

**IN THE COURT OF THE AD HOC ADDITIONAL
DISTRICT & SESSIONS JUDGE (FTSC) UNDER
POCSO ACT,BERHAMPUR.**

Present: **Shri Rohit Lal Panda,
Ad hoc Additional District &
Sessions Judge (FTSC) under
POCSO Act, Berhampur.**

Dated this the 29th.day of June,2026

Date of Argument: 20.06.2026

Date of Judgment: 29.06.2026

G.R.Case No.79/2022

T.R.No.28/2024 (FTSC)

**(Arising out of G.R.case No.817/ 2022 of SDJM,
Berhampur corresponding to Baidyanathpur P.S. Case
No.117 dated 26.04.2022).**

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|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Complainant | Stranger Informant |
| PRESENTED BY | Dr.Siva Prasad Mishra, Spl.P.P., Berhampur. |
| ACCUSED | Sipriyan Digal,S/o.Late Dhanisahu Digal, aged about 65 years, Occupation- Labour,Vill- Pirigada,Raikia,P.S- Sarangada, Dist-Kandhamala , |
| The Defence presented by | Sri Manoj Pattnaik, Advocate, Berhampur.(State Defence Counsel) |

| | |
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| Date of Offence | 25.04.2022 |
| Date of F.I. R | 26.04.2022 |
| Date of Charge sheet | 06.09.2022 |
| Date of Framing of charge | 16.01.2023 |
| Date of commencement of evidence | 07.08.2023 |
| Date on which judgment is reserved | 20.06.2026 |
| Date of Judgment | 29.06.2026 |
| Date of the sentencing order, if any | 30.06.2026 |

| Accused Details | |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 1 | Rank of the Accused |
| Sipriyan Digal | Name of the accused |
| 26.04.2022 | Date of Arrest |
| -- | Date of release on bail |
| U/s.302/354A(iv) of IPC and Sec.12 of the POCSO Act. | Offence charged. |
| Convicted | Whether acquitted or convicted. |
| Subject to confirmation by the Hon'ble High Court, the convict is sentenced to death by hanging by neck until his death u/s.302 of IPC. | Sentence imposed |
| 26.04.2022 to 30.06.2026 | Period of detention undergone during trial. |

J U D G M E N T

The accused stands charged with the offence U/s 302/354-A (iv) of I.P.C and sec. 12 of the POCSO Act on the allegations of having sexually harassed and committed murder of the minor deceased victim child.

2. The prosecution case is that on dt 26.4.2022 at 5.00 A.M one passers-by namely Ashis Das presented a written report at Baidyanathpur Police station , Brahmapur, to the effect that on the previous day at about 9.30 P.M, while returning home on a bi-cycle from courtpeta chhak towards Goilundi, on the road at Vidyanagar , he noticed some people had gathered inside a house and raising hullah. He immediately rushed to spot house and found one girl aged 13 to 14 years burning on fire. He participated with the local people to put out fire on the body of the victim girl and rescued her. The victim's mother disclosed that her accused brother in trying to kill the victim daughter, had poured kerosene on the body and set her to fire, whereby the victim daughter sustained severe burn injuries. They shifted the victim girl M.K.C.G.MCH, Berhampur for her immediate treatment to save the life of

the child. While the victim child was under treatment in a Critical condition and struggling for life and death, he requested the police to take legal action against the culprit to give proper justice to the innocent victim child.

On receipt of the written complaint from the stranger, in the absence of the I.I .C, the Sub- Inspector of the Police, registered. P.S. case No.117/2022 U/s 307/326 of IPC and directed the Sub –Inspector Smt. Meenakshi Dalabehera to investigate into the case. During the course of investigation the police officer Smt.Dalabehera examined the complaint and other witnesses, visited the spot and prepared a spot map, seized one half burnt plastic water bottle having smell of petrol, one faded night dress having smell of petrol, one fully burnt mosquito net having smell of patrol, one faded panty fixed with a burnt pieces of cloth, one match box, one piece of blue colour mosquito net (melted) affixed with a tarpaulin having smell of petrol from the spot. On the previous day itself, the I.I.C of the Police station had requested the chief Medical Officer to record the dying declaration of the victim child, who had been admitted in the hospital, and on the same day victim's dying declaration had been recorded. The victim was

shifted to SCB Medical college and Hospital at Cuttack on 26.4.2022, and hence she had proceeded to Cuttack, examined the deceased victim and recorded her statement U/s 161 Cr.P.C., but on the next day i.e. 30.4.2022 she was informed ,the victim had succumbed to the burn injuries, while undergoing treatment in SCB Medical collage and Hospital at Cuttack. The police Officer arrested the accused and seized his wearing apparels like jean pant and full shirt ,and forwarded him to the court. The police Officer had also sought for assistance of the scientific team of the DFSL, Berhampur, who visited the spot on dtd.1.5.2022 and collected physical evidence like some black colour shoot particles from the spot, and handed over the same to her through a seizure list. The seized articles were sent to the RFSL, Berhampur, through the court ,for chemical examination. She made a requisition to the IIC of Mangalabag Police station , Cuttack, to handover the concerned FIR of Mangalabag P.S. U.D case No.950/22, inquest report, Dead body challan, Post mortem report along with the case Diary, which she received on the subsequent days, and after completion of Investigation, submitted charge sheet against the accused to face his trial in the court of law, and hence this case.

3. The plea of the defence is complete denial and false implication of the accused, on the dispute over monetary transaction.

4. The points for consideration to decide the case are as follows:-

(i) If the deceased victim was then a minor girl child under the age of 18 years, on the very date of the incident ?

(ii) If on 25.4.2022 at about 9.30 P.M at/ near Vidyanagar, committed murder of the deceased victim girl by intentionally causing her death.?

(iii) If the accused had sexually harassed the deceased victim child by passing sexually coloured remarks?

5. In support of the case, the prosecution has examined altogether thirteen number of witnesses of whom P.W.7 is the mother of the deceased victim, P.Ws.3,4,5,6 and 8 are the independent witnesses ,P.W.12 is the Headmaster, P.Ws 1 & 2 are the police constables, P.W 9 is the Medical Officer of Berhampur Hospital, who had firstly treated the deceased-victim and recorded her

dying declaration, P.W.10 is the medical Officer of Cuttack Hospital who had conducted post mortem examination on the dead body of the deceased victim, P.W.11 is the medical Officer who had examined the mother of the deceased victim, and P.W.13 is the investigating Officer of the case, where as the defence has adduced no evidence on its behalf.

6. The first and foremost question to be decided in a case under the POCSO Act is minority of the victim, otherwise the case would not fall within the purview of the said Act. As per the F.I.R Ext.P-11, the deceased victim was a minor girl child of 13 to 14 years old. It is the version of a stranger who had lodged the F.I.R. The mother P.W.7 has not stated about her age of the deceased victim daughter, and similarly the independent witnesses are also silent on the age of the victim child. P.W.9 the medical officer Dr.Gayatri Mahali has also stated that the victim girl was 13 years old. But she had not conducted any ossification or dental tests to determine the age of the deceased victim child ,and there was also no time to verify such details, as she had proceeded for recording dying declaration and referred the patient to SCB Medical college Cuttack. P.W.10, the other medical Officer

Dr.Pradeep Kumar Nayak, who had conducted autopsy , has stated that it was the dead body of the deceased victim aged 13 years .

7. There is a separate provision in sec.34 of the POCSO Act for age determination of the victim child. Sec.34 of the POCSO Act prescribes the mode of determination of age of the child, who commits an offence, but does not provide any specific rule for determination of age of a victim child. The relevant section 34 of the Act reads that-

34. Procedure in case of commission of offence by child and determination of age by Special Court- (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of ¹[the Juvenile Justice (Care and Protection of Children) Act,2015 (2 of 2016)].

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying

itself about the age of such person and it shall record in writing its reasons for such determination,

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

8. The above Section 34 of the POCSO Act clearly says that when a child commits any offence under the Act, his/her age is to be determined under the provisions of Juvenile Justice (Care and Protection) Act (J.J.Act). However, sub-section 2 of Section 34 of POCSO Act requires that the age of the victim child shall be determined by the Court, after satisfying itself about the age of such person and it shall record its reasons for such determination. Sub-section 3 thereof further provides that the age determined as such shall be deemed to be correct. Of course, primarily the rules for age determination has been clearly prescribed in Section 94 of the Juvenile Justice (Care and Protection) Act, of which sub-section 2 and 3 are relevant. These two sub-sections to section-94 of J.J.Act lay

down the detail rules and procedures of age determination, which read that-

“94(1).....

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the School, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age

determination test conducted on the orders of the Committee or the Board”.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of the person so brought before it shall, for the purpose of this Act, be determined to be the true age of that person.

9. Though Section 34 of the POCSO Act does not say specifically that in case of victim child the age is to be determined as per Sec.94 of J.J.Act, but in the case reported in (2023) 91-OCR (SC)- 899 **P.Yuvaprakash – vrs.- State Rep. by Inspector of Police**, Their Lordships of the Hon’ble Supreme Court have held that in case of victim child also the same principle of juvenile justice (care and protection) Act is applicable. The relevant paragraph 13 of the judgment reads that-

“13. It is evident from the conjoint reading of the above provisions (Section

34 of POCSO Act and Section 94 of J. J. Act) that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned Court has to determine the age by considering the following documents:

(i) the date of birth certificate from the School, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

10. The investigating Officer had collected some maternal documents in proof of age of the deceased victim. P.W 12, Smt.Meenakhi Dalabehera, who was the investigating Officer of the case, has deposed in her evidence that on dt. 25.5.2022, during investigation ,she had visited Goilundi U.P. School, verified the school Admission Register to ascertain the age of the deceased victim, and seized the admission Register of the school on production by the Headmaster vide the seizure list Ext.P.8, and then he had returned the Register to the Headmaster vide Zimanama Ext. P.9 .She stated to have ascertained the victim's birth date to be 28.2.2010 and hence the deceased victim was aged 12 years one month and 25 days only.

11. P.W.12, Basanta Manjari Dash, was the then Headmistress of the Govt. Upper Primary School at Goilundi, Berhampur Town, from whose possession the school Admission Register had been seized by the police Officer. PW.12, in producing the original school Admission Register Ext. P-10 before the court , has confirmed that on 25.5.2022 the police officer had visited the U.P.School Goilundi and seized the school Admission Register on her

production vide seizure lit Ext.P-8, and then returned the Register to her under Zimanama Ext.P.9 .She proved the said school Admission Register as P-10 and stated that the deceased victim child was a student of their school and her name has been entered in the relevant entry in Sl.No.5291 dt. 26.4.2019 vide Ext.P.10/1, and her birth date is 28.02.2010.

During her cross examination , the witness has clarified that she was also the Headmistress of the same school at the time of admission of the deceased victim in the school, and that the victim's own mother had brought the child with transfer certificate of the previous school for admission in Class IV, and she herself has also brought the said transfer certificate which had been issued by Godavarish Nagar Primary School. The learned defence counsel suggested to the witness that Ext.P.10 is not the school admission Register and she had collected the document from elsewhere and the Police had not seized the same. These are all baseless, meaningless and also vague suggestions without any substance. The defence has no genuine ground to disbelieve the relevant entry Ext.P.10/1 in the School Admission Register Ext.P.10.

12. However, the document Ext.P.10 is not the specified school document described in section 94 of the JJ Act, but it is the basic document of school certificates on birth dates of the students. The school authorities issue school certificates basing on the school Admission Register only, as no other documents would be available for them. Therefore, by necessary implication, Ext.10 ,being the basic and fundamental documents of a school for any school certificate, comes within the categories of documents mentioned in preference No.(i) of the J.J.Act. Hence Ext.P.10 shall be considered for correct assessment of the age of the decease victim. Her birth date was 28.2.2010 as per the relevant entry Ext.P.10/1, and hence she was a minor girl child aged twelve years five months and twenty seven days only ,on the date of incident dt 25.4.2022.

13. So far as the allegation U/s 12 of the POCSO Act is concerned ,in the FIR there is no allegation of any incident of sexual harassment to the victim child, because of the fact that one stranger had lodged the FIR on the burning incident which he had accidently noticed while passing across the spot. During the trial, the informant had

also not turned up to the court for his evidence. He had also not mentioned in the FIR why the culprit had poured kerosene or petrol on the victim and set fire. Thus the police Officer while registering the case on the report of the stranger-informant, had put offences U/s 307 / 326 of I.P.C against the accused for having attempted to murder by inflicting burn injuries. But in the later days, after recording statement of the deceased victim and her mother , the police alleged commission of offences under section 8 and 12 of the POCS Act, and accordingly charge sheet had been placed.

14. The mother of the deceased victim , being examined as P.W.7, stated all about the burning incident, but whispered nothing about the incident of sexual harassment . Similarly, she has also not explained, why the accused had poured kerosene or petrol on the body of deceased victim and set fire. The police officer has started implicating the accused with the offences under POCSO Act basing on the statement of the deceased victim and her mother. P.W.7, the victim's mother has confirmed that the police had produced her before a Judicial Magistrate, who recorded her statement in Ext.P.4. It was a mere

statement of the witness U/s 164 Cr.P.C. which cant be taken as primary evidence of the fact stated therein ,though it can be used for the purposes of contradiction or corroboration. Under such circumstances, for clear understanding of the scenario, it would be proper to quote the said statement of deceased-victim's mother in Ext.P.4, the translated version of which runs as follows-

“My name is (name omitted) . Sixteen days before at about 9.30 P.M in the night, I was present at home. My son and daughter were present with me .At that time my brother Sipran Digal was also present with me. He brought 'Bara' (fried food item) for my daughter to eat. He asked my daughter to study well. He asked me for fried lady finger to eat. My daughter asked him to give her money for purchasing school note book. Then he asked my daughter to come to his house, and if she came, he would give money. My daughter told him 'if, I will go to your house, my mother would assault me'.He told my daughter, 'let me see how long your mother can keep you in her custody forcefully. I cannot resist myself looking at your beautiful face. I will destroy your face into pieces, so that people would hate you. Then he told my daughter 'mother I was telling you all these by consuming liquor but, I was telling for your wellbeing. Hence do not take it otherwise'. After knowing all about these,

I asked him, Brother, why are you telling about her beautiful face. After all you are her maternal uncle. I told her to go back to his house. He told to leave after a while . Then he told to consume 'Bidi'. I spread bed for the daughter and set the mosquito net. The daughter went to sleep. Then I had proceeded to set mosquito net for myself. Thereafter, the daughter shouted as saying –mother, Mother , petrol had been poured on my body, Mother rescue , rescue. I ran to the place and while pulling out the daughter, my right hand finger, left leg ,left eye lid were burnt. My daughter was completely burnt. I shouted and hence local people came and poured water, I immediately shifted the daughter to main hospital by means of an Auto rickshaw and then took Cuttack medical. After four days while under going treatment at Cuttack medical, the victim passed away. Thereafter, we went to Puri and cremated the dead body.”

15. There could have been such coloured remarks by the accused on the beauty of the deceased victim and he had whimsically threatened to destroy her beauty, but the facts stated before the Magistrate on the matter of sexual harassment are not stated by the witness during her evidence before the court . No other witness has also stated on this aspect before the court, most apparently they were not aware of the same, because such coloured

sexy remarks had been made within the four walls of the house. There is no material evidence on the charge of sexual harassment to the deceased victim, and hence the offence U/s 12 of the POCSO Act is not established.

16. The accused is also charged with a similar offence punishable under section 354 A(iv) of I.P.C, on the allegation of sexual harassment by making coloured remarks. The allegation is the same as in the offence under section 12 of the POCSO Act which has failed for want of any material evidence. Therefore, there is need of further discussion with respect to the offence under section 354 -A(iv) of I.P.C. and hence this offence also fails for want of evidence.

17. The material charge alleged against the accused is murder, not sexual harassment of the victim child (since dead). There is no dispute that in the occurrence night of 25.04.2022 at about 9.30 P.M, while the deceased victim was on her bed and inside the mosquito net for sleeping, the burning incident occurred, in consequence of which her 81 percent of the body surface had been burnt, and immediately after the incident, some local people including the stranger informant had assembled in the spot

house and the deceased victim had been shifted to the MKCG. MCH, Berhampur to save her life, and the doctor attending the patient had recorded the dying declaration of the victim, and then the victim had been referred to SCB Medical college and Hospital on the next day, but while under treatment at Cuttack, the victim child had succumbed to the burn injuries.

18. P.W.7 , being the mother of the deceased victim child, is the only ocular and material witness of the prosecution. It is her evidence before the court that since two months prior to the occurrence the accused was staying in her house, and on the date of incident in the night, while the accused was living in her house, had asked more curry. It is her further evidence that the deceased victim daughter was sleeping inside the house, and she herself was also sleeping nearby her daughter, and at that time the accused poured petrol on the deceased victim daughter and put (set) fire, whereby the deceased victim daughter cried for help, and she herself got up from the bed and found the deceased victim daughter was burning. She raised hullah and the nearby villagers run(rushed) to the spot and put off (put out) fire. According to her version , the

deceased victim daughter was burning with fire on her entire body, and she had taken the deceased victim daughter to the medical and told everything to the medical officer, who was treating the deceased victim, and that the local medical officer had referred to S.C.B. Medical college and Hospital, Cuttack, where she had stayed for four days, but her daughter succumbed to injuries in the hospital.

During cross examination she has stated that she had got the victim child (deceased) from the road side and hence she was not her natural born daughter, and that her son, who is elder to the victim, is a mentally ill boy. According to her version, the incident happened inside a room of the house where the victim girl was sleeping, and there was no electric current in the locality at the time of the incident, and that earlier the accused was suffering life sentence and she herself had brought him on bail, and that the accused was usually sleeping outside the house but on the date of incident the accused had requested to sleep inside the house, and that on the date of incident he was sitting on the outside veranda and smoking "bidi". Therefore, at the relevant time of incident the accused was present on outside veranda of the house and smoking bidi

.She has further stated that firstly they had taken the victim to the medical and thereafter gone to the police station and that her son had been also called to the police station and the villagers had also assaulted him.

19. The defence suggested to the witness that she had not stated before the police that the accused set fire on her daughter by pouring petrol, and that she had stated while she was arranging mosquito net for her accused brother, at that time the victim had cried for help as her body was burning. It has been also further suggested that she was selling petrol and other materials at the front side of her house, and that her mad son was raising objection while she was loving much to the deceased victim, and that her own son had set fire to the victim daughter. She has clearly denied all such defence versions. On the other hand, no such contradiction has been established through the investigating officer P.W.12 Smt.Meenakhi Dalabehera . The learned defence argued that the witness had not at all named the accused in her 164 Cr.P.C statement before the Magistrate as having poured Kerosene or petrol on the body of the deceased victim and set her to fire. The said statement of the victim in Ext.P.4 as quoted earlier is

entirely against the accused and none else, though she had not specifically stated the same.

20. The prosecution has examined some independent witnesses and they are Rajeswari Padhi (P.W.3), her husband Santosh Kumar Padhi (P.W.4), Gayatri Moharana (P.W.5), Rina Naik (P.W.6) and Rabi Kumar Das P.W.8 . The witnesses Rajeswari Padhi (P.W.3) and her husband (P.W.4) have deposed in their evidence that they do not know the informant, deceased victim and the accused as well, but stated that the occurrence had happened one year back (prior to the evidence before the court on 7.8.2023) and they heard from the residents of their lane that one girl of the same lane was burnt. P.W.8 Rabi Kumar Das , even though an immediate neighbour denied to have known the victim girl and the accused. According to his version he had told the police that he had no direct knowledge about the incident, but he came to know from daily News paper. It is surprising that in the modern age people residing in the same lane do not know their neighbour, even if burnt alive.

21 . P.W.5 Gayatri Moharana, who is an immediate neighbour of the victim, residing in the same first

floor of the house (as per the spot map Ext.P-12), has stated in her evidence that she does not know the informant ,victim and the accused also. It is quite absurd to say that despite being an immediate neighbour she knew none of them. She expressed her total ignorance about the incident by stating that at the time of incident she was in the hospital to attend her mother. But he witness admitted that she had been examined by the police in this case, and the police had escorted her to the court and her statement was recorded by a Magistrate in the court U/s 164 Cr.P.C vide Ext.P.-2. The learned Spl.P.P declared the witness hostile and cross examined her, but nothing substantial could be brought out from her mouth. During cross examination by the defence she has further stated that she had also stated before the police and the Magistrate that by the time of incident she was in the hospital as she was then attending her mother. Under such scenario of the facts, it would be just and proper to examine her statement U/s 164 Cr.P.C. recorded by the Magistrate in Ext.P.2, the translated version of which runs as follows:-

“Since one month there was no electric current in our lane. A few minutes before the power cut, the victim and her daughter were playing with other children

of their lane. But after the power cut, the children had gone back to their respective houses. While she was engaged in domestic work , all of a sudden she heard unusual sound- “Podigala Podigala.

Then I went to call the neighbour Reena Naik to see what had been burnt. I went to the place and found the deceased victim’s mother bringing the deceased in a naked condition. The people assembled there , so also the police arrived . The people assaulted deceased victim’s maternal uncle and her brother. The deceased victim’s mother shifted the child by an Ambulance and the police took the deceased victim’s brother and maternal uncle, and then they had returned home.”

22. The prosecution has also brought out from the mouth of investigating Officer P.W.13 that the witness Gayatri Moharana (P.W.5) had stated in her police statement that on 25.4.2022 at about 9.30 P.M they heard cry from the house of the victim and she found the victim had been set ablaze and that the accused had poured kerosene on the victim and set her to fire. From the above facts and circumstances , it is very much clear that the witness P.W.5 has totally deposed falsehood in concealing the truth for some reasons and otherwise.

23. P.W.6 Rina Naik is the fourth independent witness from the same locality. It is her evidence that she

knows the informant, and also knows accused, who was visiting the house of the informant, and that the incident happened about two years back (prior to her evidence in the court on 6.5.2024) and that on the very date of incident at about 9 to 10 P.M they hearing hullah came outside of the house and found the body of the deceased victim was burning with fire. But the informant is a stranger male person and not the mother or any relative of the deceased. But this witness was under impression that the informant was the mother of the deceased victim. It is her further evidence that some villagers were assaulting a man and she along with others called ambulance to take the deceased victim to hospital for her treatment, and subsequently the ambulance reached there and took the victim to the medical. She has also confirmed that she had been produced before the local Judicial Magistrate, who recorded her statement vide Ext.P.3 . The witness did not confirm the identity of the man, who was assaulted by the villagers suspecting him to be the culprit, and therefore, the learned special P.P declared the witness hostile and cross -examined her. She denied to have stated before the Magistrate that she found the villagers assaulting the uncle of the deceased. Examined her 164 Cr.P.C statement before the Magistrate

in Ext.P.3, and found that her statement had been recorded two months after on 27.6.2022 and she had clearly stated that the people assaulted the maternal uncle of the deceased and that the police took him on a vehicle. During her evidence, though she has not confirmed the identity of the man, who had set fire to the deceased victim, but she had earlier stated before the Magistrate that the man, who was assaulted at the spot by the local people just after incident, was the maternal uncle of the deceased victim.

24. The prosecution has adduced medical evidence by examining three medical officers of different Hospitals. P.W.9 Dr.Gayatree Mahali, who was then a senior Resident of Medical Collage, Berhampur and engaged in the causality, has deposed in her evidence that on dt 25.04,2022, on police requisition, she had examined the victim child and found 81 per cent of her body surface including the face had been burnt but she was in sense, and that she had provided necessary treatment and also recorded her dying declaration in presence of the witnesses including her own mother, and the said dying declaration forms a part of the medical report in Ext.P.5. She further stated that she had also obtained signature of the victim's

mother on the dying declaration as well as on the medical report, while the deceased victim not able to sign, she had obtained her L.T.I on the dying declaration.

During cross-examination, she has stated that they had come directly to the causality without going to any other doctor, and that her junior students were too present with her. She confirmed that the mother of the child had come with the deceased victim and disclosed the incident, and she was alone asking the questions to the victim, and she herself had written the dying declaration on her own hand. She denied the defence suggestion that the victim had died within 15 minutes of the incident and hence she had not recorded the dying declaration, and she had prepared the same as per the version of the deceased victim's mother. It is the clear case of the prosecution that after dying declaration the victim had been shifted to S.C.B. Medical college, Cuttack and while under treatment the deceased victim had died after four days in S.C.B. Medical College and Hospital at Cuttack She admitted that the police had not examined her after recording of the dying declaration. She is not an occurrence witness, but the medical officer, who gave evidence in her official capacity

and her evidence is totally based on documents.. There is no discrepancy or any infirmity in her evidence, and hence her entire evidence is not disputable.

25. The dying declaration, which forms a part of medical papers in Ext.P.5, would go to show that the doctor had asked the deceased victim a few questions as to her name and address and about the incident. The deceased had clearly stated that in the night at 9 P.M. while she was sleeping, her maternal uncle Sripran Digal poured petrol on her body and set fire, and that her mother had rescued her and shifted to the hospital, and that her maternal uncle Sipriyan Digal was responsible for the incident.

The learned defence counsel disputed the genuineness of the dying declaration on the ground that the deceased victim had not signed on the document, and that the victim's mother who was present there had manipulated the same. The victim had sustained severe burnt injuries extending to 81 per cent of her body surface, and the statement had been recorded immediately while she was in extremely terrible pain, and therefore, it was natural that she was not in a position to put her signature. But the doctor had taken the L.T.I of the

deceased victim on the dying declaration . The victim's mother and many local people, had immediately shifted the victim to the Hospital for treatment and soon thereafter, the dying declaration had been recorded, most apparently prior to the registration of the case at the police station in the early morning. Therefore , there is no genuine ground for the defence to dispute the dying declaration.

26. P.W.11 Dr.Aswin Suresh was then medical Officer of City Hospital ,Berhampur. It is his evidence that on 11.5.2022, on police requisition, he had examined the victim vide medical report Ext. P-7 and found her conscious , oriented and stable, and he had found multiple burn injuries such as :-

- (i) Burn injury 1 cm x 1 cm over the left supra orbital region extending over left upper eye lid.
- (ii) Burn injury over left forearm, left shoulder and right shoulder of size 1 cm.
- (iii) Burn injury over right hand fingers 3rd,4th and 5th.
- (iv) Burn injury over left hand.
- (v) Burn injury of size 6 cm x 4 cm over left leg just below knee extending over the lateral aspect of leg till above the left lateral Malleoli.

The doctor opined that all the injuries were grievous in nature, caused by burn with petrol and fire. It is his further evidence that in the previous day on 2.5.2022, the patient had been treated in the hospital vide OPD No . 4787 in surgery ward and after treatment the patient had been sent back.

During cross-examination, the doctor stated that he had examined the victim on 11.5.2022 after 16 days of the occurrence, and that he had not mentioned that it was a case of petrol burning but mentioned the fact in the history, and that the patient had narrated the incident though he had not mentioned the same in his report, and that by the time of examination the injuries were at the healing stage.

27. The learned defence counsel argued that the victim was alive till 11.5.2022 which is 16 days after the occurrence, and that the doctor has totally falsified the dying declaration as per his own statement that he had not mentioned in his report about the narration of the incident by the victim. On examination of the medical report Ext.P-7, it is found that the medical officer P.W.11 had examined

the mother of the deceased victim , and not the deceased victim. The mother of the deceased victim is also a victim for all purposes, as the deceased victim had succumbed to the burn injuries, and she herself had also sustained burn injuries during the rescue of the child . The medical report Ext.P.7 has been prepared on the reverse page of the injury requisition issued by the police, and this requisition would further prove that the police had sent the mother of the deceased victim on 11.5.2022 for her medical examination. The deceased victim had never been produced before the Doctor P.W.11, as she had been admitted immediately in the same night of the incident and on the next day she had been shifted to S.C.B. Medical College, Cuttack, where she had succumbed to the injuries after four days of treatment. But during the court trial, the names of the victims are not written on the deposition forms, for which such minor discrepancies are bound to appear. Therefore, the argument advanced as such by the learned Defence counsel is factually incorrect. The Medical report in Ext. P.7 would go to prove that the deceased victim's mother had immediately tried to put out fire on the body of her daughter, in course of which she had sustained those burn injuries. But the evidence of the doctor P.W.11 is not correct that the burn

injuries were due to petrol burning. There is no such finding on his report and it is also quite absurd. But the thing remains very crystal clear that the deceased victim had sustained burn injuries due to petrol burning on her body, and the mother of the deceased victim had sustained some grievous burn injuries on her different parts of body in course of the incident, while she had tried to put out fire on the body of the deceased victim.

28. P.W.10 Dr Pradeep Kumar Nayak was the Asst. Professor, F.M. & T Department, SCB Medical Collage, Cuttack, who had conducted autopsy on the dead body of the deceased and submitted the postmortem report in Ext.P.6. It is his evidence that on 30.4.2025, on police requisition, he had conducted Post Mortem on the dead body of the deceased victim, being identified by OAPF-94 Kartika Sabar, and it was the dead body of female girl child aged 13 years , and that he had found as follows.

i. Average body built ,teeth 14 in each jaw, rigor mortis partially developed in jaw and all limbs, Postmortem lividity was not appreciable, central I.V line was present over right subclavian region, surgical bandage all over the body,

ii. Dermo epidermal burn injuries with infected greenish yellow base involving entire body, sparing part of scalp, left shoulder, patch of 15cm x 5 cm over left forearm ventral aspect, left side chest lateral aspect, left lateral aspect abdomen, perineal area, a patch of lower abdomen, bilateral soles. Lines of redness present over the burnt areas. Scalp hair, axillary hair, eye brows and eye lashes were singed.

iii. On dissections of the body, - scalp, skull and duramater were intact. Brain was intact and congested. Neck structures were intact. Lungs were intact and pale. Heart was intact and right chamber was containing fluid blood. Stomach was intact, mucosa was healthy and was containing 20 ml of bilious fluid. Liver, spleen and kidneys were intact and pale. About 1 ltr. of exudative fluid were present inside abdominal cavity. Uterus was intact, small and empty.

The medical Officer opined that the above mentioned burnt injuries were ante mortem in nature, caused by dry heat in the form of flame and fire involving 80 to 85 percent of total body surface area; Death was due to septicemic shock as complications of burnt injuries, and the time since death was 6 to 12 hours at the time of autopsy.

During his cross examination, he expressed his inability to opine exactly if the child could have lost her sense or had sense and able to speak in case of such extent

of burn injuries. The doctor stated that there was no smell of kerosene or anything else, on the deceased had been treated after the incident. He has also admitted that police had not examined him in connection with this case. The doctor has completely confirmed that the deceased had sustained extensive antemortem burnt injuries involving 80 to 85 percent of her body surface, caused by dry heat in the form of flame and fire, which could have been due to either kerosene or petrol, and that *the* death was due to septicemic shock as complications of burnt injuries.

29. P.W.13 Smt.Meenakhi Dalabehra ,who is the investigating of this case, has confirmed in her evidence that on 26.4.2022 while she was S.I of Police B.N.Pur Police station, in the absence of the I.I.C, of the police station, the Sub-Inspector Sri Bhairaba Kumar Bhuyan had received the written report Ext.P.11 from one Ashis Dash and registered P.S.case No.117/22 U/s 307/326 of I.P.C, and directed her to investigate into the case vide Ext.P.11/1. It is her evidence that during investigation she had examined the informant, made a requisition to the S.P. Berhampur to depute scientific team from the DFSL. for spot visit, and that on the same day at about 5.30 A.M in

the very morning she had visited the spot and prepared a spot map in Ext.P.12, and collected half burnt plastic water bottle, faded multi colour night dress, one pink colour burnt mosquito net, one faded green colour pant (chadi), one match box, one piece of blue colour mosquito net (melted) fixed on a black colour tarpaulin from the spot, and there was smell of petrol from the room and those materials, which she had seized at the spot in presence of the witnesses vide Ext P.13.

30. The spot map Ext.12, which is annexed to crime detail form, would go to show that the spot house was the rented house of deceased victim's mother situated at the first floor of the house, and the house owner was one Bidyadhar Das, and that the spot of occurrence is a small room divided into two parts without any partition and there was bath room on the southern side and another bed room on the northern side with a small portico in front of the front room, and that witness Gayatri Moharana (P.W.5) was staying adjacent to the spot house while Rina Naik (P.W.6) was residing at the ground floor of the house. In the spot map it has been further stated that witness Rabi Dash (P.W.8) was staying on the other side of the spot

house. Therefore, P.W.7, the mother of the deceased victim, is correct to state in her evidence that at the time of the incident she was sleeping nearby her deceased daughter.

31. It is her further evidence that she had examined some other witnesses at the spot, apprehended the accused from his house and seized his wearing apparels vide seizure list Ext.P.1 and she had arrested the accused and forwarded him to the court. She further stated that the victim had been firstly admitted at M.K.C.G. Medical college at Berhampur and her dying declaration was recorded and then she had been referred to S.C.B. Medical College at Cuttack for better treatment and that on 27.4.2022 she had examined the deceased victim's mother and one Tinkeswar Majhi at S.C.B Medical college at Cuttack, and on 29.4.2022 she had again proceeded to S.C.B. Medical college, Cuttack and recorded deceased victim's statement, but on 30.4.2022 she had got intimation about death of the deceased victim.

32. It is her further evidence that on 1.5.2022 the scientific team had visited the spot in her presence and collected some materials on the spot, and handed over the same to her vide seizure list Ext.P.14, and then she had

received the spot visit report vide Ext.P.15 from the scientific team. In the later days, the seized materials had been sent to the RFSL, Berhampur, through court vide forwarding report Ext.P.16, but no such chemical examination report has been received or exhibits during the trial .

33. The witness has also stated that on 8.5.2022 she made a request to the Mangalabag Police, Cuttack for supplying dead body challan, post mortem report of the U.D.case relating to the deceased victim, and that in the later days on 31.7.2022 she herself had proceeded to Mangalabag Police station,Cuttack, and receive the P.M report , inquest report (Ext.P.22) , dead body challan (Ext.23) and the U.D.case F.I.R under a seizure list vide Ext.P.21. She has further stated that on 10.5.2022 she had also visited the M.K.C.G. MCH, Berhampur and seized the discharge certificate, bed head ticket with dying declaration (Ext.P.5.) and casualty O.P.D ticket (Ext.P.19) under the seizure list Ext.P.18. She has also confirmed that on 11.5.2022 she had issued injury requisition in favour of deceased victim's mother and received the injury report, and that on the same day the victim's mother had been

produced before the court for her statement which was recorded by the Magistrate U/s 164 Cr.P.C. She has also affirmed that on 17.5.2022, he had made a requisition to the Tahasildar to provide land particulars with sketch map of the occurrence spot and in the later days she had received the same, which is Ext.P.20.

34. Previously the accused was a life convict but he had been released on parole for which by the time of incident the accused was no more inside the jail but found in the occurrence house. In this connection the witness (P.W.13) has stated that on 18.5.2022 she had written to the Jail Superintendent, Berhampur, to provide necessary information with respect to the previous conviction of the accused, whereby on 23.5.2022 the said Jail Superintendent had transmitted the information through the whatsApp message that the accused had been convicted in S.T. 215/2012 U/s 302 I.P.C with life sentence, but the convict had been released on parole. During cross examination of P.W.7 (deceased victim's mother) also the defence itself has brought out from her mouth that the accused was suffering life sentence and she herself had brought him on bail.

During cross- examination it is also brought out from her mouth that the deceased victim's mother (P.W.7) had two children, of whom the daughter had been married and the son was an insane type boy, and that the victim was not the original daughter of the woman but she had picked up the abandoned child (deceased) from a road side at Bhubaneswar and brought up her at home as her own daughter. This fact is also confirmed by the P.W.7 herself during her evidence.

35. She has also confirmed during cross-examination that there was power cut at the locality at the time of occurrence within 9 P.M to 9.30 P.M, and that from the spot (after the spot visit) she had proceeded to the M.K.C.G.,MCH, Berhampur and by then the deceased victim had been referred to S.C.B Medical college, Cuttack and hence she had not seen the victim at Berhampur Hospital, and then on 27.4.2022 she had gone to S.C.B medical College, Cuttack, where she found the deceased victim, who was not in a condition to give her statement.

36. The defence put three important suggestions to the investigating officer and those three questions form the

entire defence plea of innocence of the accused . Firstly, the police Officer had admitted that the investigation does not disclose from where the accused had procured petrol. Then the defence has suggested to the Investigating Police Officer that she herself was present at the time of dying declaration, and as per the version of the deceased victim's mother, the dying declaration had been recorded. Thirdly, it is also suggested that the accused had not killed the deceased victim by burning, but since the mother of the deceased victim (P.W.7) was very much fond with the deceased victim, the insane brother of the deceased killed her, and in order to save the life of her only son, the deceased victim's mother had named the accused as the culprit, since the accused had come out of jail on parole , and she had thought in her mind, if she would name the accused as the culprit, the police would easily believe her statement

37. The learned Defence counsel vehemently argued that there is no evidence as to where from the accused had procured petrol. It is true that the investigating officer had not found out, from where the accused had brought the petrol to the occurrence house. But there is

absolutely no doubt that in the occurrence night, while the deceased victim child on her bed and sleeping inside the mosquito net, petrol had been poured on her body and she was mercilessly set on fire, whereby she had succumbed to the burnt injuries within 5 days .Therefore, it is not important to find out where from petrol or diesel had been brought to the spot house, but the important aspect for consideration is who did the said inhuman cruel act and burnt the deceased alive. In this connection, it is pertinent to see that the defence had suggested to the deceased mother (P.W.7) that she was selling petrol and other materials at the front side of her house.

38. The learned defence counsel argued that the insane brother of the deceased had burnt the deceased due to jealousy with her, and the accused has been falsely implicated by manipulating the dying declaration to save her son and the evidence available against the accused is insufficient. In support of his argument, the learned defence counsel relied on some citations, which are of course not filed. The learned Defence counsel submitted in writing the general principles of criminal justice (i) that an accused is presumed to be innocent till he is proved guilty,

and suspicion however strong can never take the place of proof, and the prosecution has to adduce reliable and cogent evidence to travel that path- vide OCR -2012, vol.51-482 (Kailash Gour and others Vrs state of Assam; secondly, that in criminal jurisprudence the burden is always on the prosecution and never shifts, and the accused is presumed to be innocent unless proved guilty by the prosecution, and the accused is entitled to the benefit of reasonable doubt- Vide AIR 1920 SC 1459 (Vijaya Sigh Vrs. State of UP) and thirdly, that a conviction can be based upon the solitary testimony of a witness when said testimony is found to be of sterling quality and free from any blemish, and the evidence of the solitary witness has to be above the board vide OLR 2023(ii)-431(Sarbeswar Badia Vrs State of Orissa) .The learned defence counsel has correctly and appropriately relied on those citations. But the same being not filed and also not available, it is not possible to quote the same with authenticity. But the principles of law so apprised are not disputable.

39. In the occurrence night, the deceased victim was sleeping inside a mosquito net on her bed, and her mother was sleeping or had gone to sleep on her bed at a

nearby place in the same small house. While the deceased victim, burning with petrol and fire, had raised shout, the mother (P.W.7) had got up, rushed to the deceased victim and put out fire at the risk of her own life, whereby she herself had also sustained grievous burnt injuries vide medical report Ext.P.-7. At the time of awful and horrible incident of child burning, there were two other persons present in the occurrence house, and they were insane brother and the maternal uncle of the deceased. The accused is the said maternal uncle of the deceased and the own brother of P.W.7. Therefore, the learned defence counsel argued that the insane deceased's brother had burnt the deceased, and in order save him, the accused has been falsely implicated. In any event, if the son of P.W.7 had burnt the deceased, he could have escaped criminal liability on account of his insanity, which is an excuse U/s 84 of the penal code.

40. The learned defence counsel, in support of his argument, apprised that as per the own statement of P.W.7, her son had been also called to the police station and the villagers had also assaulted her son, and that the independent witnesses, while giving their statements before

the Magistrate U/s 164 Cr.P.C, had too stated that the local people were found assaulting the brother of the deceased and her maternal uncle (accused) and both of them were taken by the police to the police station immediately after the incident. On perusal of their statements in Ext.P-2 and Ext.P-3, it is found that P.W.5 alone had given such a statement that the people having assembled there had assaulted the maternal uncle and the brother of the deceased victim, and the police reached the place and took both of them to the police station, Basing on such statements, the learned defence counsel forcefully argued that insane brother of the deceased had burnt the deceased due to jealousy with her.

41. The fact that the local people while assaulting the accused, had also assaulted the brother of the deceased and then both of them had been taken to the police station immediately, is not enough to believe that the deceased's brother is the real culprit and the accused has been falsely implicated. It creates a suspicion at the initial stage, but the police had investigated the case in details to find out the real culprit. In the absence of any eye witnesses, the police would examine and interrogate many persons from

different angles. There is absolutely no evidence on record that the insane brother of the deceased had burnt the deceased for jealousy or otherwise. During examination U/s 313 Cr.P.C, the accused admitted the fact that he had been earlier sentenced to life imprisonment and he had been released on parole, but denied all the material incriminating evidence against him by stating that on the very date of the incident, he was not at all present in the occurrence house of his sister (P.W.7) , that he has been falsely implicated in the case on account of monetary dispute that five years before his sister (P.W.7) had taken Rs.40,000/- from him on credit, but instead of returning the same quarrel with him. He had not stated or whispered that the brother of the deceased had burnt the deceased, or that he had been falsely implicated to save the life of the deceased's brother. The accused also did not like to enter into the witness box to testify any such incident in the house, though he himself was present at the time of the incident.

42. It is clear from the evidence of the victim mother (P.W.7) that the accused was present in the house at the time of the incident, and he was staying in her house from the preceding two months of the incident. Her such

evidence in specific is not all disputed by the defence. There is also no assertion, except during examination of the accused U/s 313 Cr.P.C, that he was not present in the occurrence house at the time of the incident. The defence relies on the 164 Cr.P.C. statements of the witnesses in Ex.P.2 & Ext.P.3, but they (P.Ws 5 & 6) had named the accused, who had been assaulted by the people immediately just also the incident. The accused took plea of alibi whimsically but not seriously at the time of his examination, but he has not disclosed where he was then present if he was not present in the occurrence house. . He has not tried to prove his absence at the spot and hence the natural presumption would be against him that he was present at the spot when the child burning incident happened.

43. P.W.7, the mother of the deceased victim seems to be a poor illiterate house wife at Bidyanagar, and the accused, though a resident of a different District, was also staying at the nearby lane Dandasi Sahi ,Berhampur Town within the same police station jurisdiction. P.W.7 had her two children, - one is married daughter, and the second one is the son, who is an insane type boy. There is

no further information about the said son of P.W.7 or his activities at the time of the incident in the house. Despite having her own children, she had picked up the abandoned deceased victim child from a road side at Bhubaneswar and brought up her as good as a natural born daughter, maintained the child well and good, and also imparted education by admitting the child in local primary school. She seems to be a very kind hearted lady, and hence she had sympathy for the accused, though a life convict. She herself stood surety for the accused brother while the accused was suffering life imprisonment and got him released on parole, and thereafter also she was helping the accused by accommodating him at her small house. There is absolutely no ground to believe that she had enmity or hostility with the accused brother at any point of time prior to the occurrence. When the accused himself was a life convict, who had been released on parole, it can never be believed that the accused had given Rs.40,000/- to his sister on credit, and there was dispute between them, and he had been falsely implicated to save her own son. After all the accused is also her own brother, whom she had assisted to be released on parole. The defence has not given such a suggestion of monetary transaction to any of the

prosecution witnesses including the investigating police officer, P.W.13, and he has also adduced no evidence to establish such a fanciful defence plea. Thus, the pleas taken by the accused during his examination U/s 313 Cr.P.C are not in the evidence and hence they are baseless, vague and also imaginary. Such a narrative has been planted at the fag end of the trial to get any how escape from the criminal liabilities.

44. The mother of the deceased herself had not complained before the police, as soon after the incident she was busy in the medical treatment of the deceased daughter at MKCG MCH, Berhampur to save her life and within a few hours of the incident she had taken the deceased to S.C.B Medical Collage, Cuttack where the deceased died within 4 to 5 days on 30.4.2022. She had no time to go to the police and complained against her brother accused. The FIR had been lodged by a stranger passerby, who honestly informed the police in writing, what he had observed at the spot and spontaneously heard from the deceased's mother. The informant could not be examined as a witness during the court trial, as his whereabouts could not be ascertained, but his statement

U/s.164 Cr.P.C had been recorded by the learned Magistrate, simultaneously on the same day when the statement of P.W.5 and P.W.6 had been also recorded. Therefore, the victim's mother herself had not implicated the accused in the case, but by a stranger passerby. Therefore, it would be wrong to say that in order to save the life of her son, the deceased mother had named the accused as the culprit for burning the deceased child.

45. The learned defence counsel also apprised that the prosecution has failed to establish the motive of the accused behind the incident of child burning. Motive is not required to be essentially proved in a criminal case because it is a state of mind of the culprit. In the absence of direct evidence on the matter, it can be assessed from the attending circumstances for which in the present case one has to go to the previous statement of the deceased victim's mother u/s.164 Cr.P.C. before the Magistrate in Ext.P-4 and there is no other document. It seems that the accused had casted evil eyes on the minor daughter who was a beautiful girl which the accused was not able to resist.

46. The dying declaration in Ext.P-5 is the first statement of facts officially registered by the medical

officer, P.W.9. Soon after the incident, the deceased victim had been admitted in MKCG,MCH, Berhampur in a critical condition due to 81 percent of burn injuries and the Medical Officer, P.W.9, who was attending the patient, in apprehending death of the deceased and in pursuance to advice of the Police Officer (IIC of Baidyanathpur Police station), had immediately recorded the dying declaration of the deceased in Ext.P-5 . The deceased can never have an idea to name a different person as culprit to save her brother, while the accused would be also her maternal uncle. The learned defence counsel argued that the dying declaration had been recorded by the doctor on the version of the deceased's mother, who was present there. But there is no material before the court that the deceased's mother had influenced the doctor to implicate the accused. P.W.9, who recorded the dying declaration, is a public officer, and in discharge of his official duty, he had recorded the dying declaration . There is no substance on such argument. The dying declaration in Ext.P-5 is a substantial piece of evidence against the accused which cannot be ignored or discarded on such imaginary and baseless ground. The dying declaration in Ext.P-5 corroborates the oral testimony of the deceased's mother (P.W.7).

47. The deceased victim's mother (P.W.7) is a trust worthy and reliable witness. She had no hostile terms with the accused in the previous days, rather she had good relationship with him. She has adduced clear and clinching evidence . She had not seen the particular incident but she had immediately rushed to the place within a few seconds while the accused was in the occurrence house. Her evidence is supported by the dying declaration of the deceased victim which is a substantive piece of evidence. There were also other additional evidences as the local people having assembled there during the incident had started assaulting the accused due to his such conduct. The burden of proof certainly lies with the prosecution to prove the guilt of the accused, but in peculiar circumstances when any fact is especially within the knowledge of the accused, the burden of proof lies upon him, as per the language of Sec.106 of the Evidence Act. While the child was burning with petrol and fire and the mother was sleeping just at a nearby place on her bed, the accused along with the insane brother of the deceased were present. The said insane boy can not give evidence to explain the incident, and therefore the accused himself is the proper person to explain how the victim was burnt with petrol and fire. But the

accused totally remained silent over the matter and did not like to open his mouth even at the time of his examination u/s.313 of Cr.P.C. Therefore, the natural presumption would be that the accused himself had committed the crime and none else. Anyway, the evidence of P.W.7 cannot be disbelieved when her evidence is supported by the dying declaration of the deceased victim herself. Hence, it is clearly established that the accused had poured petrol or kerosene on the body of the deceased victim and set her on fire and killed her by inflicting extensive burn injuries. Accordingly, the offence u/s.302 of IPC is proved against the accused.

48. In the result of the above discussion, I find, the prosecution has successfully proved its case, of-course partly, against the accused beyond all reasonable doubts. I hold the accused not guilty of the offences u/s.354-A(iv) of IPC and Sec.12 of the POCSO Act and acquit him thereof. But at the same time, I hold the accused guilty of the offence charged to him u/s. 302 of IPC, and convict him thereof u/s.235(2) of Cr.P.C.

Sd/- R.L.Panda,29.6.26
Ad hoc Addl.Dist.& Sessions Judge,
(FTSC) under POCSO Act,Berhampur.

The judgment, typed to my dictation and corrected by me, is pronounced in the open Court on this the 29th.day of June, 2026 under my hand and seal of the Court.

Sd/- R.L.Panda,29.6.26
Ad hoc Addl.Dist.& Sessions Judge,
(FTSC) under POCSO Act,Berhampur.

HEARING ON THE QUESTION OF SENTENCE

30.06.2026

49. Heard the learned defence counsel and the learned Spl.P.P. in presence of the convict on the question of sentence. The learned defence counsel submitted that the convict is an aged man of 65 years, who hails from a poor family in a remote village, and that he had no motive or intention to kill the deceased but due to influence of liquor such an unfortunate incident had happened, and that the convict has his three sons at home and therefore a lenient view may be taken in awarding minimum prescribed sentence. The learned Spl.P.P submitted that the convict may be sufficiently punished to meet the ends of social justice.

50. It is found that the convict is within the age group of 65 years. He must have his family with children at home. He is the own brother of P.W.7(deceased victim's mother) and therefore, a maternal uncle to the deceased. But he was a life convict released on parole, and it was P.W.7, who herself had stood surety for release of the convict on parole. The convict had no enmity with the deceased or her mother (P.W.7) in any manner . Rather he had good relationship with them for which P.W.7 had accommodated him in her small house. But the convict betrayed his sister P.W.7 and killed the deceased victim child in a very abnormal and cruel manner mercilessly that too while she was in sleep . It is a child burning case and as it appears from the 164 Cr.P.C. statement of P.W.7,the convict had evil eyes on the deceased victim child for she was very beautiful at the early age of grown up period, which the convict was not able to resist.

51. The said deceased victim was an abandoned child. P.W.7 had picked up the deceased victim from a road side at Bhubaneswar and brought up her at home as a natural born daughter. At the time of incident the deceased victim was at the age of 12 years, which is early time of her grown up age, and in the night of the occurrence,

while she was sleeping inside mosquito net on the bed, the convict had poured petrol or kerosene on her body and set fire, whereby the deceased died within five to six days while undergoing treatment in SCB Medical College, Cuttack. Just at the time of the incident, her mother (P.W.7) had reached the spot and found the child, whom she herself had picked up from road side and brought up her at home, was found burning on entire body with petrol/kerosene and fire and she had rescued the child by taking her life risk and sustained grievous burn injuries. The most pathetic condition is that by the time of incident she was sleeping in side a mosquito net on her bed, and the convict had in a very cruel manner set fire on her body by pouring petrol/ kerosene, and due to the horrible incident the minor child of 12 years had sustained extensive burn injuries extending to 81 percent on her body surface. The convict had inflicted severe burn injuries and caused untold pain and sufferings to the minor victim child until her death. We cannot bear burning of a tip of our finger but the minor child was found burning on her entire body and ultimately she died within five days .

52. The offence is u/s.302 of IPC. In the earlier case also it was an offence u/s.302 of IPC as has been

confirmed by the Investigating Officer (P.W.13) in her evidence. Admittedly, the man was a life convict . He had caused horrible incident of child burning and murdered the deceased child of 12 years old . It is a very rarest in rare cases of murder of a minor child by burning with petrol/kerosene and fire. Considering the cruelty and brutality of the convict, and pains and sufferings meted out to the deceased victim until her death and the convict himself being already a life convict, minimum prescribed sentence would be unjust and improper. It is very dangerous to the society to live with the accused any more. Earlier there was a separate provision in Sec.303 of IPC which prescribed mandatory sentence of death in case of life convict. But the same has been repealed, and then while enacting Bharatiya Nyaya Sanhita in the subsequent days, a similar provision has been made with an alternative sentence of life imprisonment until remainder of the natural life of the convict. But it is the desire of the society that such a life convict should be given death sentence. Under the above premises, the maximum sentence, which is nothing but death penalty, would be just and appropriate to meet the ends of justice to the deceased family as well as the society at large.

53. Accordingly, subject to confirmation by the Hon'ble High Court, the convict is sentenced to death by hanging by neck until his death for the offence u/s.302 of IPC.

The zimanama shall stand cancelled, and the other seized properties, if any, be destroyed after four months of the expiry of appeal period, if no appeal is preferred.

Sd/- R.L.Panda,30.6.26

Ad hoc Addl.Dist.& Sessions Judge,
(FTSC) under POCSO Act,Berhampur.

| LIST OF PROSECUTION /DEFENCE /COURT WITNESSES | | |
|------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------|
| A. Prosecution witnesses- | | |
| RANK | NAME | NATURE OF EVIDENCE |
| | | EYE WITNESS,POLICE WITNESS,EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS. |
| P.W.1 | Dasarathi Sahu | Police constable/ seizure witness. |

| | | |
|--------------------------------------|--------------------------------------|----------------------------------------------------------------------------------|
| P.W.2 | Banamali Behera | Police constable/ seizure witness. |
| P.W.3 | Rajeswari Padhi | The independent witness. |
| P.W.4 | Santosh Kumar Padhi | The independent witness. |
| P.W.5 | Gayatri Maharana | The independent witness. |
| P.W.6 | Rena Naik. | The independent witness.. |
| P.W.7 | The mother of the deceased victim | The evidence of the mother of the deceased victim. . |
| P.W.8 | Rabi Kumar Das | The independent witness |
| P.W.9 | Dr.Gayatri Mahali | The Medical Officer who recorded dying declaration. |
| P.W.10 | Dr.Pradip Kumar Nayak | The Medical Officer who conducted postmortem of the deceased victim. |
| P.W.11 | Dr.Aswin Suresh | The Medical Officer who had examined the mother of the deceased victim. |
| P.W.12 | Basanta Manjari Das | Headmaster. |
| P.W.13 | Smt.Meenakshi Dalabehera | The Investigating Officer. |
| B. Defence witnesses, if any: | | |
| RANK | NAME | NATURE OF EVIDENCE |

| | | (EYEWITNESS, POLICEWITNESS, EXPERTWITNESS, MEDICALWITNESS, PANCHWITNESSES, OTHER WITNESS) |
|----------------------------------------------------|-------------------|----------------------------------------------------------------------------------------------------------|
| | None | |
| LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS. | | |
| A. Prosecution Exhibits | | |
| Sl.No | ExhibitsNumber | Description |
| 1 | Ext.P-1 (P.W.1) | Seizure list. |
| 2 | Ext.P-1/1(P.W.1) | Signature of the victim girl,P.W.1. |
| 3 | Ext.P-1/2(P.W.2) | Signature of P.w.2 |
| 4 | Ext.P-2(P.W.5) | 164 Cr.P.C. statement of P.W.5 |
| 5 | Ext.P-2/1(P.W.5) | Signature of P.W.5 |
| 6 | Ext. P-3(P.W.6) | 164 Cr.P.C. statement of P.W.6 |
| 7 | Ext. P-3/1(P.W.6) | Signature of P.W.6 |
| 8 | Ext.P-4(P.W.7) | 164 Cr.P.C. statement of P.W.7 |
| 9 | Ext.P- 4/1(P.W.7) | Signature of P.W.7. |
| 10 | Ext. P-5(P.W.9) | Medical report with dying declaration of the deceased victim. |
| 11 | Ext.P-5/1(P.W.9) | Signature of P.W.9 |
| 12 | Ext. P-5/2(P.W.9) | The signature of mother of the deceased victim |
| 13 | Ext.P-5/3(P.W.9) | The signature of mother of the deceased victim |
| 14 | Ext. P-5/4(P.W.9) | The signature of mother of the deceased victim |

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| 15 | Ext.P-6(P.W.10) | Post mortem report. |
| 16 | Ext.P-6/1 (P.w.10) | Signature of P.W.10 |
| 17 | Ext. P-7(P.W.11) | Injury report relating to the mother of the deceased victim. |
| 18 | Ext.P-7/1(P.W.11) | Signature of P.w.11 |
| 19 | Ext. P-8(P.W.12) | Seizure list. |
| 20 | Ext.P-8/1(P.W.12) | Signature of P.w.12 |
| 21 | Ext.P-9(P.W.12) | Zimanama |
| 22 | Ext.P-9/1(P.W.12) | Signature of P.W.12 |
| 23 | Ext.P-10(P.W.12) | School admission register. |
| 24 | Ext.P-10/1(P.W.12) | Relevant entry in Ext.P-10 |
| 25 | Ext.P-11(P.W.13) | FIR |
| 26 | Ext.P-11/1(P.W.13) | Signature of police Sub-Inspector of Sri Bhairba Kumar Bhuyan |
| 27 | Ext.P-12(P.W.13) | Spot map |
| 28 | Ext.P-12/1(P.W.13) | Signature of P.w.13 |
| 29 | Ext.P-13(P.W.13) | Seizure list. |
| 30 | Ext.P-13/1(P.W.13) | Signature of P.w.13 |
| 31 | Ext.P-1/3(P.W.13) | Signature of P.w.13 |
| 32 | Ext.P-14(P.W.13) | Seizure list |
| 33 | Ext.P-14/1(P.W.13) | Signature of P.w.13 |
| 34 | Ext.P-15(P.W.13) | Spot visit report. |
| 35 | Ext.P-16(P.W.13) | Forwarding report. |
| 36 | Ext.P-16/1(P.W.13) | Signature of P.w.13 |
| 37 | Ext.P-17 (P.W.13) | Acknowledgement receipt. |
| 38 | Ext.P-18 (P.W.13) | Seizurelist. |
| 39 | Ext.P-18/1(P.W.13) | Signature of P.w.13 |
| 40 | Ext.P-19 (P.W.13) | Casualty OPD Ticket |

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| 41 | Ext.P-8/2(P.W.13) | Signature of P.w.13 |
| 42 | Ext.P-9/2(P.W.13) | Signature of P.w.13 |
| 43 | Ext.P-20 (P.W.13) | Spot visit report with sketch map . |
| 44 | Ext.P-21 (P.W.13) | Seizurelist. |
| 45 | Ext.P-21/1(P.W.13) | Signature of P.w.13 |
| 46 | Ext.P-22 (P.W.13) | Inquest report. |
| 47 | Ext.P-23 (P.W.13) | Dead body chalan. |
| B.Defence Exhibits, if any- | | |
| Sl.No. | Exhibits numbers | Description |
| | NIL | |
| C.Court Exhibits , if any: | | |
| Sl.No. | Exhibits numbers | Description |
| | NIL | |
| D.Material objects: | | |
| Sl.No. | Material object number | Description |
| | NIL | |

Sd/- R.L.Panda,30.6.26

Ad hoc Addl.Dist.& Sessions Judge,
(FTSC) under POCSO Act,Berhampur.

