

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 28TH DAY OF APRIL, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CRIMINAL APPEAL NO.100596 OF 2024(C)

C/W

CRIMINAL REFERRED CASE NO.100001 OF 2024

IN CRL.NO.100596/2024

BETWEEN:

UDDAPPA S/O. RAMAPPA GANIGER,
AGED ABOUT 39 YEARS, OCC. COOLIE,
R/O. KURABGODI, HARUGERI,
TQ. RAIBAG, DIST. BELAGAVI-590001.

...APPELLANT

(BY SRI. D.J. NAIK, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
THROUGH HARUGERI POLICE,
REP. BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
DHARWAD-580001.
2. SMT. SUDHA APPASAAB SANNAKKINAVAR,
AGED ABOUT 32 YEARS, OCC. COOLIE,
R/O. KURABGODI, HARUGERI,
TQ. RAIBAG, DIST. BELAGAVI-590001.

...RESPONDENTS

(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP)



**CRL.A.NO.100596 OF 2024 C/W.
CRL.RC.NO.100001 OF 2024**

THIS CRIMINAL APPEAL IS FILED U/SEC. 415(2) OF BNSS, 2023 SEEKING TO CALL FOR RECORDS OF THE COURT BELOW AND ALLOW THIS APPEAL BY SETTING ASIDE THE JUDGMENT AND SENTENCE DATED 25.09.2024 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE FTSC-I BELAGAVI IN SESSION CASE NO. 431/2017 AND ACQUIT THE ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 366(A), 376, 302, 201 OF IPC AND UNDER SECTIONS 4, 6, 8 AND 12 OF POCSO ACT 2012 AND SETTING ASIDE THE ORDER DATED 27.09.2024 OF SENTENCE TO DEATH FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC IN SESSION CASE NO. 431/2017 AND ETC.

IN CRL.RC.NO.100001/2024

BETWEEN:

THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
FTSC-I, BELAGAVI.

...COMPLAINANT

(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP)

AND:

UDDAPPA S/O. RAMAPPA GANIGER,
AGE: 32 YEARS, OCC. COOLIE,
R/O. KURABGODI, HARUGERI,
TQ. RAIBAG, DIST. BELAGAVI-591220.

...RESPONDENT

(BY SRI. D.J. NAIK, ADVOCATE)

THIS CRIMINAL REFERRED CASE UNDER SECTION 407 OF BNSS,2023 (CORRESPONDING SECTION 366 OF CR.P.C.) PRAYING TO CONFIRM THE SENTENCE OF DEATH PENALTY IMPOSED ON THE ACCUSED/RESPONDENT UDDAPPA S/O. RAMAPPA GANIGER BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-I, BELAGAVI IN ITS JUDGMENT AND SENTENCE DATED 25.09.2024 IN SESSIONS CASE NO.431/2017.

THIS CRIMINAL APPEAL AND CRIMINAL REFERRED CASE, HAVING BEEN HEARD AND RESERVED ON 24.04.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUSTICE **H.P.SANDESH**, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE H.P.SANDESH
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

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

Heard the learned counsel for the appellant/accused as well as learned Addl. SPP for the respondent/State.

2. This appeal is filed by the accused questioning the judgment of conviction and death sentence and prayed this Court to set-aside the conviction and death sentence and prayed this Court to acquit the accused. The CrI. RC. No. 100001/2024 is filed for the confirmation of death sentence imposed by the trial Court under Section 366 of Cr.P.C on the ground that the case comes within the purview of rarest of rare case.

3. The factual matrix of case of the prosecution is that, the accused has committed the offence of kidnapping the minor girl, who is aged about 3 years when she was playing, on 21.09.2017 at about 17.30 hours, with an intention to rape her by giving chocolate to her, purchasing the same from the shop of CW16 and from there took her to the sugar cane field of CW17 and in between 18.00 to 19.00 hours, the accused subjected the child for aggravated penetrative sexual assault

and thereafter, committed the murder by putting the mud on her mouth, nose and eyes and tried to disappear the evidence by covering the mud on the body. Hence, based on the information of PW1, at the first instance, the complaint was registered for the offence punishable under Section 363 of IPC and thereafter, on discovery of the dead body at the instance of the accused, invoked the offences under Sections 4, 6, 8 and 12 of the POCSO Act and also Section 302 and 201 of IPC. The Investigating Officer, who conducted the investigation, after recording the statement of witnesses and collecting the materials, has filed the charge sheet for the aforesaid offences. The accused was secured from the judicial custody and subjected him for charge and he did not plead guilty and claims the trial. Hence, the prosecution examined the witnesses as PW1 to PW25 out of 30 charge sheet witnesses and got marked Ex.P1 to P52 and MO1 to MO8.

4. On closure of the evidence of the prosecution, the accused was subjected to 313 statement of Cr.P.C. and the accused has denied all incriminating evidence against him. But he did not choose to lead any defence evidence on his behalf. The trial Court, having considered both oral and documentary

evidence, convicted the accused and while sentencing the accused, comes to the conclusion that it is rarest of rare case, evaluating the mitigating circumstances and also aggravating circumstances and taken note of the fact that the accused took the victim girl aged 3 years, who was playing in front of her house, pretending that he would get chocolate to her and thereafter, took her to the shop of PW14 and from there took her to the sugarcane field belongs to PW15, wherein subjected her for sexual act with a malafide intention to meet his lust and committed aggravated penetrative sexual assault on her and the evidence available before the Court is sufficient to come to a conclusion that the accused only committed the sexual act and thereafter, committed the murder. Moreover the accused is also a relative of the deceased victim girl and he had pre-planned to take the life of the deceased and managed to see that the deceased victim girl could trust on him and accompany him and also taken note of the fact that he is perverted sexual behaviour person based on the evidence of the doctor, who examined him and comes to the conclusion that there are no chances of accused going to be

reformed and hence, convicted and sentenced for the death and sent the file to this Court for confirmation.

5. The counsel appearing for the appellant in his argument vehemently contended that the case of the prosecution is not believable and the incident was taken place in the previous day and he was arrested on the next day at 05.00 a.m. and PW7 had informed the complainant that the victim girl was playing and the accused had taken her and no sufficient material before the Court for taking of the child and for having committed the sexual act and even committing the murder also, the evidence of the prosecution cannot be believed. The counsel also submits that there is no cogent evidence to hold the appellant guilty of the alleged offences. The trial Court without properly appreciating the facts and circumstances of the case and also evidence on record, erroneously convicted the appellant. He further submits that the evidence given by the witnesses is in contradiction with each other. PW1-complainant herself is the mother of the victim and she is also hearsay witness and PW7 and PW10 are the grandparents of the victim girl and PW11 turned hostile and not supported the case of the prosecution. The evidence

of PW15 is also hearsay evidence and PW14 is the owner of the petty shop and his evidence also not corroborates with the evidence of PW15, who says only with regard to the incident was taken place in his land and the trial Court committed an error in believing the evidence of prosecution witnesses and the said finding is erroneous and contrary to the law and facts and material available on record.

6. The counsel for the appellant would further contend that the trial Judge fails to appreciate the fact that the evidence available on record is not sufficient and not reliable, and the inference drawn by the trial Court is highly illegal and arbitrary and cannot be accepted and also failed to consider the cardinal principles of criminal jurisprudence that guilt has to be proved beyond reasonable doubt and no nexus between the appellant and the alleged crime. The counsel also would submit that the conviction and sentence is highly excessive and abnormal and not commensurate with the gravity of the offence and awarding of death sentence is nothing but an excessive punishment and the trial Court fails to take note of the mitigating circumstances in awarding the death sentence.

7. The counsel for the appellant in support of his argument relied upon judgment of the Apex Court in the case of ***Jai Prakash Vs. State of Uttarakhand***¹ and would submit that in a case of rape and murder of strangulation by hand, the Apex Court comes to the conclusion that it will not come within the threshold of rarest of rare category and comes to the conclusion that it is appropriate to award life imprisonment without remission extending to the natural life of the appellant instead of the punishment of the death penalty and counsel brought to the notice of this Court paragraph-15 of the said judgment, wherein discussion was made With regard to whether the case comes within the criteria for determining and whether a case falls under the "rarest of the rare" case.

8. Per contra, the learned Addl. SPP appearing for the respondent/State would vehemently contend that the evidence of PW7 is very clear that she has seen the accused taking the girl, pretending that he would get the chocolate when the child was playing. He would also submit that the evidence of PW14 is very clear that from his shop he had

¹ 2025 (3) CrI.L.J.3363

purchased the chocolate and also witness had also witnessed the accused coming out from the sugarcane land hurriedly and he was wet and his clothes were stained with mud and the same is also noticed by other circumstantial witnesses. The Addl. SPP also admits that when the accused was enquired and he did not divulge anything, but he was apprehended by the villagers and at the first instance, the complaint was given by PW1 having received the information from PW7, who gave the information that the accused took the victim girl and at the first instance, case was registered under Section 363 of IPC and having arrested the accused, he admitted his guilt and gave voluntary statement and led the panch witnesses as well as the police and pointed out the place where he committed the sexual act and screened the evidence covering the mud and there is a discovery and the doctor who conducted the PM also given the report as well as oral evidence is very clear that the child was subjected to sexual act and thereafter, she was murdered and death is due to asphyxia as a result of using the mud blocking her nose and mouth.

9. The Addl. SPP would also submit that the evidence of PW19-doctor, who examined the accused, is very clear that the very behavior of the accused is perverted sexual behavior and hence, the trial Court rightly appreciating the same comes to the conclusion that the accused will not be reformed and despite he is a married person having children, he used the child, who is aged about 3 years, for his lust. He would also submit that that the evidence of PW3 and PW15 is very clear and the statement of the witnesses was also recorded before the learned Magistrate under Section 164 of Cr.P.C. for having seen the accused, who took the minor girl and also keeping the child near the shop and also the FSL report at Ex.P1 is very clear that the clothes, which were seized at the instance of the accused, were also stained with blood and report is also positive. The PW15 and PW16 are the witnesses to the discovery of the body at the instance of the accused and PW4 also supported the case of the prosecution with regard to Ex.P13-Seizure Panchanama and so also relies upon the prosecution evidence of PW3, PW4, PW15, PW7, PW10, PW11 and PW14.

10. The counsel appearing for respondent No.2 in his argument would vehemently contend that the trial Court rightly considered both oral and documentary evidence and particularly, taken note of the evidence of PW19-Doctor with regard to the nature of the accused, who was having perverted sexual behaviour and so also the medical evidence and FSL report corroborates the case of the prosecution and hence, it is not a case for even for reduction of sentence. The counsel in support of his argument relied upon the judgment of this Court passed in CrI.A.No.2216 of 2024 connected with 2246 of 2024 and CrI.RC No.2 of 2024, delivered on 06.02.2026 confirming the death sentence considering the aggravating circumstances and mitigating circumstances, wherein the child was aged about 7 years and hence, prayed this Court to confirm the death sentence.

11. Having heard the counsel appearing for the appellant as well as the learned Addl. SPP for the State and counsel appearing for respondent No.2 and also on perusal of the material available on record both oral and documentary evidence, the points that would arise for the consideration of this Court are:

- 1) Whether the trial Court committed an error in convicting the accused for the offence punishable Sections 4, 6, 8 and 12 of POCSO Act and also for the offence punishable Sections 363, 302 and 201 of IPC and whether it requires interference of this Court?
- 2) Whether the trial Court committed an error in imposing the death sentence and whether it requires modification in coming to the conclusion that the case will not come within the purview of rarest of rare case to impose the death sentence?

12. Having considered the grounds urged in the appeal memo as well as oral submissions of respective counsels and so also the reference made by the trial Court invoking Section 366 of Cr.P.C., this Court has to re-examine the material available on record.

13. The law was set in motion based on the complaint at Ex.P1. The mother of the victim girl had lodged the complaint that she is having three daughters and victim girl is the second daughter and on 21.09.2017 at 05.00 p.m., when her daughter was playing, the accused took her and the same

was witnessed by her mother, who is examined as PW7 and she gave an information for having taken the daughter by the accused, but the daughter did not turn up till 09.00 p.m. and even having made the search also, they did not find the daughter. Hence, with all details of the daughter, gave the complaint and forcibly took the daughter by the accused for some purpose. Based on the complaint-Ex.P1, case was registered at the first instance on the same date on 21.09.2017 at 10.00 p.m. and invoked the offence under Section 363 of IPC. Having considered the complaint and also the evidence of PW1, she reiterates the same that her mother (PW7) informed about the accused taking of her daughter and so also in her evidence deposed as to what happened subsequent to the same i.e., the accused took the victim to the land of Bheemappa and while coming out from the said land, his clothes are wet and stained with mud. On enquiry, he did not give any details and hence, filed the complaint at the first instance, suspecting his role and the accused was arrested and on enquiry, he revealed about his act and body was recovered at his instance and also it is her evidence that the accused committed the rape and also murdered and found

the chappals in the said sugarcane land and mahazar was drawn and she identifies the chappal of the victim as MO1 and also her cloth-MO2 and also it is her evidence that at the time of seizure, stained and unstained mud was also seized. PW1 was subjected to cross-examination and it is elicited that the accused is her relative and also he is a neighbour and also admits that they were not having any cordial relationship and they did not search immediately. But when her daughter did not come back, started searching her and admits that suspecting the role of the accused only, the complaint was given. So also, she says that the complaint was written by her husband's family members and she has signed the same and she is not an eye-witness. But she gave evidence based on the information given by her mother PW7.

14. Now, this Court has to consider the evidence of PW7, who gave information to PW1 and she says that the accused forcibly took the victim girl when she was playing and thereafter, when the child did not turn up, the family members and also the villagers have gathered and later on, the accused was arrested and body was recovered at the instance of the accused and mahazar was drawn. In the cross examination of

this witness, no doubt it is elicited that the husband of her daughter was not taken care of the family and also he is a relative and her daughter was missing after 05.30 p.m. She also says that when the accused took her, she informed the same to even neighbours and three children went and others came back, but her grand-daughter (victim girl) did not come back. When the suggestion was made that she did not make any statement before the police that the accused took to get the chocolate to her granddaughter, she says that she made such statement. Nothing is elicited from the mouth of PW7 that the accused did not take the victim and it is elicited that at around 10 o'clock, the police came and body was recovered.

15. Now this Court has to examine the evidence of PW14-petty shop owner and his evidence is that on 21.09.2017, the accused brought the girl and purchased chocolate and on the next day, he came to know about the accused committed sexual act and murdered the child. In the cross-examination of this witness, he says that PW1 used to come to his shop and it is elicited that when the accused brought the girl to his shop, he was not aware that she is the

daughter of PW1, but later came to know about the same. This answer is elicited from the mouth of defence itself. No doubt, an answer is elicited from this witness that he did not make such statement before the police. But categorically says that his statement was recorded on the next day and he cannot tell what police have written. But nothing is elicited from the mouth of this witness that the accused did not bring the child to his shop and not purchased the chocolate.

16. This Court has to analyze the evidence of PW15 and in his evidence, he categorically says that the accused in the presence of PW8, PW12 to 14 came to the spot and the accused pointed out the dead body and police recovered the dead body and later came to know that the baby was raped and murdered and the police have recorded his statement. In the cross-examination, when the suggestion was made, it is got elicited that the accused only pointed out the spot and he witnessed the same and also the accused admitted in his presence about his act and also he gave the statement before the police that he witnessed the same and given the statement. PW15 further says that he is aware of the contents of his statement and only when the accused revealed before

the police, he came to know about the same. But he did not produce the chocolate slip to the police. Nothing is suggested in the evidence of PW15 that the accused did not take the witnesses and the police to the spot and body was recovered at the instance of the accused and the same is not disputed.

17. The other witness is the evidence of PW2 and PW7, the grand parents and their evidence is similar as that of the case of the prosecution. PW8 is the witness to Ex.P4-Seizure Panchanama and taking of photographs and conducting of inquest in respect of Ex.P12. The PW4 and PW17 are the witnesses to the seizure of clothes of the accused and drawing of mahazar at Ex.P13 and also the Ex.P16. The Exs.P14 to P17 are the photographs and these witnesses supported with regard to seizure of cloth of the accused and nothing is elicited from the mouth of theses witnesses i.e., PW4 and PW17 regarding seizure of the cloth of the accused and clothes were seized in the police station itself, since cloth of the accused was stained with mud and blood as he was wearing the same. The PW5 speaks about drawing of mahazar in terms of Ex.P19 having drawn the mahazar at the spot. PW8 is the witness to Ex.P4-Spot Panchanama and also the seizure of pant, chappal

of the victim and stained and unsigned mud at the spot. The PW9, who is also circumstantial evidence and last seen the child that Mayakka and Manjula were standing near the shop and waiting that the accused would bring the child. But he came from the sugar cane land and this witness also noticed that cloth of the accused was stained with blood and also the mud. But, the accused did not reveal anything about the child. The evidence of PW11 is not fruitful, since he turned hostile, except stating that the accused was having the child in his arm near the shop. The PW13 also noticed the accused came out from the sugarcane land with wet cloth and also stained with mud and on enquiry, he did not reveal anything about that. PW16 speaks about they searched the child and when the child did not find, they went and lodged the complaint in the police station and PW1 gave the complaint and also says that when the police came, the accused was apprehended by the villagers and given the custody of the accused to the police.

18. Now this Court has to consider the evidence of PW19-doctor, who examined the accused and he says that he is having perverted sexual behaviour as per the report of the

Psychiatrist and nothing is elicited with regard to the said opinion. The PW20 is the Engineer and PW21 is the doctor, who conducted the PM and found 5 injuries and given the opinion that cause of death is due to asphyxia as a result of antemortem gagging which results from putting of mud particles into the mouth and also on perusal of the report, he gave opinion that vaginal smear shows spermatozoa suggestive that the victim had recent sexual intercourse. In the cross-examination, it is elicited that time since death is 12 to 24 hours. It is suggested that the injuries found and mentioned in Ex.P29 would occur if any animal bites and the same was denied. However, in Ex.P30 cervical smear is negative. It is suggested that she was not subjected to any sexual act and given the false report, the same is denied.

19. PW22 is the scribe of the complaint-Ex.P1 and PSI, who registered the case is examined as PW23 and he issued the FIR having received the complaint-Ex.P1 and thereafter, he entrusted the papers to the higher officer for further examination and also it is his evidence that he recorded the voluntary statement of the accused in terms of Ex.P32. The PW24 is the IO, who conducted the further investigation

taking the accused to the place where he committed the rape and murdered the victim girl and body was recovered at the instance of the accused and drawn the mahazar in terms of Ex.P4 and also got the sketch in terms of Ex.P35 and sent the body for PM and also mahazar was drawn in terms of Ex.P13. The other witness is PW25, who is the Expert who subjected the said articles to the examination and gave the report in terms of Ex.P51 and Ex.P52 and except answer eliciting that in Item No.5, 6, 7, no seminal stains were found, nothing is elicited.

20. Having considered the evidence of prosecution, PW7 is the important witness, who found the accused taking the minor girl on the guise of getting the chocolate to her and the evidence of the prosecution witness i.e. PW14-shop owner also corroborates that the accused brought the child and purchased the chocolate from his shop. So also the evidence of other witnesses is very clear that the accused came out from the sugarcane land and while coming out, his clothes were wet and stained with mud and blood and on enquiry, he did not reveal anything. It is also important to note that law was set in motion suspecting the role of the accused at the

first instance on the very same day without there was any delay and the case was registered for the offence punishable under Section 363 of IPC and on apprehending the accused, body was recovered after recording his voluntary statement and clothes of the accused were also seized and the panch witnesses for seizure of clothes of the accused also were supported the case of prosecution and FSL report at Ex.P51 and Ex.P52 is also very clear that his clothes were also stained with mud and blood. The evidence of the doctor-PW21, who examined the victim girl is clear that the victim girl was subjected to the sexual act and also the injuries were found on the body of the victim and given the report that the cause of death is an account of putting the mud on the mouth and nose. As a result, she lost her life. The medical evidence is very clear that it is a case of homicidal and also the child was subjected to sexual act and the document produced before the Court is very clear that the child is aged about 3 years.

21. Having considered the evidence of the prosecution witnesses, particularly PW1, PW3, PW4, PW7, PW10, PW13, PW14, PW15, PW16, the same points out the role of the accused and medical evidence also supports the case of

prosecution and having witnessed the accused taking the girl by PW7, who is none other than the mother of PW1 and other witnesses corroborates each other and when such material available before the Court, we do not find any error on the part of the trial Court in convicting the accused for the offence of committing the rape and murder, that too a child who is aged about 3 years.

22. No doubt, the trial Court committed an error in convicting the accused for all the offences invoked under the POCSO Act under Sections 4, 6, 8 and 12 and question of invoking Sections 8 and 12 of the POCSO Act does not arise, when the offence under Section 6 was invoked that there was an aggravating penetrative sexual act and so also imposing and convicting of accused for the offence punishable under Sections 4, 8 and 12 is erroneous and the trial Court fails to take note of the said fact that all these offences merges with the serious offence under Section 6 of the POCSO Act and no need of convicting and imposing of separate sentence for these offences and hence, it requires interference of this Court.

23. Now coming to the aspect of imposing of the death sentence, this Court has to re-evaluate the material available on record and no doubt, in a case of barbaric act, the Court has to consider both aggravating circumstances and mitigating circumstances while awarding the death sentence. No doubt, the trial Court also comes to the conclusion that there is an aggravating circumstances that child was aged about 3 years and the accused committed the murder mercilessly even after satisfied his lust and also taken note of behavior of the accused as per the evidence of the doctor-PW19, who has deposed that the accused is having perverted sexual behaviour and at the same time, the Court has to take note of with regard to the aggravating circumstances and mitigating circumstances. The accused is aged about 32 years and having wife and children and this Court also to take note of the principles laid down in the judgment of **Bachan Singh vs. State of Punjab**² and **Machhi Singh and others Vs. State of Punjab**³ and so also mitigating circumstances and aggravating circumstances. If it is an aggravating

² (1980) 2 SCC 684

³ (1983) 3 SCC 470

circumstance, offences relating to the commission of various crimes like murder, rape, and that too an offence against the woman and child, and also to take note of intention to create a fear psychosis in the public at large, and also, the Apex Court in the case of **Rajendra Prahaladrao Wasnik Vs. State of Maharashtra**⁴, upheld the death sentence awarded by the trial Court in a case of rape and murder of a child aged about 3 years by a person aged 31 years. The same is the similar circumstances in the present case. So also the Apex Court in the case of **K.P. Tamilamara Vs. State of Deputy Superintendent of Police**⁵, wherein held to strike a balance between the imprisonment as well as the death sentence, wherein a case of murder of a young couple and both of them were administered by poison in full view of a larger number of villagers.

24. Having considered the principles laid down in the judgments as well as the judgment relied upon by the counsel appearing for the appellant i.e. **Jai Prakash** (supra) and considering paragraph-15, wherein child was aged about 10

⁴ 2012 (2) SCC 30

⁵ SLP(CrI.) No. 1522/2023, dated 28.04.2025

years, the Apex Court reduced the sentence in coming to the conclusion that it will not come within the rarest of rare category and awarded life imprisonment without remission extended to the natural life of the appellant instead of the punishment of the death penalty. In the said case also, having committed the rape and strangled the child and in the case on hand also, having committed the murder and having committed the sexual act of rape on the 3-year-old child, committed the murder and caused the respiratory failure on account of mud was put on the mouth and nose. No doubt, counsel appearing for the respondent No.2/complainant also relied upon the judgment of this Court, wherein this Court confirmed the death sentence that it is a case of gang rape and the minor girl, who is aged about 7 years. This case is not the case of gang rape. But however, the Court has to keep it in mind the perverted sexual behaviour of the accused and though the trial Court considered the same and also the evidence of PW19-doctor, it is appropriate to modify the sentence to the life imprisonment without any remission till the end of natural life of the accused and that would be appropriate considering the factual aspects of the case on

hand instead of awarding the death sentence to the accused, who is aged about 32 years and having wife and children and if he is convicted and sentenced for the lesser offence and the trial Court has also taken note that he was not a person of reformative. Considering the evidence of the doctor-PW19, if he is released, again chances of committing the similar offences in view of perverted sexual behavior of the accused and these type of incidents would re-occur and hence, we modify the same.

25. Under the impugned judgment, the trial Court has awarded compensation of Rs.3,00,000/- to the mother of the victim. This is a case wherein the accused has been convicted and sentenced for the offence under Section 6 of POCSO Act, which is aggravated penetrative sexual assault on a victim aged about 3 years. Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 stipulates that in case of rape, the victim of the crime shall be entitled for compensation between Rs.4,00,000/- to Rs.7,00,000/-. As the case on hand pertains to offence under POCSO Act, the question of awarding compensation is

governed under Section 33(8) of POCSO Act read with Rule 9(4) of POCSO Rules, 2020. Thus, taking into consideration the facts and circumstances of the case, this Court holds that the compensation awarded to the family of the victim of the crime by the trial Court is on lower side, which needs to be enhanced to Rs.5,00,000/-. To the aforesaid extent, the judgment of conviction and sentence requires to be modified. Accordingly, both points are answered partly in the affirmative.

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

ORDER

- 1) The Criminal Appeal is ***allowed in part.***
- 2) The judgment of conviction and sentence passed by the trial Court for the offences punishable under Sections 4, 8 and 12 of the POCSO Act is set-aside.
- 3) However, sentence is modified holding that the accused is sentenced to undergo rigorous imprisonment for life, which shall mean imprisonment for the remainder of natural life

of the accused without any remission with fine amount of Rs.20,000/- for the offence punishable under Section 6 of the POCSO Act.

- 4) The judgment of conviction and sentence in respect of other offences against the accused are confirmed and sentence shall run concurrently.
- 5) The reference (Crl.RC. No.100001/2024) received from the District Court for confirmation of death sentence is rejected, in view of modification of sentence imposed by the trial Court.
- 6) PW1-mother of the victim of the crime, who lost her 3 years old baby, is entitled for compensation of Rs.5,00,000/- in place of Rs.3,00,000/- awarded by the trial Court and the same shall be released in her favour of the mother of the victim i.e. PW1.
- 7) The Registry is directed to forward a copy of the judgment to the District Legal Services Authority, Belagavi to arrange the payment of

the compensation amount to the mother of the victim as directed.

- 8) It is also made clear that the fine amount imposed by the trial Court for the remaining offences and also the fine imposed by this Court is to be disbursed to the mother of the victim i.e. PW1 on proper identification.

**SD/-
(H.P.SANDESH)
JUDGE**

**SD/-
(B. MURALIDHARA PAI)
JUDGE**

JTR
CT-PA