BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.06.2026
Pronounced on : 30.06.2026

CORAM:

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

AND

THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN

RT (MD)No.4 of 2026
and Crl.A(MD) No.616 of 2026

State of Tamil Nadu
rep. by the Inspector of Police,
AWPS Palayamkottai
Tirunelveli District
Crime No.7 of 2023 .. Complainant/Petitioner

Vs.

Anandhasekar .. Respondent/sole accused

Referred trial filed by the State under Section 407 of BNSS (Section 366 of Cr.P.C.), to confirm the judgment and order dated 09.03.2026 passed in S.C.No.97 of 2023 on the file of the Sessions Judge for POCSO Act cases, Tirunelveli District.

For Appellant : Mr.John Sathyan
State Public Prosecutor
assisted by
Mr.G.Karuppasamy pandian
Counsel for State

For Respondent : Mr.V.Kathirvelu
Senior counsel for
Mr.K.Prabhu

Crl.A(MD) No.616 of 2026

Anandhasekar .. Appellant/sole accused

v.

State of Tamil Nadu
rep. by the Inspector of Police,
AWPS Palayamkottai
Tirunelveli District
Crime No.7 of 2023 .. Respondent/Complainant

Appeal filed under Section 415(2) of BNSS (Section 374(2) of Cr.P.C.), against the judgment and order dated 09.03.2026 in S.C.No.97 of 2023 on the file of the Sessions Judge for POCSO Act cases, Tirunelveli District.

For Appellant : Mr.V.Kathirvelu
Senior counsel for
Mr.K.Prabhu

For Respondent : Mr.John Sathyan
State Public Prosecutor
assisted by Mr.G.Karuppasamy pandian
Counsel for State

COMMON JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J)

For the sake of anonymity, the victim girls in this case are referred to as “x, y and z”.

2. Death sentence awarded to Anantha Sekar / the sole accused in Spl. SC No.97 of 2023 on the file of the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli, dated 09.03.2026 is now before this Court for confirmation under Section 407 of BNSS 2023 (Sec. 366 Cr.P.C) in RT No.4 of 2026.

3. The sole accused has also filed an appeal in Crl.A.No.616 of 2026 challenging the conviction and sentence imposed by the trial court

in the following manner:

Offences for which convicted (IPC)	Sentenced to undergo
450 IPC	10 years rigorous imprisonment with fine of Rs.5,000/- in default to undergo simple imprisonment for six months
366 IPC (3 counts)	10 years rigorous imprisonment each with fine of Rs.5,000/- for each count and in default to undergo simple imprisonment for six months for each count.
342 IPC (3 counts)	One year rigorous imprisonment for each count with fine of Rs.1,000/- for each count and in default to undergo simple imprisonment for one month for each count.
506(II) (3 counts)	One year rigorous imprisonment for each count with fine of Rs.1,000/- for each count and in default to undergo simple imprisonment for one month for each count.
5(l), 5(m) read with Section 6 of POCSO Act 2012	Sentenced to death and to pay a fine of Rs.10,000/- for each count and since death sentence can be executed only once, sentence of death imposed on three counts shall merge for the purpose of execution

4. The case of the prosecution is that the accused person is a neighbor to the three minor victim girls (x – 6 years) (y – 8 years) and (z – 7 years). The parents of the victim girl are daily wage labourers,

who leave their children in the residential area and go for work in the early morning and return back late in the evening in order to eke their livelihood. During week ends, the three victim girls used to play in front of the house of x's grandmother (PW6). It is alleged that the accused person used to take these three children inside the house of PW6 and would lock the door and had committed aggravated penetrative sexual assault on them. The accused person is said to have threatened and intimidated the three children not to reveal about the same to their parents. These incidents are said to have taken place over a period of nearly one year.

5. On 26.02.2023, at about 10.00 a.m. when PW4 (mother of x), was folding clothes in the house, x and y were playing and on seeing the accused person coming out of his house, x rushed into her house. One Preeth, who was playing with x and y, asked x as to why she ran after seeing the accused, for which, y stated that the accused person would ask to remove the undergarments. This was overheard by PW4 and she immediately asked x and y and they informed PW4 that the accused person takes them and removes their undergarments and commits sexual

assault. PW4 became aware of the fact that z was also subjected to sexual assault. When enquired z also stated about the conduct of the accused person. PW4 informed the same to the mother of z. It was decided to set the criminal law in motion.

6. PW4 gave the complaint Ex.P4 to PW19, who registered the FIR (Ex.P34) in Crime No.7 of 2023. The FIR was registered on 26.02.2023 for offences under Sections 5(l), 5(m) read with 6 of POCSO Act 2012 (hereinafter referred to as 'the Act'), 342 and 506(II) IPC.

7. The investigation was taken over by PW20. PW20 inspected the scene of crime in the presence of witnesses Eswaran and Perumal (PW10 and PW11) and the officer prepared the observation mahazar (Ex.P16) and rough sketch (Ex.P34a). The investigating officer examined the three victim girls and their parents and recorded their statements under Section 161(3) Cr.P.C. On 27.02.2023 at about 8.00 a.m., the accused person was arrested in the presence of witnesses and he was sent to judicial custody.

8. The three victim girls were sent to Tirunelveli Government Medical College and Hospital for conducting medical examination through PW17, who is the Head Constable. PW17 produced the victim girls for medical examination before the Doctor PW18.

9. PW18 conducted the medical examination on x and prepared the accident register (Ex.P27) and the report Ex.P28. Similarly for y, the accident register was prepared under Ex.P30 and report was prepared under Ex.P31. For z, the accident register was prepared under Ex.P32 and the report was prepared under Ex.P33. PW20 recorded the statements of PW19, PW15, PW14 and PW17 under Section 161(3) Cr.P.C.

10. The further investigation was taken over by PW21. On 01.03.2023, PW21 gave a requisition letter (Ex.P37) to send the accused person for medical examination and Ex.P38 to record the statement under Section 164(5) Cr.P.C., from the victim girls. The accused person was examined by a Doctor and a certificate was issued (Ex.P42). Similarly the statement of the three victim girls were recorded under Section

164(5) Cr.P.C. and they have been marked as Ex.P1 to Ex.P3.

11. PW21 gave a requisition for issuance of certificate with regard to the age of the three victim girls and the certificate regarding age proof was issued (Ex.P10, Ex.P12 and Ex.P13).

12. After the completion of recording of the statements of witnesses under Section 161(3) Cr.P.C., and after collecting all the relevant reports and on completion of investigation, the final report was laid before the special Court.

13. The trial Court framed charges against the accused person for offence under Section 450 IPC, 366 (3 counts), 342 (3 counts), 506(II) (3 counts) and Section 5(l), 5(m) read with Section 6 of the POCSO Act (three counts). The accused person when questioned denied the charges and refused to plead guilty.

14. The prosecution examined PW1 to PW21 and marked Ex.P1 to Ex.P42 and relied upon MO1. The court documents Ex.C1 to Ex.C4 were

also marked.

15. The incriminating circumstances and evidence were put to the accused person when he was questioned under Section 313(i)(b) of Cr.P.C., and he denied the same as false.

16. The accused person neither examined any witnesses nor relied upon any documents.

17. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has sufficiently established the foundational facts and the accused person was not able to discharge the reverse burden under Sections 29 and 30 of the POCSO Act and accordingly convicted and sentenced the accused person in the manner stated supra. Under such circumstances, the referred trial case and the criminal appeal have been placed before this court for consideration.

18. The learned Senior counsel appearing on behalf of the

appellant/accused made the following submissions:

- The evidence of PW1 to PW3 is unnatural and at every stage, there is an improvement in the version and it is quite evident that the victim girls have been tutored;
- The alleged occurrence is said to have taken place one year before the complaint was given and for such a serious allegation made against the accused, the delay is enormous and there is absolutely no explanation to justify the delay;
- The statements given by the victim girls as if an aggravated penetrative sexual assault was committed by the accused person is not corroborated by the medical evidence since PW18, who is the Doctor who treated the victim girls, did not find any internal injury in the private parts and the hymen was intact. Therefore, the charge under Section 5(l), 5(m) read with Section 6 of the POCSO Act has not been proved by the prosecution;
- The statement of all the witnesses recorded under Section 161 (3) Cr.P.C., reached the Court only on 10.05.2023 at the time of filing the police report and there is absolutely no explanation as to why

those statements never reached the Court at the earliest point of time. Insofar as the sentencing is concerned, the trial court did not appreciate the exaggerated version given by the victim girls and had relied upon the report of the probation officer, which was not even shown to the accused person and the questioning was not done in accordance with Section 235(2) Cr.P.C.;

●Even assuming without admitting that the prosecution has made out a case against the accused person, at the best, only the offence of aggravated sexual assault under Section 9(l), 9(m) read with Section 10 has been made out and it only attracts a maximum punishment of seven years.

●The learned Senior counsel for the appellant has relied upon the judgment of this Court in ***State v. Murugan*** (RT(MD) No.2 of 2026 dated 07.04.2026) reported in ***2026 (2) MLJ Crl. 556***.

19. Per contra, the learned State Public Prosecutor made the following submissions:

●In a case of sexual assault against children, complaints are not

given immediately and many a times the families are hesitant to even give a complaint and therefore, the delay in lodging the complaint can never be a determining factor for an offence under the POCSO Act;

- The victim girls were hardly 6 to 8 years and it is not within their mental faculty to explain the incident like how an adult explains the same and in the instant case, they have given the explanation by using the words and language to which they have been exposed. If there are any discrepancies, that will not discredit their statements and the Court has to necessarily consider their age and the trauma undergone by the victim girls;

- The prosecution has clearly laid the foundational facts and hence, presumption under Sections 29 and 30 to the Act comes into play and the accused has not discharged his burden;

- There was no reason for the three victim girls and their respective mothers to give a false complaint against the accused person and nowhere the accused person established that there was an ill motive against him either by putting appropriate questions

during cross-examination or by providing the necessary explanation when questioned under Section 313(i)(b) of Cr.P.C.;

●In a case of penetrative sexual assault, even the definition under section 3 of the Act makes it clear that such penetration need not always be with the penis and it includes insertion to any extent with any object or part of the body not being the penis into the vagina, urethra or anus of the child and it even extends to applying mouth to any of these parts of the child. Therefore, the Court has to take into consideration the manner in which the victim girls have explained the incident and their explanation clearly brings this case within the scope of aggravated penetrative sexual assault;

●The opinion given by the Doctor is only a relevant fact and it is not necessary that in every case the statement made by the victim girl must be necessarily corroborated by medical evidence unless the Court finds the version given by the victim girl to be completely unnatural and unbelievable;

●Insofar as the sentence is concerned, the trial Court itself has considered nearly nine aggravating circumstances and found that

the so called mitigating circumstances does not in any way outweigh the aggravating circumstances and therefore considering the heinous crime committed by the accused person, the death sentence imposed by the trial Court is justifiable. Only if the extreme punishment of death is imposed in this case, the same will act as a deterrent for others in the Society who will fear to commit such offences and face such consequences.

●The learned State Public Prosecutor relied upon the judgment of the Apex Court in ***Manoj and others v. State of Madhyapradesh*** reported in ***2023(2) SCC 353***.

20. This Court has carefully considered the submissions made on either side and the materials available on record.

21. This Court has been given an arduous task of dealing with the heinous crime said to have been committed on three innocent children inflicting deep emotional and psychological harm during their formative years and on the other hand to see if the offence has been made out and

it warrants death sentence to the accused person, whose life is now hanging in a balance by virtue of the judgment of the trial Court. In view of the same, this Court will carefully analyze the entire evidence in this case and first determine as to whether the offence has been made out against the accused person. Thereafter if the offence has been made out, this Court will venture into the sentence that has been imposed against the accused person by the trial Court and take a decision as to whether the case warrants death sentence or any modification of sentence is to be granted to the accused person.

22. X was examined as PW1. Her age was six years when she was examined in Court. After the Court ascertained that she is capable of understanding the questions and giving reply for the same, recorded the evidence of PW1. She has stated that she is studying in third standard and she knows the accused person and he was also identified in the Court. she has stated that the accused is living in the opposite house and she used to call him as 'uncle' (khkh). She further stated that she along with y and z used to play near the house of PW6 every Saturday. At that

point of time, the accused person used to drag all three victim girls inside the house. Instead of translating the version given by PW1 in the manner in which the sexual assault took place, it will be appropriate to extract the same hereunder:

> "...mg;Gwk; mtq;fSf;F efk; tsu;e;jpUf;Fk; mij tr;R mtq;f ehd; xd;Df;F NghFk; ,lj;jpy; nrhuz;Lthq;f. mg;Gwk; vq;f NkNy vy;yhk; gLg;ghq;f. mLj;J mtq;f mq;Nf> ,q;Nf vy;yhk; njhLthq;f. mLj;J mtq;f xd;D Nghw ,lj;ij vq;f xd;D Nghw ,lj;jpy; tr;R gz;Zthq;f mLj;J vq;f nu];l; &k; NghFk; ,lj;ij ehf;F tr;R ef;Fthq;f. mLj;J mtq;f ,J gz;Zw NghyNt vq;fisAk; gz;zr; nrhy;Ythq;f. mg;Gwk; mtq;f ehd; gz;Zw khjpup vy;yhj;ijAk; gz;Z> gz;Zd;D nrhy;Ythq;f. mg;Gwk; XXXXXXXXXX [l;bia fow;Wthq;f. mt NkNy vy;yhk; gLg;ghq;f. mg;Gwk; mt xd;Df;F Nghw ,lj;ij mtq;f ,J gz;Zthq;f"

PW1 also states that the accused person used to show a knife and keep it in her neck and threatened that she should not say it to anyone. The knife with which the accused used to threaten has been marked as MO1.

23. Y was examined as PW2. Her age was eight years when she was examined in the Court. After the Court ascertained that she is capable of understanding the questions and giving reply for the same, recorded the evidence of PW2. She has stated that she is studying in third standard and she knows the accused person and he was also identified in the Court. she has stated that the accused is related to her mother. She also has an younger brother. She further stated that she along with x and z used to play near the house of PW6 every Saturday. PW2 has explained the sexual assault in the following manner:

> "...அப்புறம் சேகர் மாமா அவங்க டிரஸ் ஜட்டி எல்லாத்தையும் கழட்டிடாங்க. என்னோட டிரஸ்ஸை கழட்டி என்னோட ஒன்னுக்கு போற இடத்துல அவங்க ஒன்னுக்கு போற இடத்த வச்சி தேச்சாங்க. அப்புறம் (துஞ்சி) வையும் இதே மாதிரி பண்ணினாங்க, அப்புறம் (ஒழஞ்சி) வையும் இதே மாதிரி பண்ணுவாங்க"

PW2 has further stated that the accused person used to threaten by saying that he will strangulate her if the same is informed to the parents. PW2 further states that on a Sunday, she spoke about this to PW1 and another friend on seeing the accused person and running away from that place

and this was heard by PW4. The entire incident was explained to PW4.

24. Z was examined as PW3. Her age was seven years, when she was examined in Court. After the Court ascertained that she is capable of understanding the questions and giving reply for the same, recorded the evidence of PW3. She has stated that she is studying in third standard and she knows the accused person and he was also identified in the Court. She has stated that she used to address the accused person as 'uncle' (சித்தப்பா). She further stated that she along with x and y used to play near the house of PW6 every Saturday. At that point of time, the accused person used to drag all the three victim girls inside the house. Instead of translating the version given by PW3 in the manner in which the sexual assault took place, it will be appropriate to extract the same hereunder:

> "சேகர் சித்தப்பா வந்தாங்க.. எங்கள் (தஞ்சி) ஆச்சி வீட்டுக்குள்ள கூட்டிட்டு போயிட்டாங்க. அப்புறம் கதவ மூடிட்டு என்னோட நைட்டிய தூக்கினாங்க. என்னோட நெஞ்சுல வாய வச்சு அழுத்தினாங்க. என்னோட ஜட்டி கழட்டி நான் யூரின் போற இடத்துல அவங்க யூரின் போற இடத்த வச்சாங்க. அதே போல (அஜ) வையும் (தஞ்சி) சேகர் சித்தப்பா இப்படி பண்ணினாங்க. அப்புறம்

நாங்க சத்தம் போட்டோம்."

PW3 has stated that the accused person showed the knife and threatened her stating that the incident should not be told to the parents. She further states that the accused used to repeat this act every Saturday. At one point of time, PW4 met the mother of z and thereafter the police complaint was given.

25. PW4 is the mother of PW1. She has deposed that PW1 is her elder daughter and that she used to go for work every day at 7 a.m. and return back at 6.00 p.m. On 26.02.2023, which was a Sunday, when PW4 was folding the clothes, PW1 saw the accused person and ran inside her house and at that point of time, she informed one Preeth, who was another friend that the accused person used to commit sexual assault. PW4 enquired about the same and the sexual assault committed by the accused person on the three victim girls came to light. It was PW4 who gave the complaint, Ex.P1, which set the criminal law in motion.

26. PW5 is the mother of PW3. She has stated that PW4 met her

and explained about the incident and when she enquired her daughter (PW3), she stated that she did not inform about the same due to the threat exerted by the accused person. She also speaks about the manner in which the children used to be sexually abused and also the fact that the complaint was given to the police by PW4.

27. PW6 is the grandmother of PW1. She has deposed that PW1 is studying in the 4th standard and she complained that she is experiencing pain in her private parts. Only after she tried to run away on seeing the accused person and she was enquired, PW6 became aware of the fact that the accused person had committed sexual assault in her house. She has stated that she has to go for job at 6.00 a.m. in the morning and returns back only 4 or 5 p.m. in the evening. She also talks about the threat exerted by the accused person on the victim girls not to reveal about the same to anyone.

28. PW7 is the mother of PW2. She has stated that PW3 (z) is her brother's daughter and that she used to go for work at 6.30 a.m. in the morning and return back only at 6.00 p.m. She came to know about the

sexual abuse committed on PW2 (y) only when PW2 complained that she is experiencing pain in her private parts. On enquiry, PW2 has explained about the manner in which the accused person had sexually abused the three victim girls. She reiterates the fact that the accused person used to repeatedly commit the crime every Saturday.

29. PW8 is the Headmaster, who speaks about the requisition received from the All Women Police Station, Palayamkottai and the issuance of certificate for PW2 and PW3 (y and z), which were marked as Ex.P12 to Ex.P15. The certificates also established the date of birth of 'y' as 23.12.2014 and 'z' as 17.03.2015.

30. PW9 is the father of PW3. He states that PW7 is his sister and PW4 is his neighbour. He also reiterates whatever was stated by PW4 and PW7.

31. PW10 and PW11 are mahazar witnesses. PW11 turned hostile.

32. PW12 is the witness for the arrest of the accused person, which

took place on 27.02.2023 at 8.00 a.m. and his signature was obtained in the confession statement given by the accused person which was marked as Ex.P19.

33. PW13 is the Headmistress of the School in which PW1 (x) was studying. Based on the request made by the All Women Police Station, Palayamkottai, she issued the certificate (Ex.P21 and Ex.P22). That confirms the date of birth of PW1 as 04.07.2016.

34. PW14 is the Head Constable, who produced the accused person before the Court on 27.02.2023 and thereafter took the accused person to the Central Prison, Palayamkottai, when he was remanded to judicial custody. PW14 also produced the accused person for medical examination along with PW16 and the requisition letter given to the hospital was marked as Ex.P25.

35. PW15 and PW16 accompanied PW14, who produced the accused person before the Court and subjected him to medical examination.

36. PW17 is the Head Constable, who produced the victim girls x, y and z before the Tirunelveli Medical College Hospital on 27.02.2023 for medical examination.

37. PW18 is the Doctor, who conducted medical examination for PW1, PW2 and PW3 (x,y and z). Insofar as PW1 is concerned, the accident register copy was marked as Ex.P27 and the medical report was marked as Ex.P28. In the report, it is mentioned that there were no external injuries found and the hymen was intact. Vaginal examination was not conducted, since the mother of PW1 did not give consent.

38. Insofar as PW2 (y) is concerned, the Accident Register copy was marked as Ex.P30 and the medical report was marked as Ex.P31. It is mentioned in the report that there were no external injuries and the hymen was intact. No vaginal examination was conducted since the mother of the victim did not give consent.

39. Insofar as PW3 (z) is concerned, the accident register copy was

marked as Ex.P32 and the medical report was marked as Ex.P33. On examination, no external injuries were found and hymen was intact. However, redness was noted in the labia majora, urethra and fourchette. The vaginal examination was not conducted, since the mother did not give consent.

40. PW19 is the Special Sub Inspector of Police, who received the complaint (Ex.P1) from PW4 and registered the FIR (Ex.P34) in Crime No.7 of 2023.

41. PW20 and PW21 are the Investigating Officers, who conducted the investigation and filed the final report and the procedure adopted by them in the course of investigation has already been explained supra.

42. The primary contention that was put forth on the side of the appellant is that the statement of the victim girls is unnatural, suffers with contradictions and they have improved their version at every stage since they have been tutored.

43. The rough sketch has been marked as Ex.P34a. In the rough sketch, it is seen that the house of PW6 is shown as Sl.No.2 and that is where the accused person is said to have committed sexual assault on x,y and z every Saturday. The house of the accused person is right adjacent to the compound wall and shown as Sl.No.5 in the rough sketch. The learned senior counsel appearing on behalf of the appellant submitted that the house of y and z is conspicuously missing and it is not shown as to how they were present inside the house of PW6.

44. The above contention only deserves to be rejected since the consistent statement given by the three victim girls is that all of them used to play during Saturdays near the house of PW6. As already stated PW6 is none other than the grandmother of x (PW1). The manner in which these three girls addressed the accused person as 'khkh and சித்தப்பா' shows the proximity of the victim girls to the accused person and without any doubt he is a known person, who was residing right next to the compound wall.

45. When the Court appreciates the evidence of children, the Court

should not understand or view it from the perspective of an adult. The Court has to put itself in the shoes of the victim girl and try to understand what the victim girl is actually attempting to explain/express. The language employed, the expressions used and the slight deviations that naturally takes place when every time the same incident is spoken by a victim child, has to be appreciated from the stand point view of the victim child. The yardstick that is used while appreciating the evidence of an adult can never be used while appreciating the evidence of a child.

46. A Judge who deals with a case pertaining to sexual abuse undergone by a child should comprehend the same from the child's perspective. Hence, a Judge has to show a lot of sensitivity to what the child is attempting to explain with a caveat ensuring that the child is not tutored by someone and the child is not telling what someone has already tutored the child. A focussed understanding of the statement of the child will clearly reveal as to whether the child is actually speaking or the child is speaking what it has been tutored. The words used, the language employed and the way in which the child explains the incident will enable the Court to appreciate the genuineness of the statement made by

the child. In other words, a professionally and a legally trained mind can certainly differentiate between a natural statement given by a child and a statement given after the child has been tutored.

47. As stated supra, the children in this case were aged about 6 to 8 years. The way they described the incident has already been extracted supra and this Court consciously decided not to translate what the children said to comprehend it in the language that was employed by the children.

48. The conspectus of the statement made before the Court by PW1 to PW3 (x, y and z) makes it clear that these children used to play near the house of PW6 every Saturday and the accused person used to come there and take them inside the house of PW6 and committed sexual assault on these children. Each child also talks about what was done to the other two children by the accused person. What has been explained by PW1 to PW3 cannot be a figment of imagination since at that age no child gets exposed to such detailed sexual contents. There is consistency in the statements made by PW1 to PW3 in the manner in which the

accused person used to abuse them on a regular basis over a period of time. The complaint itself was given after one year and during the interregnum period, these children have been subjected to sexual assault on a regular basis. Therefore, it is not a single incident, which is attempted to be projected by the children and it is a phenomenon undergone by them atleast over a period of one year.

49. The learned senior counsel appearing on behalf of the appellant submitted that the statements of the victim girls recorded under Section 164(5) Cr.P.C. and the statements that were made by the victim girl before the Court differ and it has been improved at a later point of time.

50. To appreciate the above contention raised by the learned senior counsel, this Court carefully went through Ex.P1 to Ex.P3.

50.1. Ex.P1 is the statement that was recorded from x and she has stated as follows:

"...ehd; rdpf;fpoik md;W tPl;by; 5 ,Uf;Fk;NghJ vq;fs; tPl;bw;F mUfpy; cs;s vdJ Mr;rp tPl;bw;F nrd;W ehDk; XXXXp. XXXXXXXXX MfpNahu; tpisahLNthk;.

mg;NghJ Nrfu; khkh Mr;rp tPl;bw;F te;J vq;fs; %d;W NgiuAk; mtuJ tPl;bw;F $l;br; nrd;whu;. vd;Dila [l;bia fol;bdhu;. ehd; xd; ghj;&k; NghFk; ,lj;jpy; mtuJ thia itj;jhu;. gpd;du; mtUila xd; ghj;&k; nry;Yk; gFjpia vd;Dila thapy; itj;jhu;. NkYk; mtUila nry;iy fhz;gpj;J vd;id gLf;fg;Nghl;L ehd; xd; ghj;&k; NghFk; ,lj;ij njhl;Lf; nfhz;Nl ,Ue;jhu;. mjd; gpwF vd;id ntspNa mDg;gptpl;lhu;. XXXXp kw;Wk; XXXXXXXXXXt tPl;bw;Fs;NsNa itj;Jf; nfhz;lhu;. mjd; gpwF XXXXp ntspNa te;jhs;. XXXXpAk; ehDk; mtu;fsJ tPl;bw;F nrd;W tPl;il G+l;bf; nfhz;Nlhk;. XXXXXXXXXXTk; ehDk; XXXXXXXXTk; Ngrpf; nfhz;bUe;jNghJ vdJ jhahu; Nfl;Ltpl;lhu;. MfNt vdJ jhahu; fk;g;sa;z;l; nfhLj;jhu;."

50.2. Ex.P2 is the statement recorded from y and she has stated as follows:

"ehDk;> XXXXXXXXXXXXXXXX MfpNahu; tpisahbf;; nfhz;bUe;jNghJ mg;NghJ mq;F te;j Nrfu; ngupag;gh vq;fis $g;gpl;lhu;. ehq;fs; tukhl;Nlhk; vd;W nrhd;Ndhk;. mg;NghJ vq;fs; ifia gpbj;J XXXXXXXXXX; Mr;rp tPl;bw;F ,Oj;Jr; nrd;whu;. mq;F itj;J vdJ [l;bia

fol;lr; nrhd;dhu;. vd; kPJ gpLj;jhu;. vdJ neQ;rpYk;> fPo;gFjpapYk; njhl;lhu;. ehd; ,J gw;wp vdJ mk;khtplk; nrhy;yg;NghfpNwd; vd;gjw;F vdJ rq;if gpbj;J J}f;fpdhu;. XXXXXXplk; fj;jpia fhl;b kpul;bdhu;. Nrfu; ngupag;gh tPl;by; nrhy;yf;$lhJ vd mbj;jhu;. ehDk;> XXXXXXXX XXXXXXX Nrfiu gw;wp nrhy;ypf; nfhz;bUe;Njhk;. mg;NghJ XXXXXXd; mk;kh ahu; [l;bia fol;lr; nrhd;dhu; vdf; Nfl;lhu;. Nrfu; ngupag;gh vq;fsplk; ele;J nfhz;lij gw;wp tupirahf nrhd;Ndhk;"

50.3. Ex.P3 is the statement recorded from z and she has stated as follows:

"...எங்கள் தெருவில் சேகர் மாமா வசித்து வருகிறார். அவருக்கு [illegible] என்ற குழந்தை உள்ளது. நாங்கள் பள்ளி விடுமுறை நாளான சனிக்கிழமை தினத்தில் நானும், [illegible] [illegible] ஆகியோர் விளையாடுவோம். அந்த சமயத்தில் சேகர் மாமா வந்து எங்கள் மூவரையும் [illegible] ஆச்சிவீட்டிற்குள் அழைத்துச் செல்வார். வீட்டிற்குள் சென்றவுடன் எங்களது மூவரையும் ஜட்டியை கழட்டச் சொல்லுவார். நாங்கள் கழட்டாவிட்டால் கத்தியை காட்டி கொன்றுவிடுவதாக மிரட்டுவார். நான் ஜட்டியை கழட்டியவுடன் யூரின் போகும் இடத்தில் அவரது கையை வைத்து சுரண்டுவார். நெஞ்சில் கையை வைத்து அமுக்குவார். எனது

அம்மாவிடம் இது பற்றி சொல்லுவேன் என்றபோது என்னை கத்தியால் குத்தி கொன்றுவிட்டு சாக்கு மூட்டையில் அடைத்து வீசிவிடுவேன் என்று மிரட்டினார். என்னுடன் வந்த மற்ற பிள்ளைகளையும் அதே போல் தான் செய்வார். ஒவ்வொரு சனிக்கிழமையும் எங்களை கூட்டிச் சென்று நெஞ்சு பகுதியில் வாயை வைப்பார். அதன் பிறகு அவங்க யுரின் போகும் இடத்தையும் நான் யூரின் போகும் இடத்தையும் ஒன்றாக வைப்பார். உடம்பு முழுவதையும் தொட்டு நசுக்குவார். என் அம்மாவிடம் சொன்னால் கத்தியால் குத்திவிடுவேன் என்று சொன்னார். எனது தாயாருக்கு [illegible] அம்மா தான் சொல்லியுள்ளார்..."

51. The above statements were recorded from PW1 to PW3 on 17.03.2023. PW1 was examined in the Court on 24.07.2023. PW2 was examined in the Court on 11.12.2013 and PW3 was examined in the Court on 11.12.2013. Thus, there was a time gap between the statement recorded under Section 164(5) and the statement that was recorded before the Court as evidence. During this period, these children would have had the unfortunate experience of explaining this incident to the close family members, police, Public Prosecutor etc. and there would have been some response from them and as a result, a child's mind would have grasped it and as a consequence, the subsequent statements made by

them is bound to have some exaggerations and embellishments. Therefore, what is expected of a Court while appreciating the evidence of a child witness is to see whether the substratum of the allegations made by the child touching upon the sexual abuse/assault undergone by the child is consistent in every statement. In short, the Court has to separate the chaff from the grain.

52. This Court, on carefully reading the evidence of PW1 to PW3 and the statements recorded from them under Section 164(5) Cr.P.C., finds that the sexual assault underwent by them over a period of time and the threat that was exerted on them not to reveal it to anyone is consistent. In fact, it was PW4, who is the mother of PW1, who overheard what her daughter (PW1) said to one Preeth. That day (26.02.2023) brought the entire incident to light. This evidence of PW4 is natural and cogent and there is no element of exaggeration. She found PW1 running into the house on seeing the accused person and she heard what PW1 told to Preeth and only thereafter she became aware of what happened to the three victim girls. She thereafter follows up with the families of PW2 and PW3 and the criminal law is set in motion. This is

perfectly in line with the statement made by the victim girls to the effect that they were subjected to threat by the accused person not to reveal it to anyone. If PW4 had not overheard what PW1 informed to Preeth, probably the sexual abuse would have continued for some more time, since PW1 to PW3 did not inform the parents about the abuse suffered by them in the hands of the accused person due to fear.

53. Insofar as the sense of fear is concerned, again the Court has to look at it from the stand point view of a child. What may cause fear to a child may not have the same impact on an adult. Therefore, the fear has to be understood by the Court from the perspective of the child. Applying the same to the facts of the present case, this Court finds that the children have been subjected to threat and fearing the same, these children have not informed anything to their parents.

54. The next logical question that a Court has to put to itself is as to why these three children must pin point the accused person and state that they were subjected to sexual assault by him. To start with, it is not a natural conduct for a child to make an allegation of sexual assault on any

person since a child may not even know at that age what a sexual assault is all about. If any such allegation is made by a child, the only plausible defence on the side of the accused person would be that there is a motive behind such allegations. In such an event, it is for the accused person to establish what that motive is by either putting suggestions during cross-examination of the witnesses or explaining the same when questioned under Section 313(i)(b) of Cr.P.C. or by examining defence witness. If that is not done, the statement made by the victim girls will remain intact without being controverted. In the case in hand, the accused person nowhere has explained or established as to what is the motive against him for giving such a serious complaint of sexual assault.

55. This Court carefully went through the cross-examination of PW1 to PW7 and PW9 and it is seen that their evidence in chief remains unshaken and it has not been discredited. Even though it looks like a detailed cross-examination, most of the questions were irrelevant and unwarranted.

56. A lot of hue and cry is made about the delay in lodging the

complaint. In a case of this nature, the families are very hesitant to lodge a complaint and prosecute a criminal case considering the impact it would have from the Society. Any parent would want to avoid Court proceedings since they may not want their child to undergo the trauma of facing Court proceedings at that age and facing unpalatable questions during trial, which will further aggravate their agony. In reality, there may be many such sexual abuses taking place and only a few reaches the Court and the rest suffer the agony silently. Therefore, the delay in lodging the complaint can never be a defence when it comes to sexual offences and particularly when it pertains to a child. Even if delay is raised as a defence, it is for the accused person to establish as to how that delay itself is a result of some motive to give a false complaint against the accused person. Therefore, the contention raised regarding delay in lodging the complaint stands rejected.

57. The next issue is regarding the delay in the statement recorded under Section 161(3) Cr.P.C. In a case involving an offence under the Act, the investigation process is expedited and it is completed within a very short time and therefore, in many cases, the statement recorded, the

reports collected etc. are filed along with the police report. In the case in hand, the FIR was registered on 26.02.2023 and the final report had been taken on file on 09.05.2023. Therefore, the investigating officer was focussing on completing the investigation on time and it was over within three months. In view of the same, the statements recorded from witnesses reaching the Court at the time of filing the final report does not in any way vitiated the case of the prosecution. Ultimately the Court has to see whether the evidence let in before the Court gets weakened due to such delay caused in sending statements under Section 161(3) Cr.P.C. to Court. All those procedural infirmities that are flagged in traditional penal offences, cannot be blindly followed in a case of this nature. This is in view of the fact that the statement of the victim girl, if found entirely reliable, is enough for the Court to convict and sentence a person and all the other procedural formalities and the so called contradictions will take a back seat. Hence, the contention made on the side of the appellant in this regard stands rejected.

58. The prosecution has proved the foundational facts in this case. Once that is done, Sections 29 and 30 of the POCSO Act comes into play.

Thereafter the principle of reverse burden gets triggered and it is for the accused person to rebut the legal presumption failing which the Court shall presume that the person has committed the offence and he had the mental state to commit such offence. In the case in hand, the accused person did not rebut this legal presumption by even remotely establishing that there was an ill-will or motive in giving the complaint against him and prosecuting the case before the Court of law. In view of the same, the offence under the POCSO Act stands proved.

59. The next issue to be gone into is as to whether the materials placed before the Court makes out a case for aggravated penetrative sexual assault or it only makes out a case for aggravated sexual assault.

60. Section 3 of the Act defines penetrative sexual assault and for proper appreciation, the same is extracted hereunder:

> *"3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—*
>
> *(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the*

child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person"

61. The legislature has thought it fit to provide exhaustive definition for this expression. Sub clause (a) contemplates penetration with penis. Sub clause (b) contemplates insertion to any extent any object or a part of the body not being the penis. Sub clause (c) deals with manipulation of any part of the body of the child so as to cause penetration. Sub clause (d) visualizes a situation where the mouth is

applied on the various parts of the body of the child and this is considered as penetrative sexual assault by the legislature. Such an exhaustive definition has been given only to ensure that no one escapes by taking a technical plea that the prosecution has not made out a case of penetration with penis. This exhaustive definition was required considering the fact that the Act itself applies only to a child whose genitals are not fully grown like an adult. Therefore penetration as is understood for an adult cannot be made applicable to a child and therefore, the legislature has consciously given an exhaustive definition for the term penetrative sexual assault.

62. Section 4 of the Act provides for punishment for penetrative sexual assault.

63. Having understood the definition of penetrative sexual assault, this Court must now analyse the materials and see if it satisfies the requirement of Section 3 of the Act. If it satisfies the requirements of Section 3, this Court must take the next step of seeing if the given materials also satisfy the requirement of Section 5(l) and 5(m) of the Act,

which is punishable under Section 6 of the Act.

64. One of the main contention that was raised on the side of the appellant is that the medical reports marked as Ex.P28, Ex.P31 and Ex.P33 show that the hymen was intact and there were no external injuries since insofar as x and y are concerned, the genital was also found normal and insofar as z is concerned, the genital was found with redness. None of the mother permitted PW18 to conduct vaginal examination for x,y and z. Therefore, according to the learned Senior Counsel appearing on behalf of the appellant, there is no material to show that the accused person committed penetrative sexual assault.

65. The relevant portion in the depositions of PW1 to PW3 have been extracted supra. PW1 specifically talks about the accused person using his fingers and stroke the vagina. Apart from that he also kept his penis over the vagina of PW1. He has also used his tongue over the vagina.

66. Insofar as PW2 is concerned, she states that the accused person kept his penis on her vagina.

67. Insofar as PW3 is concerned, she has stated about that the accused person keeping his penis on the vagina. These depositions are further corroborated by the statements recorded under Section 164(5) Cr.P.C. which have been marked as Ex.P1 to Ex.P3.

68. The description given by PW1 to PW3 on the sexual act committed by the accused person clearly brings it within the definition of penetrative sexual assault since it satisfies sub clause (a), sub clause (b) and sub clause (d).

69. In the light of the above finding, this Court must go into the next issue as to whether the requirement under Section 5(l) and 5(m) are satisfied. Without any doubt, the requirements are satisfied since the accused person has committed the offence of penetrative sexual assault repeatedly over a period of time and such assault was made on children who were all below 12 years.

70. As a consequence of the above finding, the accused person

becomes liable for punishment under Section 6 of the Act.

71. In the light of the above finding, it is not necessary for this Court to deal with the scope of sexual assault and aggravated sexual assault.

72. As far as the charge under Section 450 IPC is concerned, the accused person is said to have trespassed into the house of PW6 in order to commit the offence of penetrative sexual assault. PW6 has confirmed that the house where the offence was committed is her house. The evidence of PW1 to PW3 confirms that they were playing in front of the house of PW6 and the accused person got into the house and thereafter dragged the three children. PW6 also explains that the accused person was aware as to where the key was kept and made PW1 bring the key and had opened the house and thereby got access to the house of PW6. This evidence clearly establishes that the ingredients of Section 442 of IPC has been satisfied since upon trespass an offence has also been committed which is punishable for imprisonment for life. Thus, the ingredients of Section 450 IPC is also made out.

73. Insofar as charge under Section 366 IPC is concerned, the evidence of PW1 to PW3 and PW6 makes it clear that the accused person had the intention to remove the victim girls from the place where they were playing to the house of PW6 for the purpose of committing penetrative sexual assault on all the three victim girls over a period of time. Thus, the charge under Section 366 IPC has also been proved by the prosecution.

74. The charge under Section 342 IPC is also clearly proved since PW1 to PW3 were confined in the house of PW6 and the door was locked from inside and the children were prevented from moving out of the house.

75. Insofar as the charge under Section 506(II) IPC is concerned, the evidence of PW1 to PW3 clearly demonstrates the fact that the accused person had criminally intimidated the children by showing the knife and threatening them with dire consequences.

76. In the light of the above discussion, insofar as the offence under Section 5(l), 5(m) read with Section 6 of the Act, the prosecution has proved the foundational facts beyond reasonable doubts and the accused person has failed to rebut the reverse burden. Insofar as IPC offences are concerned, the prosecution has proved the case beyond reasonable doubts.

77. This Court has to now venture into the correctness or otherwise of the sentence that has been imposed by the trial court and more particularly the capital sentence imposed on the accused person for the charge under Sections 5(l), 5(m) read with Section 6 of the Act.

78. The trial Court has considered the nature and gravity of the offence and whether it falls within the category of rarest of rare cases. Thereafter, it has drawn up the balance between the aggravating circumstances and the mitigating circumstances.

79. There cannot be any iota of doubt that the case in hand by its

very nature and gravity is very serious and it deserves a stringent punishment. When it comes to an offence like murder, the life of a person/persons is taken away. In a case involving sexual offence and more particularly the offence committed on a child under the POCSO Act, the dignity and the soul of the child is destroyed. Atleast in a case of murder, the life is lost and thereafter nothing remains. However, in a case of this nature, the life continues but the soul is lost. It results in the trauma carried by the child throughout the life and in many cases it makes the existence in this world very painful. Therefore in the considered view of this Court, cases of this nature deserves more stringent punishment than cases involving murder, dacoity etc. In a case of this nature, the dignity and soul is butchered and without that it becomes a bare existence in this planet and therefore, it has to be considered to be even more heinous than an offence committed on the body of the person. Subtle is stronger than the gross and it has more impact on a person. In offences against human body, the impact is more on the gross and in an offence of sexual assault on a child, it is an offence on the dignity and soul of the child and its impact is severe at multi fold levels.

80. The trial court has taken the following aggravating circumstances:

(a) The three victim girls are aged from 6 to 8 years and at that age, their childhood innocence and future has been destroyed;

(b) The life of three children has become entirely vulnerable and it is an age where they are dependant on elders for protection and it is an elder person, who has committed the offence and therefore it shocks the collective conscience of the community;

(c) The offence has been committed every Saturday over a period of one year in a systematic and premeditated manner which demonstrates deep rooted depravity and complete lack of remorse;

(d) the children were looking at the accused person as their uncle (khkh and rpj;jg;gh) and were carrying the love and respect for this

person and the accused person has exploited this trust and committed the most heinous crime betraying the trust;

(e) There is extreme depravity and planning on the part of the accused person to commit the offence, whereby he makes PW1 bring the key and opens the door of the house of PW6 and commits the offence inside the house. On the one hand, the accused person has exploited the innocence of children and on the other, it expose the animal inside him, which was looking for an opportunity to exploit the children;

(f) The accused person was repeatedly threatening the children by placing the knife in the neck or attempting to strangulate or threatening the children stating that he will kill them and their parents, if they disclose about the incident;

(g) the children were dragged into the house and the door was locked from inside and the children were not allowed to move out of the house and the accused person commits the offence against one girl in the presence of the other two and the innocent child apart from suffering the

assault is also witnessing the assault suffered by the other two children;

(h) The amount of threat exhibited by the accused person is evident from the fact that PW1 on seeing the accused person runs inside the house and tells about the incident to her friend and that shows the deleterious impact created and which has already embedded in the minds of three innocent children. These are all symptoms of deep psychological trauma and these are scars which these children will be carrying for the rest of their life. In most cases this psychological harm becomes irreversible;

(i) The report of the probation officer marked as Ex.C1 which shows that the accused person is a habitual criminal against whom many cases have been registered and some of the cases were pending;

81. The mitigating circumstances that were taken into consideration by the trial Court are the age of the accused person, who was 38 years at the time of incident, the financial status and the background of the accused person, who claims to be a coolie worker and

the sole breadwinner of his family comprising of his wife and children and the possibility of reformation of the accused person.

82. We had an opportunity to deal with the scope of the various punishments that have been provided under Section 6 of the Act and how to determine the quantum of punishment in a given case. The relevant case is ***State v. Murugan*** reported in ***2026 (2) MLJ (Crl.) 556*** and the relevant portions are extracted hereunder:

> *"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*

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.

...

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: the 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 Death*
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.

...

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."

83. The trial court, upon weighing the aggravating circumstances and mitigating circumstances and also after considering the probation officer's report, came to a conclusion that the aggravating circumstances outweighed the mitigating circumstances and there was no justification for leniency and consequently the case falls under the category of rarest of rare cases and since the sentencing must reflect both the harm caused to the children and also the societal expectation that the children safety is

paramount and the sentence must convey a strong message to society and serve as a deterrent to persons, who exploit children particularly holding the position of trust, the trial Court thought it fit to impose the maximum punishment of death penalty.

84. In the case in hand, the accused person is a married person and he has children. In his age, the mental faculty is fully developed and he knows what is right and what is wrong. All the aggravating factors against the accused person has already been pointed out supra. The so called mitigating factors does not in any way outweigh the aggravating factors. In the confirmation proceedings of death sentence, there is a dual and heightened responsibility upon the high Court since the high court has to independently examine the judgment and order of the trial Court and see to it that the prosecution has established the case beyond reasonable doubts and satisfy itself on the correctness of the conviction and thereafter determine whether the case falls within the category of rarest of rare cases warranting extreme penalty of death.

85. The Apex Court has repeatedly emphasized that life imprisonment is a rule and death penalty can only be an exception and it

has to be resorted to only when the circumstances of the crime are so exceptional that no other punishment would suffice.

86. In the above judgment, at Paragraph Nos.28 and 29, we have dealt with the nature of punishment to be awarded where the offence falls under Sections 5(l) and 5(m) of the Act. On analyzing the various judgments of the Apex Court, we find that where the cases falls under Section 5(l), the maximum punishment that has been awarded is life sentence till the natural death. However, when it comes to the charge under Section 5(m), this Court took into consideration the fact that children under the age of 12 are at a critical stage of physical and psychological development and their bodies are not equipped to endure penetrative acts. This Court also took into consideration the fact that the minds of such children lack the cognitive maturity to comprehend such trauma that leaves deep and lasting psychological harm. The younger the child, it causes more devastation both physically and emotionally. In these cases, the Court has to recognize the vulnerability of the children on the one hand and the extreme gravity and moral reprehensibility of such acts. The Courts must also inform the society that such acts will not

be tolerated and imposing death sentence in such cases alone will send a strong message to the Society and serve as a deterrent to prevent such heinous crimes from being committed in future. The system has to ensure to every child that they are growing in a society which will take care of them and will ensure safe passage into their adulthood. In the absence of this assurance, every child will grow up in a vulnerable atmosphere and culprits with deprived minds will get an impression that they can get away by committing such crimes by comfortably staying inside the jail.

87. In the case in hand, not one but three children have been subjected to aggravated penetrative sexual assault repeatedly over a period of one year and all these children are in the age group of 6 to 8 years. The modus operandi adopted by the accused person has been discussed in detail. The accused person does not deserve any leniency and any punishment less than death sentence will fall short of the societal expectation that the children safety is paramount. The accused person, who has destroyed the soul and dignity of three children, is not fit to live in the society and for the heinous crime committed by him, he has to necessarily lose his life.

Epilogue:

88. The measure of a society's civilization is found in how it protects its most vulnerable and no one is more vulnerable than a child trusting the sanctity of a home. The accused before us did not merely commit a crime against the physical body; he executed a calculated, systematic campaign of terror that shattered the innocence of three young souls. By weaponizing fear, wielding threats of death, and forcing these children to witness the violation of one another, he did not just break the law but he extinguished the light of their childhood and left in its place a lifetime of haunting shadows.

89. A crime so grotesque, so utterly devoid of a shred of human conscience, demands a judicial response that mirrors society's collective abhorrence. To spare the life of a perpetrator who showed such cold-blooded, protracted cruelty would be an act of misplaced mercy, rendering the law a silent spectator to the destruction of the innocent. It would send a devastating message to the community: that the soul of a

child is cheap, and that a monster may trade the lifelong peace of his victims for the comfort of a prison cell.

90. We are acutely aware that the death penalty is an extraordinary measure, reserved exclusively for the "rarest of rare" cases where the alternative is unquestionably foreclosed. This case stands as the tragic epitome of that exception. The law must possess a spine of steel when dealing with those who prey on children to satisfy their darkest instincts. Let this judgment serve as a stark, unyielding warning to any who believe they can manipulate, terrorize, and destroy the youth of our nation with impunity.

91. By confirming this sentence, this Court does not act out of vengeance, but out of a solemn duty to justice, deterrence, and the restoration of the moral order. For actions that have effectively slain the souls of three innocent children, the law can offer no sanctuary. The prisoner has forfeited his right to walk among humanity.

92. We are reminded of the judgment of the Apex court in ***Madangopal Kakkad v. Naval Dubey and another*** reported in ***1992(3) SCC 204*** where the Apex court held thus:

> *"Judges who bear the sword of justice should not hesitate to use that sword with utmost severity to the full and to the end if gravity of the offence so demands".*

The case in hand demands wielding that sword with utmost severity since gravity of the case so demands.

93. In the light of the above discussion, the conviction and sentence imposed by the trial court is confirmed. Consequently, RT(MD) NO.4 of 2026 is answered by confirming the death sentence imposed by the trial Court in Spl. SC No.97 of 2023 dated 09.03.2026 for the charge under Section 5(l), 5(m) read with Section 6 of the Act. The conviction and sentence imposed for the other charges also stand confirmed. Consequently, Crl.A(MD) No.616 of 2026 is dismissed.

94.(a) The Registry is directed to communicate this order forthwith to the trial Court;

(b) There shall be further direction to the Registry to redact the names of the victim girls from all the trial court records including the reference made in the judgment of the trial court;

(c) The Registry is also directed to serve a copy of this judgment to the appellant, who is confined at Central Prison, Palayamkottai, free of cost and

(d) the jail authorities are also directed to provide necessary legal assistance to the appellant to prefer appeal against this judgment, if the appellant so desires.

[N.A.V, J.] & [K.K.R.K, J.]
30.06.2026

NCC : Yes
Index : Yes
RR

To
1.The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

2.The Sessions Judge for POCSO Act cases,
Tirunelveli District.

3.The Inspector of Police,
AWPS Palayamkottai Police Station,
Tirunelveli District.

4The Superintendent of Prisons
Central Prison
Palayamkottai.

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

6.The Section officer (English Records)
Madurai Bench of Madras High Court,
Madurai.

N.ANAND VENKATESH, J
AND
K.K.RAMAKRISHNAN, J.

RR

Judgment made in
RT(MD) No.4 of 2026 and
Crl. A. (MD)No.616 of 2026

30.06.2026