

**IN THE COURT OF THE II ADDL SESSIONS JUDGE
AT KOLAR**

Dated this the 15th day of September 2018

PRESENT

Smt B.S.REKHA, B.A.(Law), LL.M,
II Addl.District and Sessions Judge, Kolar.

S.C. No.130/2018

COMPLAINANT:- State by Malur Police.
(Rept. By Spl.Public Prosecutor)
V/s.

ACCUSED : T.N.Suresh Babu @ Babu @ Soori
S/o Narayanaswamy, a/a 25 yrs,
R/o besides Anjaneyaswamy temple,
Melina Tekal village, Malur tq.
(by Sri LNS, Advocate)

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<i>Date of Commission of offence</i>	01.08.2018		
<i>Date of Report of offence</i>	01.08.2018		
<i>Date of arrest of accused</i>	03.08.2018		
<i>Date of release of accused from J.C.</i>	Still in judicial custody		
<i>Name of the complainant</i>	Sri N.R.Ravi		
<i>Nature of offence complained</i>	U/s 341, 302, 376, 511 of IPC and Sec.8 of POCSO Act.		
<i>Date of filing of charge sheet</i>	23.08.2018		
<i>Date of commencement of recording of evidence</i>	25.08.2018		
<i>Date of closing of recording evidence</i>	07.09.2018		
<i>Date of Judgment</i>	15.09.2018		
<i>Opinion of the Judge</i>	convicted		
<i>Duration of the case</i>	<i>Year</i>	<i>Month</i>	<i>Days</i>
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J U D G M E N T

The Circle Inspector of Police, Malur Circle, Malur has charge sheeted the accused for the commission of the offences punishable under Sec.341, 302, 376, 511 of IPC and Sec.8 of POCSO Act.

2. The brief facts of the prosecution case is that, the accused who is a coolie going to the work of CW.6 James at Indiranagar, near the house of deceased Rakshitha and he saw her and intended to have sexual intercourse with her, teased her, to which her father abused and as a result, due to vengeance, he planned to commit rape and murder her and in that process on 1.8.2018 at 4.30 p.m., when CW.2 Preeti and deceased Rakshitha after completion of inter-school sports in Honda stadium at Malur were coming back near railway bridge and by crossing the railway track, when they were coming in the Rose garden of Chennappa in pathway, the accused came behind Rakshitha, held her and when she attempted to shout, he forcibly gagged her mouth and threatened Preeti and that Preeti ran away by leaving Rakshitha. That Rakshitha was attempting to escape, the accused followed her and forcibly dragged her and while attempting to commit rape, as she protested he fisted on her left eye with hands and assaulted number of times with stone to the head of Rakshitha and caused

severe injury which resulted in her death and he dragged near a bush and by removing her clothes attempted to commit rape and by looking CW.3 Narayanaswamy, he ran away from the spot and thereby the accused has committed the afore said offences.

3. *On the basis of these allegations, the PSI of Malur police station being the SHO, received the complaint, registered it in Cr.No.243/2018 for the offences punishable under Sec.341, 302, 376, 511 of IPC and Sec.8 of POCSO Act and FIR was submitted to the Court. On 3.8.2018 accused was produced before the court and he is in judicial custody.*

4. *After filing charge sheet, cognizance taken to the offences incorporated in the charge sheet, copies of police papers i.e., charge sheet furnished to the accused under Sec.207 of Cr.P.C., After hearing the learned counsel for the accused before framing charge, charge was framed against accused for the offences punishable under Sec.341, 302, 376, 511 of IPC and Sec.8 of POCSO Act, wherein accused pleaded not guilty and claims for trial.*

5. *In order to establish its case, the prosecution examined in all 15 witnesses as PW.1 to 33 and got marked Ex.P1 to 84 & MOs 23. After closure of the prosecution evidence, the accused statement as contemplated under Sec.313 of Cr.P.C., was recorded, wherein*

accused has denied the incriminating circumstances as appeared against him in the evidence of prosecution witnesses and he has not chosen to adduce any defence evidence and not stated anything else.

6. *Heard arguments from both sides. On the basis of the submissions of both sides and material placed on record, the following points that arise for my consideration:*

*1. Whether the prosecution proves beyond all reasonable doubt that on 1.8.2018 at about 4.30 p.m., near the pathway of Chennappa's Rose garden, after Railway bridge, Malur, when CW.2 Kum Preeti along with victim Rakshita after completing inter school sports, were proceeding towards the house at Indira Nagar, accused wrongfully restrained CW.2 and Rakshita from moving further and thereby committed an offence punishable under **Sec. 341 of IPC?***

*2. Whether the prosecution proves that accused held the victim from backside and when she tried to scream, accused gagged her mouth and when the victim tried to escape from him, accused followed her, held her & tried to commit rape on her, when she resisted, accused fisted on the left eye of victim and did commit murder by intentionally or knowingly causing the death of victim Rakshitha by throwing stone repeatedly on her head and thereby committed an offence punishable U/S **302 of IPC?***

3. *Whether the prosecution further proves that, after throwing stone on the head of victim Rakshitha, dragged her body about 15 feet away in a bushes, removed her pant, shirt and inner garments and tried to commit rape on her and thereby committed an offence punishable U/S **376 of IPC?***
4. *Whether the prosecution proves that accused attempted to commit rape on victim and in such attempt did a certain act towards the commission of the said offence and thereby committed an offence punishable U/S **511 of IPC?***
5. *Whether the prosecution proves that accused commits sexual assault on victim girl who is aged about 15 years, with intent to outrage her modesty and thereby committed an offence punishable **U/S 8 of POCSO Act?***
6. *What order?*

7. *My finding to the above points are :-*

Point No. 1 to 5 : In the affirmative

*Point No.6 : As per final order for
the following stated*

REASONS

8. POINT NO.1 to 5:- *As these points are interconnected and cohesive in nature, hence to avoid repetition, answered with common reasoning.*

9. CW.1 N.R.Ravi examined as PW.1 has stated that he know CW.2, 3, 7, 11 to 14 & the accused. He is having two daughters i.e., Rakshitha and Pooja. Rakshitha was aged 15 years and studying 10th standard in BGS school. He used to drop her regularly at 8.30 a.m., and she was coming back by walk with her friends. He and his wife were working in Medoforma. They used to go to work in two wheeler and come back at 4-00 p.m., On 1.8.2018 at 4.45 p.m., when he and his wife were in the house, CW.2 Preeti and her father came to his house and she told that when herself and Rakshitha were coming back from school there is a garden land near railway bridge one person came from backside and gagged the mouth of Rakshitha and threatened her not to shout and she ran away and informed her father. Himself, Preeti and her father accompanied her and she shown the place of incident, but Rakshitha was not there.

10. Her bag, umbrella, slippers and one pair of male slippers were found and they searched and at 100 meters away they found 5 to 6 persons were standing and on the way they found blood stains and the stone and thereafter there is a bush and mud-hump & Rakshitha was there. Her clothes were shuffled and the inner garment and pant were below the knee and the T-shirt was towards upper side and she sustained head injury and her left eye

was turned to reddish colour. She was found dead. In spite of it, he took her with the help of public to Masthi circle and taken her in Siddeshwara school bus to Government hospital wherein the doctor declared her as dead.

11. *Thereafter he had given complaint as per Ex.P1. The dead body was shifted to Jalappa hospital and then CPI called him. He went and shown the place of incident at 8.45 p.m., He shown the bloodstains and the stone which was seized by the police and he signed on the slip. He also taken the signature of other four persons and they have taken the blood stained mud and sample mud and seized and taken the photographs. He signed to that mahazar Ex.P2. He identified MOs 1 to 3 and the slips Ex.P3 and P4. On 2.8.2018 he went to Jalappa hospital wherein postmortem was made and he signed to the receipt Ex.P6. He had taken the dead body to the house and they have buried at 5 p.m.*

12. *CPI called him and he went at 6 p.m., and given further statement. On 6.8.2018 he was called to Malur court to draw blood for DNA test with his wife. Thereafter CPI called and informed that the accused was traced. They have shown the accused to him. He was aware of the accused as he was coming to coolie to the house of one Gas Manja. Once accused teased his daughter and he*

warned him and also told that he is going to lodge complaint. He identified the accused.

13. *He further stated that there is a distance of half km, from his house to the place where his daughter was found dead. The house of Preeti is situated at a distance of 100 feet from his house. Preeti informed at 4.45 p.m., they came within 5 to 10 minutes. He did not inform the police about warning to the accused. There are three houses in between his house and the house wherein the accused was working. The counsel appearing for the accused had denied the statement given by him. He identified Ex.P30 & 31 the photographs and Ex.P23 to 26 photographs.*

14. *CW.2 Preeti aged 14 years, student of 9th standard in the same school examined as PW.2 has stated that she know the complainant, Narayanaswamy, Varalakshmmamma, Rupendra, Gundappa, Lokesh and the accused who is behind the screen. CW.8 Babu is her father. She is the student of BGS school in 9th standard and some times her father used to drop her or otherwise she used to go and come back by walk. Whenever they were going by walk, they used to pass through the pathway below the railway bridge. On 1.8.2018 at 4 p.m., after completion of sports, she and Rakshitha were coming in pathway, there was rainy and it was*

stopped. They were holding umbrella and thereafter they were coming on pathway. After the railway track, one person below a tree came, gagged the mouth of Rakshitha and threatened her not to shout and she ran away to house at 4.30 p.m., she informed her father and thereafter they went to the house of Rakshitha and she told that somebody held Rakshitha. Thereafter they came to spot, but Rakshitha or that person were not there. The slippers of Rakshitha, bag and two slippers of a man were there and at a distance of 50 feet people were gathered and they ran away and found the dead body of Rakshitha. Her clothes were shuffled and inner garments were dragged.

15. *There were about 7 to 8 persons at spot and father of Rakshitha taken her with the assistance of public to Masthi circle and thereafter in Siddeshwara school bus, the dead body was taken to hospital. She came home with her father and came to know that Rakshita died. Police called her father and they went at 7 p.m., There four police, CPI, Varalakshmamma and other witnesses were there. The police by using torch enquired her and she shown the place wherein the slippers of Rakshitha and two slippers of male person, bag and umbrella were there. In that bag books, card-board, specs box, lunch box and jerkin were there,*

which was seized by the police. She signed the mahazar and she identified the photographs Ex.P8 to 15 and MOs 4 to 9. On 2nd at 3.00 p.m., CPI along with three policemen came to her house in civil dress along with WPC and she told the incident and they have written it. On 8.8.2018 the police informed her father to come to Kolar Jail for identification parade, they went to the police station and then to the jail. There were 8 persons made to stand and the Tahsildar told her to identify, that process was taken place three times. When she first identified, accused was standing in 3rd place from left side and in the 2nd time in 5th place and on the 3rd time in 7th place. She identified her signature on Ex.P16 to 18. She identified her signatures on the slips, on the articles as Ex.P19 to 22. Thereafter she went to the house and she had given further statement. She identified the accused who is behind the screen.

16. *She further stated that on 1.8.2018 it was not holiday. She is not aware of the accused earlier. Her house is situated little bit away from the house of Rakshitha and the place of incident is at a distance of half km., The counsel appearing for the accused had denied the chief examination to the witness.*

17. *CW.3 Narayanaswamy examined as PW.3 has stated that his land is situated by the side of Railway Bridge and his*

house is also there. He is an agriculturist. He is aware of CW.1, 2, Rakshitha and the accused. He used to grow vegetable and greens in his land and used to sell in the market. He used to take the vegetables between 4 to 4.30 p.m., in his TVS Super XL. On 1.8.2018 at 4.30 p.m., when he was taking the greens in his Super XL vehicle, he found the accused in the bridge turning, went little bit and found that by the side of the accused there was a child. He stopped the vehicle and in the meantime the accused ran away. The clothes of the girl was shuffled, there was injury to the head and the left side of the face turned to reddish colour, there is Masthi circle at a distance of 20 to 30 meters, when he went and brought 7-8 persons, at that time the father of the girl and 5 to 6 persons came.

18. The girl who was going with the injured was also there. They thought that she might have still alive and taken in Siddeshwara school bus. That girl CW.2 told that when they were coming back after attending sports by crossing the railway track towards their house, near tree a person held that girl and gagged her mouth and threatened this girl and thereafter she ran away. He identified Ex.P23 to 26 photographs. On 8th he received notice from Tahsildar and he went on 9th at 10 a.m., to Kolar Sub-jail and

that girl was also there. Tahsildar and Writer were there inside the jail, there were 8 persons and he was told to identify the said person. For the 1st time the accused was identified and he was standing in 2nd place from left side and for the 2nd time he was standing in 6th place and for the 3rd time he was standing in 8th place. He identified his signature in Ex.P27 to 29. He identified the accused. Accused means the person who committed the offence. There is only one road from his house to Masthi circle. There is a distance of 5 meters from the place of incident to the place where he parked the vehicle. The accused ran away immediately. The counsel appearing for the accused had denied and suggested the chief examination to the witness.

19. *CW.4 N.K.Arun Kumar examined as PW.4 has stated that Masthi circle is at a distance of half km., from his house. On 1.8.2018 he went to personal work to Masthi circle, at 4.45 p.m., one Narayanaswamy came by shouting and told that a school girl was assaulted and a boy ran away by looking at him. Immediately they went to the spot and found the girl and her clothes were shuffled. The father and the friend of the victim with her father came. The girl was seriously injured to the head and her left eye was turn to red. The girl told that when they were coming after*

sports in that pathway a person came from backside and held her and when she attempted to shout he threatened. They have shifted that girl to Masthi circle and thereafter they have sent that girl in Siddeshwara school bus with four others. On the next day they came to know that the girl died. On 2nd at 4 p.m., the police called, he identified Ex.P24 to 26 as the photographs of that girl. He is not personally aware of anything except information given by Narayanaswamy. The counsel appearing for the accused had denied and suggested the chief examination to the witness.

20. CW.5 Narayanaswamy examined as PW.5 has stated that he know CW.6 Daniel and the accused from last six months. Accused told that he is a mason. He was talking to him on the bridge. As he is Asthama patient he used to consume liquor. On 1.8.2018 between 4.30 to 5 p.m., that accused came to his room and on enquiry he told that he is going to sleep in the room. Even though he refused but the accused who was already in drunken status had given Rs.100/- and told to bring liquor. He got that liquor and they have consumed that liquor. He was in the room for 1½ hours and left. On the next day after walking when he was coming from Masthi circle the people gathered near Railway bridge and discussing that somebody committed rape and murdered a girl.

The police have taken his signature. The accused was in the police station and he had given statement. Accused was the person who consumed liquor with him in his room on that day. Whenever he used to go for walk the accused used to sit on the bridge. They used to go together for consuming liquor. James is not his friend.

21. *CW.6 Daniel Jackpot James examined as PW.6 has stated that he is mason from 25 years in Malur. There are seven workers with him and sometimes 10 to 20 persons used to work with him. He had constructed houses in Malur town. In this August month he was constructing the house of one Gas Manju and accused was working from last 8 to 9 months. For a period of two weeks accused did not come to work. On 1.8.2018 at 8 a.m., he found the accused in Masthi circle, they went to the hotel of Gopal and had breakfast. When the accused was working with him, he is in the habit of consuming liquor and teasing the girls. He scolded him twice. He called the accused on that day, but he told that he will not join the work for three days. Thereafter by taking the other workers he went. At 6.30 p.m., when he came near the circle, the people were talking that some girl is assaulted. On the next day at 8 a.m., when he went to the circle, the people were discussing that the girl died. On 4.8.2018 the police enquired and taken him to the*

station and shown the accused. He told that from 8 to 9 months he know him and the police recorded his statement. He identified accused as the said person.

22. CW.7 Karthik examined as PW.7 has stated that he is the bus driver of Siddeshwara school bus, 2 to 3 days prior to 1.8.2018 he was the driver in that bus and he used to pick up the students at 8 a.m., and reach the school at 9.15 a.m., The school will leave at 4.00 p.m., On that day by dropping the children when he was coming towards Masthi circle, one person by putting the girl on his shoulders along with four persons stopped the bus and he told to open the door and thereafter they have taken the girl inside the bus and he took the bus to Government hospital. He identified that girl in Ex.P24 & 25. He had given statement. The counsel appearing for the accused had denied and suggested the chief examination to the witness.

23. CW.8 M.Babu examined as PW.8 has stated that he know the complainant, Preeti is his daughter. She was studying in 9th standard in BGS School, Rakshita is the daughter of Ravi who was studying in 10th standard in the BGS school. He used to drop his daughter to the school and some times she used to go by walk and come back by walk in the pathway near the railway bridge in the

garden land. On 1.8.2018 after completion of sports his daughter came at 4.45 p.m., in fear and told that when she and Rakshitha were coming some boy held Rakshitha near Railway bridge in pathway and threatened her and she ran away. Immediately she and her father went to the house of Rakshitha and intimated to her father. All the three went to the spot and found slipper, bag, slipper of male person and umbrella, but Rakshitha was not there.

24. *They searched and found 7 to 8 persons standing at a distance of 100 meters, they found the dead body and the clothes were shuffled and there is bleeding in the head. Her father shifted her to Masthi circle and went in Siddeshwara school bus, he took his daughter to house at 6 p.m., His friends called and told that Rakshitha died at 7 p.m., he received phone from police and he took his daughter to the spot.*

25. *There the police have marked the articles and his daughter shown the place, they seized those articles i.e., MOs 4 to 9. He identified Ex.P8 to 15 photographs. There is a distance of half km., from the place of incident to his house. There is one road between his house and the house of Rakshitha. She told about the incident for five minutes and within two minutes they went to the house of Rakshitha. They took 10 minutes to reach the place of*

incident. There was no school on 1.8.2018, but there was sports. The counsel appearing for the accused had denied and suggested the chief examination to the witness.

26. *CW.9 Shanmugaiah examined as PW.9 has stated that on 3.8.2018 he brought his wife to Government hospital between 5 to 5.30 a.m., and the police came and told that they caught one Suresh Babu in Rakshitha case and they want to personally search him and requested to come to the police station and he went there and identified the accused. Even Mallikappa was also called. The police have searched the accused and taken his pant, shirt, nicker and given other clothes. The shirt was blood stained and they were separately covered and sealed and taken the signature of Mallikappa and him and handed over the seal to him. He identified MOs 10 to 12 and he signed the slip Ex.P32 to 34. He signed Ex.P35. He identified the accused. There is no OPD at that time, but the doctor was there. He was not aware of the police.*

27. *CW.10 Mallikarjunappa examined as PW.10 has stated that he know CW.9 Shanmugaiah and the accused. On 3.8.2018 at 5.45 a.m., he took his son for treatment to Government hospital, Malur and the police came and told that they arrested the person who committed murder of Rakshitha and they have to search his*

body and he went and found the accused. The police have given notice and he signed. The accused had handed over the clothes on his body and other clothes were given. There was bloodstains on the shirt. The police seized and put seal as 'A' and handed over to Shanmugappa, he signed Ex.P35, the mahazar was completed at 7.30 a.m., He identified MOs 10 to 12. He had given statement at 11 a.m., he identified the accused. As his son was having stomach pain he took him. He is not aware of the police. He was present when Rakshitha was murdered along with the other public and the police identified him and taken.

28. CW.11 Varalakshamma examined as PW.11 has stated that she know Roopendra, Gundappa, Lokesh, Ramachandrappa. On 1.8.2018 after completion of the school she went to house and BEO called and requested to assist as a witness in Rakshitha murder case and CPI also called and she went to Masthi circle at 6.30 p.m., and the police came and served the notice as per Ex.P36. Thereafter she was taken near a tree and one Preeti was there. She told that at 4.30 p.m., when they were coming from school near railway bridge in Pradeep Reddy layout on pathway there is Rose and Tomato garden a person coming from Tomato garden from backside, held Rakshitha and she shouted and the police verified

the spot and found one bag, umbrella, two slippers and slippers of a male person. They found Tiffin box, water bottle, exam pad, specs box and the jerkin and put those items in the bag. They have seized all the articles and Ex.P8 to 15 are the photographs taken. She identified Ex.P7. Those articles were sealed with letters KSP and it was handed over to Roopendra.

29. *She identified MOs 4 to 9 and the slips are Ex.P19 to 22. The mahazar was prepared between 7.30 to 8.15 a.m.,. Thereafter they were taken to a place 100 meters away and they saw a person who is the father of the deceased who shown the place wherein his daughter was assaulted and the blood stain was found. The police have seized the blood stained mud and sample mud and towards east after 5 ft., there is blood stained granite stone which was seized through mahazar Ex.P2 and those articles were sealed with word 'C' and that seal was handed over to Roopendra. She identified Ex.P37 & 38 photos and MOs 1 to 3 and the slips Ex.P3 to 5. The mahazar was prepared at 8.40 to 10 p.m., She had given statement on next day. Her phone number was with BEO. She was not aware of the incident earlier. She was not aware of father of the deceased.*

30. CW.12 Roopendra examined as PW.12 has stated that he know Varalakshmamma, Gundappa, Lokesh, Ramachandrappa. He is working as Village Accountant in Chikka Tirupati village. On 1.8.2018 CPI Satish called at 6.30 p.m., and requested to come to Masthi circle for mahazar. He went at 7 p.m., and found police and panch witness and served the notice as per Ex.P36. Thereafter he was taken near a tree and one Preeti was there. She told that at 4.30 p.m., when they were coming from school near railway bridge a boy held Rakshitha and found one bag, umbrella, two slippers and slippers of a male person . They found Tiffin box, water bottle, exam pad, specs box and the jerkin and put those items in the bag. They have seized all the articles and Ex.P8 to 15 are the photographs taken. He identified Ex.P7.

31. Those articles were sealed with letters KSP and it was handed over to him and he hand over the same to Court as per MO.13. He identified MOs 4 to 9 and the slips are Ex.P19 to 22. Thereafter they were taken to a place 100 meters away and they saw a person who is the father of the deceased who shown the place wherein his daughter was assaulted and the blood stain was found. The police have seized the blood stained mud and sample mud and after 3 ft., there is blood stained granite stone which was

seized through mahazar Ex.P2 and those articles were sealed with word 'C' and that seal was handed over to him and he produced the same to the Court as per MO.14. He identified Ex.P37 & 38 photos and MOs 1 to 3 and the slips Ex.P3 to 5. He had given statement on next day. He know the CPI and the CPI is having his phone number. He was not aware of the incident earlier. When the CPI called he was in Taluk office.

32. *CW.15 Ramachandrappa examined as PW.13 has stated that on 4.8.2018 at 5.45 a.m., the police called him and CPI told that the accused was traced and he requested him for mahazar. A notice was served as per Ex.P39. At 6.10 a.m., he, PDO Yashwanth, CPI, accused, two police came to Masthi-Hosur circle and stopped the Jeep. The accused has taken them towards northern side in a pathway and he stopped near a bush and shown the place as he left the dead body and 10 feet away he told that he thrown the stone used to assault her and they found the blood stains, but the stone was not there. When the police shown the photo of the stone he identified. 60 to 80 meters away from there he took them to a tree and told that his slippers were left and he identified the photo. He identified Ex.P40 & 41 the photographs. The police have prepared mahazar as per Ex.P42. Yashwanth,*

accused, CPI and the writer have signed the mahazar. He identified the accused. He know the CPI earlier as he was attending the Programme of the College.

33. *CW.16 Yashwanth examined as PW.14 has stated that on 4.1.2018 when he was walking in Malur stadium at 5.40 a.m., the police came and told that they have arrested a person in Rakshitha murder case and he is going to show the place and requested to be panch witness. One Ramachandrappa was in the station, the accused was also in the station. A notice was served as per Ex.P39. Himself, Ramachandrappa, CPI, accused, two police came to Masthi-Hosur circle and stopped the Jeep. The accused has taken them towards northern side in a pathway and he stopped near a bush and shown the place as he left the dead body and Ex.P40 & 41 are the photographs.*

34. *Thereafter he told that he thrown the stone used to assault her and they found the blood stains, but the stone was not there. When the police shown the photo of the stone he identified. Thereafter he took them to a tree and told that there he attempted to commit rape on the girl and when she resisted his slippers were left and he identified the photo. The police have prepared mahazar as per Ex.P42. Ramachandrappa, himself, accused, CPI and the writer*

have signed the mahazar. He identified the accused. He is not aware of CPI . The counsel appearing for the accused had denied and suggested the chief examination to the witness.

35. *CW.17 Aruna examined as PW.15 has stated that he know the complainant, Yashwanth Kumar, CW.19 is her husband, she is aware of CW.20 & 21 who are working in Medoforma. Ravi & CW.20 are husband and wife who are having two children, Rakshitha and Pooja. Rakshitha is no more. On 1.8.2018 after attending the sports, Preeti and Rakshitha were coming in the pathway after bridge by crossing the railway track, one unknown boy held her and attempted to commit rape and assaulted with stone and killed her. She came to know at 8 p.m., On the next day at 8 a.m., she, Narayanaswamy and others went to Jalappa hospital wherein there were two to three policemen were there.*

36. *At 8.30 a.m., CPI and police came and they requested to participate in the inquest. Ex.P43 is the notice given. She was taken to mortuary and the dead body was shown. The clothes were removed. She found six inches injury on the left side of the head and two inch injury and there is bleeding in left ear, left eye was swollen, there is abrasion on right eye and below neck, there is abrasion to two fingers on the left leg, there is T-shirt, pant, shorts,*

underwear and shimmy on the body. There are ear studs and nose stud which was handed over to father of the deceased. They have typed the inquest and taking the print out, have taken the signatures at 11.30 a.m., as per Ex.P44. She identified the photographs Ex.P24 to 26 and P23 and MOs 15 to 19. The police were measuring the injuries.

37. *CW.20 Srilakshmi who is the mother of the deceased examined as PW.16 has stated that the complainant is her husband, she know CW.2 Preeti, Narayanaswamy, Babu, Aruna, Yashwanth Kumar, Balakrishna Reddy and Narayanamurthy. She is having two children Rakshita and Pooja. She is working in Medoforma company, they used to go by 9 a.m., and come back at 4 p.m., Her husband used to drop her daughter between 8.15 to 8.30 a.m., and she used to come back with her friends between 4.30 to 5.00 p.m., Her daughter is no more.*

38. *On 1.8.2018 when she along with her husband were in the house, at 4.45 p.m., Preeti and her father came in a hurry and told that at 4.30 p.m., when Preeti and Rakshita were coming below the Railway bridge in pathway some unknown person held Rakshita and her husband, Preeti and her father ran away to the spot. At 5.30 p.m., she came to know that her daughter was*

murdered and an attempt to commit rape was made. Thereafter the dead body was taken to Jalappa hospital. On the next day at 6 a.m., she along with her husband and neighbours went to Jalappa hospital and she saw the dead body at 10 a.m., there was injury on the left side of the head and in the eye, there was bleeding in the ear, she identified the dead body. Ex.P23 to 26 are the photographs of the dead body. Her daughter used to go to school with the daughter of Narayanaswamy sometimes. According to her, as her another daughter was in the house, she did not accompanied her husband.

39. *CW.21 Narayanamurthy examined as PW.17 has stated that he know the complainant and the witnesses who are working in Medoforma Company. On 1.8.2018 after completion of the work, he went to house at 4 p.m., At 5.00 to 5.30 p.m., his friend called and told that somebody murdered the daughter of N.R.Ravi near Railway track. On the next day at 8 a.m., he went to Jalappa hospital. At 8.30 a.m., CPI came and he informed the incident to CPI. He shown the dead body in the mortuary. He was visible in Ex.P23. He identified the photographs Ex.P24 to 26. Nobody called him.*

40. CW.23 P.Ramakrishnappa examined as PW.18 has stated that on 4.8.2018 Malur CPI requested for attendance certificate, admission register extract and date of birth certificate of deceased Rakshitha and on 6.8.2018 he had given those documents and he had handed over those documents Ex.P46 to 48. On 1.8.2018 there was Taluk level sports in the stadium and they have sent the students. In Ex.P46 the name of Rakshita is found. Though there was school they sent Rakshita to sports.

41. CW.27 Dr.Pushpalatha examined as PW.19 has stated that when she was working in Casualty department, on 4.8.2018 at 4.30 p.m., the accused was produced and PSI requested to know his capacity to do the sexual intercourse. After obtaining the information, she sought the report from Forensic division and after getting the information she had given opinion that there is nothing to suggest that the accused is incapable to do the sexual intercourse. Accused was the person examined by her. She had not given any information that the accused was involved in sexual activity with anybody.

42. CW.24 Jayaram examined as PW.20 has stated that on 4.8.2018 he received requisition from CPI, Malur to prepare the sketch and on the same day he visited the place of incident with

CPI and prepared the sketch and on 6.8.2018 the AEE had sent to CPI. Ex.P40 & 41 are the photographs and Ex.P8 & 9 are the photos of the place of incident. He came to know about the incident only when he visited the spot.

43. *CW.26 H.V.Girish examined as PW.21 has stated that on 8.8.2018 as per the directions of this Court, CPI Malur requested to conduct the identification parade and based on that requisition he sent notice to Preeti and Narayanaswamy. On 9.8.2018 at 10 a.m., the identification parade was suppose to be conducted and he went to sub-jail and conducted the Identification parade in three rounds. When Preeti was identifying, he made the accused to stand in Sl.No.3 out of eight persons and in 2nd round in Sl.No.5 and in 3rd round in Sl.No.7 and she identified the accused properly. With respect to Narayanaswamy also he conducted three rounds and in 1st round the accused was made to stand in Sl.No.2 and in 2nd round in Sl.No.6 and in 3rd round in Sl.No.8 and Narayanaswamy had properly identified the accused. He had given report as per Ex.P54 and those forms as Ex.P16 to 18 and 27 to 29. He identified the accused. He identified RTC issued from his office as per Ex.P55. He had not produced the copy of the notice to the Court.*

44. CW.30 Dr.Murali Mohan examined as PW.22 has stated that on 2.8.2018 he received requisition from CPI, Malur to conduct the postmortem on the dead body of Rakshita, aged 15 years and he conducted in the mortuary of Jalappa hospital between 11.30 a.m., to 12.30 p.m., he collected the clothes and articles and he found seven injuries on the dead body and he had given postmortem report by giving opinion that the cause of death is due to shock as a result of head injury sustained. According to him injury No.1 to 4 could be caused if she assaulted with the stone which is before the Court, injury No.5 could be caused if she was fisted, injury No.6 and 7 could be caused if she was attempted to escape from the clutches of a person. If a person assaulted 2 to 3 times with the stone, this type of injuries could be caused. On 10.8.2018 the Investigating Officer had sent MO.1 to get the opinion and he had given opinion that the said injuries could be caused with that weapon. He identified the articles and also the DNA report. According to him it is not possible if a person fell and sustain injuries, this type of injuries could be caused.

45. CW.29 Dr.Channakeshava examined as PW.23 has stated that on 6.8.2018 as per the request of CPI, Malur he visited the Malur court and before the Magistrate he had taken the blood

sample of N.R.Ravi and Srilakshmi for DNA and kept in Cold box and sealed and sent to DNA expert. According to him, Dr.Vasanth Kumar and the Lab Technician were with him. He prepared the identification form.

46. *CW.32 Byrappa PC-569 examined as PW.24 has stated that on 1.8.2018 he was deputed to hand over the FIR and produced at 12.45 a.m., to the Home office.*

47. *CW.33 Munirathna WPC 707 examined as PW.25 has stated that on 2.8.2018 she was deputed to look after the dead body of Rakshita in Jalappa hospital and after postmortem examination, she received the dead body and handed over to father of the deceased.*

48. *CW.37 K.C.Venkatesh PC 323 examined as PW.26 has stated that on 2.8.2018 at 9 a.m., CPI Satish deputed him, PSI Girish, PC Murali Mohan and Kodandapani to trace the accused and they went in Tata Sumo with driver Nagendra and searched at Masthi circle, Indira Nagar, Ashok Nagar, Industrial area and on the same day at 12.10 a.m., PSI got information and when they were going through Kondashettihalli towards Tekal railway station, they reached at 1-00 a.m., and the informant had shown one person and they went and arrested him. The PSI enquired and he*

told his name as Suresh Babu @ Babu @ Soori. They took him to custody at that time and produced before CPI at 2 a.m., He identified the accused. He is not aware how the informant was having knowledge about the accused. Tekal is at a distance of 20 kms., from Masthi circle. They require 50 to 60 minutes to reach Tekal railway station from Malur.

49. *CW.41 Selvi Kumari WPC 695 examined as PW.27 has stated that on 2.8.2018 when she was on duty, at 6 p.m., CPI called and told that they have to record the statement of eyewitness Preeti in murder case of Rakshita and on his instructions she along with PC 675 went to the house of Preeti at Indira Nagar and at 6.30 p.m., CPI had recorded the statement which was written by PC Murthy and she signed to Ex.P66, they were in civil dress.*

50. *CW.44 M.L.Girish PSI examined as PW.28 has stated that on 2.8.2018 CPI Satish had deputed him along with PC Venkatesh, Kodandapani, Murali Mohan to trace the accused and they went to Masthi circle, Indira Nagar, Industrial area and at 12.10 a.m., he got information from the informants and when they were going through Kondashettihalli route to Tekal railway station the informant had shown the accused, thereafter they arrested and on enquiry he told his name as Suresh Babu @ Babu @ Suri in a*

fear and he took him to custody at 1.00 a.m., and produced before CPI at 2-00 a.m., and he identified the accused. On 4.8.2018 as instructed by CPI he and the staff taken the accused for medical examination to SNR hospital. Based on the information given to informants they have traced the accused.

51. CW.43 G.Srinivasa ASI examined as PW.29 has stated that on 1.8.2018 he reported to Malur police station and he was deputed as SHO at 5.30 p.m., he received information from Malur Government hospital that the dead body of Rakshita was brought and after receiving the information, he informed to PSI.

52. CW.31 L.Purushotham, In-charge Assistant Director, DNA division, FSL Bangalore examined as PW.30 has stated that on 7.8.2018 he received 16 articles pertains to this case for DNA examination and after comparison he had registered the case and he verified the articles separately, article No.4 was brought from cold storage. He had given DNA code to those articles and he conducted the examination. He had taken the articles 1, 3, 5, 6, 8, 9, 12 to 16 and 4(1), 4(2) and he followed the international level procedure for examination and by using identifier plus kit and conducted PCR process and he did profiling and by using jean mapper, ID and verified and thereafter he sent the result to the

higher officer and thereafter he decoded and then given opinion. In item No.1, 3, 5, 6, 8, 9, 14, 15 the blood stains were of female. In item No.12 and 13 the epithelial cells of female. In item No.16 there is seminal stains of man. The DNA result of item No.1, 3, 5, 6, 8, 9, 14, 15 belongs to Srilakshmi and Ravi and the epithelial cells in item No.12 and 13 belongs to them. It was confirmed that the girl who died is the daughter of Srilakshmi and Ravi. He had given the said opinion.

53. *CW.45 M.N.Murali PSI examined as PW.31 has stated that on 1.8.2018 ASI Srinivas received the death memo from Malur Government hospital and produced before him and he informed to the higher officers and then went to Malur Government hospital and found the dead body of Rakshita and her father and relatives were at spot. At that time CPI came and he informed the relatives of deceased to come to the police station. At 6 p.m., the complainant had given written complaint and he registered the case and submitted FIR. When he received information he was in police station and at 6 p.m., he registered the case.*

54. *CW.42 Nagoji Rao ASI examined as PW.32 has stated that on 1.8.2018 he was instructed to bring the Camera to take the photographs of the places wherein Rakshita was held and killed.*

He had taken Ex.P8 to 15 at one spot and Ex.30 & 31 at different spot. On 2nd he went to Jalappa hospital to take the photograph of dead body and he took the Laptop printer and camera for inquest. He had taken Ex.P23 to 26 photos and typed inquest as per Ex.P44. On 3rd at 2 a.m., CPI called that the accused was brought and he went to the office and recorded the voluntary statement of the accused and he typed the body search mahazar of the accused as per Ex.P35. On 4th the accused had taken them to the place of incident and he had taken photographs Ex.P40 & 41.

55. *CW.46 B.S.Satish, CPI examined as PW.33 has stated that on 1.8.2018 when he was doing beat duty at Malur, PSI Murali called and told that one Rakshita, a student died and he received memo from Government hospital and requested him to visit the hospital. Thereafter he went to the hospital and found the dead body and shifted for law and order problem to Jalappa hospital with WPC Radhamma. On the same day at 6 p.m., he took further investigation and called BEO and Tahsildar to send the witnesses for panchanama. He enquired Preeti, but as she was in fear he did not record her statement. He issued notice to Varalakshamma, Gundappa, Lokesh and Roopendra to assist mahazar and he requested Preeti to show the place and she shown the place*

wherein he prepared mahazar as per Ex.P7 and he seized the articles MOs 4 to 9 and sealed with 'KSP' MO.13 and handed over to Roopendra. He put the slips with signatures of panch witnesses and himself. Ex.P8 to 15 are the photographs.

56. *He prepared rough sketch. The complainant had shown the place where the dead body was found and the granite stone was found and he seized those articles and prepared mahazar as per Ex.P2 and he identified MOs 1 to 3 and the photos Ex.P30 & 31. He put the seal as 'C' and hand over to Roopendra. He subjected the articles to PF. He served notices to Yashwanth Kumar and Balakrishnareddy and Aruna for inquest and he prepared between 8.30 to 11.30 a.m., and the photos are Ex.P23 to 26. He recorded the statements of Srilakshmi and Narayanamurthy. He went to the house of Preeti with Selvi Kumari and Murthy and recorded her statement.*

57. *Thereafter he recorded the statements of Narayanaswamy, Babu, Arun Kumar, Varalakshmamma, Gundappa, Roopendra, Lokesh, WPC Radhamma, Munirathnamma, PC Byrappa and further statement of the complainant. On 3.8.2018 at 2 a.m., PSI Girish produced the accused and he arrested and recorded the voluntary statement and he told that he was wearing*

the same dress and he seized the clothes and conducted personal search in the presence of Shanmugaiah and Mallikarjunappa and he collected his clothes i.e., MOs 10 to 12 and subjected to PF and recorded their statement. He recorded the statement of Karthik, PSI Girish, Venkatesh, Kodandapani and Murali Mohan. On 4.8.2018 at 5.50 a.m., he got Ramachandrappa and Yashwanth and the accused taken them and shown the places of incident and admits the photographs and thereafter he sent the accused to SNR hospital for medical examination. He collected the school records, spot sketch and sent requisition to collect the blood samples for DNA. He recorded the statement of Ramachandrappa, Yashwanth, Narayanaswamy, Daniel Jackpot, PC Murthy, ASI Nagoji Rao. He collected the postmortem report and clothes on the dead body and sent to FSL. He obtained the school records and the sketch. He produced the accused to the Court. On 8.8.2018 he sent requisition to Tahsildar, Malur to conduct identification parade and to Jail Superintendent to make arrangements. He sent the stone for opinion of the doctor. After receiving all the records, he filed charge sheet. He further stated that he was in Balaji circle when he received notice.

58. *The case of the prosecution is that on 1.8.2018 as usual Rakshita who is the daughter of the complainant went to the school and from there as she was deputed by the school authority to participate in the sports, went to Honda stadium and when coming back along with PW.2 Preeti and were on the way to their houses, after crossing the Railway bridge in the pathway the accused held Rakshita by gagging her mouth and when Preeti shouted, he threatened her and thereafter Preeti went to the house and informed her father and they together went to the house of Rakshita and informed her parents about this incident and when Preeti, her father and this complainant immediately went to the spot, they did not found Rakshita, but they found her bag, umbrella, her slippers and the slippers of a male person and when they were searching, they found at a distance of 100 meters some people were gathered and when they were going on the way they found blood stain and the granite stone with blood stains and thereafter the dead body of Rakshita near a bush and thereafter they have taken her to the hospital, but the doctor declared her as dead. When they saw the dead body, the clothes of Rakshita were shuffled which shows that an attempt to commit rape was made and there are head injuries and injury to the left eye of Rakshita and abrasions of the body*

shows that she resisted. After two days of lodging the complaint, the accused was traced and he admits the incident.

59. *In order to substantiate this particular event, the prosecution examined the complainant who is not an eyewitness to the incident, but he is the father of the deceased to whom that Preeti and her father have intimated that one person gagged the mouth of Rakshita when they were coming home and immediately he went to the spot, but he did not find Rakshita at spot and at a distance of 100 meters he found the dead body of Rakshita. Immediately he took her to the hospital and the doctor declared her as dead and he had given complaint against unknown person. However after tracing the accused when the accused was shown to him by the police, he told that this accused was working in the house of one Gas Manju and he was a construction Labour who teased his daughter and his daughter informed him and he warned the accused. This shows that prior to the incident this accused had teased the deceased and warned by the father of the deceased.*

60. *With respect to the eyewitness and circumstantial witnesses are concerned, this PW.2 Preeti who is material witness to this case had specifically stated that Rakshita is elder to her and as usual after completion of the sports when they were coming by*

walk in the same route, this accused held Rakshita and warned her and thereafter due to fear she ran away to the house and informed to her father and they in turn informed to the father of said Rakshita. In this case the statement of this particular witness is very material as she identified the accused in the identification parade conducted by the Tahsildar and she had no hesitation to say that this accused is the person who was with the deceased. This supports the last seen together theory. Further at this stage itself it is relevant to note the daresness of the accused to take the victim in the presence of an eyewitness. Further within a span of 15 to 20 minutes the entire incident occurred. This shows that this accused is the person who is responsible for the death of Rakshita.

61. *In this case the medical evidence shows that Rakshita made attempt to rescue herself and also she sustained injuries in this regard. The doctor who conducted the postmortem had specifically stated that if a person is dragged and in an attempt to escape, the injury No.6 and 7 could be caused. In this case this particular evidence clearly establish that Rakshita had made attempts to rescue herself, but it was went in vain. Further with respect to intention of the accused to commit rape is concerned, the clothes on the dead body was found shuffled which is stated by*

PWs.1 to 4. In this case PW.3 is also very material witness to this case had specifically stated that on 1.8.2018 at 4.30 p.m., when he was going in a Super XL vehicle by taking Greens in the bridge corner, he found the accused and he moved to some distance and thereafter he found the body of Rakshita and when he stopped his vehicle the accused ran away. Thereafter he brought the other witness i.e., PW.4 who immediately came to the spot and he assisted father of the deceased to take the dead body.

62. *PW.8 Babu is the father of Preeti also categorically stated that his daughter informed that one person held Rakshita and immediately this Preeti, Babu and Ravi went to the spot within short span, but they were unable to rescue Rakshita. In this case the place of incident is clearly established by the prosecution by placing the cogent materials on record, because Ex.P2 & 3 are the mahazars and the relevant photographs are Ex.P8 to 15 which supports the case of the prosecution that the said incident was taken place in that particular place. In this case with respect to shifting of said Rakshita to the hospital, PW.7 is the witness who had taken the said Rakshita in a bus to the hospital.*

63. *Now with respect to the mahazars are concerned, PW.11 & 12 who are the material witnesses with respect to Ex.P2*

mahazar. This PW.11 who is a Teacher had specifically stated that she was called by the CPI on 1.8.2018 to be a panch to the mahazar and when she came to the spot she found the articles at spot and the police have seized those articles and sealed with KSP and she also identified the photographs and also she had specifically stated about the identification of the place by father of the deceased. This particular evidence of PW.11 is completely supported by PW.12 who also categorically stated and supported the mahazar.

64. *In this case with respect to the inquest is concerned, PW.15 & 16 are the material witnesses. PW.15 is also an employee in Medoforma had specifically stated that she was present and she identified the dead body. She also stated about the injuries on the dead body and handing over the gold to the father of the deceased. PW.16 is the mother of the deceased who identified the dead body and she had categorically stated that she got information, but she did not went with her husband as another daughter was in the house.*

65. *In this case with respect to the behaviour of the accused is concerned, the prosecution examined PW.5 Narayanaswamy who is the friend of the accused had specifically stated that sometimes*

himself and the accused used to consume liquor together and on 1.8.2018 the accused came between 4.30 to 5.00 p.m., to his room and he refused him to stay, but at that time itself he was in drunken status. Thereafter also they have consumed liquor. Further he had specifically stated that he is the person who usually will be with him.

66. *Further at this stage it is pertinent to note about the medical certificate of the victim Ex.P50 which shows that on left hand little finger there is small contusion 0.5 x 0.5 cm., brownish to black in colour, abrasion of 3 x 3 cm., over the anterior mid third of left leg brownish to black in colour which clearly goes to show that this accused sustained injuries and that particular injuries probabalize that these injuries could be occurred when he attempted to held said Rakshita.*

67. *Further with respect to the behaviour of the accused, another supporting evidence is that of PW.6 who is the mason under whom this accused was working. This witness has specifically stated that the accused was working with him from the last 8 to 9 months and he was constructing the house of Gas Manju. Even he had specifically stated that the accused is a*

drunkard and he used to tease the girls. The presence of the accused on 1.8.2018 in Masthi circle is established by this witness.

68. *Now it is very much important to look into the recovery of clothes on the person of the accused is concerned, PW.9 & 10 have specifically stated that on 3.8.2018 when they were near Malur Government hospital, they were called by the CPI and in their presence the CPI had recovered the pant, shirt and undergarment of the accused and it was sealed and the seal was handed over to Shanmugaiah and these witnesses have specifically stated that the shirt was blood stained. They are witnesses to Ex.P35 mahazar.*

69. *Now it is pertinent to observe at this stage itself about the DNA report regarding the clothes of the accused. The DNA expert has specifically stated that he examined the articles sent to him. Article No.14 to 16 are the clothes belongs to accused. These witnesses have categorically stated that those articles were seized and sealed. Now in the DNA report the expert had categorically stated that there was seminal stain in item No.16 was found belongs to one male individual. If this particular document and oral evidence is considered, it proves the ejaculation and if the accused intended to commit rape, then only the possibility of presence of seminal stain in his inner garment would occur. This particular*

evidence of the witnesses as well as the DNA expert and DNA report clearly establish the intention of the accused that he wanted to commit rape on that particular victim.

70. *After securing the accused, the Investigating Officer called PW.13 & 14 to assist him in conducting the mahazar subsequent to the voluntary statement as the accused stated that he is going to show the places where he committed the incident. These two witnesses have categorically stated that they left the station with CPI at 6.10 a.m., and came to Masthi circle and from there the accused had taken them towards northern side in a pathway and shown a bund near the pathway and told that he attempted to commit rape and he murdered Rakshita and after 10 feet he shown the stone which was used for killing her and thereafter he shown the place near a tree from where he held the girl and in that process he left his slippers. They identified the photographs and this particular mahazar is supported by these two witnesses. PW.17 is a witness to inquest. There is no dispute that the victim was the student. The capacity of the accused in doing the sexual intercourse is concern, the doctor PW.19 had certified.*

71. *Now with respect to arrest of the accused is concerned, PW. PW.26 & 28 have specifically stated about the arrest of the*

accused. In this case the Tahsildar PW.21 had conducted the identification parade had followed the due procedure and the witnesses have supported the conducting of IP and there is proper identification of this accused by those witnesses. In this case in all the places the photographs were taken by the Investigating Officer with PW.32 who had specifically stated the same.

72. *In this case the entire incident is supported by each and every prosecution witnesses by saying the role played by them in this investigation. Further the evidence of the complainant shows that this accused who was working near his house had an eye over the victim and he was teasing her and warned by him. This could be the reason why this accused who is a drunkard and he is so dare enough to take the victim in the presence of her friend/PW.2 who is an eyewitness and threatened that eyewitness and went to the extent of committing the entire episode of incident within half an hour. Further with respect to his behaviour, the prosecution examined the witnesses to show that he is a drunkard and in the habit of teasing the girls. Further the place of incident is established by the Investigating Officer by preparing the mahazar and by examining the witnesses with the photographs. None of the witness have turned hostile.*

73. *All the material witnesses have supported the case of the prosecution. The injury on the deceased shows that she protested the act of the accused and sustained severe injuries. Further there are injuries on the accused as per the medical report. Further presence of seminal stains in the inner garment of the accused proves his intention to commit rape. Further the material witnesses have stated that the clothes on the dead body were shuffled i.e., to say that the pant and underwear were dragged and T.Shirt was lifted upwards. This particular incident is taken into consideration, the court has to consider the intention of the accused and his daresness in committing the incident in the presence of eyewitness.*

74. *Nowadays this type of instances is going on in the society. This incident made the entire city on the heels and it is a burning incident which cannot be ignored. The fate of the children going to the school and their life at stake is to be seriously taken into consideration. This is an instance made that there is no protection to the female in society. Further the Court has to consider the suffering of the parents in this type of incident. One should not be taken as granted. Further the Investigating Officer in this case had taken very much pain in conducting the investigation and submitting the charge sheet well in time. All the material witnesses*

have stated the incident with all details. Thus in my opinion there is no single lapse on the part of the prosecution or the Investigating Officer. There is no probable defence taken by the counsel. In this case the entire materials available on record shows that it is a pre-planned, pre-thought crime and it has to be considered as rarest of rare case and the Court has to take this matter seriously so that the other should learn before thinking of this type of act. Hence in my opinion the prosecution has proved the guilt on the part of the accused beyond reasonable doubt. Hence, I answer the points for consideration in the affirmative.

Point No.6:

75. In the light of the above discussion and findings, I proceed to pass the following:

O R D E R

Acting under Sec. 235(2) of Cr.P.C. the accused is hereby convicted for the offences punishable under Section 341, 302, 376, 511 of IPC and Sec.8 of POCSO Act.

To hear regarding sentence.

(Dictated to the Judgment Writer on-line, computerized by her, corrected and then pronounced in open court on 15th day of September 2018).

(B.S.REKHA)

II Addl. Dist. & Sessions Judge, Kolar.

15.09.2018

Order regarding sentence:-

Heard on sentence. Learned Special Public Prosecutor submits that as it is a heinous crime, the accused dragged the victim to a distance of 300 meters and assaulted to her head severely and this point has to be taken into consideration. He requests the Court to impose him death penalty. He also relied upon citation reported in (2015)SCC (Cri) 309 between Shabnam vs. State of UP and Saleem vs. State of UP, wherein it is observed that “the age of the accused is not a relevant factor to impose the lesser sentence.”

He also relied upon citation reported in AIR 1980 SC 898 between Bachan Singh vs. State of Punjab with respect to sentencing policy wherein it is observed that ‘when the victim is an innocent child or a helpless woman, the murderer is in dominating position then the Court cannot grant lesser sentence’.

The learned counsel appearing for the accused submits that he is the only son and his father is no more and mother is vending flowers and lenient view may be taken and request the court to impose lesser punishment.

In this case the Court has to look into the mens-rea behind the act. The intention of the accused is that he wanted to commit rape on the victim who is aged 15 years and studying in 10th standard and this accused is a coolie who teased the victim when she was going to the school and her father warned him. This accused is a drunkard and he was waiting for the opportunity and even though the victim was with her friend Preeti and coming to the house on the way he is so dare enough to held the victim and

threatened the friend with dire consequences and when she intimated to her parents and came back, already he committed murder and he attempted for rape.

There was no other reason as to why he held the victim. The injury on the body of the victim is to be seriously taken into consideration because he fisted to her left eye and she made efforts to escape from him and he attacked her with MO.1 stone on her head for more than one time and the Court has to see the suffering of that girl without her fault and in that process the accused also sustained injuries shows his violent act and his violent behaviour. Further the safety and security of the girl child is at stake. In the day light itself, in the presence of another girl, this type of incident allowed to occur, then the fate of the society is at stake.

In this case as the accused intentionally with pre-plan under drunken status had knowledge of the consequences by leaving an eyewitness was dare enough to do such an act cannot be lightly considered. The Court has to consider it as one of the rarest of rare case and lesser punishment cannot be given because if he is allowed to be in society, then he will be more dangerous to the society. Further it should be a lesson for others before thinking of such act. Further the pain and suffering of that particular innocent child is very material and the Court cannot ignore it. One person is not authorised to take away the life of other person for their convenience or their wants.

At this stage it is relevant to refer the Nirbhaya murder case wherein the victim even though major and student of paramedical was brutally raped by the accused and thereafter she died and the

Hon'ble Supreme Court of India confirmed the death sentence to the accused. This case also cannot be considered as lesser to that, because the victim who is innocent 10th standard student having bright future was murdered for the purpose of sexual act in the daylight within the vicinity of the town is also not lesser to the NIRBHAYA case.

If he is allowed for lesser punishment, then it will not be a lesson for others. In this case that girl was innocent and a helpless and she fought for life, but her life came to an end at his hands within span of half an hour. Further if proper punishment is not given, then the life of people will be at stake.

Hence the Court has to consider that the capital punishment is the proper punishment for accused because I have narrated the aggravating circumstances. With respect to mitigating circumstances are concerned, there is no reason as to why lesser punishment should be given to accused. Further it is not the case that he was mentally unfit or he was having any problem during that particular period which made him to commit this alleged act. Further this accused may not be having criminal background, but even without that he had committed such a heinous crime and if he is not appropriately punished, the society will be at stake. Hence in my opinion, there is no reason as to why lesser punishment should be given to him. Hence in my opinion capital punishment is the only punishment for this type of criminal. . Hence I proceed to pass the following order:

ORDER

Accused is sentenced to undergo death penalty and he shall be hanged till his death for the offence punishable under Sec.302 IPC.

He is also sentenced to undergo imprisonment for one year for Sec.341 IPC.

He is sentenced to undergo imprisonment for three years with fine of Rs.5000/- for Sec.376 r/w Sec.511 IPC. In default of payment of fine, he shall undergo simple imprisonment for one (01) month.

He is sentenced to undergo imprisonment for two years with fine of Rs.5000/- for Sec.8 of POCSO Act. In default of payment of fine, he shall undergo simple imprisonment for one (01) month.

The sentences shall run concurrently.

The period of judicial custody of accused shall be set off Under Section 428 of Cr.P.C.

The office is directed to send the records to Hon'ble High Court of Karnataka for confirmation of the death sentence of accused.

MOs 1 to 23 are ordered to be destroyed subject to confirmation order by Hon'ble High Court of Karnataka.

Furnish free copy of this judgment and sentence to the
accused forthwith as per Section 353 of Cr.P.C.

(B.S.REKHA)

*II Addl. District & Sessions Judge,
Kolar.*

A N N E X U R E

Witnesses examined on behalf of the Prosecution:

PW-1	:	N.R.Ravi
PW-2	:	Preeti
PW-3	:	Narayanaswamy
PW-4	:	Arun Kumar
PW-5	:	Narayanaswamy @ Gowda
PW-6	:	Danial Jackpot James
PW-7	:	Karthik
PW-8	:	M.Babu
PW-9	:	Shanmugaiah
PW-10	:	Mallikarjunappa
PW-11	:	Varalakshamma
PW-12	:	Roopendra
PW-13	:	Ramachandrappa
PW-14	:	Yashwanth
PW-15	:	Arun
PW-16	:	Srilakshmi
PW-17	:	Narayana Murthy
PW-18	:	Ramakrishnappa
PW-19	:	Dr.Pushpalatha
PW-20	:	Jayaram
PW-21	:	H.V.Girish
PW-22	:	Dr.Murali Mohan
PW-23	:	Dr.Channakeshava
PW-24	:	Byrappa
PW-25	:	Munirathna
PW-26	:	K.C.Venkatesh
PW-27	:	Selvi Kumari
PW-28	:	M.L.Girish
PW-29	:	Srinivasa.G

PW.30 : L.Purushotham
 PW.31 : Murali M.L.
 PW.32 : Nagoji Rao
 PW.33 : Satish B.S.

2. Documents exhibited on behalf of the Prosecution:

Ex.P.1 : Complaint.
 Ex.P.2 : Mahazar.
 Ex.P.3 to 5 : Slips on MOs 1 to 3.
 Ex.P.6 : receipt on receiving dead body .
 Ex.P.7 : Mahazar.
 Ex.P.8 to 15 : Photographs.
 Ex.P.16 to 18 : identification parade documents
 Ex.P.19 to 22 : Slips on MOs 4 to 9.
 Ex.P.23 to 26 : Photographs.
 Ex.P.27 to 29 : Identification parade documents.
 Ex.P.30 & 31 : Photographs.
 Ex.P.32 to 34 : Slips on MOs 10 to 12.
 Ex.P.35 : Mahazar.
 Ex.P.36 : Police notice.
 Ex.P.37 & 38 : Two Photos.
 Ex.P.39 : Police Notice.
 Ex.P.40 & 41 : Two Photos.
 Ex.P.42 : Mahazar.
 Ex.P.43 : Notice to witness for
 Inquest mahazar.
 Ex.P.44 : Inquest report.
 Ex.P.45 : Requisition to school Head master.
 Ex.P.46 & 48 : Certified copies of Attendance
 register.
 Ex.P.47 : Transfer certificate copy.
 Ex.P.49 : Letter.
 Ex.P.50 : Medical Certificate of accused.
 Ex.P.51 : Sketch.
 Ex.P.52 : Letter.
 Ex.P.53 : Requisition for Parade for identification
 of accused.
 Ex.P54 : Letter to CPI from Tahasildhar.
 Ex.P55 : RTC extract.
 Ex.P56 : P.M.Report.
 Ex.P57 : Letter to Medical officer by I.O.

- Ex.P58 : Letter written by Medical officer to CPI.
- Ex.P59 : Slip affixed on M.O.1 stone.
- Ex.P60 : Model seal.
- Ex.P61 : DNA report.
- Ex.P62 : Final opinion.
- Ex.P63 & 64 : Xerox copies of Identification Forms.
- Ex.P65 : FIR.
- Ex.P66 : Statements of Eye witnesses.
- Ex.P67 : Report of production of accused before CPI.
- Ex.P68 : Memo issued by Medical officer.
- Ex.P69 : Model seal.
- Ex P70 : Certificate U/s.65(b) to obtain photo.
- Ex.P71 : Rough sketch.
- Ex.P72 : PF.No.69/2018.
- Ex.P73 : PF.No.70/2018.
- Ex.P74 : Portion voluntary statement of accused.
- Ex.P75 : PF.No.71/2018.
- Ex.P76 : PF.No.72/2018.
- Ex.P77 & 78 : DNA examination identification Form.
- Ex.P79 : PF.No.73/2018.
- Ex.P80 : Report of K.N.Ramakrishna inspite of obtain dead body things.
- Ex.P81 : Report of Hanuman Singh inspite of blood report of victim parents.
- Ex.P82 : FSL acknowledgment.
- Ex.P83 : Birth certificate of victim girl.
- Ex.P84 : Letter written by C.O of CMC to CPI.

3. Witnesses examined on behalf of the Accused:

- N I L -

4. Documents exhibited on behalf of the Accused:

- N I L -

5. Material objects marked on behalf of the Prosecution:

- M.O.1 : One stone.
- M.O.2 : Blood stained mud.
- M.O.3 : Sample mud.
- M.O.4 : School bag with it contents.
- M.O.5 & 6 : Two chappals of victim girl.

- M.O.7 & 8 : One paid of gents chappal.
- M.O.9 : One Umbrella.
- M.O.10 : One shirt.
- M.O.11 : One pant.
- M.O.12 : One under wear.
- M.O.13 : KSP words seal.
- M.O.14 : "C" word seal.
- M.O.15 : Yellow & blue colour mixed T-shirt.
- M.O.16 : Yellow & Blue colour mixed track pant.
- M.O.17 : Yellow & Blue colour mixed shot
(nicker).
- M.O.18 : Kandu colour under wear.
- M.O.19 : Pink colour shimmy (slip).
- M.O.20 & 21 : Two black colour threads.
- M.O.22 : Vaginal smear.
- M.O.23 : Vaginal swab.

II Addl. District & Sessions Judge,
Kolar.