. The accused got released the victim girl's hands. The accused had placed white jeans of her brother "G" on his hand in order to avoid to get imprinted the impressions of his palm. Then the victim girl died. At that time, she was taking photographs. She was also requesting her father by saying, '*Don't kill Didi*'. Thereafter the accused sent her to a room where she was sleeping. She had kept concealed the mobile phone, with which she clicked photographs, in a rice container. Her father left the papers written by the victim girl at the place where he killed the victim. Her father used to compel the victim girl to write on the pieces of paper.

45. She further deposed that thereafter she woke up at 06:00 a.m. at that time, the victim girl was in hanging position. After she woke up

her father had gone to call Nilkanth. After Nilkanth Papa arrived he saw the victim and called police. On arrival, the police verified as to whether the victim girl is alive or not. The accused frightened her and asked her not to disclose anything to police. Hence, she did not state anything about the incident and mobile phone to police.

46. She identified the handwriting of the victim girl marked as Article A-5. Then photographs were shown to her which was marked as Article B-1 to B-3. The photographs which were clicked with the mobile of the accused were marked as Article B-4 to B-25, respectively. She states that her father asked the victim girl to take out the tongue and the photograph of the same is marked as Article-9. She states that the accused wanted to show that the victim girl was dead. The victim girl identified the rope which was used in the offence and the same was marked as Article-C. The stool used in the commission of the offence was identified by the witness and it was marked as Article-D. Though she stated that she can identify the mobile phone which was shown to her, in relation to the same, she categorically stated that the same is not mobile phone with which she clicked the photographs.

47. In cross-examination, some omissions were brought on record which are minor and not substantive in nature. In cross-examination, she

admits that the discharged accused Santosh Piparde was pressurizing the victim girl for getting married due to which the victim girl had consumed poison. However, she denied the suggestion that the accused did not hang the victim girl. Rest of the cross-examination is nothing but giving of suggestions to the witness as regards whatever she stated in the chief is false. Thus, the defence failed to bring anything contrary to the oral testimony brought on record by the prosecution in chief.

48. The defence, on the basis of certain improvements during the cross-examination of PW-1, tried to say that PW-1 is a tutored witness.

49. PW-1, in her oral testimony, has narrated the entire incident, in detail. The minor omissions brought on record by the defence in the cross-examination did not destroy or shatter the case of the prosecution. Notably, no suggestion was put-forth by the defence to imply that the testimony of PW-1 was tutored by the police or by any discharged accused.

50. PW-25 IO admitted in the cross-examination that she recorded two statements of PW-1, in one of which, PW-1 has not stated that the accused asked her to take pictures with 'blue' mobile phone. Thus, the omission is of the colour of the mobile phone, which cannot be said to be a material omission.

51. PW-25 further admits in the cross-examination that PW-1, in her first statement, did not state to her when the feet of the victim girl were on the ground, she said '*Mujhe Mat Maro*'. The omission is '*Mujhe Mat Maro*'. Similarly, PW-1 did not state that the accused kept Gaurav's white jeans on his hands so that his hand prints would not come on it. Further, PW-25 admits that PW-1 has not stated to her that the accused has left chits on the place where he had killed the victim girl, in PW-1's first statement. However, the said fact is proved by the prosecution through PW-4 Nilkanth and PW-18 PSI Raut, who came to the spot and found suicide notes lying near the victim girl.

52. The above-referred omissions or contradictions are not material and the learned trial Court has rightly held that they are bound to appear but unless they go to the root of the case, they will not be of any help to the defence.

53. There is no dispute as regards presence of PW-1 or the accused in the house at the time of the incident. Moreover, in absence of any material brought on record by the defence to doubt the credibility of PW-1's testimony, her evidence is reliable and worth to act upon it to base the conviction.

54. As discussed above, an evidence of a child witness, even if sole, can form the basis of conviction, but it requires 'heightened scrutiny' to rule out tutoring or fabrication.

55. The narration given by PW-1 is corroborated by the oral testimony of PW-12 Vidya Budhbaware, who is the headmistress of the school in which the victim girl and her siblings used to study.

56. PW-12 deposed that on 12/11/2022, the police summoned her with Shrirame Sir, Somankar Sir and Sangita Date to record statement of PW-1. The letter issued to record the statement is at Exh.77. She deposed that the police recorded the statement of PW-1 and made its video shooting in a mobile phone. She deposed that PW-1 in her statement stated that her father woke her in the night when she was asleep and told her that photographs were to be clicked to implicate Santosh. Her father tied a rope used for goats and he had made the deceased victim to stand on a stool and pushed the said stool and that her father had put a plastic carry bag in his hand. She states that when her father moved the stool, at first, victim's feet were touching the floor. After he moved the drum and made the rope tied he again made the victim stand she started crying and praying that not to make her stand on it. Thereafter, her father pushed the stool and the deceased victim caught hold the iron bar to save herself, the victim's father had pulled her.

57. PW-12 further deposed that PW-1 told that she had clicked the photographs with mobile phone handset. She further states that all the three children stated them that their father used to beat them. The scorch marks are present on the legs of N (PW-1) and mark of beating was also present on her person.

58. PW-4 Nilkanth deposed that at 06:00 a.m. on 06/11/2022 the accused came to his house and told him that the victim girl had committed suicide by hanging. At that time he said to him “You have killed her”. Then he made a phone call to the Police Station and went to the house of the accused and he saw that in the room having *Devghar* the victim girl was seen hanging from noose tied to the hook. A stool was lying there and chits were lying beside. He had picked up one chit and read it. It was written there in that her maternal uncle and mother were pressurizing her for getting married. On it, he said to the accused that he only had killed the victim girl. He had a suspicion that the accused had killed the victim girl. No pain was seen on the face of the accused for the death of his daughter. In cross-examination PW-4 deposed that in the month of January 2022 the victim girl had come alone to his house as she was beaten.

59. The learned defence counsel argued that the evidence of PW-4 needs to be discarded for the reason that he admits in his cross-examination that he again read his statement today. It is argued that it is not permissible that the police allowed the witness to read the statement to refresh memory before entering into the witness box.

60. In this regard, it will be beneficial to refer to the observations recorded by the Full Bench of the Gujarat High Court in *Nathu Manchhu v. State of Gujarat*, reported in 1977 SCC OnLine Guj 37, wherein it has observed thus:

“34. We may now examine the decision of the Division Bench of the Bombay High Court in State v. Maganbhai Jhaverbhai, Criminal Appeal No. 460 of 1953 decided by Vyas and Bavdekar, JJ. on Sept. 29, 1953. The learned Judges were considering the evidence of one Bai Sabu, daughter of Kashia Khalpa. Her evidence would have connected the accused of that case with the offence of murder under consideration. Her case was that while she was preparing loaves, the deceased all of a sudden hurriedly entered her house and ran into the back yard in a bleeding condition. He was closely followed in to the backyard by the six accused who were armed. Thereupon, she was terrified and ran away from the house. It was found that her police statement was read out to her before her evidence was recorded in the Committing Magistrate's Court as well as Sessions Court. Her statement was recorded under S. 164 of the Code by a Magistrate and before that also her police statement was read out to her. The case would fall under case No. 1 of the five illustrative cases set out earlier. Vyas, J. was of the view that on account of reading out of her police statement at three stages her evidence was inadmissible in view of the decisions of the Privy Council in Zahiruddin's case (48 Cri LJ 679(PC)) (supra). In

his opinion, the view expressed by the Privy Council was not to be confined “only to the physical use or tangible use of her police statement by a witness while giving evidence in Court.” The learned Judge went on to say:

“In other words, in order that the observations of their Lordships made by them in the above mentioned case may be attracted, the police statement of a witness need not necessarily be in his hands or before his eyes at the time of giving evidence in the court.”

“Speaking for myself, I have no doubt that their Lordships' observations would apply with equal force even if a witness made a mental use of his police statement, which was just previously read out to him, because by reason of such mental use, the witness's evidence was bound to be moulded by or modelled on his police statement.” The learned Judge then proceeded to give illustration of a case in which a witness is “almost made to commit to memory his police statement before stepping into the witness box to give evidence”; and reasoned on this basis that the evidence of such a witness was bound to be almost a copy of his police statement. Speaking with great respect, this is an extreme example; and extreme examples do not become helpful in interpretation of statute. With regard to Sabu's evidence, the learned Judge observed that material parts of her police statement “must have almost come to be committed to memory” and her evidence “must have been modelled on her police statement”. In the end, the learned Judge said that reading over of the police statement to witness before her stepping into the box amounts to use of the police statement at the trial. Of course, in the alternative, the learned Judge also said that the value of Sabu's evidence must suffer considerably.

Bavdekar, J. refused to express any opinion on “how far the evidence of a witness would become inadmissible on the ground that the witness' police statement was used to refresh his memory. He at the same time expressed concern on the practice of reading over police statement to the witness before he enters the box and said “it is doubtful how far the practice, which has been deprecated by this court so often, would stop unless this court were to hold categorically that the evidence of a witness would be inadmissible in case his statement to the police was used to refresh his memory”. What is of utmost significance for our purpose is the learned Judge's exposition

of the basis of the Privy Council's decision in Zahiruddin's case. The learned Judge said:—

“But the fact remains that, in the case which was before their Lordships of the Privy Council, the witness had used the statement to refresh his memory while he was under examination in the witness box and it was obvious, therefore, that it could not be argued with any reason that the statement was not used at the trial. I am inclined to think that the decision of their Lordships of the Privy Council to exclude altogether from the evidence the deposition of a witness given by him in such circumstances was based not upon the view that the witness's evidence amounted to a police statement, but upon the view that it was the policy of the Legislature to prevent any use of the police statement of a witness at the enquiry or trial and if the witness was allowed to use his police statement to refresh his memory when he gave the evidence, it would be defeating the statute to allow his evidence to come on record”. (Emphasis supplied), With respect, that is the correct exposition of the ratio of the Privy Council decision which was not based on any supposed identity between the police statement and the evidence given, at the trial. If this is the correct ratio laid down with respect to actual use of the police statement while giving evidence, what logically follows from it cannot be considered to be the ratio of the Privy Council's decision. The said ratio does not apply to the questions referred to this Full Bench and those questions are not concluded by the Privy Council decision.

35. *We have already seen that in State v. Maganbhai (Cri. App. No. 460 of 1953, D/- 29-9-1953) (Bom) (supra) it was the opinion of Vyas, J. alone which laid down that the evidence of a witness to whom police statement was read over thrice at different times before she gave evidence in the Sessions Court was inadmissible on the basis that the bar of S. 162(1) was contravened. Bavdekar, J., in terms refrained from expressing definite opinion on this question. The Division Bench of this High Court consisting of Divan and J.B. Mehta, JJ. in Kathi Moti Lakha v. State of Gujarat, Criminal Appeal No. 543 of 1962 decided on 21/22nd Nov. 1963 laid down a similar principle after referring to the decision of the Privy Council in Zahiruddin's case (48 Cri LJ 679(PC)) (supra) and Maganbhai's case (supra). The Division Bench of this Court as appears from its judgment reproduced the observations of Vyas, J. in Maganbhai's case under the impres-*

sion that that was the decision of the Division Bench. Speaking with great respect, I am of the opinion that the interpretation of S. 162 made by Vyas, J. and the Division Bench of this Court is not correct in view of the conclusion reached by me as to the interpretation and scope of the prohibition contained in S. 162(1) in the context of the questions referred to the Full Bench. It is already shown earlier that the cases covered by the questions referred to this Full Bench are not governed by the dictum laid down by the Privy Council in *Zahiruddin's case* (supra).

36. It must, however, be emphasised that the practice of reading over police statements to witnesses before they enter the box is not healthy practice.

37. In cases where such practice is resorted to, the Magistrates and Judges should carefully consider the evidence given by the witness and decide upon the probative value of such evidence in view of the facts and circumstances of each case.

38. Answers to the questions referred to this Full Bench are as under:

(1) The evidence of such witness does not become inadmissible; its probative value has to be judged in the circumstances of each case. No hard and fast rule can be laid down that in all such cases the evidence of such witness will be of no value whatsoever.

(2) Reading over of the police statement to the witness before he enters the box does not amount to contravention of the prohibition contained in S. 162(1). But the fact of reading over of the statement may affect the probative value of the evidence of the witness.

(3) Reading over of such a statement to the witness before he enters the box does not amount to use of such statement contrary to S. 162(1). The matter will now go back to the Division Bench.

61. Further, the Allahabad High Court in *Rajesh Jha v. State of U.P.*, reported in **2015 SCC OnLine All 8917**, has observed thus: -

“30. Section 159 of the Evidence Act, provides as under:

“159. Refreshing memory.—A witness may, while under examination, refresh his memory by referring to any writing

made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct. When witness may use copy of document to refresh memory. — Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original. An expert may refresh his memory by reference to professional treatises”.

31. *From the provisions quoted hereinabove, it is evident that the witness can refresh his memory inter alia by referring to any writing made by himself at the time of the transaction or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.*

33. *Further, search about the refreshing of memory by a witness took us to the judgment given by Court of Appeal in R. v. Da Silva, [(1990) 90 Cr App R 233.] in the law of evidence by Ratan Lal and Dheeraj Lal, the observation of the Court of Appeal has been quoted as under:*

“In our judgment, therefore, it should be open to the judge, in the exercise of his discretion and in the interests of justice, to permit a witness who has begun to give evidence to refresh his memory from a statement made near to the time of events in question, even though it does not come within the definition of contemporaneous, provided he is satisfied:

- that the witness indicates that he cannot now recall the details of events because of the lapse of time since they took place;*
- that he made a statement much nearer the time of the events and that the contents of the statement represented his recollection at the time he made it;*
- that he had not read the statement before coming into the witness-box;*
- that he wished to have an opportunity to read the statement before he continued to give evidence.*

We do not think that it matters whether the witness withdraws from the witness-box and reads his statement, as he would do if he

had the opportunity before entering the witness-box or whether he reads it in the witness-box. What is important is that if the former course is adopted, no communication must be had with the witness, other than to see that he can read the statement in peace. Moreover, if either course is adopted, the statement must be removed from him when he comes to give his evidence and he should not be permitted to refer to it again, unlike a contemporaneous statement which may be used to refresh memory while giving evidence. (PHIPSON ON EVIDENCE, 15th Edn. (2000), pages 271-272 (para 11-51)).”

35. *Lastly, we would like to make a reference to Volume 28 of the Halsbury's Laws of England, Fifth edition. Its para 562, throws light on the point of refreshing memory. Para 562 reads as under:*

“A witness in criminal proceedings may be permitted to refresh his memory either in the course of his evidence or before going into the witness box. In practice, it would be almost impossible for a Court to control the extent to which witnesses refresh their memories before testifying, the testimony would become more a test of memory than of truthfulness if witnesses were deprived of the opportunity of checking their recollection beforehand by reference to statements or notes made at a time closer to the events in question. Any rule purporting to deny witnesses prior access to their statements would tend to create difficulties for honest witnesses but do little to hamper dishonest witnesses.

A witness giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time, if:

- he states in his oral evidence that the document records his recollection of the matter at that earlier time, and*
- his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.*

Similarly, where such a witness has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at the time, and where his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and where a transcript has been made of the sound recording, he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

A document used by a witness to refresh his memory need not have been made by the witness personally, provided it was verified by him while the facts were relatively fresh in his memory. Where a witness has dictated a note to, for example, a police officer, he need not verify the original by inspecting it; it is enough if the officer reads back to the witness what he has written. Documents may be used to refresh memory even if they would not otherwise be admissible if tendered in evidence, and there seems to be nothing to prevent copies of original documents being used for this purpose.

It is not necessary that the witness should have any independent recollection of the facts to which he testifies and of which he seeks to refresh his memory, apart from the document to which he refers.”

62. Therefore, in view of the above-referred judgments, the evidence given by PW-4 cannot be said to be completely inadmissible. However, the probative value of the evidence given by this witness will be considered as per the facts and circumstances of this case.

63. Thus, the prosecution has successfully brought on record the evidence relating to the conduct and behaviour of the accused as regards the incident of hanging. Whereas, the defence has failed to discredit or demolish the prosecution's evidence. The minor omissions elicited in the cross-examination of PW-1 are inconsequential and do not destroy or shatter the prosecution's case.

64. It is imperative to note that the manner in which PW-1 narrated the entire incident by giving the minute details, particularly the first

failed attempt to hang the victim by the accused, followed by the second attempt wherein the accused released the victim's hands upon noticing that she was holding the iron bar, resulting in her death by hanging. Such a detailed narration by a minor girl cannot be a result of any tutoring unless she would actually witness the incident. Notably, no suggestion has been put forth by the defence to imply that the testimony of PW-1 was influenced or tutored by the police or by any discharged accused.

65. The second direct evidence on which the prosecution has heavily relied upon to prove the allegations under Section 302 of IPC are the photographs, allegedly clicked by PW-1, at the time of the offence being committed by the accused.

66. It is the prosecution's case that during the house search of the accused, conducted on 09/11/2022, a blue coloured vivo mobile phone was recovered and seized from a rice container, in which, there were some photographs of the victim girl standing on a stool with a rope tied around her neck. Similarly, there were photographs of the suicide notes which were captured in October 2022, i.e. prior to the incident.

67. The defence has raised a challenge to the admissibility of the blue coloured vivo mobile phone and the photographs allegedly obtained

from that mobile phone, on various grounds, which are as follows:-

- i. The mobile phone containing the photographs has not been duly proved or identified in court, and its seizure procedure suffers from serious infirmities.
- ii. The prosecution has failed to establish an unbroken chain of custody of the seized mobile phone and extracted data, leaving the possibility of tampering open.
- iii. The authenticity and reliability of the photographs are doubtful as they do not clearly depict the accused and contain metadata discrepancies and contradictions in forensic reports.
- iv. The electronic records relied upon by the prosecution are inadmissible due to absence of a valid certificate under Section 65B of the Indian Evidence Act.
- v. The evidence of PW-21, PW-24, and PW-22, who dealt with the mobile phone and extracted data, is inconsistent, unreliable, and unsupported by panch witnesses.
- vi. In light of the above infirmities, the cumulative evidentiary value of the alleged photographs is negligible and the same cannot be relied upon to base conviction.

68. On the other hand, it is submitted by the prosecution that PW-1 has narrated, in detail, the entire account of how she clicked

photographs of the incident. It is submitted that the accused can be seen in the photographs along with the victim girl, which goes to the root of the matter.

69. In light of the rival contentions, let us examine the evidence as regards the photographs.

70. PW-21 Golu Sinha (photographer) deposed that on 18/11/2022 PW-25 had issued notice to him and called him to the Police Station for photography and videography. He shot the proceedings of Panchanama executed by the Police in connection with the offence committed by the accused. Later he copied it from his computer in the pen drive.

71. PW-21 further deposed that the videography of the recording of statement of younger daughter of the accused too was shot by him. Then he copied it from his computer in the pen drive. He has handed over two such pen drives to Police. PW-25 had seized both the said pen drives.

72. Then PW-25 obtained the hash value of the two pendrives Exh.256 on dt. 24.12.2022.

73. PW-21 further deposed that PW-25 had given him one mobile hand-set with which he had clicked 27 photographs. He had also given one more copy of the photographs. He had transferred the said photographs from the mobile into his computer directly and then their prints were taken out and handed over to them. Exhibit Nos. 22 to 40 are the same photographs.

74. PW-24 Ravi Kulsange, a technician attached to Cyber Police Station, Nagpur transferred the data from mobile to the hard disk, as per the request made by PW-25 by issuing a letter on 25/12/2022.

75. PW-25 prepared panchnama Exh.207 regarding this. She received some photographs of the deceased victim girl and the accused from the mobile of the accused, 10 photographs of suicide notes and 6 photographs of the time when the victim girl was admitted in the hospital on 10/10/2022.

76. On 26/12/2022, PW-24-Ravi obtained hash value of the hard-disk Exh.209 and issued certificate in respect of obtaining hash value and 65-B, Exh.210 and 211, respectively.

77. PW-25 then sent all the mobiles, reference photographs of the accused and photographs of suicide notes to Chemical Analyzer with letter Exh.116. She received invoice Exh.117 and challan Exh.118 from NPC Suresh. On 02/01/2023, she sent original suicide notes with specimen natural handwriting of the victim girl to Handwriting Expert as per letter Exh.199, report of which is at Exh.203 and C.A. Report is at Exh.185.

78. PW-22 Dr. Prajakta Pathe, Scientific Officer in Regional Forensic Science Laboratory, Cyber Department, states in her evidence that her department received requisition Exh.116 dated 30/12/2022 for examination of mobile phones, sim-cards, reference photographs taken by PW-11 Anand Malkar as per the request of PW-25, and documents in Crime No.634 of 2024 from Police Station, Kalamna. PW-22, on completing her analysis, submitted her report as regards all the above articles.

79. She further stated that she had received four sealed envelopes. In first envelope which was marked as B1 by P.S. Kalamna, she found one mobile phone and two sim cards, to which she marked the mobile phone as EX-1. It was of vivo company having model number 1901. It has two IMEI numbers i.e. (1) 864684043522693 and (2) 864684043522685.

She marked it Exh.2 and Exh.3 EX2XX3 numbers to the SIM cards, they were of Jio company. The serial number of Exh.2 sim card is 8991 8540 400 442712928 and Exh.3- 89918640400522079115. The said mobile belongs to the accused. She has also received reference photographs of the accused. Police marked them as B-5 collectively. She marked it as Exh.11 to Exh.14 respectively. The police marking to the 11 reference documents as B-6 collectively. She marked the same as Exh.15 to Exh.25, respectively. The said photographs were in respect of expression of the accused and victim girl. Some of them were in respect of hanging rope in neck of the victim girl.

80. She further deposed that there were other 11 documents. Police marked the same as B-7 and she marked it as Exh.26 to 36. These were the photographs of the spot, showing the victim girl in hanged condition. There were other four reference photographs of victim girl. Police marked it as B-8, collectively. She marked it as Exh. 37 to Exh. 40. The other five reference photographs at B9, collectively she marked it as Exh.41 to Exh. 45.

81. PW-22 further stated that she used forensic tools to extract data from mobile phone and sim cards. After analysis she can say that she found Exh.15 to 36 and Exh. 41 to 45 in the phone Exh.1, which belongs

to the accused and the phone which has captured the image after the analysis also found to be vivo 1901, which is Exh.1.

82. She further stated that she also found images of suicide notes other than the suicide notes which are referred to her for analysis in mobile phone Exh.1. She has filed hard copies of suicide note and photos of accused and victim girl which are at Exh. 179/1 to 179/17. She found the photographs Exh.180 and 181, 154 and 155 and they were found in the mobile of accused. She also found the similar photographs in the mobile of accused which are at Exh. 182 to 184.

83. She further stated that she extracted all the data found in the mobile of the accused and saved in the hard disk. Accordingly, he issued a CA report Exh.185. Then she transferred all the data from all the mobiles and sim card and memory card in the hard disk. She deposed that in a similar way she extracted the data from the mobile of discharged person Aarti, Santosh and Kaushalya.

84. The hard disks were played before the trial Court that she has proved her analysis report. She has categorically deposed that she found the photographs, in the mobile phone of the accused relating to the incident of hanging of the victim girl.

85. Upon a careful examination of the material on record, we are of the considered view that even though the said photographs go to root of the matter, they suffer from serious fundamental infirmities, which render them unsafe for reliance. The following foundational defects strike at the very admissibility of the material:

- (i) The prosecution has failed to duly prove the mobile phone said to have been used by PW-1 to capture the photographs.
- (ii) The chain of custody of the said mobile phone has not been satisfactorily established.
- (iii) No hash value of the data stored in the mobile phone was generated at the time of seizure or prior to extraction of the photographs, which casts a serious doubt on the authenticity of the digital material.

86. Although it has been asserted that PW-1 captured the images, the record shows that she was not asked to identify the mobile phone in Court. This lapse is fatal to establishing the source device.

87. Further, PW-8, who acted as a panch to the house search conducted on 09/11/2022, during which the phone was allegedly seized, has also not identified the mobile phone in the Court.

88. Thus, the identity of the source device has remained unproved. Establishing such identity is a necessary precondition to consideration of its contents; failure in this regard goes to the root of admissibility.

89. The prosecution has also not furnished contemporaneous documentation reflecting the movement, sealing, storage, and handling of the mobile phone post-seizure. No Malkhana Register entries, or endorsements demonstrating contemporaneous sealing, have been produced.

90. It further emerges that PW-21, PW-24, and PW-22 handled the said mobile phone at various stages; however, the record is either silent or incomplete regarding handover-takeover documentation, and, in certain instances, even the condition of sealing has not been proved.

91. Rule 148 (2) of the Bombay Police Manual, 1959 (Vol III, Appendix XXIV) reads as follows:

“(B) Other precautions - Special care should be taken to avoid the following faults:- The integrity of exhibits and control samples must be safeguarded from the moment of seizure up to the completion of examination in the laboratory. This is best done by immediately packing, sealing and labelling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also.”

92. The Division Bench of this High Court, in the case of *Ashraf Hussain Shah v. State of Maharashtra*, reported in **1996 SCC OnLine Bom 683**, has held as under: -

“14. First of all we would like to observe that the learned trial judge was perfectly justified in rejecting the evidence of recovery of blood stained clothes and knife at the pointing out of the appellant, primarily on the ground that there was no evidence to indicate that after seizure these articles were sealed. A Division Bench of this Court to which one of us (Vishnu Sahai J) was a party in the case of Deoraj Deju Suvarna v. State of Maharashtra, reported in 1994 Cri LJ 3602, after considering a large number of authorities has held that not only should the prosecution adduce evidence that after seizure the articles were sealed but should also lead link evidence to the effect that till being sent to the Chemical Analyst they were kept throughout in a sealed condition. This is done to eliminate the suspicion that blood might not have been put on the articles subsequent to the recovery and prior to being sent to the Chemical Analyst.”

93. Then, in the case of *Mohd. Iqbal alias Munna v. State of Maharashtra*, reported in **2016 SCC Online Bom 5365**, the Division Bench of this High Court has held as under: -

“46. Though the query report was received on 13th of November, 2009, Muddemal articles like the clothes of the accused and the weapons were sent to Chemical Analyzer by Investigating Officer under requisition (Exh.107) on 2nd of February, 2010 vide Outward No. 246 of 2010. Now, from 13th of November to 2nd of February, 2010 where these articles were lying? Whether they were kept in proper sealed condition? Whether they were in proper custody?. There is no prosecution evidence to answer the aforesaid questions. The prosecution was obliged to adduce the evidence to show that after the articles seized were properly sealed and they were in proper custody and were kept throughout in a sealed condition i.e. right from the time of recovery till being sent to the Chemical Analyzer. The prosecution evidence is clearly wanting on the said aspect. Therefore, in our view, the learned Senior Counsel has rightly placed his reliance on dictum of this Court reported in 1995 Cri LJ 1432 (State of Maharashtra v. Prabhu Barku Gade) for extending benefit in favour of the appellants.”

94. In *Sanjay Devaji Ramteke v. State of Maharashtra*, reported in **2020 SCC OnLine Bom 431**, this Court has held as under: -

*“32..Contemporary document, recovery panchanama (Exh.-28) is conspicuously silent in respect of “sealing” of the clothes on the spot. Evidence of Fulchand (PW6) does not show that steps were taken by the investigating officer to seal the clothes of the appellant. Evidence of the investigating officer Sohansingh (PW4) is also silent on this aspect. He did not depose that after seizure, he applied seal to the bundle of clothes. Seizure form (Exh.-28A) regarding clothes of the appellant is also not having specimen of seal as given in format. Ultimately, during cross-examination, the investigating officer was required to admit that inadvertently it remained. Contemporaneous documents and evidence of the prosecution witness Fulchand (PW6) and even the evidence of investigating officer does not show that clothes of appellant were sealed after those were seized from the spot. In *Tulshiram Bhanudas Kambale v. State of Maharashtra*; reported in 2000 CRI.L.J. 1566 and Mohd. Iqbal alias Munna s/o Abdul Sattar v. State of Maharashtra, through PSO P.S. Lakadganj, Nagpur; reported in 2016 All MR (Cri) 4530, it is the direction of the Court that where evidence of the investigating officer shows that after effecting recovery of articles he did not affix the lac seals on them, no evidentiary value can be attached to said recovery.*

*33. Similarly, on earlier occasion also, in *Lalchand Cheddilal Yadav v. The State of Maharashtra*, reported in 2000 (3) Mh. L. J. 438, this Court discarded scientific evidence when it was noticed that articles stained with blood were not sealed.”*

95. Similarly, in the case of *Samadhan v. State of Maharashtra*, reported in **2021 SCC OnLine Bom 13**, the Division Bench of this High Court has held as under: -

*“75. ...In this connection, it would be pertinent to refer to para 8 of the Division Bench decision of the Rajasthan High Court in *State of Rajasthan v. Motia* [*State of Rajasthan v. Motia*, 1953 SCC OnLine Raj 51 : AIR 1955 Raj 82] accused, wherein Wanchoo, CJ, (as he then was) observed thus:*

‘... It is, therefore necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the

time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the chemical examiner the seals remained intact. This evidence is missing in this case. It is, of course not difficult to sprinkle a few human bloodstains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken the argument raised on behalf of the accused that this might have been done remains unrefuted...'

96. From the above-referred observations of this Court, it is evident that the prosecution should establish that after effecting recovery of articles, the articles were sealed and they were kept throughout in sealed condition and were kept in proper custody till being sent to the chemical analyst. This is to be done to eliminate the suspicion that the articles were tampered.

97. Therefore, in view of the serious deficiencies in establishing chain of custody in the present case, the integrity of the electronic material stands unestablished.

98. Moreover, neither at the time of seizure nor before extraction was any hash value of the photographs computed. Computation and matching of hash values is a recognised forensic safeguard to verify integrity and authenticity of electronic data. The hash value of the photographs should have been ascertained at the very first stage when

PW-21 extracted the photographs from the mobile phone of the accused on the instructions of PW-25. In the absence of such verification, the originality and authenticity of the photographs remain doubtful, and the possibility of alteration, deletion, or manipulation cannot be ruled out.

99. For the aforesaid foundational reasons, we are of the considered view that the prosecution has failed to establish the basic prerequisites for the admissibility and reliability of the photographs. Consequently, the said photographs and their derivative outputs stand excluded from consideration.

100. Since the evidence of photographs fails at the threshold itself, a deeper examination of the remaining objections pertaining to them is unnecessary.

101. This exclusion, however, does not affect the analysis recorded herein above of the oral and circumstantial evidence which has sufficiently proven the crime committed by the accused beyond reasonable doubt. Therefore, we are of the considered view that the prosecution has successfully proved the allegations under Section 302 of IPC.

102. Let us now examine the evidence with respect to the offence punishable under Sections 376(2)(f) and 376(2)(n) of the IPC read with Section 6 of the POCSO Act.

103. It is the case of the prosecution that, after the arrest, the accused disclosed to PW-25 API Dandawate that he repeatedly committed rape on victim girl. However, this disclosure statement of the accused is not admissible as evidence. Therefore, it is important to see other evidence on record to ascertain the allegations of rape.

104. The learned Senior Advocate Shri Anil Mardikar submits that the accused has been convicted for sexual assault based on surmises. It is submitted that there is no forensic evidence which links the accused to the alleged sexual assault. It is submitted that PW-1 nowhere states that the deceased was sexually assaulted by the accused. It is, therefore, submitted that the foundational facts have not been established for the presumption under section 29 of POCSO Act to shift to the accused. To buttress his arguments, the learned defense counsel has placed reliance on *(GNCT of Delhi) vs. Kuldeep*, **2019 SCC OnLine Del 7261**, and *Pravin Ruprao Harde vs. State of Maharashtra*, **2024 SCC OnLine Bom 2475**.

105. On the other hand, the Government Pleader and Senior Advocate Shri. Chauhan submits that it is the case of the prosecution that the accused used to commit rape on the victim girl repeatedly.

106. In light of the rival contentions, let us look at the law in cases of POCSO Act.

107. In the case of *Pravin Ruprao Harde (supra)*, this Court had an occasion to deal with the presumption under section 29 of the POCSO Act, wherein it observed thus: -

“10. At the outset, it needs to be stated that the crime against the children is required to be viewed seriously. The perpetrator of the crime does not deserve any leniency. The lawmakers have provided for presumption in such a crime under Section 29 of the POCSO Act with regard to the guilt of the accused in certain circumstances. However, the basic principle of criminal jurisprudence that the guilt of the accused has to be proved beyond reasonable doubt cannot be done away with completely. Initial burden is on the prosecution to prove the charge against the accused. The presumption under Section 29 of the POCSO Act is not an absolute presumption. The presumption can be triggered only in case the prosecution is able to establish the foundational facts. The foundational facts as to the charge must be proved to the satisfaction of the Court by leading cogent, concrete and trustworthy evidence. The foundation has to be laid on the basis of the trustworthy evidence. Once the foundation is laid to the charge, then the presumption would get attracted. In this backdrop, it would be necessary to appreciate the evidence adduced by the prosecution.”

108. Similarly, in the case of *Kuldeep (supra)*, with regard to the standard of proof required in cases of presumption, the Delhi High Court held that the burden is on the prosecution to prove foundational facts beyond reasonable doubt.

109. It is evident from the above-referred observations that in cases under the POCSO Act, Section 29 introduces a 'reverse burden' by presuming the guilt of the accused unless rebutted, while Section 30 presumes the existence of a culpable mental state. However, the presumption operates only when the prosecution establishes the foundational facts of the offence through cogent and trustworthy evidence.

110. In view of the above law, let us examine the evidence with respect to the penetrative sexual assault.

111. Firstly, there is no dispute as regards the age of the victim girl at the time of the offence. The Birth Certificate (Exh.108) of the victim girl shows that she was 16 years old at the relevant time. Therefore, she can be said to be a 'child' under the provisions of the POCSO Act.

112. To prove that the victim girl was sexually assaulted, the prosecution has examined PW-5 Dr. Deepak Sangle, who conducted the post-mortem of the victim girl. He deposed that no injury was found over the external bluish genital, but the hymen was torn showing old healed margins. Usually, hymen remains intact in girls of 16 years old. So, he opined that sexual assault cannot be ruled out.

113. During cross-examination, when a suggestion was given to PW-5 that the hymen may get torn by other physical activities, he deposed that the hymen may get torn in horse riding and not due to other activities. He deposed that the hymen was extremely torn, and therefore, it was not possible to say that hymen was torn due to other activities like cycling and other physical activities. He further deposed that there were no external fresh injuries in respect of sexual assault. There were no external fresh injuries on the body of the victim to prove sexual assault.

114. The prosecution has primarily relied on the post-mortem report of PW-5 Dr. Sangle. His deposition indicates that the hymen of the victim was torn with old healed margins. While he opined that sexual assault could not be ruled out, he also admitted that there were no fresh injuries or forensic findings to confirm recent sexual intercourse attributable to the accused. His opinion, therefore, is inconclusive and does not positively establish sexual assault at the relevant time.

115. Further, the prosecution relied upon the ocular evidence of PW-4 Nilkanth wherein he deposed that he had cordial relations with the victim girl. The 'victim girl' had come to him in the year 2022. He had kept her with him for a month. The accused had beaten her with a belt and beaten her by keeping a cylinder on her chest as she was taking a

selfie. The accused had come to take her back two-three times and she was refusing and at that time, accused was staring at her angrily. When he (PW-4) asked the 'victim girl' as to why she was not going, she told him that the accused beats her, wakes up in the night and that she was afraid of the accused.

116. Importantly, the prosecution has not produced any forensic evidence such as DNA profiling or biological samples which could link the accused to the act of sexual assault.

117. In this backdrop, we find that the prosecution has failed to discharge the initial burden of proving the foundational facts so as to enable the Court to draw the presumption under Section 29 of the POCSO Act.

118. Thus, we are of the considered view that the allegations against the accused under Sections 376(2)(f) and 376(2)(n) of the IPC read with Section 6 of the POCSO Act do not stand proved.

119. In the present case, the learned Special Court has imposed the punishment of death penalty on being held that the accused committed offence under Section 302 of IPC and under Section 6 of the POCSO

Act, 2012. The question before us is whether the manner in which the crime has been committed by the accused falls under the category of ‘rarest of rare’ cases, as prescribed in the case of *Bachan Singh* (supra), to impose a death penalty.

120. The Hon’ble Supreme Court, in the case of *Bachan Singh* (supra), emphasized that sentencing requires consideration of both the crime and the criminal, with the weight of aggravating and mitigating factors varying by case. Since the nature of the crime often reflects the offender’s character, both aspects are intertwined, and only when the conduct displays extreme depravity can “special reasons” exist to justify the death penalty. While aggravating circumstances may warrant harsher punishment, mitigating factors must be interpreted broadly, as death is to be imposed only in exceptional cases. Courts must exercise great caution and humanity, recognizing that life imprisonment is the rule and the death sentence an exception, permissible only in the “rarest of rare” situations where no alternative remains.

121. Streamlining the guidelines discussed in *Bachan Singh* (supra), the Hon’ble Supreme Court of India, in the case of *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 observed thus: -

“38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. 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?

40. 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 hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.’

122. Some of the aggravating and mitigating circumstances, as given in the case of *Bachan Singh* (supra), are as under: -

“Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”

Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

123. The Supreme Court in *Shankar Kisanrao Khade v. State of Maharashtra*, reported in (2013) 5 SCC 546 held that in considering the death penalty, courts must apply three tests: the “crime test” (requiring full satisfaction of aggravating factors), the “criminal test” (requiring absence of mitigating factors), and finally the “rarest of rare” (R-R) test. If any mitigating circumstance exists, such as youth, lack of intent, potential for reformation, or absence of criminal history, the criminal test favours the accused, making the death penalty inappropriate. Even when the crime test is fully met and no mitigating factor is present, the death sentence may be imposed only if the R-R test, based on society’s perception rather than the judge’s view, is satisfied, reflecting societal abhorrence toward particularly heinous crimes.

124. From the above exposition of law, it is clearly evident that life imprisonment is the rule and death sentence is an exception, which must be inflicted only in gravest cases of extreme culpability. While aggravating circumstances may warrant harsher punishment, mitigating factors must be interpreted broadly, as death is to be imposed only in exceptional cases.

125. The learned Special Court has rightfully noted the aggravating circumstances against the accused. However, we are of the view that the

learned Special Court failed to consider the mitigating circumstances, and therefore has erred in categorizing the present case in the category of 'rarest of rare' cases.

126. In the present case, the accused is around 41 years old. Admittedly, the accused has no prior criminal record and, till date, has not been convicted of any other offence. Thus, the probability that the accused can be reformed and rehabilitated cannot be denied.

127. Therefore, upon perusal of the entire evidence on record and the above-referred law as regards death penalty, we are of the considered view that the sentence of death imposed on the appellant is inappropriate. Accordingly, we answer the reference under Section 366 (1) of the Code in negative and thereby dismiss the Confirmation Case No.02 of 2024.

128. Moving further to allegations under Section 323 of the IPC and Section 75 of the Juvenile Justice Act. It is the case of the prosecution that the accused used to beat his children. PW-1, in her oral testimony, has deposed that she sustained injury on left arm. The accused had beaten her with pipe for committing a mistake. Whenever siblings used to commit mistake, the accused used to beat them and make them stand in the sun.

129. PW-3 Sarika Santosh Kosarkar deposed that the accused is her neighbour. The accused is short-tempered by nature. Therefore, she did not used to speak with him. She deposed that the accused used to beat Kaushalya and therefore, she used to leave the house. The accused used to beat the children also. He has inflicted scorches on PW-1. Similarly, he used to pour sugar water and once ants gathered he used to make the children sit on it. Prior to the incident, the accused used to beat the victim girl with bamboo and sticks. Similarly, the accused used to beat the victim's brother.

130. PW-20-Yogita Dnyaneshwar Kose deposed that the accused was residing in front of her house. On the date of occurrence of the incidence, the accused had informed her that the victim girl died due to hanging herself. She further states that the accused was a short-tempered person. The behaviour of the accused with Kaushalya was ill-natured and therefore, she used to dessert him. The accused used to scorch the body of the children with yardstick and used to beat them with stump. The accused once attempted to pour petrol / kerosene on the children in front of her house. She further states that by way of punishment the accused used to make his children stand in the sun, outside the house where ants used to infest. Due to fear, the neighbours were not on talking terms with the accused. If they intervened to convince him, he used to give threat to

them that he would implicate them. In cross-examination, she categorically deposed that she personally witnessed the accused while beating his children.

131. PW-4 Nilkanth deposed that the victim girl had come to him in the year 2022. He had kept her with him for a month. The accused had beaten her with belt and beaten her by keeping cylinder on her chest as she was taking a selfie. When the accused had come to take her back 2-3 times she refused and at that time the victim told him that the accused beats her, wakes up in the night and that she was afraid of the accused.

132. PW-6 Dr. Vishwajit Bobde, who examined the injuries on the body of PW-1, deposed that on 29.11.2022, he was on duty as a Casualty Medical Officer at IGMCM, Nagpur. He received requisition (Exh.61) from police station Kalamana to examine PW-1, aged 12 years. API Chanda Dandawate had brought said girl. There was no fresh injury on her person and no fresh complaint was there. He examined her and he found following injuries on her person :-

Injury No.1: Old scar mark present over right foot, dimension 0.5 cm x 10 cm was elevated. (The portion comes out after healing).

Injury No.2: Old scar suture mark present over left foot, dimension 0.3 cm x 7 cm.

Injury No.3: Old scar mark over left foot, dimension 1 cm x 5 cm. Blackish in colour

Injury No.4:- Old scar mark circular in shape, 2 cm x 2 cm. Margin not clear.

Injury No.5:- Deformity on right elbow (deformity means the alignment was not normal).

133. He further deposed that all scar marks are old, margins are not clear. Hence, he could not comment on the weapon of injury. The injury No. 5 can be possible if a person is beaten with a stick or pipe. Accordingly, he has issued the certificate (Exh.62). In cross-examination, he admitted that all the injuries are possible if child falls during playing and deformity is possible by birth. However, just by admitting the other possibilities, his evidence regarding prosecution case that PW-1 used to be beaten does not get demolished.

134. The defence could not show any reason to disbelieve the evidence of PW-1, PW-4, PW-3, PW-20 or PW-6. Therefore, we are of the considered view that the prosecution has successfully proven that the accused voluntarily caused hurt to PW-1. Similarly, the prosecution has also proven that the accused, while in-charge and control of his children, being father, abused them and assaulted them mercilessly, neglected them and thereby caused his children mental and physical sufferings. Thus, the prosecution has proved the allegations against the accused under Section 323 of IPC and Section 75 of the Juvenile Justice Act.

135. Let us now examine the evidence with respect to the allegations under section 307 of the IPC against the accused.

136. It is the case of the prosecution that the accused attempted to kill the victim girl previously in the month of October 2022 by administering poison to her. At that time, she was hospitalized in Mayo Hospital and she survived. The prosecution asserts that as she survived from that attempt, the accused planned and executed the incident of hanging of the victim girl. According to the prosecution, the accused repeatedly raped the victim girl, and then, under the guise of giving her medication to relieve her pain, administered poison to her on the night of 09.10.2022.

137. While describing the said incident, PW-1 deposed that the incident of consuming poisonous substance by the 'victim girl' had happened prior to this incident. Her father had administered poison to the 'victim girl'. At that time, she was admitted to the hospital. At that time, the 'victim girl' was admitted to hospital for 2-4 days.

138. In her cross-examination, it is brought on record that PW-1 has not stated the fact of taking poison to the police in her first statement.

139. PW-4 Nilkanth deposed that in the month of October 2022 at 06:00 a.m. he had received a phone call of the victim girl. At that time, the victim girl told that she wanted to talk with him. She used to address him as 'Bade Pappa'. She said to him "Bade Pappa Jaldi Ghar Par Aao Nahi To Main Apko Dikhungi Nahi." At that time he went to her house when the accused told that the victim had consumed poison and he showed him one bottle and told that it was his wife Kaushalya's Sickle Cell medicine. Later he had taken out one chit from near pillow of the victim girl and given it to PW-4 wherein it was written that "Bade Pappa, Maze Mama Mami Lagnakarita Dabav Takat Ahet" (my maternal uncle and aunt are pressurizing me to get married). He further deposed that health of the victim girl was not good, he immediately took her to Mayo Hospital.

140. PW-11 HC Rewatkar deposed that on 09.10.2022, from 9.00 o'clock in the night till 10.00 o'clock in the morning, he was on night duty. In the morning, an intimation was received on a phone call from Mayo Police Booth. The said intimation that was received was about consuming poisonous substance by the victim girl and admitting her to Mayo Hospital on account of deterioration of her health. The Duty Officer orally directed him to record statement of the victim girl. Thereafter, he recorded her statement.

141. PW-11 further deposed that as age of the said girl is below 18 years, her statement was recorded in presence of her father. She stated that on 08.10.2022, her step-mother Kaushalya, Kaushalya's brother Santosh and his companion named Tulsi had come to her house and they were talking about her marriage with one another and she heard the said talk and since then she became tensed and therefore, on 10.10.2022, at 2.00 o'clock, in the night, she consumed a substance named Pentagene (V.O.) and as her health got deteriorated, her father brought her to the Hospital. Signature of the victim girl and thumb impression of her father were obtained on that statement.

142. The statement Exh. 74 shows that victim girl has stated to PW 11 HC Rewatkar that her stepmother Kaushalya and her brother Santosh were talking about her marriage and therefore she got stressed and consumed poison. It is the case of the prosecution that the victim girl gave statement as per the say of accused, in order to falsely implicate the discharged persons.

143. PW-25-IO-Dandwate, in her oral testimony, narrated the investigation carried out by her in this regard. PW-25 deposed that on 08/12/2022, she had issued letter to the Dean of Medical College, Nagpur for providing treatment paper of the incident occurred in the month of October. Accordingly, treatment papers were received vide

Exhibit No. 102. Thereupon, she had recorded statement of Satish Nipane from whom the accused had purchased bug killer medicine. During the course of investigation, it was revealed that at the time of incident occurred in the month of October, accused Guddu compelled the 'victim girl' to write suicide notes. Photographs of suicide notes were also taken in the month of October and those were found in the mobile phone and the 'victim girl' had given false information to Police at the instance of accused Guddu.

144. PW-15 Dr. Dipti Chand, who was working as Professor as a Head of Department of Medicine, deposed that their department had received letter dated 08/12/2022 and request was made to provide documents in respect of patient Mahi Guddu Razak admitted on 10/10/2022. This letter was received by Dean, Medical Hospital, Nagpur. Their Record Department had given the documents to police. As per these documents the patient was admitted in the morning hours on 10/10/2022 with history of vomiting since 2.00 a.m. in the night. As per admission notes there was suspect of poisoning. A blood report was sent for it. The report was received for serum choline esterase which was below normal suggestive of organo phosphorus poisoning. She was treated for the same. She improved over the period of two days and on 13/10/2022 she was discharged in the healthy condition.

145. PW-15 further deposed that on the basis of presence of serum choline esterase and from the clinical examination, she was a case of organophosphorus poisoning. She was treated for that. She improved and thereafter recovered and discharged on 13/10/2022.

146. In her cross-examination, she was asked about Exh. 102, wherein there is mention of unknown compound consumption. To which she explained that it was the organo phosphorus compound, but earlier they were not sure which organo phosphorus compound consumed by victim girl. From the clinical observation and pathological report, she can say that serum/choline esterase was present and thus it was the case of organo phosphorus poisoning.

147. During cross-examination, she admitted that there are three reasons mentioned in Exh. 102. Those are viral hepatitis seriosis, metastatic, carcinoma and organo phosphorus poisoning. She explained that there were no clinical signs of viral hepatic seriosis and metastatic carcinoma and as there were no clinical sign, the two samples were not taken. She further admitted that the amino compound can be inhaled by the person if he has an access to pest control in day-to-day life. However, there is no such case made out by the defence in the cross-examination of any of the witness. Therefore, the admission given by the doctor will not be helpful to the defense.

148. Thus, the evidence of the PW-15 Dr. Dipti clearly shows that on 10.10.2022 the victim girl was admitted for consumption of poison. She was treated in the hospital and it was the case of organo phosphorus poisoning.

149. PW-15 Dr. Dipti Chand opined that if the victim girl would have not been treated at the right time, it would have been dangerous for the life of victim girl. Her evidence has not been shaken in cross-examination.

150. It is the case of the prosecution that the accused purchased the poison from PW-9 Satish Nipane, who runs a hardware shop in the same locality.

151. The learned defense counsel submitted that the testimony of PW-9 is unreliable because of absence of any documentary record to support his assertion. It is also submitted that it is unlikely for PW-9 to remember the exact date and time when the accused allegedly purchased poison from his shop.

152. Whereas, the learned Govt. Pleader submitted that the accused is the resident of the same locality where PW-9 Satish runs hardware

shop, and the defense has not brought on record any evidence to negate his evidence.

153. PW-9 deposed that he runs a hardware shop in the same locality in which the accused resides. He sells acid, phenyl and powder to kill ants and bed bugs. Similarly he also sells other domestic articles. He knows accused by face. He (accused) used to come to his shop intermittently to purchase nails, wires etc. The accused had visited his shop on 01/10/2022. He had purchased insecticide meant for killing bed bugs.

154. In cross-examination, PW-9 stated that he had not issued to accused, the bill for selling powder meant to kill bed bugs and had not maintained any entry about it with him.

155. The accused is the resident of the same locality where PW-9 Satish runs hardware shop. There is no suggestion from defence that he has not identified accused or he does not know the accused. There is also no reason brought on record as to why he would depose falsely against the accused, therefore, in these circumstances, just because the bills are not placed on record, it cannot be said that the witness is deposing false. The prosecution has proved that the accused before the incident of October 2022, purchased bug killer powder from PW-9 Satish Nipane in

order to give it to the victim girl for creating a false story against the discharged person.

156. The prosecution also relied on photographs of suicide notes found in the accused's mobile phone, recorded to be from October 2022, i.e. before the incident of hanging. However, we are not placing reliance on those photographs obtained from the mobile phone of the accused for the reasons recorded while discarding the evidence of photographs.

157. Referring to the suicide notes, PW-1 deposed that her father used to compel the victim girl to write on the pieces of paper.

158. To prove the suicide notes, prosecution has examined PW-23- Shivaji Virkar, who is handwriting expert. He examined five suicide notes written by victim girl with specimen natural handwriting. The original notes were marked as Q1 to Q9 and two notebooks were containing natural handwriting of victim girl. He marked it as N12 and 75 in green. Then he carried out examination with the scientific equipment and he came to the conclusion that red encircled writing marked Exh. Q1 to Q9 compared with red encircled writing marked Exh. N12 and N 75 revealed similarities in the writing habit indicating towards common authorship. Accordingly, he has given his opinion at Exh. 203 and the

reasons for reaching such conclusion at Exh. 204. No such material is brought on record to disbelieve his evidence in the cross-examination. Therefore, it can be said that the suicide notes sent for examination, were in the handwriting of victim girl.

159. Further the evidence PW-4 Nilkanth shows that at the time of the incident of poisoning, when he reached the house of the accused, the accused had shown him the bottle of poison and the suicide note. At that time the accused informed him that the victim girl had consumed poison and she has been vomiting since then. However, the accused had not taken the girl to the hospital till the morning. The victim girl in the morning had called him to her house and then he took the victim girl to the hospital.

160. Considering the cumulative evidence, i.e., the forcible administration of poison, delayed medical care, false narrative coerced from the victim, procurement of poison, and preparation of suicide notes, the prosecution has successfully established, beyond reasonable doubt, that the accused attempted to kill the victim. The intention to cause her death can be inferred from his conduct, supported by medical and circumstantial evidence. Accordingly, the ingredients of Section 307 IPC stand proved.

161. It is the case of the prosecution that the discharged person, Kaushalya, was the accused's second wife. Her father owned agricultural land that was soon to be sold. The accused allegedly demanded a portion of that property and physically assaulted Kaushalya to pressurize her. As a result, she separated from him. The prosecution contends that, to falsely trap Kaushalya and her family, the accused devised a plan to murder the victim girl so that fabricated evidence could be created against the discharged persons.

162. To substantiate the allegation of fabricated implication, the prosecution examined discharged persons Santosh Piparde and his daughter, Aarti Piparde.

163. PW-2 Santosh deposed that the accused performed marriage with Kaushalya 1 ½ years prior to the incident. It was not the first marriage of Kaushalya. The accused had three children one of them was the victim. The accused, his children and Kaushalya used to go home in his absence as Kaushalya had performed 2-3 marriages. He did not use to allow her to come home in his absence. His father has a field in Muktai, Baitul. The said field was in the name of his father and three brothers and one sister. The same was put for sale. He states that the accused used to beat Kaushalya to get share in the money received after selling the

field. Kaushalya after beaten by the accused some times used to stay in orphanage or sometime she used to stay anywhere.

164. He further narrates the incidence when the victim girl consumed poison in October 2022. He deposed that in the second week of October 2022, he received a phone call in the night from some CID Madam. She told him that the victim girl has consumed poison, her condition was serious and she asked him to immediately go to Mayo Hospital. When he reached half way he again made a phone call to CID Madam, whereupon she told him that her duty hours are over and asked him to come on the next day. On it, he requested her to meet him for five minutes, then she called him near Daga Hospital on Central Avenue where the madam met with him. She told that the condition of the victim girl was serious and if anything happened to her he would get implicated. She told that the victim girl told that he had molested her and that he was going to take her to Gujarat and sell her off and hence, he would get implicated in the case and further asked him to pray for her recovery. Her name was being displayed as CID Ashwini in his phone screen. He further states that later on he came to know that CID madam was accused's sister in law (wife's sister) (absconding accused).

165. In cross-examination, PW-2 states that he did not share cordial relations with his sister and he never went to the house of the accused. He denied that at the instance of Kaushalya he demanded share in the field of his father and also denied that he pressurized to the victim to marry with him. He denied that he committed rape on the victim girl and therefore, she had committed suicide by consuming poison. He denied that the victim girl committed suicide under pressure from him and his sister.

166. The defense could not demolish the evidence of PW-2 during the cross-examination. He has deposed that the accused used to beat Kaushalya so as to receive a share in the money after the land is sold by her father. However, this fact is missing from his statement under Section 161 of CrPC. The defence has duly proved this omission. Therefore, evidence of PW-2 Santosh cannot be accepted to the extent that accused wants to implicate discharged person to get share in the amount of aftersale agricultural land.

167. In fact, Kaushalya could have helped the prosecution by stating the true facts as to why accused wanted to implicate her and her family in the crime. In this regard, the evidence of PW-25 shows that after Kaushalya was discharged from this crime and after her release from jail her whereabouts are not known. Kaushalya's mobile was seized and was

sent to C.A. and no further details about Kaushalya were found out. Therefore she could not record statement of Kaushalya.

168. Another witness is PW-10 Aarti Piparde, who is a discharged accused and daughter of the discharged accused Santosh. She deposed that her parents were not on talking terms with the accused, and her aunt (father's sister). The victim girl, victim girl's sister 'N', victim girl's brother 'G', the accused and Kaushalya Aatya (father's sister) used to visit her house to meet her grandparents in absence of her parents. Her father never used to visit the accused. Then she narrates the incidence of phone call received by her father from one CID Police after the victim consumed poison. She deposed that in the second week of October 2022, there was a phone call on her father's mobile phone. It appeared as 'CID Police' on Truecaller. She saved the number on her father's mobile phone. One lady told her father that she was CID Police and the victim girl had consumed poison. She said that her father was responsible for the same. She further told that the victim girl had given such statement and his father would have to come to Mayo Hospital. Her parents got frightened and visited Mayo Hospital. There they met the said lady who was CID police. At that time she told her parents that her father was responsible for consumption of poison by the victim girl and that if she survives it would be fine or else her father would be implicated in the case.

169. In the cross-examination, nothing is brought on record contrary to the oral evidence of PW-10 that her father never used to visit the accused and Kaushalya used to visit her house to meet her grandparents in absence of her parents.

170. The defence could not bring out anything in the cross-examination to show any involvement of the discharged persons in the present crime.

171. The record contains strong, reliable evidence establishing that the discharged persons were falsely implicated. The main circumstances, as noted by the learned Special Court, are as follows: -

- a) PW 1 N deposed that accused wanted to take photographs of victim girl of the execution of suicide to deceive Santosh Piparde.
- b) The statement of victim girl (Exh.74) while she was admitted in Mayo Hospital shows allegations against Santosh Piparde that she consumed poison because of him. The said statement was recorded in presence of accused. His thumb impression is on the statement.
- c) PW 25 Chanda Dandawate and PW 22 Dr. Pathe proved that suicide notes were of the month of October, 2022.
- d) All the suicide notes proved by the prosecution contains the allegations against discharged person.

- e) PW 1 N proved that accused used to prepare suicide notes from victim girl.
- f) The photographs Exh.29 to 31, Exh 37, Exh 22 and Exh 81 taken by PW 1 N and found in the mobile of accused do not show suicide notes on spot. According to PW 1 N, accused after the death of victim girl plotted suicide notes on the spot.
- g) Absconding accused Ashwini lodged report against discharged person and accused Guddu let the police act upon the report.
- h) All the discharged person were arrested by the police in the present crime on the basis of report lodged by Ashwini.'

172. The above circumstances show that there has been an attempt by the accused to implicate the discharged accused falsely.

173. PW-4 Nilkanth, in his oral testimony, has narrated an incident linked to the accused's habit of implicating others. PW-4 deposed that two years after Aarti's death, accused with his children, had come to him. At that time, he got smell of diesel. At that time, he found accused and his all the three children smeared with diesel. When he asked him as to what had happened, he told that while they were coming from near the railway track, one tractor driver poured diesel on them and they all fled when he was igniting. PW-4 took them to Police Station. At that time, accused had lodged report with the Police Station. When the Police made

enquiry, it revealed that the said report was false. The accused had one wife before Aarti and he attempted to deceive her relatives. At that time, PW-4 had scolded him. After Aarti's death, the accused performed marriage with a woman named Kaushalya. The accused used to always beat Kaushalya and his all the three children.

174. The defense could not bring anything in cross-examination to discredit the testimony of PW-4.

175. PW-22 Dr. Prajakta Pathe, Scientific Officer in RFSL, Cyber Department, deposed that the police have submitted one panchanama relating to mobile verification and extraction of data of the accused and daughter of the discharged accused Santosh Piparde. As Kaushalya was not returning to house, therefore Guddu Razak himself put bandage on his legs and hands and was hanging himself. Such photograph was sent to Aarti Santosh Piparde. During PW-22's analysis, she found one of such screenshot (Exh.171/17) from the whatsapp of the accused. There were also some photographs relating to the medical receipts and photos regarding consumption of poison by/to Mahi Razak. They are at Exh.171/3 to 171/9. She also found some audios related to the present case. The names of the audio files are Samki Jaenge 2022-04-30 21-02-44.m4a. In this audio file Guddu Razak is speaking to someone else and

telling that he would be committing suicide. It is of dated 30.04.2022. The another audio file is in the name of New recording 4.m4a. According to PW-22, this audio is regarding the children are going to brought Kaushalya from the hostel. It is of 12.09.2022. The third recording is in the name of Neeta Teacher, 2022-09-12 14-03-37.m4a. In this video Guddu Razak is speaking to teacher of hostel and telling her that he is not well. The blood is oozing from his mouth and someone has played black magic on him, and Kaushalya is the only person who can recover him. He also stated that someone has thrown lemon in the courtyard of his house. The photographs related to the same are at Exh.171/13 and 171/14. The date of this recording is 12.09.2022.

176. Although there is no reason to disbelieve the testimony of PW-22, the above-referred material obtained from the mobile of the accused cannot be considered as evidence because the prosecution failed to establish the chain of custody of the mobile phone of the accused and because of the other reasons which have been discussed above while discarding the evidence of photographs.

177. It is a settled principle of criminal law that the prosecution must prove its case beyond reasonable doubt. In this matter, the prosecution has convincingly demonstrated that the accused tried to falsely implicate

the discharged persons, though it has been unable to establish the precise reason as to why the accused wanted to do so. Earlier incidents of similar behaviour show a tendency on the part of the accused to frame others falsely. The evidence firmly establishes that the accused intended to falsely implicate these persons and thereby reveals the motive and intention behind the victim girl's murder.

178. So far as the case of the prosecution regarding conspiracy in between accused and absconding accused Ashwini is concerned, the prosecution is relying on the evidence of PW-4 Nilkanth who is the first person who went to the spot. He states that after police came on the spot, sister-in-law of accused Ashwini came there. She started shouting and saying that Santosh has killed victim girl. Ashwini told the accused to go to Mayo Hospital and she will handle the police. There is no such denial to the above said evidence in the cross examination. So the evidence of PW-4 Nilkanth on this point can be safely accepted.

179. The prosecution has brought on record CDR's Exh.263 of the mobile phone of accused. During the period of 10.10.2022 to 06.11.2022 there were 27 outgoing calls and 30 incoming calls found in the CDRs in between accused and absconding accused Ashwini. This is a circumstance which shows their close association and is an important evidence of conspiracy.

180. There is another circumstance on which prosecution is relying to prove the case of conspiracy. PW-2 Santosh and his daughter PW-10 Aarti both have stated that in October, 2022 Santosh received call from CID Ashwini. She informed him that victim girl has consumed poison and admitted in the hospital. So PW-2 and his wife met Ashwini near Daga hospital. That time Ashwini told him that victim's condition is serious and victim girl informed the police that PW-2 Santosh has harassed her. In order to prove this circumstance, the prosecution has proved the calls in between Santosh and Ashwini by placing CDRs of mobile numbers of Santosh and Ashwini of the month of October, 2022. The relevant entries in the CDRs of Santosh are marked as Exh.268 collectively which show five calls between absconding accused Ashwini and PW-2 Santosh on dt. 10.10.2022.

181. One another circumstance which goes against the accused to prove the conspiracy is in FIR Exh.124 lodged by Ashwini against discharged persons wherein there is reference of incident of taking poison by victim girl. So all the circumstances collectively establish that accused and Ashwini committed conspiracy to falsely implicate discharged person and thereby committed murder of the victim girl.

182. From the above referred discussions, we are of the opinion that the learned trial Court has rightly held the accused guilty as under :

- a) That the accused, with the intent to create a false scene of suicide by hanging so as to falsely implicate discharged accused Nos. 1 to 4, compelled his elder daughter (the victim), aged 16 years, to stand on a stool and tie a rope around her neck. Thereafter, he intentionally kicked the stool and forcibly released her hand from the metal rod she was holding for support to save herself, thereby causing her death and committing an offence punishable under Section 302 of the Indian Penal Code.
- b) That on 10/10/2022, during night hours at his residence, the accused brought poison and compelled his elder daughter (the deceased victim) to consume it. By doing so, with such intention and under such circumstances that, if death had ensued, he would have been guilty of murder, the accused committed an act amounting to an attempt to cause her death and is therefore liable for an offence punishable under Section 307 of the Indian Penal Code.
- c) That the accused habitually and mercilessly beat his younger daughter, N, and scorched her body with matchsticks, thereby voluntarily causing hurt to her and committing an offence punishable under Section 323 of the Indian Penal Code.
- d) That the accused gave a false report through one Ashwini Durgaprasad Deshbhratar to Shri Raut, PSI, Police Station Kalamna, a public servant, alleging that his daughter had

committed suicide by hanging due to the actions of discharged accused Nos.1 to 4. Knowing the said report to be false and intending thereby to cause the said public servant to arrest those persons in a false crime, which he would not have done had he known the true facts, the accused thereby committed an offence punishable under Section 182 of the Indian Penal Code.

- e) That the accused forcibly made his minor daughter write false suicide notes/letters with the intention of falsely implicating discharged accused Nos.1 to 4. He thereafter placed those fabricated notes near the deceased's body to mislead the investigating authorities into believing that the deceased had committed suicide due to the acts of those persons, thereby committing an offence punishable under Section 193 of the Indian Penal Code.
- f) That the accused intentionally placed fabricated false evidence, namely suicide notes, on record with the intent of causing discharged accused Nos.1 to 4 to be convicted for an offence punishable under Section 305 of the Indian Penal Code, which carries punishment of death, life imprisonment, or imprisonment up to ten years, and thereby committed an offence punishable under Section 194 of the Indian Penal Code.
- g) That the accused corruptly used the fabricated and false suicide notes as genuine evidence, knowing them to be false, with the intention of falsely implicating discharged accused Nos. 1 to 4, thereby committing an offence punishable under Section 196 of the Indian Penal Code.

- h) That the accused, knowing fully well that he had committed the murder of his daughter, nevertheless lodged a false report through Ashwini Durgaprasad Deshbhratar with the police officials of P.S. Kalamna, alleging that discharged accused Nos. 1 to 4 had abetted his daughter's suicide. Knowing such information to be false and intending to mislead the police, he thereby committed an offence punishable under Section 203 of the Indian Penal Code.
- i) That prior to 06/11/2022, while residing with his children and having actual charge and control over them as their father, the accused abused, assaulted, and mercilessly beat them, scorched parts of their bodies with matchsticks, caused physical injuries, and neglected them in a manner likely to cause unnecessary mental and physical suffering. By such acts, he committed an offence punishable under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- j) That prior to 10/10/2022 and up to 06/11/2022 at Nagpur, the accused entered into a criminal conspiracy with absconding accused Ashwini Deshbhratar to commit the murder of his own daughter (the victim) and to falsely implicate discharged accused Nos.1 to 4. Pursuant to this conspiracy, in October 2022, both accused forced the victim to prepare false suicide notes. On 10/10/2022, the accused administered poison to the victim intending to kill her; however, she survived. Subsequently, on 06/11/2022 at about 02:30a.m., he deceitfully induced her to pose for staged photographs of suicide, compelled her to stand on a stool, tied a rope around her neck,

and kicked the stool, thereby causing her death. He then placed the fabricated suicide notes near her body and lodged a false report through Ashwini Deshbhratar against discharged accused Nos. 1 to 4. By these acts, the accused conspired with the said absconding accused to commit murder and thus committed an offence punishable under Section 120-B of the Indian Penal Code.

183. In the circumstances, we pass the following order :

- i) The Confirmation Case No.02 of 2024 is **dismissed**.
- ii) The Criminal Appeal No.322 of 2024 is **partly allowed**.
- iii) The impugned judgment and order dated 21/05/2024 passed by learned Special Court (POCSO) District Judge-3 and Additional Sessions Judge, Nagpur in Special Criminal Case No.61 of 2023, insofar as, it convicts the accused for the offence punishable under Section 302 of the Indian Penal Code for causing death of his deceased daughter, stands confirmed. However, sentence of death awarded to the accused is commuted to imprisonment of life. The sentence of fine awarded is however, maintained.
- iv) The conviction and sentence awarded to the accused vide said judgment and order for the offences punishable under Sections 307, 323, 182, 193, 194, 196, 203, 120B of the Indian Penal Code and under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015, is maintained.

- v) The conviction and sentence for the offence punishable under Section 376(2)(f) and 376(2)(n) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 is hereby set aside.

The Confirmation Case No.02/2024 and Criminal Appeal No.322 of 2024 are **disposed of** accordingly. Pending application(s) if any, shall stand disposed of.

(PRAVIN S. PATIL, J)

(ANIL S. KILOR, J)

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