BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

R.T.(MD).No.02 of 2026
and
Crl.A.(MD).No.425 of 2026

R.T.(MD).No.02 of 2026:

The State of Tamilnadu rep by,
The Inspector of Police,
All Women Police Station,
Valliyoor,
Tirunelveli District.
(Crime No.06 of 2025) ... Appellant

Vs.

Murugan
XXXXXX ... Respondent

PRAYER : RT Sole Accused Petition to be filed under Section 407 of BNSS on the Judgment of Conviction dated 30.12.2025 and sentenced dated 05.01.2026 passed in Spl.C.C.No.116 of 2025 on the file of the Learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli.

For Appellant : Mr.Hasan Mohammed Jinnah,
State Public Prosecutor
assisted by
Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

Mr.S.Arun Pandi

Ms.P.Jeba Malar

For Respondent : Mr.R.Manickam

Crl.A.(MD).No.425 of 2026

Xxxxxxx ... Appellant

Vs.

The State of Tamilnadu rep by,
The Inspector of Police,
All Women Police Station,
Valliyoor,
Tirunelveli District.
(Crime No.06 of 2025) ... Respondent

PRAYER : Criminal Appeal is filed under Section 415 of BNSS, 2023, to call for the records relating to the judgment dated 30.12.2025 made in Spl.S.C.No.116 of 2025 dated 30.12.2025 on the file of the learned Sessions Judge, Special Court (POCSO Act Cases), Tirunelveli District and set aside the conviction and sentence imposed against the appellant/accused and allow the above appeal by acquitting the accused.

For Appellant : Mr.R.Manickam

For Respondent : Mr.Hasan Mohammed Jinnah,

State Public Prosecutor
assisted by
Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor
Mr.S.Arun Pandi
Ms.P.Jeba Malar

COMMON JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN,J.**)

Death sentence awarded to Muruxxxxxn, Sole Accused in Spl.S.C.No.116 of 2025 dated 30.12.2025 on the file of the learned Sessions Judge, Special Court (POCSO Act Cases), Tirunelveli District dated 30.12.2025, is now before this Court for confirmation under Section 407 of BNSS, in R.T.No.2 of 2026.

2.Muruxxxxxn has also filed appeal in Crl.A.(MD).No.425 of 2026, challenging the conviction and death penalty awarded against him in the above impugned judgment, whereby, he was convicted for offences punishable under Sections 5(l), 5(n), and 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, and Section 351(3) of the Bharatiya Nyaya Sanhita, 2023. The sentence imposed is as follows:

Sl.No	*Offence under Section*	*Punishment*	*Fine*
1	5(l), 5(n), 5(j)(ii) r/w 6 of POCSO Act	Sentence to death and that he shall be hanged by the neck, till he is dead	Rs.20,000/- in default of undergo rigorous imprisonment of three years
2	351(3) of BNS	Sentenced to under three years of rigorous imprisonment	Rs.5,000/- in default to undergo rigorous imprisonment of six months

3.The said appeal has been tagged along with Referred Trial (MD).No.2 of 2026 for confirmation of the death sentence.

4.**Facts of the case:**

The appellant is the sole accused in **Special Sessions Case No. 116 of 2025** on the file of the Learned Judge, Tirunelveli District Special Court under the POCSO Act. The victim girl, examined as **PW1**, is the biological daughter of the accused. **PW2** is the wife of the accused and the mother of the victim. **PW6 and PW7** are the other two children born to the accused and PW2. There are, two female children and one male child for them. After

the marriage of PW7, she is living in her materimonial home. PW2 usually go for agricultural work in the garden of one Muthu, which required her to be away from the house for a considerable period. Taking advantage of the situation and the consequent vulnerability and loneliness of P.W.1 the minor victim, the accused subjected her to repeated **penetrative sexual assault**. The prosecution case further reveals that the accused continuously exploited the victim over a period of time, as a result of which the victim became pregnant. The pregnancy came to light when PW2 noticed some changes in the physical appearance of the victim. On 05.02.2025, PW2 took the victim to the Primary Health Centre at Panangudi, where, upon preliminary examination, the doctor suspected pregnancy and referred the victim to the Government District Hospital, Tirunelveli for further evaluation. On the same day, the victim was admitted to the said hospital. The attending doctor, after conducting examination, confirmed that the victim was pregnant. Thereafter, the statement of the victim was recorded with the consent of her mother (PW2) and intimation was sent to the jurisdictional police. Based on the intimation sent by the hospital, the jurisdictional police visited the hospital on **05.02.2025**, recorded the statement of PW2, and subsequently registered a case in**Crime No. 625 of 2025** for offences under sections5(l),

5(n), 5(j)(ii) r/w 6 of POCSO Act and under section 351(3) the **Bharatiya Nyaya Sanhita (BNS)**. Following due medical procedures and legal formalities, the victim underwent **medical termination of pregnancy**, and she remained in the hospital until **13.02.2025**, after which she was discharged. Upon registration of the FIR (Exhibit P12), the Investigating Officer (PW16) took up the investigation, visited the scene of occurrence, prepared the observation mahazar and rough sketch, examined the victim and other witnesses, and arrested the accused on **06.02.2025** near Muthu garden. The accused was thereafter remanded to judicial custody. Subsequently, the investigation was continued by the succeeding Investigating Officer (PW17), who examined additional witnesses, collected material objects, and forwarded the same for forensic analysis. Further, biological samples of the victim and the accused were collected and sent for **DNA analysis**, through the Forensic Science Laboratory. The DNA report later confirmed the involvement of the accused. Upon completion of investigation, **final report** was filed before the Special Court, which was taken on file as **Special Sessions Case No. 116 of 2025**. Copies of the documents were furnished to the accused under Section230 of BNSS. Charges were framed against the accused, and upon being questioned, he

pleaded not guilty and claimed to be tried.

4.1.**Evidence Adduced by the Prosecution**

In order to substantiate the charges, the prosecution examined PW1-PW 17 and marked documentary exhibits **Exhibits P1- Ex.P35.**

4.2.The victim girl was examined as PW1. She gave a clear, cogent, and consistent account of the acts of **aggravated penetrative sexual assault** committed by the appellant, who is her own father. She specifically deposed that the accused subjected her to repeated sexual assault on several occasions, stating that such acts could be for more than twenty times. She further stated that her date of birth is **28.06.2009** and that she discontinued her studies after completing 8th standard.

4.3.PW2, the mother of the victim and wife of the accused, deposed that the accused married her as his second wife, and through their marriage, two female children and one male child were born. The victim is their second daughter. She stated that the accused had subjected the victim to

sexual assault even before she attained puberty. PW2 further deposed that she was working in a garden owned by one Muthu, during which time the accused used to consume alcohol and behave violently. Upon noticing changes in the physical features of the victim, PW2 took her to the **Primary Health Centre at Panangudi** on **05.02.2025**, where it was found that the victim was carrying a foetus of about 22 weeks. She was thereafter referred to the **Government Hospital, Tirunelveli**, where the victim underwent **medical termination of pregnancy**. Subsequently, PW2 lodged the complaint before the police, leading to registration of the case.

4.4.PW7, the elder sister of the victim, corroborated the testimony of PW2. She stated that the victim was born in the year 2009 and that their mother was working in the garden. She further deposed that upon noticing some health issues developed by the victim, it came to light that the victim was pregnant. According to PW7, the victim disclosed that the accused (their father) had committed repeated acts of sexual assault upon her.

4.5.PW3 was examined to prove the preparation of the **observation mahazar and rough sketch**. She admitted her signature in the observation

mahazar marked as **Exhibit P4**.

4.6.PW4, a neighbour of PW1's family, deposed that the accused had married PW2 as his second wife and that the victim, aged about 15 years, is their daughter. He further stated that he came to know, during police enquiry, that the accused had committed sexual assault on the victim, resulting in her pregnancy, after which she was taken to the hospital.

4.7. PW5 and PW6 were examined to speak about the **arrest and confession** of the accused. Though both witnesses turned hostile and did not support the prosecution case fully, they admitted in their chief examination that they had heard about the accused committing sexual exploitation of the victim.

4.8.PW8, the Headmaster/School Authority of the school where the victim last studied, produced the **admission register**. He deposed that the victim's admission number was **10784**, and as per school records, her date of birth is recorded as **07.06.2011 and** he produced **Exhibit P6** – Extract of Admission Register (Date of Birth), **Exhibit P7 & P8** – Attendance and

related school records and he also produced the original records before the Court to verify the above exhibits.

4.9.PW9, the doctor attached to the **Government Hospital, Tirunelveli**, deposed regarding the admission and treatment of the victim. She confirmed that the victim was pregnant and that **medical termination of pregnancy** was carried out. She further deposed that upon completion of the procedure, no fetus remained in the uterus and she produced **Exhibit P9** and **Exhibit P10, namely, medical records and** Discharge Summary.

4.10.PW10, the doctor who first examined the victim on **05.02.2025**, deposed that the victim was brought for medical examination and was found to be carrying a foetus of about **18 to 20 weeks**. She further recorded the history as narrated by the victim, wherein it was stated that her father, under the influence of alcohol, had subjected her to sexual assault. PW10 obtained the consent of the victim/mother for medical examination and she issued **Exhibit P11 (**Consent form for medical examination) and **Exhibit P12 (**Accident Register (AR) copy/intimation sent to the jurisdictional police)

4.11.PW11, Police constable deposed that he escorted the accused to the **Government Hospital, Tirunelveli**, for medical examination and he marked **Exhibit P13(**Police passport/medical memo) and **Exhibit P14** (Requisition/endorsement letter)

4.12.PW12,another Police constable deposed that she produced the victim before the jurisdictional Magistrate for recording her statement under **Section 183 BNSS (164 Cr.P.C**) and he produced **Exhibit P15(** Passport/requisition for recording 183 BNSS statement)

4.13. PW13/**Sub-Inspector of Police** deposed that upon receiving the intimation from hospital, she proceeded to the hospital, recorded the complaint from PW2 (mother of the victim), and registered the case on **06.02.2025 at 7:30 a.m** and she marked **Exhibit P16(**Express FIR) and he further stated that the FIR was promptly forwarded to the Court and superior officers.

4.14.PW14/ **Medical Officer** deposed that the biological samples collected from the victim were kept in safe custody and were later forwarded to the **Forensic Science Laboratory (FSL)** on **18.03.2025** and she produced **Exhibits P17 & P18**.

4.15.PW15/ **DNA Expert** who conducted the DNA analysis, deposed that the DNA profiling conclusively established that the accused is the **biological father of the fetus** and he produced **Exhibit P21 (**DNA Positive Report).

4.16.P.W.16/First Investigating Officer conducted the investigation from **06.02.2025 to 08.02.2025** and she had Visited the scene of occurrence, Prepared observation mahazar and rough sketch, examined the victim and PW2 and Arrested the accused on 06.02.2025.

4.17.**PW17/Second Investigating Officer** continued the investigation from **08.02.2025 onwards**. She examined remaining witnesses, Collected medical and forensic reports, Sent material objects for

chemical and biological analysis, obtained DNA report and filed the **final report/charge sheet** before the Special Court.

4.18.Examination of Accused 351 BNSS **(Section 313 CrPC)**

After completion of evidence om the side of the prosecution, the accused was examined under 351 BNSS(**Section 313 CrPC**). The accused denied all incriminating circumstances and claimed that the case was false. However, he did not offer any plausible explanation for the evidence against him. No defence witnesses were examined, and no documents were marked on the side of the defence.

4.19.**Trial Court's Findings and Sentencing against the accused**

Upon appreciation of the oral and documentary evidence, the learned Trial Judge found the accused guilty and convicted him on **30.12.2025** for offences under **Sections 5(l), 5(n), 5(j)(ii) read with Section 6 of the POCSO Act And U/S 351(3) of BNS.**

4.19. 1.At the stage of sentencing, the accused pleaded innocence and

sought leniency on the ground that he belongs to a poor family and is the sole breadwinner.

4.19.2.The Trial Court, before imposing sentence, examined **victim (PW1), her Mother (PW2) and Sister (PW7)** and obtained their statements under **Exhibit C2,3,4 and also obtained** Probation Officer's Report under **Exhibit C1.**

4.19.3. The **Probation Officer's Report (Ex.C1)**revealed that:

The accused was a habitual drunkard

He frequently behaved aggressively under the influence of alcohol

He often quarreled with family members and created a hostile domestic environment

4.19.4. The victim and her family members, through their statements,empathatically **urged the maximum punishment** for the accused.

4.20.Conclusion of Trial Court

After considering the consistent testimony of the victim and Corroborative evidence of PW2 and PW7 and Medical and scientific evidence, including DNA report and the aggravating and mitigating circumstances, the victim impact statements, the learned Trial Judge imposed **capital punishment against the Appellant** .

4.21.**Reference Proceedings and Appeal**

After convicting the accused and awarding the sentence of **capital punishment**, the learned Trial Judge, as mandated by law, submitted the entire records of the case for confirmation to this Court under **Section 407 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)**[corresponding to Section 366 CrPC].

4.22.Upon receipt of the records, the Registry of this Court registered the matter as **Referred Trial No. 2 of 2026** and this court issued summons to the accused.

4.23.Though summons were duly served, the accused did not appear either in person or through counsel and contested the reference. . Hence, he was called to appear through **video conferencing from the prison and on his appearence,w**hen this Court interacted with the accused, he expressed his desire to avail legal assistance.

4.24.Considering the same, this Court appointed **Mr. R. Manikam**, an advocate with more than 20 years of standing at the Bar, particularly in criminal law, as **Legal Aid Counsel** to represent the accused. This Court, upon satisfying itself about his competence and experience, entrusted him with the onerous duty of arguing the case.

4.25.All relevant case records and documents were furnished to the learned Legal Aid Counsel. Further, this Court directed the concerned authorities to extend necessary assistance to the counsel to effectively represent the accused.

4.26.Thereafter, the learned Legal Aid Counsel, upon careful examination of the records, preferred an appeal challenging both the **conviction and sentence**, which was taken on file as **Criminal Appeal No. 42 of 2026**.

4.27.Both the **Referred Trial** and the **Criminal Appeal** were taken up together for hearing. As per settled practice, the learned **State Public Prosecutor** was directed to represent the prosecution in the reference proceedings.

4.28.The matters were posted for final hearing, and on **07.04.2026**, this Court heard the learned **State Public Prosecutor** appearing for the State; and the learned **Legal Aid Counsel** appearing for the appellant/accused. Both sides advanced **detailed and elaborate submissions** on the question of conviction as well as about the sentence imposed by the Trial Court.

5.**Submissions of the learned State Public Prosecutor:**

The learned State Public Prosecutor, assisted by the learned Additional Public Prosecutor, Mr.Anthony Sahaya Prabhakar, advanced elaborate submissions. This Court also heard, at length, the learned counsel appearing for the appellant.

5.1.The learned Public Prosecutor would submit that the prosecution has conclusively established the charges framed against the appellant under Sections 5(l), 5(n), 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, as well as under Section 351(3) of the Bharatiya Nyaya Sanhita, 2023. It is contended that all the aforesaid charges have been proved beyond reasonable doubt through the cogent and consistent evidence of the victim and other prosecution witnesses.

5.2.Elaborating his submissions, the learned State Public Prosecutor took this Court through the entire oral and documentary evidence. He would submit that P.W.1, the victim, has clearly and categorically deposed about the repeated acts of penetrative sexual assault committed upon her by the

appellant. Despite incisive cross-examination, nothing has been elicited to discredit or dislodge her testimony. It is further submitted that the testimony of P.W.1 stands amply corroborated by medical evidence as well as scientific evidence, including the DNA analysis. The doctor who examined the victim and conducted the medical termination of pregnancy has deposed that the victim was carrying a foetus of about 18–20 weeks. The prosecution has also established that blood samples of the accused were collected on 17.09.2025 and forwarded to the Forensic Science Laboratory on 23.09.2025. The expert (P.W.15) has spoken about the DNA analysis report, which conclusively establishes the paternity, thereby corroborating the prosecution case.

5.3.The learned State Public Prosecutor would further contend that the offence of criminal intimidation has also been clearly established through the evidence of P.W.1, who has deposed that the appellant repeatedly threatened her not to disclose the acts of sexual assault to anyone. Referring to the evidence of P.W.2, the mother of the victim, it is submitted that she has corroborated the version of P.W.1 in material particulars. According to the prosecution, the victim had informed P.W.2

about the repeated sexual assaults and the threats of the appellant, who had taken advantage of her absence from the house. The testimony of P.W.2 has also withstood cross-examination, and nothing has been elicited to doubt her credibility.

5.4.The learned State Public Prosecutor would emphasize that the evidence of P.Ws.1 and 2 is cogent, trustworthy, mutually corroborative, and free from material contradictions. It is further submitted that there is no suggestion or material to indicate any false implication or motive for framing a false case against the appellant.

5.5.On the aspect of sentence, the learned State Public Prosecutor would submit that the learned trial Judge has made an elaborate analysis in paragraph Nos.73 to 115 of the impugned judgment, wherein the Court has considered the entire evidence on record, examined the applicable legal principles laid down by the Hon'ble Supreme Court, and evaluated the aggravating and mitigating circumstances. It is submitted that the trial Court has also obtained the necessary reports, including that of the Probation

Officer, before arriving at its conclusion.

5.6.It is the further submission of the learned State Public Prosecutor that the nature of the offence—being repeated aggravated penetrative sexual assault by a father upon his own minor daughter, resulting in pregnancy—constitutes an extremely grave and heinous crime. The appellant is also stated to have repeatedly intimidated the victim from disclosing the incident. In such circumstances, the learned trial Judge, having found that the case falls within the category warranting the highest punishment, has rightly imposed the sentence of death.

5.7.Accordingly, it is contended that, having regard to the gravity of the offence and the manner in which it was committed, no interference is warranted either with the conviction or with the sentence imposed by the trial Court.

6.**Submissions of the learned counsel appearing for the accused:**

The learned counsel appearing for the appellant/accused would submit that the prosecution has failed to establish the charges framed against the appellant beyond reasonable doubt. It is contended that the appellant had, in fact, questioned the conduct of the victim and had advised her to refrain from keeping inappropriate associations, which, according to the defence, led to the institution of a false case against him. On this premise, it is argued that the allegation of repeated aggravated penetrative sexual assault is wholly unsubstantiated.

6.1.The learned counsel would further point out certain alleged contradictions in the prosecution case, particularly with regard to the aspect of criminal intimidation and the existence of frequent domestic quarrels between the appellant and his wife, purportedly arising out of suspicion regarding her character. It is also submitted that there is an unexplained delay in the registration of the First Information Report, and that the prosecution has failed to specify precise dates and times of the alleged occurrences of sexual assault.

6.2.It is the further submission of the learned counsel that there is no independent corroborative evidence to support the version of the victim. The prosecution, according to him, rests solely on the testimony of interested witnesses, which, in the absence of independent corroboration, ought to be viewed with caution.

6.3.With regard to the scientific evidence, the learned counsel has raised doubts concerning the DNA analysis. It is submitted that there are discrepancies in the time line relating to the collection and forwarding of samples. According to the defence, the foetal samples were sent for analysis earlier, whereas the blood samples of the accused were collected only on 17.09.2025 and thereafter forwarded to the laboratory, reaching it on 23.09.2025. The delay in collection and transmission of samples, according to the learned counsel, has not been satisfactorily explained, thereby creating a serious doubt as to the credibility and worthiness of DNA analysis.

6.4.It is further argued that the DNA test, having been conducted using the blood sample of the appellant, who is the biological father of the victim, would naturally show a genetic match, and therefore, such evidence cannot be treated as conclusive proof of paternity in the context of the alleged offence.

6.5.The learned counsel would also submit that there is no reliable medical evidence to conclusively establish that the pregnancy of the victim was the result of any act committed by the appellant.

6.6.On the question of sentence, the learned counsel has made elaborate submissions contending that the imposition of the death penalty is unwarranted. Referring to the report of the Probation Officer, it is submitted that the appellant is addicted to alcohol and tends to exhibit unstable and aggressive behaviour under its influence, often leading to quarrels within the family and neighbourhood. According to the defence, such conduct reflects a lack of self-control rather than any ingrained criminal propensity.

6.7.It is further submitted that the appellant has no prior criminal antecedents and that there are no allegations of similar offences in the past. In such circumstances, it is contended that the case does not fall within the category warranting imposition of capital punishment.

6.8.The learned counsel would argue that the trial Court has failed to properly apply the settled principles laid down by the Hon'ble Supreme Court governing the imposition of the death penalty, particularly the "rarest of rare" doctrine and the requirement of balancing aggravating and mitigating circumstances. It is submitted that the trial Court has not undertaken a proper sentencing analysis in accordance with the established guidelines. On these grounds, the learned counsel has prayed for setting aside the conviction and sentence, or in the alternative, for commutation of the death sentence to a lesser punishment.

7.**Scope and Duty of the High Court in Death Sentence Reference:**

The present matter arises out of a reference made by the learned trial Judge for confirmation of the death penalty imposed upon the appellant by

the impugned judgment. In a case of reference for confirmation of death sentence under**Section 407 of the Bharatiya Nagarik Suraksha Sanhita, 2023**(corresponding to Section 366 of the Code of Criminal Procedure, 1973), this Court is duty-bound to strictly adhere to the statutory mandate and the settled principles laid down by the Hon'ble Supreme Court. The provisions governing such reference are contained in **Sections 407 to 412 of the BNSS, 2023**, which correspond to **Sections 366 to 371 of the CrPC, 1973**, and earlier to Sections 374 to 381 of the CrPC, 1898. The language of Sections 374 to 381 of the CrPC, 1898, Sections 366 to 371 of the CrPC, and Sections 407 to 412 of the BNSS, 2023 are similar without any material change and hence, this Court is extracting the provisions of Sections 407 to 412 of the BNSS, 2023 hereunder:

Sections	*Contends of Section*
407	When the Court of Session passes a sentence of death, the proceedings shall forthwith 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.

408.	(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session. (2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken. (3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.
409.	In any case submitted under section 407, the High Court— (a) may confirm the sentence, or pass any other sentence warranted by law, or (b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or (c) may acquit the accused person: Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.
410.	In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.
411.	Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 433
412.	In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send either physically, or through electronic means, a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

8.Principles Laid Down by the Hon'ble Supreme Court:

The law on the scope of confirmation proceedings is no longer *res integra*. It is well settled that, in a reference under **Sections 407 to 412 of the BNSS, 2023**, which correspond to **Sections 366 to 371 of the CrPC, 1973**, and earlier to **Sections 374 to 381 of the CrPC, 1898**, the High Court has a statutory as well as constitutional obligation to scrutinize the entire material, both on facts and law, uninfluenced by the conclusions of the trial Court, and to satisfy itself *whether the conviction is sustainable* and whether the case falls within the category of the *"rarest of rare" warranting imposition of capital punishment*

8.1.In the case of ***Masalti v. State of Uttar Pradesh***, a Bench of Four Judges of the Hon'ble Supreme Court and a bench of three Judges the Hon'ble Supreme Court in the case of ***State of T.N. v. Rajendran*, (1999) 8 SCC 679** and **AIR 1977 SC 2046,** have held as follows:

AIR 1965 SC 202	8. ...Section 374 provides that the sentence of death shall not be executed unless it is confirmed by the High Court. In other words, the sentence of death imposed by the Court of Sessions is not effective until and unless it is confirmed by the High Court. It is only when the High Court confirms the sentence of death that it is capable of execution. That is why this Court emphasised the solemnity of the proceedings brought before the High Court under Section 374, and it pointed out that under Section 375, the High Court is given the power to admit additional evidence if it thinks necessary to do so. Proceedings brought before the High Court for confirmation of a death sentence give a right to the condemned prisoner to be heard on the merits and to require the High Court to consider the matter for itself without being influenced by the conclusions recorded by the Court of Session. The conclusions of the High Court on the merits in such proceedings must be independent, and so, the High Court inevitably has to go into the whole of the evidence, consider all the pros and cons of the case and satisfy itself that the offence charged under Section 302 IPC is established beyond reasonable doubt and the sentence of death submitted to it for its confirmation is fully justified.

State of T.N. v. Rajendran, (1999) 8 SCC 679	5..... When a reference is made to the High Court under Section 366 of the Code of Criminal Procedure by the learned Sessions Judge on passing a sentence of death, the High Court has to satisfy itself whether a case beyond reasonable doubt has been made out against the accused for infliction of the extreme penalty of death. The proceedings before the High Court in such a case require a reappraisal and reassessment of the entire facts and law so that it can come to its independent conclusion but while so doing, the High Court cannot also totally overlook the conclusion arrived at by the learned Sessions Judge. In performing its duty, the High Court is of necessity bound to consider the merits of the case itself and has to examine the entire evidence on record. The legislature having provided in the confirmation proceedings, a final safeguard of the life and liberty of the subject in cases of capital sentences, the duty of the High Court becomes more onerous to consider independently the matter carefully and examine all relevant material evidence and come to a conclusion one way or the other. It is, therefore, the duty of the High Court in a death reference to consider the evidence afresh. If the impugned judgment of the High Court is scrutinised bearing in mind the aforesaid parameters, the conclusion becomes irresistible that the High Court as a court of appeal has failed to exercise its power under Section 386 of the Code of Criminal Procedure and instead of discharging its bounden duty to examine the evidence and other materials on record and without appreciating the same, it has merely on surmises and conjectures come to the conclusion that the accused is entitled to the benefit of doubt. In our considered opinion, the aforesaid conclusion cannot be sustained. Not only has there been an infraction of the duty and obligation of the appellate court but also such infraction has caused a gross miscarriage of justice.

8.2.From the above reading of the provisions and reiterated principles

of Hon'ble Supreme Court the confirmation proceedings of death sentence impose a dual and heightened responsibility upon the High Court and the High Court must independently examine whether *the guilt of the accused* has been proved beyond reasonable doubt, based on the entire evidence on record and only upon being fully satisfied about the correctness of the conviction, the Court must further to determine whether the present case falls within the category warranting **extreme penalty of death.** This Court went through principles governing capital punishment in the following cases:

Sl. No	***Case Laws***	***Citations***
1	Bachan Singh v. State of Punjab,	(1980) 2 SCC 684
2	Machhi singh vs, State of Punjab	(1983) 3 SCC 470
3	Bhagwani v. State of M.P.,	(2022) 13 SCC 365
4	Hari v. State of U.P.,	(2021) 17 SCC 111
5	Ravishankar v. State of M.P.,	(2019) 9 SCC 689
6	Shatrughna Baban Meshram v. State of Maharashtra,	(2021) 1 SCC 596
7	Shiva Kumar v. State of Karnataka,	(2023) 9 SCC 817
8	Rajendra Pralhadrao Wasnik v. State of Maharashtra,	(2012) 4 SCC 37
9	Shankar Kisanrao Khade v. State of Maharashtra,	(2013) 5 SCC 546
10	Rajendra Pralhadrao Wasnik v. State of Maharashtra,	(2019) 12 SCC 460
11	Sangeet v. State of Haryana,	(2013) 2 SCC 452

12	Harendra Rai v. State of Bihar,	(2023) 13 SCC 563
13	Manoj Pratap Singh v. State of Rajasthan,	(2022) 9 SCC 81
14	Bhagchandra v. State of M.P.,	(2021) 18 SCC 274
15	Mohd. Mannan v. State of Bihar,	(2019) 16 SCC 584
16	State of T.N. v. Rajendran,	(1999) 8 SCC 679
17	Ram Deo Prasad v. State of Bihar,	(2013) 7 SCC 725
18	Masalti v. State of U.P.,	1964 SCC OnLine SC 30
19	Mohd. Arif vs Supreme Court of India	2014 9 SCC 737
20	**Ram Deo Prasad v. State of Bihar,**	**(2013) 7 SCC 725**
21	**Bhagwani v. State of M.P.,**	**(2022) 13 SCC 365**
22	**Mohd. Mannan v. State of Bihar,**	**(2019) 16 SCC 584**
23	**Ravishankar v. State of M.P.,**	**(2019) 9 SCC 689**
24	**Rajendra Pralhadrao Wasnik v. State of Maharashtra,**	**(2019) 12 SCC 460**
25	**Swamy Shraddananda (2) v. State of Karnataka,**	**(2008) 13 SCC 767**
26	**Union of India v. V. Sriharan,**	**(2016) 7 SCC 1**
27	**Shatrughna Baban Meshram v. State of Maharashtra,**	**(2021) 1 SCC 596**
28	**Sandesh v. State of Maharashtra,**	**(2013) 2 SCC 479**
29	**Sangeet v. State of Haryana,**	**(2013) 2 SCC 452**
30	**Ramnaresh v. State of Chhattisgarh,**	**(2012) 4 SCC 257**

9.Apart from the reference, this Court is also required to adjudicate upon the appeal preferred by the appellant under Section 427 BNSS(386 Cr.P.C.) Thus, in exercise of its appellate as well as confirmatory jurisdiction, this Court is duty-bound to independently evaluate the evidence

and determine:

(i) whether the prosecution has proved the charges framed against the accused beyond reasonable doubt; and

(ii) whether the sentence of death imposed by the trial Court is justified in law.

10.Having regard to the irreversible nature of the death penalty and its direct bearing on the fundamental right to life and personal liberty, this Court is required to bestow proper and meticulous appreciation while considering the evidence and law.

11.Accordingly, this Court has carefully perused the entire oral and documentary evidence adduced before the trial Court. Before embarking upon the appreciation of evidence, it is necessary to advert to the nature of the charges framed against the appellant under the relevant provisions of the Protection of Children from Sexual Offences Act, 2012, and the Bharatiya Nyaya Sanhita, 2023. The charges under Sections 5(l), 5(n), and 5(j)(ii) r/w

6 of the POCSO Act and 351(3) of BNS have been framed and substances of framed charges are as follows:

> ***The accused, father of the victim aged 14 years allegedly committed penetrative sexual assault repeatedly and the victim became pregnant and she had undergone medical termination.***

12.To consider whether the prosecution has proved the charged offence under Sections 5(n), 5(l), 5(j), (ii) of POCSO Act, 2012, it is relevant extract to following provisions of the POCSO Act:

Section	***Contents of the Section***
Section 5(n) of POCSO Act	***Whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child.***
Section 5(l) of POCSO Act	***Whoever commits penetrative sexual assault on the child more than once or repeatedly***
Section 5(j)(ii) of POCSO Act	In the case of female child, makes the child pregnant as a consequence of sexual assault.
Section 29 of the Act	***Presumption as to certain offences:*** Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Section 30 of the Act	***Presumption of culpable mental state:*** *(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.* (2)For the purposes of this Section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. ***Explanation In this Section, "culpable mental state' includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.***

*13.*In compliance with above provisions, before drawing Presumption under section 29 of pocso act , the following foundation facts as essential ingredients of the offences under Sections 5(l), 5(n), and 5(j)(ii) of the POCSO Act must be established by the prosecution through legally admissible *and reliable evidence:*

13.1.The victim is a child within the meaning of the POCSO Act, being admittedly underage at the time of occurrence.

13.2.Whether the prosecution proved charged offence under Sections 5(n), 5(l), 5(j), (ii) of POCSO Act, 2012 and u/s 351(3) of BNS beyond reasonable doubt against the appellant?

14.Proof of age:

The date of birth of the victim is 07.06.2011. The prosecution has asserted that the victim was about 13 years at the time of occurrence. To substantiate the same, the Headmaster of the school (P.W.8) was examined. He deposed that the victim's admission number was **10784**, and as per school records, her date of birth is recorded as **07.06.2011 and also** produced **Exhibit P6 (**Extract of Admission Register -Date of Birth) and **Exhibit P7 & P8 (**Attendance and related school records) along with the original records for verification. The said documents were marked without objection and nothing has been elicited in the cross-examination of P.W.8 to discredit the authenticity of the school records. Victim clearly deposed her date of birth as 07.06.2011. Her mother affirmatively stated that her age on the date of occurrence was 14. No contra evidence on the side of accused was either produced or elicited through cross examination of prosecution witnesses. The evidence of P.W.1 (victim), P.W.7 (sister), and P.W.8 (Headmaster), read along with the documentary evidence (Exs.P2, P6, and related records), consistently established that the victim was a minor. Accordingly, this Court finds that the prosecution has satisfactorily proved

that the victim was below the age of 18 years, attracting the provisions of the POCSO Act.

15.Discussion on testimony of victim:

With regard to the allegation of penetrative sexual assault, the testimony of the victim assumes significance. victim is the younger daughter of the accused. She had discontinued her studies and was staying with accused, mother and younger brother in village ' **AA**'. The elder daughter had been given in marriage and was living in her matrimonial home. The evidence on record further discloses that the appellant had contracted a second marriage with P.W.2, the mother of the victim. P.W.2 was employed as a labourer in a garden, and she would frequently leave the house for work. It has also come in evidence that she, along with her son (the brother of the victim), used to attend church prayer on several occasions. Taking advantage of such absence and the consequent isolation of the victim, the appellant subjected the child to repeated acts of penetrative sexual assault. P.W.1, the victim girl, has consistently stated both in her statement recorded under Section 183 BNSS(164 Cr.P.C). before

the learned Judicial Magistrate and in her deposition before the trial Court that the appellant, being her father, repeatedly committed penetrative sexual assault on her. She specifically deposed that the accused subjected her to repeated sexual assault on numerous occasions, stating that such acts were committed more than twenty times. As a consequence of such acts, she became pregnant and most specifically the acts of sexual assault committed upon her by the appellant on numerous occasions taking advantage of her loneliness and absence of her mother and brother. Her evidence is cogent, credible and trustworthy and this court firmly holds that her testimony itself is sufficient to hold the accused guilty even in the absence of independent corroboration. The victim (P.W.1), in her deposition, has categorically stated that on each such occasion, when she resisted or attempted to disclose the acts, the appellant criminally intimidated her by threatening that she would be killed if she revealed the same to anyone. The victim has further deposed that the appellant committed such acts on numerous occasions, approximately more than twenty times. Her testimony reveals a consistent pattern of abuse coupled with intimidation. It is the further case of the prosecution that, at one point, the victim developed physical ailments, prompting P.W.2 to take her to the Government Hospital at Panangudi.

Upon medical examination, it was found that the victim was carrying a foetus of approximately five months. She was thereafter referred to the Government Hospital, Tirunelveli, for further examination and management.

15.1.During her hospitalization, information was conveyed to the police, and upon inquiry, the victim disclosed that the appellant/ her father had subjected her to repeated sexual assault, resulting in pregnancy. Following due medical procedure, termination of pregnancy was carried out, and biological samples, including that of the foetus, were collected. P.W.14, the Doctor, has clearly deposed that she examined the victim and conducted the abortion in accordance with the prescribed legal procedures. She has further stated that the aborted foetus was preserved and sent for scientific examination. Despite being subjected to cross-examination, nothing has been elicited to discredit her testimony. Her evidence clearly establishes both the pregnancy and the lawful termination thereof. Importantly, no material contradiction or infirmity has been brought out in the cross-examination of this witness. Further, P.W.16, the Sub-Inspector of Police, has spoken about the registration of the case based on hospital intimation and the recording of the victim's statement. P.W.17, the Investigating

Officer, has deposed in detail regarding the investigation, including obtaining the blood sample of the accused after due permission from the competent authority and forwarding the same for DNA analysis. P.W.15, the Forensic Science Laboratory (FSL) expert, has categorically deposed that DNA analysis was conducted and the report, marked as Ex.P21, confirmed that the DNA profile of the accused matched with that of the foetus. During the examination under Section 313 Cr.P.C., the accused has merely denied the incriminating circumstances and has not offered any plausible explanation, particularly with regard to the conclusive DNA evidence.Therefore, this scientific evidence conclusively establishes that the appellant is the biological father of the foetus. Accordingly, this court holds that the charges under Sections 5(l), 5(n), and 5(j)(ii) of the POCSO Act, have been clearly established through the cogent and reliable evidence of P.W.1, the victim, which is duly corroborated by medical and scientific evidence.

15.2.The learned counsel for the appellant contended that there was a delay in collecting the blood sample of the accused (on 17.09.2025) and hence the DNA analysis is unreliable. This Court is unable to accept the said

contention. Firstly, no such suggestion was effectively put to the concerned medical or forensic experts during cross-examination.With regard to the scientific evidence, it is established that the foetal sample was forwarded for DNA analysis on 14.03.2025. Subsequent to the arrest of the appellant, his blood sample was collected on 17.09.2025 and forwarded to the Forensic Science Laboratory. The expert (P.W.15) has deposed that, upon analysis, the DNA profile established a positive match, thereby indicating that the appellant is the biological father of the foetus.

15.3.In view of the above evidence, this Court finds that the testimony of the victim is cogent, credible, and inspires confidence. The same is amply corroborated by medical evidence as well as scientific (DNA) evidence.

15.4.Secondly, the evidence on record shows that the foetus was properly preserved, handled, and subjected to DNA testing in accordance with established procedures. The positive DNA result cannot be discarded merely on the ground of delay in sample collection, in the absence of any

material to show tampering or procedural irregularity. Thus, this Court finds that there is no lapse in the investigation affecting the core of the prosecution case. Accordingly, this Court holds that the prosecution has discharged its initial burden of proving the foundational facts. Consequently, the statutory presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012, stands attracted, whereby the Court shall presume that the accused has committed the offence unless the contrary is proved. The burden therefore shifts upon the accused to rebut the presumption. Section 30 of POCSO Act , in particular, places a higher degree of responsibility on the accused to prove absence of culpable mental state, which he has failed to do. The appellant has neither adduced any evidence nor elicited any material in cross-examination to rebut the said presumption. There is a complete absence of any plausible explanation or defence to dislodge the presumption.

15.5.Therefore, this Court finds that the prosecution has successfully established all the essential ingredients of the offences under Sections 5(l), 5(n), and 5(j)(ii) read with Section 6 of the POCSO Act and section 351(3) of BNS. Accordingly,the prosecution has proved the guilt of the accused

beyond reasonable doubt and the finding of conviction recorded by the trial Court does not warrant interference and Accordingly, this Court concurs with the finding of conviction recorded by the learned trial Judge for the offences charged.

16.Discussion on the sentence:

The next question that arises for consideration is whether the present case warrants the imposition of capital punishment. The principal question that arises for consideration is whether the imposition of capital punishment upon the appellant is justified in the facts and circumstances of the present case. For better understanding and discussion, it is relevant to extract section 5 and 6 of POCSO Act:

5.**Aggravated penetrative sexual assault.—**

(a) Whoever, being a police officer, commits penetrative sexual assault on a child —

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of

custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using

deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which —

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks;

[(iv) causes death of the child; or]

(k) whoever, taking advantage of a child's mental or physical

disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of 1 [communal or sectarian violence or during any natural calamity or in similar situations]; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

17. Section 6 : **Punishment for aggravated penetrative sexual assault.—**

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life,

which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

18.It is true that the statutory framework under the Protection of Children from Sexual Offences Act, 2012, as amended in 2019 permits imposition of the death penalty in appropriate cases of aggravated penetrative sexual assault. However, such statutory permissibility is subject to the constitutional limitations and judicially evolved principles governing capital sentencing. Therefore it is necessary to recapitulate the settled principles governing the award of death penalty as laid down by the Hon'ble Supreme Court In ***Bachan Singh v. State of Punjab***, The Constitution Bench authoritatively held that death penalty can be imposed only in the "rarest of rare" cases, where the alternative option of life imprisonment is unquestionably foreclosed. The Apex Court emphasized that life imprisonment is the rule and death penalty is an exception, to be resorted to

only when the circumstances of the crime are so exceptional that no other punishment would suffice. The said principle was further elaborated in ***Machhi Singh v. State of Punjab***, wherein the Hon'ble Supreme Court laid down broad categories and guiding factors for identifying cases that may fall within the "rarest of rare" doctrine, including the manner of commission of the crime, the motive, the magnitude of the offence, and the personality of the victim. In subsequent decisions, the Hon'ble Supreme Court has consistently reiterated the necessity of a balanced consideration of aggravating and mitigating circumstances, and has cautioned against mechanical imposition of the death penalty. The jurisprudence has progressively evolved to mandate a principled sentencing inquiry, often referred to as the "crime test" and the "criminal test", followed by the "rarest of rare" test.

18.1.Recent pronouncements after*Mohd. Arif vs Supreme Court of India.* have further emphasized a more cautious and restrained approach in awarding capital punishment, particularly requiring courts to consider the possibility of reformation and rehabilitation of the accused, as well as the adequacy of alternative punishments such as life imprisonment for the

remainder of natural life. It is also pertinent to note that even in cases involving offences under the POCSO Act, including those coupled with extreme aggravating factors, the Hon'ble Supreme Court has, in appropriate cases, commuted the death sentence to imprisonment for life till the end of natural life, upon finding that the case did not satisfy the stringent threshold of the "rarest of rare" category.

18.2. Under the amended provisions of Section 5 of the Protection of Children from Sexual Offences Act, the legislature has expansively enumerated more than twenty-six categories of aggravated penetrative sexual assault, with a view to comprehensively addressing and curbing the manifold forms of sexual exploitation of children. The provision is thus deliberately structured to capture not merely conventional forms of abuse, but also those aggravated situations arising out of relationship, authority, vulnerability, and circumstances of the victim. Correspondingly, Section 6 of the Act prescribes a graded, three-tier sentencing framework, thereby equipping the Court with the discretion to impose punishment proportionate to the gravity and particularities of the offence. Broadly, cases falling under Section 6 of the Act may be classified into three categories:

Category (A) — cases warranting minimum sentence of twenty years

Category (B) — cases justifying rigorous imprisonment for life, including imprisonment for the remainder of the natural life of the convict; and

Category (C) — the exceptional class of cases falling within the "rarest of rare" doctrine, where the death penalty alone would meet the ends of justice.

18.3.The statutory framework provides for death penalty across multiple categories without the accompaniment of sufficiently crystallised statutory guidelines and the application of capital punishment under the POCSO regime has not yet been comprehensively guided by authoritative pronouncements of the Apex Court. In this backdrop, this Court makes a conscious and cautious endeavour to delineate the circumstances under which capital punishment may justifiably be imposed.

18.4.The statutory scheme itself reflects a graded sentencing structure —beginning with a minimum sentence of twenty years, extending to imprisonment for the remainder of the natural life of the offender, and, in

the rarest cases, culminating in the death penalty. This hierarchy unmistakably positions capital punishment as a measure of last resort. Therefore, the imposition of the death penalty cannot be mechanical or routine. It must be reserved for the gravest and most exceptional cases where the alternative punishments are unquestionably inadequate. The difficulty in formulating rigid sentencing guidelines has already been underscored by the Constitution Bench in ***Bachan Singh v. State of Punjab*** *reported in* ***(1980) 2 SCC 684***, as well as in subsequent decisions, which caution against straitjacket formulae in matters involving the ultimate death penalty.

18.5.It is true that a three-Judge Bench of the Honourable Supreme Court, in ***Sandurguna Baban Meshram v. State of Maharashtra*** *reported in* ***(2021) 1 SCC 596***, undertook a detailed consideration of the amended provisions and held that the application of Section 376A, even from the date of the Ordinance, does not offend Article 20(3) of the Constitution. Honourable Supreme Court has collated the total number of death penalty cases of 40 years and observed as follows;

35.1.*Out of these 67 cases, this Court affirmed the award of death sentence to the accused in 15 cases. In three (at Sl. Nos. 26-A, 33-A and 41-A) out of said 15 cases, the death sentence was commuted to life sentence by this Court in review petitions. Out of remaining 12 cases, in two cases (where review petitions were heard in open court in terms of law laid down in Mohd. Arif v.Supreme Court of India[Mohd. Arif v. Supreme Court of India, (2014) 9 SCC 737 : (2014) 5 SCC (Cri) 408]), namely, in cases at Sl. Nos. 51-A and 65-A, the death sentence was confirmed by this Court and the review petitions were dismissed. Thus, as on date, the death sentence stands confirmed in 12 out of 67 cases where the principal offences allegedly committed were under Sections 376 and 302 IPC and where the victims were aged about 16 years or below*

35.2.*Out of these 67 cases, at least in 51 cases the victims were aged below 12 years. In 12 out of those 51 cases, the death sentence was initially awarded. However, in 3 cases (at Sl. Nos. 26-A, 33-A and 41-A) the death sentence was commuted to life sentence in review.*

35.3.*In 2 out of aforesaid 67 cases (at Sl. Nos. 58 and 67), the offences were committed on 23-2-2015 and 22-5-2015 respectively i.e. after the Amendment Act received the assent of the President and was published on 2-4-2013 (but given retrospective effect from 3-2-2013). The conviction was also under Section 376-A IPC and the evidence showed specific acts such as drowning the*

victim or throttling her. In the first case, the age of the victim was 5 years while in the second case the victim was aged 13 years. In the first case the sentence imposed by this Court was 25 years of imprisonment without remission while in the second, the life sentence for the remainder of the life of the accused, was imposed.

19. Finally in that case, the Hon'ble Court ultimately commuted the sentence from death to life imprisonment by applying the settled principles governing sentencing under the pre-amended legal framework. Interestingly in the case of ***Manoharan v. State***, reported in ***(2020) 5 SCC 782***, the Hon'ble Supreme Court has taken the amendment 2019 to confirm the death penalty.

20.Criminal adjudication involving the *Capital punishment* contemplates two stages VIZ: t*he* ***stage of conviction*** and *the* ***stage of sentencing***. At the stage of conviction, the prosecution bears the heavy burden of proving guilt beyond reasonable doubt. At the stage of sentencing the burden assumes an even graver dimension. It is a settled principle that before imposing the death penalty, the Court must arrive at a

clear and unequivocal conclusion that **life imprisonment is manifestly inadequate**.In this regard, the Constitution Bench in Union of India v. V. Sriharan @ Murugan authoritatively recognised the Court's power to impose a modified form of life imprisonment—either for a fixed term beyond remission or extending till the end of the natural life of the convict. This doctrinal development provides courts with a constitutionally sound alternative between standard life imprisonment and capital punishment.In this context, a meaningful jurisprudential distinction must be drawn between the **death penalty** and **imprisonment for the remainder of natural life:**

Death penalty	Life imprisonment till natural Deat
Death penalty as a final act — immediate, absolute, and irreversible. It ends not just the person's life, but also any future moral evolution: no repentance, no remorse, no transformation.	Life imprisonment (till natural death) as a process — ongoing, reflective, and psychologically enduring. It forces the individual to live with what they've done, potentially experiencing guilt, regret, or even moral awakening over time.

From above , it is clear that the death penalty is final, immediate, and irreversible. It extinguishes not only life but also the possibility of repentance, remorse, or moral transformation. It brings certainty, but at the cost of foreclosing any future reckoning.By contrast,life imprisonment till the end of natural life is a different jurisprudential instrument. It is a living

punishment and sterner justice and a continuing process of accountability. Furthermore, where the death penalty closes the book, life imprisonment forces the offender to read every page, again and again, for the rest of their natural existence. .It is a condition and a continuum. It allows for the slow-burning fire of realisation, where guilt may deepen, remorse may emerge, and the weight of one's actions may be felt with increasing intensity.It condemns the convict to a ceaseless confrontation with his crime, a lifelong dialogue with his own conscience, an unending expiation in the solitude of incarceration. It compels the offender to live with the consequences of his actions, to endure the passage of time within the confines of incarceration, and to confront, day after day, the weight of his crime and simultaneously ensuring that the offender remains permanently excluded from society and resultanely, within the solitude of incarceration, time itself becomes the medium of punishment, stretching endlessly and compelling reflection. Therefore, this Court is persuaded to observe that this **living punishment of** Life imprisonment till natural Death to consider an alternative sentencing philosophy rooted in what may be described as the "enduring retributive effect" of punishment as such a sentence is not a lenient alternative, but rather a more enduring and severe form of

punishment with following intensity of suffering:

(i) ensures prolonged deprivation of liberty and compels the offender to endure the consequences of his actions every single day.

(ii) imposes a continuous psychological burden, forcing the convict to live with the weight of his crime throughout his lifetime

(iii) remains alive to reckon with their past

20.1.Therefore the legislature in its wisdom prescribed the punishment of imprisonment for life for the remainder of natural life in a case which warrants punishment more severe than the statutory minimum, yet does not satisfy the rigorous threshold of the "rarest of rare" doctrine as a calibrated sentencing structure by the way amendment 2019 to Section 6 of **Protection of Children from Sexual Offences Act, 2012.** Section 6 prescribes a minimum sentence of twenty years' rigorous imprisonment, extends to imprisonment for life (which may mean incarceration for the remainder of natural life), and reserves the death penalty for the most extreme cases. This tripartite structure demonstrates that capital punishment is intended not as a norm, but as a measure of last resort.In adjudicating offences under the POCSO Act, the Court must proceed with heightened sensitivity. The crime is abhorrent, the victim vulnerable, and societal

outrage intense. Yet, justice cannot be allowed to award of death sentencing mechanical manner. In the absence of specific post-amendment guidelines from the Honourable Supreme Court, and having regard to the legislative intent underlying the Protection of Children from Sexual Offences Act, this Court has undertaken an exercise to analyse the various categories of offences enumerated under Section 5 of the Act. Based on such analysis, this Court has endeavoured to identify, within the framework of the statute, the circumstances under which (i) the minimum fixed term of 20 years ought to be imposed, (ii) the sentence of life imprisonment extending to the remainder of natural life would be warranted, and (iii) the extreme penalty of death may be justified.

21.**Discussion on section 5(a, b, c,d, e, f) of POCSO Act :**

The sections **5(a, b, c,d, e, f)** of POCSO Act pertaining to Aggravated penetrative sexual assault on the part of police officer, armed forces or security forces , public servant, authorities of jail, remand home, protection home, observation home, or other place of custody or care, the management or staff of a hospital and the management or staff of an educational institution or religious institution.

21.1. Children in the custody of Police officers, members of the armed and security forces, and all public servants—including authorities in jails, remand homes, protection homes, observation homes, as well as the management and staff of hospitals, educational institutions, and religious institutions are in a state of total legal and physical dependency. They have no freedom of movement and no way to escape their captors. Therefore, Police officers, custodians of law and order; members of the armed and security forces, defenders of the nation; and every public servant entrusted with the care of children in jails, remand homes, protection homes, observation homes, hospitals, educational and religious institutions are a symbol of state protection and law enforcement and they closely interact with the public and they are standing in a position of heightened responsibility with respect to the welfare and protection of children and they are not mere functionaries of the State, but fiduciaries entrusted with the care, safety, and dignity of the most vulnerable and they are the State's human face, ordained to shield the tender and the vulnerable. A child in custodial or institutional care is not a chattel subject to authority; the child is a constitutional promise in flesh and blood. Therefore, the law, with anxious solicitude, such authorities not merely have a duty of care, but a higher,

non-delegable a sacred obligation to protect, to nurture, and to ensure that innocence is not ravaged by power.

21.2. Where such persons, occupying positions of dominance and trust, perpetrate aggravated penetrative sexual assault upon a child, the offence assumes the gravest character. The wrongdoing transcends the individual victim and strikes at the very foundation of public trust reposed in the institutional framework of the State and makes any assault in this environment a form of psychological torture .The offender is responsible for the child's basic survival needs, and using that power to exploit them is an absolute failure of the state's custodial responsibility. It constitutes not only a statutory offence but also a fundamental breach of the social contract and a direct violation of constitutional morality. Such conduct instills deep-rooted fear in the minds of both the victim and the community, effectively eroding the very mechanism through which justice and protection are ordinarily sought. The deliberate abuse of official position, coupled with the violation of the sanctity of the workplace, aggravates the offence to its highest degree. It is not merely an offence under statute; it is a betrayal of civilization, a desecration of trust, and a brutal inversion of the rule of law.

The gravity of the crime, aggravated by the abuse of authority and the crushing of a child's dignity, calls for the severest response known to law. When those entrusted with the duty to protect become perpetrators of such heinous offences, the consequences extend beyond the immediate harm caused. It undermines public confidence in statutory institutions and erodes faith in the rule of law itself. A failure to impose proportionate punishment in such cases risks diluting the object of the statute and weakening its deterrent effect. victim's total captive state and inability to seek external help demand the highest rigors of law. When the sentinel turns predator, the Constitution itself trembles. Therefore, in cases of this nature, when this protective mantle becomes an instrument of violation, and the guardian himself becomes the violator, and when fence eats the crop the crime transcends the individual and wounds the collective conscience, the normal rule ought to be the imposition of the ***extreme penalty of death***, having regard to the aggravated circumstances and the position of dominance and trust abused by the offender. Any deviation from this rule, *by awarding a lesser sentence of imprisonment for life till the end of natural life, must remain confined to the rarest of exceptional cases, where mitigating circumstances of a compelling nature are demonstrably present.*

22.Discussion on section 5(g) pertaining to gang penetrative sexual assault:

(g) whoever commits gang penetrative sexual assault on a child. Explanation:

When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone;

23. Gang penetrative sexual assault on a child is an extremely cruel and unusual act. A gang assault involves two or more individuals acting with a common intent, which multiplies the physical trauma and psychological terror inflicted upon the victim. The power imbalance is absolute, leaving the victim with no possibility of physical resistance or defence. The cumulative violence and dehumanization of the victim often qualify the offence as an exceptionally heinous act. Such conduct

demonstrates a depraved level of collective criminal planning and an utter lack of human empathy and restraint. Therefore, *the offence may warrant the imposition of capital punishment where no other alternative punishment would meet the ends of justice.*

24.Discussion on section 5(h) pertaining to penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance ;

The conduct described and demonstrates deeply disturbing, sadistic, and psychopathic tendencies in the offender, suggesting an extremely low likelihood of rehabilitation. Such acts inflict severe and often irreversible physical and psychological trauma on the child victim. The deliberate use of deadly weapons, fire, or corrosive substances reflects an intention to cause extreme suffering or even death, elevating the offense beyond sexual assault into a life-threatening act of violence. This calculated use of lethal force is often intended to silence the victim and reveals a predatory mindset that poses a serious danger to society. Moreover, the involvement of such instruments indicates a high risk of repeated violent behavior and

underscores the offender's extreme malice. Therefore, *the offence may warrant the imposition of capital punishment where no other alternative punishment would meet the ends of justice.*

25.Discussion on section 5(i) pertaining to penetrative sexual assault on a child causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child:

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or Whoever commits penetrative sexual assault that results in grievous hurt, bodily harm, or injury to the sexual organs of a child, and where such an act is extremely cruel and barbaric, causing irreparable physical and mental trauma or even death, may warrant the imposition of capital punishment where no other alternative punishment would meet the ends of justice.

25.1. Grievous hurt includes permanent disfigurement, loss of an organ, or severe physical impairment that endures throughout the victim's life. In addition to the profound emotional trauma—which, though severe,

may be mitigated over time through therapy—such physical injuries remain a constant and irreversible reminder of the assault. The offender, therefore, has not only violated the child's dignity but has also permanently diminished the child's physical well-being, quality of life, and future health. In such circumstances, the permanence of the victim's suffering must be reflected in the severity and duration of the punishment imposed on the offender. Where penetrative sexual assault results in grievous hurt, bodily harm, or injury to the sexual organs of a child, and is of an crime cruel and barbaric nature causing irreparable physical and mental trauma or even death, the imposition of capital punishment may be justified in cases where no lesser penalty would meet the ends of justice. However, in cases where the injury, not serious, does not result in further complications or irreversible devastation, a sentence of imprisonment for life—extending to the remainder of the offender's natural life—would be appropriate. In any event, such offences should not be met with a fixed-term sentence of merely twenty years' imprisonment.

26.Discussion on section 5(j) pertaining to penetrative sexual assault on a child causing physically incapacitates , etc:

(j) whoever commits penetrative sexual assault on a child, which physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks;

(iv) causes death of the child;

26.1.Where the act of penetrative sexual assault results in permanent physical or mental incapacity of the child, including the child being rendered mentally ill within the meaning of the Mental Healthcare Act, or where the assault leads to pregnancy of a minor victim, the appropriate punishment would ordinarily be imprisonment for life extending to the

remainder of natural life, and in exceptionally grave circumstances, may warrant the death penalty.

26.2.Where the assault results in physical or psychological harm but does not culminate in irreversible conditions such as mental incapacity, pregnancy, or life-threatening disease, in such cases, the punishment may range between **rigorous imprisonment for a term not less than 20 years and life imprisonment**, depending upon the degree of brutality and surrounding circumstances.

26.3. Where the offender commits the act with the knowledge that he is infected with HIV or any other life-threatening communicable disease: If such knowledge is established, and transmission or grave risk is caused, the case would ordinarily warrant the **extreme penalty** of death, subject to exceptional mitigating circumstances. In the absence of such knowledge, but where infection is nevertheless caused, the appropriate punishment

would be **rigorous imprisonment for a term not less than 20 years or life imprisonment**.

26.4.Where the act of sexual assault culminates in the death of the child, whether directly or as a consequence of the injuries or complications arising therefrom, such cases would ordinarily fall within the gravest category, warranting the **death penalty**, subject to the constitutional threshold of the "rarest of rare" doctrine.

27.Discussion on section 5(k) pertaining to penetrative sexual assault on a child taking advantage of a child's mental or physical disability , etc:

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

27.1. Children with mental or physical disabilities are often unable to physically resist, vocally protest, or clearly articulate the abuse inflicted upon them. This profound limitation renders them especially vulnerable and, tragically, easy targets for offenders who exploit their perceived lack of

mental or communicative ability. The extreme vulnerability of the victim, coupled with the calculated exploitation by the offender, elevates the gravity of the offence to the highest level. It demonstrates a deliberate intention to prey upon those least capable of defending themselves. Crimes of this nature strike at the very core of societal values and demand the strongest possible condemnation. Accordingly, punishment must reflect not only the severity of the act but also the need to protect society and deter similar conduct. The imposition of the harshest penalties—potentially extending to life imprisonment for the remainder of the convict's natural life and may be justified in such rare and exceptional cases death sentence, particularly where no compelling mitigating circumstances are present.

28.Discussion on section 5(l) pertaining to penetrative sexual assault on a child more than once or repeatedly:

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

Honourable supreme court in this type of numerous cases including "***Bhanei Prasad alias Raju***" *case reported in* ***2025 SCC Online SC 1636*** has awarded life sentence till the natural death and this court holds that other punishment of either 20 years or death sentence is not advisable for the reason that this Court is duty bound to follow the foot steps of the Hon'ble Supreme Court to commute the death penalty into life imprisonment till the natural death.

29.Discussion on section 5(m) pertaining to penetrative sexual assault on a child below twelve years:

1. whoever commits penetrative sexual assault on a child below twelve years;

29.1.Children under the age of twelve are at a critical stage of physical and psychological development. Their bodies are not equipped to endure penetrative acts, which can result in severe and often irreversible internal injuries. At the same time, their minds lack the cognitive maturity to comprehend or process such trauma, leaving deep and lasting psychological

harm. The younger the child, the more devastating and permanent the impact, both physically and emotionally. Recognizing this heightened vulnerability, the law treats such offences with utmost severity. The 2019 amendment specifically emphasized this age group, prescribing the maximum penalty as a deterrent, in acknowledgment of the extreme gravity and moral reprehensibility of such acts. In the case of offence committed after the victim has attained puberty without causing injuries only one time, 20 years RI and with injury and repeated times without causing injuries, life imprisonment till natural death and in the case where victim has not attained puberty, offence has been committed only one time and there are no injuries, life imprisonment and with injury and repeatedly, punishment is death penalty.

30.Discussion on section 5(n) pertaining to penetrative sexual assault on a child being a relative of the child through blood:

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

31. The offence has been committed through a grave betrayal of the child's trust. Such acts must be regarded as particularly serious, as they deprive children of the fundamental right to grow up in a safe and secure environment. The psychological trauma inflicted is severe and enduring, especially because the offender is someone known to and trusted by the child. A home is meant to be the safest space for a child, and relatives are entrusted with the primary responsibility of ensuring that safety. When a relative—whether by blood, marriage, or adoption—commits such an offence, it results in a profound "shattering" of the child's sense of security. The victim is left without a safe refuge, struggling to reconcile the abuse with the expectation of care and protection from their own kin.

31.1.This breach of a fundamental social and emotional bond gives rise to deep and complex trauma. The psychological impact of such familial betrayal is often more enduring than physical injury, as the child must navigate life with the knowledge that their abuser was someone they were meant to trust. Given the gravity and lasting consequences of such harm, the imposition of a severe sentence of 20 years RI After undergoing a prolonged

period of incarceration of 20 years, it is reasonable to infer that the convict would have been completely severed from all social and familial ties, including any possible interface with the victim's family. By the efflux of time, the victim would have resettled in life, and the immediacy of the trauma, though never erased, would have receded into a different plane of lived experience. The passage of such a substantial period may also temper the intensity of emotions among the relatives of the victim. It cannot be overlooked that upon release, the convict would re-enter a society where he is likely to face complete social alienation, with no familial or societal support to receive or acknowledge him. In this backdrop, a sentence of 20 years' rigorous imprisonment appears to strike a just balance between the demands of retribution, deterrence, and the possibility of reformation. In exceptional circumstances committing the offence coupled with threats and beating the victim, life imprisonment, is warranted. When the offence is clandestinely done with aministering drugs , capital punishment is warranted. In the above all categories tender age of accused has different yardsticks.

32.Discussion on section 5(o) ,5(p) pertaining to penetrative

sexual assault assault ***on a child in the ownership, or management, or staff, of any institution providing services*** **and** ***in a position of trust or authority*** **:**

This clause applies to owners and employees of institutions that provide services to children, such as crèches, transport services, and recreational centres, who operate under a professional duty of care. It also extends to individuals such as coaches, mentors, and family friends who, though not formal public servants, occupy positions of authority or trust in a child's life. Such individuals often leverage emotional bonds, admiration, and familiarity to lower a child's defenses. The betrayal of this trust—whether formal or informal—can have severe psychological consequences, leaving the child with a lasting sense of insecurity and an inability to trust personal or institutional relationships. This may result in social withdrawal and long-term emotional harm. The deliberate grooming and psychological manipulation involved in such cases justify the imposition of stringent punishment. A severe sentence serves not only to penalize the offender but also to deter those in positions of care and responsibility, thereby safeguarding the integrity of child-care systems. When caregivers misuse their access to exploit children, they transform welfare-oriented

environments into spaces of danger, undermining public confidence in essential social institutions. Accordingly, where the offence is committed by deceiving the child's trust, the punishment shall be rigorous imprisonment for a term of 20 years. However, where the offence is committed through coercion, or where the offender exercises undue influence to instill fear in the child so as to prevent resistance, the punishment shall be life imprisonment till natural death.

33.Discussion on section 5(q) pertaining to penetrative sexual assault on a child knowing the child is pregnant:

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or The sexual assault of a pregnant child constitutes an act of exceptional barbarity and moral depravity. Such an offence does not merely violate the bodily integrity of the victim, but also imperils the life, health, and dignity of both the victim and the unborn child. The assault, committed at a time of heightened physical and emotional vulnerability, has the potential to cause severe trauma, life-threatening complications, and long-term physical as well as psychological consequences, including the

risk of miscarriage, premature birth, and other serious maternal complications. A pregnant minor is in a medically vulnerable condition, and sexual violence in that context can lead to severe trauma, life-threatening complications, and long-term consequences for both the victim and the child she is carrying. Committing sexual assault on a child who is already pregnant is an act of extreme cruelty that endangers both the young mother and the unborn child and a double violation of her bodily autonomy during a period of peak medical vulnerability. The high risk of multi-generational trauma and the physical danger to two lives warrant a sentence of the highest magnitude exhibits the barbaric tendency of the offender. Such act of offender revictimizes the already traumatized child. The degree of cruelty inherent in such an act places it squarely within the category of gravely aggravated offences. The aggravating circumstances overwhelmingly outweigh any mitigating factors, thereby warranting the imposition of a stern and proportionate sentence. The imposition of a lesser sentence, such as a fixed term of 20 years, would be wholly inadequate and disproportionate to the gravity of the offence, and would fail to meet the ends of justice. I*n such cases, the sentencing spectrum must ordinarily gravitate towards the higher end, where life imprisonment for the natural*

life becomes the norm rather than the exception.

34.Discussion on section 5(r) pertaining to penetrative sexual assault on a child and attempts to murder the child:

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

If the offender attempts to kill the child during or after the assault, it demonstrates the highest level of criminal depravity and an intent to eliminate the only witness to the crime. This turns a sexual offence into a violent capital crime. The law views the attempt on the victim's life as a separate but deeply interconnected act of malice that moves the case into the territory of the "rarest of rare" crimes. Sexual violence, by its very nature, constitutes a grave and heinous offence, striking at the core of human dignity and bodily integrity. When such an offence is accompanied by an attempt to commit murder, the gravity of the crime is further aggravated, warranting the highest degree of judicial scrutiny in sentencing. In cases where an attempt to commit murder is alleged without the infliction of grievous injury—whether involving no injury or only simple injury—the

offence may fall within the category warranting punishment up to life imprisonment, depending on the surrounding circumstances and the degree of intent established. Where the act involves no physical injury but is limited to an attempt to commit murder accompanied by verbal abuse or threats, the appropriate punishment may extend to a rigorous term of twenty years imprisonment. However, in cases where the offender not only commits sexual violence but also causes grievous injuries, and the act demonstrates a clear and brutal attempt to end the life of the victim, such conduct enters the category of the "rarest of rare" cases *may warrant the imposition of capital punishment.*

35.Discussion on section 5(s) pertaining to in the course of communal or sectarian violence, etc.

Sexual violence, in any form and under any circumstances, is wholly intolerable and can never be condoned. This principle applies with even greater force when such offences are committed during communal or sectarian disturbances, natural disasters, or other situations of extreme vulnerability, where victims are rendered defenseless. The exploitation of such circumstances—whether natural calamities, communal riots, or civil

unrest—to target children is heinous . In these situations, children are often displaced, separated from their families, and deprived of basic shelter and protection. Preying upon a child when societal safety mechanisms have collapsed constitutes a grave form of opportunistic predation that shocks the conscience of any civilized society and undermines humanity and human dignity. They demonstrate an offender's calculated tendency to exploit vulnerability, often with the intent to assert dominance—whether personal, communal, or sectarian. Consequently, offences of this nature must be addressed with the utmost severity. *The law, therefore, mandates stringent punishment, prescribing a minimum sentence of life imprisonment, which, in the rarest and most exceptional cases, may extend to the imposition of the death penalty*

36.Discussion on section 5(t) pertaining to penetrative sexual assault on a child who has been previously convicted of having committed any offence, etc:

This demonstrates the habitual nature of the offender. There appears to be no possibility of reformation, and the elimination of such an individual from society is essential to deter other habitual offenders. A person who has previously been convicted of a sexual offence against a child and commits

the same offence again demonstrates a persistent disregard for the law and human dignity, suggesting that they may be beyond rehabilitation. Recidivism in cases of child sexual abuse indicates a deep-rooted and dangerous psychological pattern, rendering the individual a continuing threat to all children. In such circumstances, *the imposition of capital punishment may be justified, particularly where no lesser penalty would adequately meet the ends of justice*

***37*.Discussion on section 5(u) pertaining to penetrative sexual assault on a child makes the child to strip or parade naked in public:**

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault. This clause addresses the profound psychological and social harm inflicted when a child is forced to be publicly exposed or paraded during or after a sexual assault. Such acts are not incidental; they are deliberate attempts to strip the child of dignity and undermine their sense of safety by turning their trauma into a public spectacle. The resulting exposure to ridicule or voyeurism often produces deep and enduring shame, leading to severe social anxiety, withdrawal, and

a lasting fear of community interaction. By weaponizing both the child's body and the public gaze, the perpetrator reveals a calculated and sadistic intent to cause long-term emotional and reputational harm. This form of deliberate public dehumanization constitutes a grave violation of fundamental human rights and reflects a level of cruelty that justifies the most severe legal consequences *death penalty can be awarded.*

37.1. This Court clarifies at the outset that the present deliberation is confined to cases which do not involve situations where both the victim and the accused are juveniles. Cases arising out of relationships between adolescents, including those studying together in academic institution or involving individuals of a tender age, stand on a distinct footing. The application of the present guidelines to such cases would be inappropriate and each such case must, therefore, be assessed on its own facts, bearing in mind the nuanced realities of adolescent development. The physiological and psychological dimensions attendant upon tender age, including issues of maturity, consent, and evolving autonomy, necessitate a differentiated judicial response and there is no fixed equation for such circumstances with offences of a grave nature involving adult perpetrators. Therefore,this

court cannot adopt a homogenised approach in matters involving young persons. In this context, it becomes imperative to underscore that the present case stands in stark contrast. The allegation pertains to an offence committed by the victim's own father, betraying the trust and implicating a profound breach of trust and authority. Accordingly, this Court makes a cautious observation that the above differentiation is essential, particularly in contrast to the case at hand, where the offence is alleged to have been committed by the victim's own father, betraying the trust and thereby attracting a far graver degree of culpability.

37.**2**.The standards for imposing the death penalty differ across jurisdictions, taking into account factors such as the age of the victim, the nature and extent of physical injuries, the resulting medical consequences, aggravating circumstances (such as pregnancy, repeated assault, or abuse of authority), as well as the evidence and intent. Therefore ,this Court has evolved this framework within the contours of the statute as a principled guide to tailor the sentence to the facts at hand.

38.Before imposing the sentence of death, the learned trial Judge had undertaken the exercise of considering both aggravating and mitigating circumstances. For this purpose, the learned trial Judge called for the Probation Officer's Report, which was marked as Ex.C1, and also recorded the statements of the victim girl, her sister, and her mother regarding question of sentence, they have been marked as Exs.C2 to C4. All these materials were taken into consideration along with the facts and circumstances of the case.

39.The learned trial Judge, on evaluation, identified the following aggravating circumstances:

(i)The appellant, being the father of the victim, committed repeated acts of penetrative sexual assault on his own daughter.

(ii)The offence was committed over a prolonged period, indicating a pattern of abuse.

(iii)The appellant was addicted to alcohol and exhibited aggressive and uncontrolled behaviour under its influence.

(iv)The acts were accompanied by criminal intimidation.

(v)The victim was forced to undergo abortion, causing severe physical and immeasurable psychological trauma.

(vi)The nature of the offence was not only heinous but also constituted a grave violation of familial trust and societal norms.

40. The learned trial Judge also considered the following mitigating circumstances:

(i)The accused belongs to an economically weaker section and was working as a daily wager.

(ii)He lacks formal education.

(iii)He has no prior criminal antecedents.

(iv) No possibility of reformation and rehabilitation was suggested, invoking the reformative theory of punishment.

(v)The accused pleaded that he is the sole breadwinner of his family and that his family members are dependent on him.

(vi)He is not comparatively an aged person age and does not suffer from any mental illness or incapacity.

41.Upon weighing the above factors, the learned trial Judge concluded that the aggravating circumstances overwhelmingly outweighed the mitigating circumstances. The trial Court further observed that the offence was not only against the individual victim but also against society at large, particularly considering the breach of trust by a father towards his own daughter. It was also noted that the family members of the victim had sought the imposition of capital punishment. On such reasoning, the learned trial Judge held that the case falls within the category warranting the death penalty and imposed capital punishment on the appellant without extending any leniency.

41.1. However, this Court is obligated to undertake its own independent evaluation of the said factors, before affirming or modifying the sentence imposed by the trial Court. In the above legal backdrop, this Court is required to independently assess:

(i) the aggravating circumstances arising from the nature and manner of the offence;

(ii) the mitigating circumstances pertaining to the offender; and satisfaction of "*RR TEST(rarest rare case)"*

(iii)whether the alternative punishment of life imprisonment is unquestionably inadequate.

42.The appellant is the father of the victim. The appellant entered second marriage with the victim's mother. Victim and two other children were born through their wedlock. Victim was aged 14 years. She discontinued her studies. Whenever the mother and the son left the home, the appellant had committed aggravated penetrative sexual assault. He also intimidated the victim not to disclose the said act to anybody. Therefore, the victim became pregnant. She had undergone the painful process of abortion. Entire neighbours show their contempt towards her. She, her mother and her brother, sister had to bear the stigma and ignominy. The evidence on record —particularly the cogent and trustworthy testimony of the victim, duly corroborated by medical and scientific evidence—establishes the prosecution case beyond all reasonable doubt. There can be no manner of

doubt that the offence committed by the appellant falls within the gravest category of aggravated penetrative sexual assault under the Protection of Children from Sexual Offences Act. The crime, by its very nature, shocks the conscience of the Court and calls for a stern and proportionate response. Yet, the exercise of sentencing does not end with the gravity of the offence.

42.1. The nature of the accusation, coupled with the relationship between the parties, discloses a deeply disturbing abuse of proximity and confidence. The Probation Officer submitted a report stating that he was a drunkard and loses his self control at the time of intoxication. There is no chance of repeating any offence. He is aged about 50 years and his conduct in jail is also good. There is no evidence, that he had physically assaulted the victim either before or after the sexual assault and caused any injuries to the victim. He has not gone to the level of beating her. In the present case, the appellant has been in continuous incarceration from the date of occurrence. More strikingly, he stands alone due to social and familial abandonment. His wife and children, have openly sought the severest penalty against him. The bonds of kinship stand shattered. No relative has come forward to pursue remedies on his behalf. This Court went through

jail record, none of the family members of the appellant have visited him in prison, nor has any person from his village come forward to have any contact with him. This stark reality reflects a complete absence of social support and a fractured possibility of reintegration into the mainstream of society. He exists in a condition of stark isolation—cut off from family, village, and society at large. This condition, akin to a living exile, is not a mere incidental hardship but a continuing and severe form of punishment. It reflects a state where the appellant, though alive, is socially extinguished. Such circumstances, while not exculpatory, are undeniably relevant in the sentencing calculus as held by the Hon'ble Supreme Court in ***(2009) 12 SCC 460*** that where the possibility of social reintegration of the convict is bleak or uncertain, a sentence of long duration of imprisonment is permissible in preference to the extreme penalty.

43.It is further a settled principle that the burden lies upon the prosecution and the State to establish, by cogent evidence, that the convict is beyond the possibility of reformation and rehabilitation, thereby justifying the imposition of the death penalty. This mandate has been reiterated by the Hon'ble Supreme Court in a catena of decisions, including

judgments of three-Judge Benches. In the present case, the learned trial Judge has, with due respect, erred in observing that the accused had failed to produce material to demonstrate his capacity for reformation. Such an approach reverses the settled burden of proof and constitutes a serious infirmity in the sentencing process. Further, it is evident that the accused did not possess sufficient means to engage a counsel of his choice and was constrained to conduct his defence to the best of his limited sources. This circumstance, as recognised by the Hon'ble Supreme Court in ***(2013) 7 SCC 725***, constitutes a relevant mitigating factor that ought to have been duly considered at the stage of sentencing. That apart, the learned trial Judge has committed another grave procedural error in not affording an effective and meaningful opportunity to the accused under Section 258(2) of BNSS . The law, as laid down by the Hon'ble Supreme Court in*(2019) 16 SCC 584* and reiterated in*(2022) 13 SCC 365*, mandates that the accused must be given a real opportunity to place mitigating circumstances before the Court. In the present case, materials marked as Exhibits C1 to C4, which were relied upon for imposing the death penalty, were not furnished to the accused, nor was he properly questioned with regard to the mitigating circumstances arising therefrom. This omission strikes at the very root of a fair sentencing

hearing.

43.1 The learned trial Court has also failed to advert to the doctrine of residual doubt in the matter of sentencing, a principle recognised by the Hon'ble Supreme Court in ***Raj Kumar v. State of Madhya Pradesh,*** reported in ***(2019) 5 SCC 353.***

43.2 The trial judiciary, entrusted with this onerous responsibility, stands as the first sentinel of justice, having had the singular advantage of observing the demeanour of witnesses, the anguish of the victim, and the conduct of the accused. However, while exercising such grave responsibility, it is imperative that the decision, particularly in *the sentencing phase, is not swayed by emotion or sentiment.* In the present case, this Court is of the considered opinion that the learned trial Judge was influenced by emotion , sentiment and the horror of the offence.

43.3. The learned trial Judge while imposing the death sentence had failed to consider the above discussed crucial aspects ***viz:*** the absence of

social reintegration, the erroneous shifting of burden regarding reformation, the lack of adequate legal assistance, and the denial of a meaningful hearing on sentence and also the learned trial Judge was influenced by emotion , sentiment and the horror of the offence and this Court finds it necessary to interfere with the sentence of death imposed by the learned trial Judge as this case does not meet the strict threshold for death penalty and in this case the appropriate sentence is life imprisonment for the remainder of the natural life that ensures an enduring retributive and deterrent effect, consistent with the objectives of punishment under the POCSO Act, rather than imposing the irreversible penalty of death.Accordingly, applying the above framework, this case appropriately falls within **Category (B)**— warranting imprisonment for life extending to the remainder of the natural life of the appellant.

44.Above all, in the case of "***Bhanei Prasad alias Raju***" *case* **2025 SCC Online SC 1636** involving similar and comparable factual circumstances, including those where grave allegations were made against a close familial figure such as the father of the victim, the Hon'ble Supreme court has affirmed that the sentence of imprisonment for life till the end of

the convict's natural life constitutes an appropriate and proportionate punishment in preference to the death penalty. This Court is duty bound to follow the foot steps of the Hon'ble Supreme Court to commute the death penalty into life imprisonment till the natural death. In view of the above, and bearing in mind that imprisonment for life till the natural life of the convict is a constitutionally and statutorily permissible alternative, this Court is inclined to apply the said settled principles, which was unfortunately overlooked by the learned trial Court, thereby warranting interference with the sentence imposed and therefore, this Court is inclined to answer the reference negatively and death sentence awarded on the accused/Muxxxxx for the charges under Section 5(n), 5(l), (j)(ii) r/w 6 of the POCSO Act 2012 by the judgment dated 30.12.2025 in Sp.S.C.No.116 of 2025 is liable to be commuted to life imprisonment till his natural death.

45.Epilogue:

"To take a life in the name of justice is its gravest function; to spare it, when the law so permits, is its highest wisdom".

Accordingly, this Court ensuring judicial responsibility and fulfilment of justice resonates beyond the confines of punishment in such way the enduring torment of an introversive conscience of the appellant remain bound to his lifelong burden of relentless remorse as a constant reminder of the harm he caused to the innocent child each day stands as a reminder of guilt; each night, a continuation of inner suffering and dying inwardly while alive so as to suffer this punishment more severe than death.

46.conclusion:

In the result,

(i) The Criminal Appeal in Crl.A.(MD).No.425 of 2026 is partly allowed

(ii) The conviction of the appellant is affirmed

(iii) The sentence of death imposed by the Trial Court is set aside

(iv) In substitution, the appellant is sentenced to imprisonment for life, which shall mean imprisonment for the remainder of his natural life.

(v) The appellant shall not be entitled to premature release, remission, or commutation.

(vi) The fine amount imposed by the learned trial Judge with default sentence is confirmed.

(viii) Accordingly, R.T.(MD).No.2 of 2026 is answered in the following terms:

(viii)(A)The reference for confirmation of death sentence stands answered in the negative.

(viii)(B)Death sentence awarded on the accused/Mxxxxxx for the charges under Section 5(n), 5(l), (j)(ii) r/w 6 of the POCSO Act 2012 by the judgment dated 30.12.2025 in Sp.S.C.No.116 of 2025 is set aside and commuted to life imprisonment till the natural death.

(viii)(C) Registry is directed to communicate this order forthwith.

47.This Court appointed Mr.R.Manickam as a legal-aid-counsel and the said legal aid counsel made detailed submission both on facts as well as law. More particularly, he en-lighted the principles relating to the appreciation of the offence under the POCSO Act, and the principles relating to the awarding of the death penalty in the case of POCSO Act. He also taken painful steps to file the appeal on behalf of the appellant. Hence, this Court fixed his remuneration as Rs.40,000/-. The legal service

Authority attached with the Madurai Bench of Madras High Court is hereby directed to disburse the said remuneration of Rs.40,000/- within a period of 15 days from the date of receipt of a copy of this order.

48.Registry is also hereby directed to serve the copies of the judgment to the appellant who is confined in prison, free of costs and the Jail Authorities are also hereby directed to provide adequate legal aid to prefer an appeal against this judgment if he so desires.

[N.A.V.J,] & [K.K.R.K.J]
07.04.2026

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
sbn

To

1.The learned Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli District.

2.The Inspector of Police,
All Women Police Station,
Valliyoor,

Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

N.ANAND VENKATESH,J.

and

K.K.RAMAKRISHNAN,J.

sbn

R.T.(MD).No.02 of 2026
and
Crl.A.(MD).No.425 of 2026

Dated: 07.04.2026