IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2026

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PRESENT

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

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.69/2018

BETWEEN:

1 . RUDRESH @ RUDRAIAH
AGED ABOUT 21 YEARS
S/O SANGAIAH HIREMUTT
R/AT MOOLEGADDE MUTT
VILLAGE HOSAMANE
HOSANAGARA TALUK
SHIVAMOGGA DISTRICT.

PERMANENT RESIDENT OF
RAVALGUNDAVADI, JATHRA
SANGLI, MAHARASTRA. … APPELLANT

(BY SRI. SUNIL KUMAR S., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY HOSANAGARA POLICE,
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560009. … RESPONDENT

(BY SRI. RAJATH SUBRAMANYA, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 27.11.2017 AND SENTENCE DATED 30.11.2017 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, SITTING AT SAGAR IN S.C.NO.10018/2017 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.01.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

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

1. This appeal is filed challenging the judgment of conviction and sentence dated 27.11.2017 passed in S.C.No.10018/2017 on the file of the V Additional District and Session Judge, Shivamogga, sitting at Sagar for the offences punishable Sections 364 and 302 of IPC.

2. The factual matrix of case of prosecution is that the complainant is the resident of Alavalli of Sirsi, Siddapura. It is the case of prosecution that in the year 2011, the complainant got married to one Kumarswamy of Basaveshwara Nagar of

Haveri district and her husband is working as a mechanical engineer in one company at Pune. They had a son by name Srujaya aged about 3½ years. They are following Moolegadde Mutt and she is visiting there whenever she comes to her native place. The complainant had come to her native for the marriage of her sister. On 08.04.2017 she had been to the said Mutt with her mother-Renuka and son-Srujaya in order to attend the coronation ceremony of new Swamiji. It is also the case of persecution that other relatives of the complainant were also there in the Mutt. This accused was serving in the said Mutt and assisting the Swamiji and there was an ill-will between the complainant and accused since the complainant and her mother used to advise him with regard to the affairs of the said Mutt.

3. That on 10.04.2017, during the night, they took food and slept in the Mutt by locking the doors. The son was sleeping with her. On 11.04.2017, at about 05.30 a.m., one Rajaiah woke her up and said that child was not found and hence, they immediately searched for the child and found that doors of Mutt were opened. Herself and her grandmother-Gowramma and

relatives i.e., Mahadevamma, Ashwini and others have searched for the child but not found. The complainant learnt that someone had kidnapped her son when they were sleeping. It is also the case of prosecution that accused came from outside when they were searching and on enquiry, he has not given any answer thus, the complainant suspected the role of the accused that he might have kidnapped her son. It is also the case of the prosecution that there was some change in the health of the complainant and others on the next day who took food last night. Hence, lodged the complaint against the accused.

4. Based on the complaint, the police have conducted investigation and apprehended the accused and body of the child was recovered at the instance of the accused and recorded the statement of the witnesses and filed the charge sheet against the accused. The copies of the charge sheet papers were supplied to the accused in compliance of Section 207 of Cr.P.C. and the Judge who received the charge sheet, committed the case to the Sessions Court. The accused was secured and

cognizance was taken and the accused did not plead guilty and claims for trial.

5. The prosecution, in order to prove the case, examined PW1 to PW21 and got marked the documents at Ex.P1 to P57 and MO1 to MO4 were also got marked. The accused was subjected to 313 statement and he denied the incriminating evidence and he did not choose to give any defence evidence.

6. The Trial Court having considered both oral and documentary evidence comes to the conclusion that prosecution has proved the case against the accused in respect of the charges levelled against him under Section 364 as well as Section 302 of IPC and sentenced to undergo imprisonment for life i.e., he has to remain in prison until his natural death and he shall pay fine of Rs.15,000/-. In default to pay the fine, he shall further undergo simple imprisonment for 6 months. Out of the fine of amount, Rs.10,000/- shall be paid to PW1. MO1 to MO3 are ordered to be destroyed as worthless after the appeal period is over.

7. Being aggrieved by the judgment of conviction and sentence, the present an appeal is filed before this Court.

8. The main contention of the counsel appearing to the appellant before this Court is that the Trial Court committed an error in convicting and sentencing the appellant/accused even though, the prosecution utterly fails to prove the case beyond all reasonable doubt. The counsel also would vehemently contend that there is no eye-witness to the incident and the entire case is based upon the circumstantial evidence and the prosecution has utterly failed to prove the guilt of the appellant. The counsel contend that when the case is rested upon the circumstantial evidence, there must be a chain link to prove the guilt. The counsel also would vehemently contend that the witnesses are interested witnesses and official witnesses and no corroboration in testimony of the prosecution witnesses. The answer elicited from the mouth of PW1 i.e., the mother of the victim that she had not seen that accused had killed her son but she came to know that PW3 had seen that the accused had administered the sleeping tablets into the sambar. But PW3 has deposed that she

came to know that the accused had administered sleeping tablet to the child and killed him by drowning in the water.

9. The counsel further contends that PW9 is the owner of Karthik Medical Store and he deposed that the accused had purchased the sleeping tablets from his medical shop. But in the cross examination, he deposed that he does not know the contents of Ex.P33 and accused came to his shop once and he does not remember when accused again came to his shop. The counsel also would vehemently contend that PW14 - Dr. Lingaraju in his cross-examination admits that he does not remember whether accused has taken sleeping tablets from him and on verification of hospital records also there is no any document to show that accused has taken treatment from him on 01.10.2016 to 31.12.2016 and 01.01.2017 to 10.04.2017 and he also deposed that he does not remember whether accused has taken sleeping tablets from him or not. The evidence of the prosecution witnesses i.e., PW1, PW4, PW9 and PW14 not inspires the confidence of the Court and no chain link circumstances are proved. The counsel also would vehemently

contend that the ingredients of Section 364 of IPC are not proved and even in respect of offence of Section 302 also, no material before the Court.

10. The learned counsel during the course of his arguments would vehemently contend that PW15 is the Head of the Mutt and this accused was serving with him. PW1 and PW2 are the devotees of the said Mutt. The counsel would vehemently contend that the case of the prosecution is that accused had administered the tablet to the child but no material is available on record in this regard. It is also the case of the prosecution that accused had used 17 tablets putting the same in the sambar which was prepared in the Mutt. In this regard, the counsel brought to notice of this Court that the case is rest upon circumstantial evidence. The first circumstance is with regard to the motive of committing murder. The second circumstance is preparation for committing the murder. The third circumstance is recovery of body and tablets. The other circumstances relied upon is medical evidence and finally the scientific evidence. The counsel would vehemently contend that in order to prove the

motive, the prosecution examined the main witnesses i.e., PW1 and PW2 who are the mother and grandmother of the child. The PW4 is also none other than the relative of PW1 and PW2. The other witnesses are PW5, PW11 and PW15 and their evidence is not sufficient to prove the motive.

11. The counsel would vehemently contend that the prosecution mainly relies upon the evidence of witnesses with regard to the preparation to commit the murder wherein particularly, relied upon document at Ex.P31 i.e., sleeping tablets of 0.5 mg which was used to commit the murder. The prosecution mainly relies upon evidence of PW3 and PW21 for recovery of the body at the instance of the accused and their evidence also not inspires the confidence of the Court since according to the prosecution, accused was arrested at 03.15 p.m., but evidence of these witnesses was taken even prior to the said time. The counsel would vehemently contend that the prosecution also relies upon medical evidence to prove of the case examining the doctor as PW14. The doctor's evidence is with regard to the consumption of tablet and drowning. For

scientific evidence, the prosecution relies upon the evidence of PW18 and PW19 and the counsel would vehemently contend that according to the scientific evidence, found the tablet contents in sambar and also in the child. But in respect of others who have consumed the sambar, not found the contents of the tablet and report is negative. The counsel also would vehemently contend that in respect of the first charge, there is no evidence except PW1 and no material for administration of the tablet.

12. The counsel would vehemently contend that with regard to the motive is concerned there was a double edged sword and mainly relies upon the evidence of PW5 and PW12. The counsel would vehemently contend that MO1 is child's T-shirt and MO2 is child's pant. The counsel would vehemently contend that PW1 though supported the case of prosecution, in the cross-examination admitted that she used to visit the Mutt frequently before and after marriage. PW1 categorically admitted that she had sound sleep after the dinner and denied personally witnessing the accused killing her child and confirmed that others have witnessed the mixing of the medicine to the sambar.

13. PW2 who is the mother of PW1 and she speaks with regard to Ex.P2 to P5 photographs of the deceased child and also the seizure of MO1 and MO2. She only speaks that she came to know that sleeping pills were mixed in food and accused took the child to kill. In the cross examination, she admitted that she studied upto 10th Standard and also admitted that accused was taking care of PW15 and denied that accused behaved rudely and misused the funds.

14. PW3 is a panch witness to Ex.P18. He is also a devotee of the said Mutt. He says that he was called to the police station on 11.04.2017 at 03.00 p.m., with regard to drowning of a child. In police station, the accused was present and confessed mixing of sleeping tablets and also confessed for giving sleeping tablets to the child and later drowning him. The confession was video recorded and photo was taken and he accompanied the police and accused to the river pit near the Mutt and identified the location and photos. He saw there that the child's body was floated and lifted the child's body to the bank and identified the child's photographs i.e., Ex.P14 and P15 and the child's body

was floating in water and Ex.P16 and P17 are the photos of water sample collected and Ex.P18 is the spot mahazar. In the cross-examination, he admits that he was visiting the Mutt from last 10 years and knows everyone. He admits that he was at Subash Nagar before being called to the police station and went to the police station around 3.10 p.m., and thereafter started to go to the incident spot from the police station at 03.30 p.m., and he confirmed that he had signed the document after it was written in his presence.

15. The PW4 also says that she frequently visiting the Mutt and devotee of the said Mutt and deposed that she used to advise the accused not to steal money and mobile phones and deposed that due to the said advice, the accused developed hatredness against the visitors. It is her evidence that on 10.04.2017, at 7.00 p.m., she saw that the accused stirring something into the sambar and when she questioned, he said that he was heating the same. In the said night when all were slept under the stairs, her son and the accused were sleeping in the first floor. On the next day morning, she was drowsy and

was taken to the hospital along with others. Later, she learnt that sleeping pills were put in the food and in the child's water and then drowned the child. In the cross-examination, she admits that accused served the elders for some days, but later, started to steal some items. It is her evidence that they went to the hospital between 08.00 to 09.00 a.m., but admitted that she did not see the accused adding pills but realised it, after eating.

16. The other witness is PW5 who is also another devotee of the said Mutt. She also attended the coronation ceremony along with the family members and also identifies the accused before the Court stating that he was serving at the Mutt. That on 10.04.2017 at about 10.00 p.m., herself and her grandmother and others had dinner served by the accused and that night, they slept near the steps and the child slept between them. On the next day morning, the child was missing and they were admitted to hospital and came to know that tablets were mixed in the sambar and everyone in the previous night were drowsy and came to know about the incident of killing of the child. In the cross-examination, she admits that it was her second visit to

the Mutt. The accused had a broken shoulder. But she says that 7 to 8 people were admitted to the hospital and she does not know about others and she cannot tell whether police have visited the hospital or not. But she confirms that dinner was at about 10.00 p.m. and deposed that she came to know through Madevamma that accused added sleeping pills to the sambar. But she did not give any statement at police station but gave at the hospital. It is elicited that she did not witness the killing of the child but heard the same from others.

17. The other witness is PW6 who deposed that accused was serving at Mutt and came to know that accused had put sleeping pills in the sambar and powder in the milk of the child, fed it to the child and later took the child and killed him. He was called by police. He saw that the accused explaining how he took the child and he identified the photograph at Ex.P18. The accused took them from the police station to the Mutt and accused identified the child and also even pointed out the spot where the child was slept and Mahazar was drawn in terms of Ex.P18 to P20. This witness is a mahazar witness. In a cross

examination, he admits that he was called for the mahazar but not received any prior notice. He described the topography of the river, road, trees and the vacant land in the cross-examination and he admitted that he went along with police but did not know the number of the vehicle.

18. PW7 is also a Panch witness to Ex.P22-Mahazar and Ex.P23 to P28 photographs. He deposed that he was called to the police station and found other panch witnesses and accused narrated with regard to his Act and police took them to the attic where the accused showed a suitcase containing 3 sheets of tablets out of that one was empty and another was with 2 tablets and another sheet was with full tablets. The police seized the tablets and conducted the mahazar in terms of Ex.P22. He identifies the seized medicine sheets as MO3. He was subjected to cross-examination wherein he admitted that he arrived the police station around 09.45 a.m., but did not personally interrogate the accused. They left for the Mutt at 10.00 a.m., and took about half an hour to collect the medicines and he

cannot clearly explain the contents of the mahazar and did not mark to the medicine to identify the same.

19. PW8 is also a Panch witness to Ex.P29 and P30. He found that the police and accused were present in the medical shop. The accused told to the police that he had purchased the sleeping tablets from the said medical store and shopkeeper also confirmed the same. The police conducted the mahazar in terms of Ex.P30 and photograph also taken as per Ex.P29. In the cross-examination, he admits that he did not know the name of the medical store and the person who took the photographs. But he deposed that police were questioning the accused and both the accused and the shopkeeper stated that the sleeping pills were purchased and he admits that he did not know anything further apart from signing the mahazar.

20. PW9 is owner of the Karthik medical store and he deposed that the accused was frequently purchasing medicine and accused also residing at Moolegadde Mutt. He deposed that police visited to his shop on 13.04.2017 along with accused and he confirmed that he gave the Clonazepam 0.5 mg tablets based

on a doctor's prescription. 30 tablets were given to the accused on 20.03.2017 and copy of the receipt of the same was marked as Ex.P31. Those tablets were sleeping tablets and police have conducted the mahazar and took the photographs in terms of Ex.P30 and Ex.P32 is the photograph of receipt register and document of ownership of the medical store was marked as Ex.P33 and P34 and MO3 medicine sheet of Clonazepam tablets was identified. In the cross-examination, he admits that he did not instruct the police how to write the mahazar. The medicines were given only with a doctor's prescription specifically, from Dr.Lingaraju, a Government Doctor. He did not know the name of the photographer who took the photo as per Ex.P29 and could not recall names in the bill book.

21. The PW10 is a Panch witness to the inquest at Ex.P35.

22. PW11 is a relative of Priest of Moolegadde Mutt and the accused is the grandson of Siddalingaswami's sister. He also deposed that accused served the Guru at the Mutt but his nature was bad and used to stealing devotees' belongings and money and he was also advised many times, but he continued the

misconduct. During preparations for the ceremony, in April 2017, the accused broken his hand in a bike accident and he asked for money and got angry when he was scolded. On the night of 10.04.2017, food was cooked separately for Swamijis and others and given details with regard to the incident. He was subjected to cross examination. In the cross examination, he deposed that he slept between 09.00 p.m., or 09.30 p.m. He explained that leftover food from Swamiji's portion was consumed by him and Rajanna. He denies the suggestion that someone else committed the crime.

23. PW12 is the another witness of the prosecution wherein he deposed that he works as a cook for gatherings and events. He was called to the said Mutt in the month of April during the coronation ceremony. He knew the accused who served the Swamijis at the Mutt. Rajanna cooked for the Swamijis and he cooked for the devotees. He cooked rice and sambar at the Mutt and the accused was moving around in the kitchen. After finishing cooking, he returned to his home without knowing that who served the food. On the next day morning, he

came to know about the incident of missing of a child and mixing of sleeping tablets into the sambar. This witness was subjected to cross-examination. In the cross-examination, he admits not knowing which hand of the accused was injured. He explained that preparation of food for Swamiji and devotees were separate. The sambar vessel was about 10 litres and reduced to 4-5 litres by evening and stirring it with two hands was unnecessary. The next morning, the vessel still contained leftover sambar.

24. P.W.13, is a devotee of the Mutt and visits regularly. On 11.04.2017, he learnt that a child was missing. He went to the Mutt and helped to search, but could not find the child. It is his evidence that child's mother had lodged the complaint, which he wrote as dictated by her and he identifies his signature as Ex.P.1(b). It is also his evidence that C.W.1 and C.W.5 to C.W.8 felt dizzy after eating rice and sambar the previous night. He brought the leftover rice and sambar from the Mutt and gave it to doctor and identified his signature as Ex.P.36(a). It is his evidence that the accused has mixed sleeping pills in the food in

the previous night and also gave sleeping pills to the child and drowned in the river. He was subjected to cross-examination. In the cross-examination, a suggestion was made that C.W.1 did not sign the complaint and the same was denied. He says that people were admitted to the hospital due to drowsiness and a suggestion was made that he is falsely deposing and the same was denied.

25. P.W.14 Medical Officer says that several patients were admitted with dizziness and nausea. The patient Shankaraiah informed him that sleeping pills were added to rice and sambar. He also speaks about Ex.P.36 and says food was sent for chemical analysis through the police in terms of Ex.P.37. He conducted the post mortem on the child Sujay and sent internal organs for chemical analysis. The final report received confirmed Clonozepam in multiple organs, concluding that the child died due to Clonozepam poisoning and asphyxia from drowning. He examined the tablets, used for insomnia and anxiety and confirmed their contents. He was subjected to cross-examination. In the cross-examination, he admits that poison

suspicion led to chemical testing. Food was brought by relatives and confirmed details of post mortem including absence of blood, presence of froth and indigested food. He denied that a single 0.5 mg tablet could kill a child, but affirmed that death was due to drowning after poisoning.

26. P.W.15 head of the Mutt says that the accused is his sister's daughter's son and he was serving at the Mutt. The accused had a bad reputation for stealing money and belongings from devotees and the Mutt. Despite being advised, he continued his misdeeds and harbored hatred towards some devotees, especially C.W.1 and C.W.4, after being reprimanded. On 10.04.2017, separate food was prepared and the same was eaten by devotees, since separate arrangement was made for the devotees as well as him. The next morning C.W.1's son was missing and several devotees were dizzy. The child's body was later found in the stream and he was informed that the accused had poisoned and thrown the child. He identifies the dead body photos, stream photos and other related photos, identifying the accused’s involvement out of hatred. He was subjected to cross-

examination. In the cross-examination, he admitted that he treated the accused affectionately and gave him money. Others were afraid to report the accused's theft. He admitted hearing about the accused's wrongdoing from others, but denied making false claims. He clarified that the accused was advised not to work after breaking his hand, but continued serving. He admits that he came to know about the bad habits of the accused from others.

27. P.W.16 PDO says that Mutt comes within her Gram Panchayath jurisdiction and she issued the demand extract of the Mutt Ex.P.39.

28. P.W.17 Assistant Engineer says that he inspected the site behind Moola Gadde Mutt in Hosamane, which was showed by the police and he prepared the sketch as per Ex.P.40.

29. P.W.18 is the Scientific Officer, FSL. He says that he examined 12 items sent by Hosanagara Police in connection with Crime No.36/2017 for chemical analysis. Items included stomach, lungs, liver, spleen, kidneys, heart of deceased Sujay, blood samples, preservative solution, sambar and Clonozapam

tablets. He found traces of Clonazepam in item Nos.1, 3, 6 and 12. No traces in item Nos.2, 4, 5 and 7 to 11 due to metabolism/time lapse. Explained persistence of Clonazepam in deceased's body due to stopped excretion/blood circulation. He was subjected to cross-examination. In the cross-examination, he admits that item Nos.2, 4, 5 and 7 to 11, had no Clonozepam. It is suggested that he is giving false evidence and the same was denied.

30. P.W.19 doctor who is working as Deputy Director, FSL, submits that she received the water bottle samples related to Hosanagara P.S. on 17.04.2017. Samples from Toxicology Department (stomach, lungs, liver, kidney, heart and blood) were sent to Biology Department. It is also her evidence that she examined them for diatoms. Found presence of diatoms in four items. Explained diatoms enter body when a person falls in water and drinks water; if unconscious before falling or water lacks diatoms, none are found. This witness was cross-examined and she says that diatoms were not present in the water sample itself. It is stated that if diatoms are in water and visceral

organs, death can be attributed to drowning. She denied giving false report at the police request.

31. The other witness is P.W.20 ASI. In his evidence he says that he was in charge on 11.04.2017 at 10.00 a.m. and he received a written complaint and registered the case and sent the FIR to the Court and superiors and identified signature in Exs.P.1 and 45 complaint and FIR. He was subjected to cross-examination. He admits that he did not verbally order staff to trace the accused.

32. P.W.21 is the CPI. He says that he received the case file from ASI on 11.04.2017. He interrogated the accused, who confessed to abducting Sujay, administering sleeping pills and throwing him into the stream. It is also his evidence that the accused led police and panchas to the stream, identified the body, demonstrated where he threw the child. He also says that he conducted panchanamas, collected evidence including water, tablets, clothes, blood samples and prepared sketches and reports. He obtained voluntary statement and recorded witness statements and submitted the charge sheet. In the cross-

examination, when a suggestion was made that he is falsely deposing and the same was denied. A suggestion was made that he did not conduct panchanama or prepared any rough sketches and recording of evidence and the same was denied. He re-affirmed that all procedures were lawful and the accused's involvement was properly documented.

33. The learned counsel for the appellant referring the evidence of these witnesses would vehemently contend that the material collected by the Investigating Officer not points out the role of the accused and the evidence of the witnesses not inspires the confidence of the Court that accused only committed the murder. Though witnesses speak about motive and preparation to commit offence by purchasing of tablets and kidnapping by the accused, the recovery of the dead body of the child, not inspires the confidence of the Court. The learned counsel would vehemently contend that the timings of arrest of the accused and the evidence of witnesses are very clear that there are contra evidence. The evidence of FSL expert also not inspires the confidence of the Court to come to a conclusion that

this accused had only committed the murder. Though relies upon the prosecution witnesses, the evidence regarding motive, preparation, recovery of body, medical evidence and scientific evidence not points out the role of the accused.

34. Learned counsel for the appellant in support of his argument relied upon the judgments. First and foremost judgment he relied upon is the judgment of the Apex Court in **PUTAI v. STATE OF UTTAR PRADESH** reported in **2025 SCC ONLINE SC 1827.** The counsel for the appellant relying upon this judgment brought to notice of this Court paragraph No.69, wherein discussion was made that fields where the material objects allegedly belonging to the child victim and her dead body were found is open and accessible to all and sundry and hence, the prosecution would have to rule out the possibility of anyone other than the accused-appellants having committed the ghastly act for it to succeed and to bring home the charges against the said accused persons. The counsel also referred paragraph No.70, wherein also discussion was made that these facts may give rise to a strong suspicion that the child victim might have

been assaulted in the field of accused No.1, but that by itself would not be sufficient to establish that it was the accused No.1 and none else who committed the ghastly crime. The counsel referring these two paragraphs would vehemently contend that the place where the dead body was recovered is an open space and anybody can visit and access the same. Hence, the version of the prosecution cannot be believed.

35. The counsel also relied upon judgment of the Apex Court in **SUBRAMANYA v. STATE OF KARNATAKA** reported in **(2023) 11 SCC 255**. The counsel referring this judgment brought to notice of this Court reversal of judgment passed by this Court and would contend that the Apex Court in detail discussed discovery of weapon of offence, clothes and dead body in paragraph Nos.69 to 74, particularly the witnesses which have been relied upon and also discussed Section 27 of the Evidence Act in paragraph No.76 of the judgment. In paragraph No.77, the Apex Court also held that first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been

made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act. In the absence of such evidence, there cannot be any conviction. The counsel also would submit that none of the witnesses speak about the exact statements said to have been made by the accused, which ultimately led to discovery of a fact under Section 27 of the Evidence Act. Hence, Section 27 of the Evidence Act cannot be invoked.

36. The counsel also relied upon the judgment of the Apex Court in **VAIBHAV v. STATE OF MAHARASHTRA** reported in **(2025) 8 SCC 315.** The counsel referring this judgment brought to notice of this Court discussion made by the Apex Court in paragraph No.18 with regard to circumstantial evidence, wherein the Apex Court held that in a case based on circumstantial evidence, answers to such questions are not found on the face of the record. Rather, the truth is found concealed in the layers of incriminating and exonerating facts, and the Court is required to arrive at a judicial finding on the basis of the best possible inference which could be drawn from a comprehensive analysis

of the chain of circumstances in a case and also subsequent conduct of the appellant in trying to show concern to the father of the deceased despite knowing about the death. The counsel would vehemently contend that it is the duty upon the Court to make comprehensive analysis of the chain of circumstances in a case of circumstantial evidence. The counsel also brought to notice of this Court paragraph No.29, wherein discussion was made that in criminal jurisprudence, it is a time-tested proposition that the primary burden falls upon the shoulders of the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence. The counsel referring this judgment would contend that prosecution was unable to prove its case beyond reasonable doubt and if the same is proved, then only the burden lies on the accused to disprove the same.

37. The counsel also relied upon the judgment of the Apex Court in **KIRAN v. STATE OF KARNATAKA** reported in **2025 SCC ONLINE SC 2863** and brought to notice of this Court

paragraph No.8, wherein the Apex Court observed that question remains as to whether the Sessions Court was competent to award a sentence of imprisonment for life till the remainder of life and prohibit the benefit of set-off as provided under Section 428 of Cr.P.C. The counsel also brought to notice of this Court paragraph No.13, wherein it is clearly held that in appropriate cases as a uniform policy, punishment of imprisonment for life beyond any remission can be awarded, substituting the death penalty; not only by the Supreme Court but also by the High Courts. The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Courts. The counsel referring this judgment would vehemently contend that Apex Court has taken note of imposing of sentence is concerned and in the case on hand, the Sessions Court awarded life imprisonment till the natural death of appellant and the same is not permissible.

38. The counsel also relied upon the judgment of the Apex Court in **KATTAVELLAI @ DEVAKAR v. STATE OF TAMILNADU** reported in **2025 SCC ONLINE SC 1439**. The

counsel referring this judgment brought to notice of this Court paragraph No.25, wherein discussion was made with regard to recovery based on confession statement giving information regarding location of material objects and held that limited portion of the confession becomes admissible according to Section 27 of the Indian Evidence Act, 1872 and brought to notice of this Court detailed discussion made in the said paragraph referring the several judgments. The counsel also brought to notice of this Court paragraph No.26, wherein the Apex Court observed that let us now consider the circumstances in which the recovery was made from the locations as disclosed. It cannot be questioned that such recovery would be relevant since the Appellant-convict could have affected the recovery only if he had specific knowledge of the location. This, however, in our view, is not sufficient to take the recovery of the objects as a circumstance against the Appellant-convict. This we say for the reason that the objects recovered also have to be verified and tested and his statement is said to have led to the recovery of weapons. The counsel referring this judgment would vehemently

contend that very recovery of the dead body and discovery is not proved and the same cannot be believed.

39. The counsel also brought to notice of this Court paragraph No.36, wherein discussion was made with regard to motive is concerned that in a case of circumstantial evidence, motive forms one of the chains of circumstances which can collectively point to the guilt of the accused. The counsel also brought to notice of this Court that in paragraph No.41, the Apex Court discussed with regard to non-examination of Bhagyalakshmi and essential happenings of a link. The counsel referring this discussion would vehemently contend that in the present case, all the witnesses have not been examined before the Court as to who have consumed the food in the previous night and only examined some of the witnesses. The counsel also vehemently contend that FSL report is positive only in respect of the food consumed by the deceased i.e., the sambar and in respect of consumption of very same food by others, the report is negative. The counsel also brought to notice of this Court conclusion arrived in the judgment in paragraph No.45,

wherein the Apex Court observed that we have no hesitation in holding that none of the circumstances posited by the prosecution are found to be conclusively proved against the Appellant-convict. The chain of circumstantial evidence in no way points to a singular hypothesis, that is the guilt of the accused, ruling out his innocence or involvement of none else in the crime. Hence, acquitted the accused.

40. The counsel also relied upon the judgment of the Apex Court in **BALJINDER KUMAR ALIAS KALA v. STATE OF PUNJAB** reported in **2025 SCC ONLINE SC 1459**. The counsel referring this judgment would vehemently contend that the Apex Court in detail discussed the evidence, particularly the evidence of P.Ws.1 and 2 with regard to scene of occurrence and even with regard to weapon wielded by the accused is concerned, discussion was made that it goes without saying that the murder weapon becomes a relevant piece of evidence in such cases and analyzed the testimony of P.W.7. The counsel also brought to notice of this Court paragraph Nos.36 and 37 regarding recovery of blood-stained clothes and weapon and discussion was made

that only forensic evidence in this case is the report of the chemical analysis which merely states that the blood found on the exhibits is opined to be of human origin. The same is evidently not sufficient to link the articles to the deceased or the specific offence. In the absence of any evidence of prosecution for recovery while the recovery may not be wholly discarded due to the lack of a supporting witness, however, it undoubtedly becomes highly questionable, especially with the factum of long delay of two months in the discovery being effected.

41. The counsel referring these judgments would vehemently contend that having considered the material available on record both oral and documentary evidence, the same not supports the case of prosecution. Hence, the counsel would contend that the Trial Court has not properly appreciated both oral and documentary evidence available on record.

42. The learned counsel appearing for the respondent-State would submit that the evidence of P.W.4 and P.W.3 is very clear and these two witnesses withstood the cross-examination of the defence counsel. P.W.4 is the relative of P.W.15 and P.W.5

is also the relative of P.W.15 and P.W.15 is the Swamiji of the said Mutt. The evidence of P.W.1 and P.W.2 is very clear that the accused was having hatredness on both of them on account of advice made by them. The learned counsel also vehemently contend that medical evidence of P.W.14, scientific evidence of P.W.18 and P.W.19, the evidence of P.W.20 and P.W.21 corroborates each other with regard to guilt of the accused. The panch witnesses P.W.2, P.W.6, P.W.7, P.W.8 and P.W.9 also supports the case of the prosecution. There are material evidence before the Court that the accused was having ill-will against P.W.1 and P.W.2 and due to the said hatredness only he committed the murder and with regard to the motive is concerned, the evidence of P.W.1, P.W.2, P.W.4, P.W.5, P.W.11 and P.W.15 is very clear. The learned counsel would contend that P.W.15 is the relative and spoken that the accused is his sister's daughter's son and his evidence is also very clear that he was having bad reputation. The evidence of P.W.9 Virupakshappa, who is the owner of the medical shop, categorically deposes for having purchased the medicine and he is a signatory to Ex.P.30. P.W.8 is the panch witness for

preparation to commit offence by purchasing of tablets. With regard to recovery of tablets, panch witness P.W.7 clearly deposes that he is a witness to Ex.P.22. But no evidence with regard to kidnapping of the deceased by the accused, since none of the witnesses have witnessed the same. But the body was recovered at the instance of the accused and mahazar witness P.W.3 supports Ex.P.18. P.W.21 speaks about the arrest of the accused and recovery of the body at the instance of the accused. The medical evidence of P.W.14 and post mortem report Ex.P.38 is very clear with regard to the cause of death and viscera which was sent to the lab. FSL witness P.W.18 and P.W.19 also supports the case of the prosecution and hence, it is not a case for acquitting the accused and the very contention of the learned counsel for the appellant that the prosecution fails to prove the case beyond reasonable doubt cannot be accepted. Hence, it is a case for confirmation of conviction and sentence also commensurate considering the conduct of the accused and rightly sentenced to life imprisonment and he has to remain in prison until his natural death or otherwise the accused, who is having hatredness may also bring trouble to this society.

43. The counsel referring the evidence of these witnesses would vehemently contend that the prosecution, in order to prove the case, particularly with regard to motive is concerned contend that the evidence of all these witnesses i.e., P.Ws.1, 4, 11 and 15 is very clear that the accused was having hatreadness towards P.Ws.1 and 4, since they were bringing out the bad character and version of the accused, particularly to P.W.15. The counsel also would submit that even the evidence of P.W.15, who is the close relative of the accused and also Swamiji of the said Mutt also goes against the accused with regard to his bad antecedents that he was indulging in misusing the Mutt and there were complaints against him and he also scolded him about his conduct. The counsel also would vehemently contend that preparation of the accused to commit the offence was also proved. The owner of medical shop i.e., P.W.9. categorically deposed that he himself supplied the tablets to the accused and to that effect, bill is also marked as Ex.P31. The counsel also would submit that P.W.4 categorically deposed that he was pounding something and putting the same to sambar and the same was witnessed and later, came to know that the same is

the tablet. Hence, it is clear that he was making preparation with an intention to take away the life and mixed the tablet in the sambar to take away the life of a child, who is aged about 3½ years.

44. Learned HCGP appearing for the respondent-State in support of his other circumstantial evidence would vehemently contend that dead body was found in an isolation place and the same is not an open space as contented by the learned counsel for the appellant. With regard to recovery of the dead body, P.Ws.3 and 6 have spoken about the same and the body was recovered at the instance of the accused and prior to that, none were aware of the same and the same was within the special knowledge of the accused. The accused himself pointed out where he drowned the body of a boy and the evidence of P.Ws.3 and 6 is very clear that when they were called to the police station, the accused himself told that if he is taken, he would show the place where he committed the murder and thrown the body. He would counsel vehemently contend that PM report is very clear that death is an account of consumption of tablet and

also drowning. The very case of the prosecution is also that the accused had administered the tablet and committed the murder by drowning and medical evidence of the Doctor is also very clear.

45. He would further contend that FSL report is also very clear that in article Nos.1, 3 and 6, Clonazepam was found i.e., in the body of the deceased and also sambar which was seized. The Trial Court also in detail discussed the evidence of P.W.19-Doctor and so also in paragraph No.63 comes to the conclusion that as a result of Clonazepam which was found in the body of the child, child was unconscious and as a result, content of diatom will not be there in the body. He also relies upon medical evidence and in reply to the article which was relied upon by the counsel appearing for the appellant, it is clear that blood sample was received and sent on 17th and there was delay in sending the same. Hence, in respect of other persons, who have consumed the sambar, the FSL report is negative. But, the child viscera was seized on the very same day when the body was found. Hence, the report is positive and Exs.P36 to P38 were

taken note of by the Trial Court while coming to the conclusion that accused alone committed the murder.

46. In reply to this argument, learned counsel appearing for the appellant would vehemently contend that this Court cannot invoke Section 27 of the Evidence Act and also it is very clear that except examining P.Ws.1, 4 and 5, the prosecution has suppressed the evidence of material witnesses and material witnesses are not examined before the Trial Court. The very evidence of P.W.18 is very clear that it was a false evidence before the Court. But, P.W.5 says that blood was drawn on the very same day. But, no material to that effect and though, it was received by the Forensic Science Laboratory on 17th in a proper manner with seal, the delay in sending the same to the FSL cannot be a reason for negative report. The counsel referring Ex.P38-PM report would contend that time since the death is also silent and the same is not mentioned. Learned counsel also would vehemently contend by producing the order sheet of the Trial Court that case was committed on 18.07.2017 and trial had commenced on 21.08.2017 and the same was completed on

15.11.2017 within a span of three months. The judgment was delivered on 27.11.2017. Hence, it is clear that the Trial Court hurriedly conducted the case and delivered the judgment. The counsel also vehemently contend that this appellant is in custody from last 9 years and the Court has to take note of said fact into consideration.

47. Having heard learned counsel appearing for the appellant in detail and also the principles laid down in the judgments referred by learned counsel for the appellant and also having considered the submissions of learned HCGP appearing for the respondent-State, the points that would arise for consideration of this Court are:

(1) Whether the Trial Court committed an error in convicting the accused for the offence punishable under Section 302 of IPC?

(2) Whether the Trial Court committed an error in sentencing the accused to undergo imprisonment for life i.e., to remain in prison until his natural death and whether the same requires modification?

(3) What order?

Point No.(1):

Law set in motion

48. This Court while considering the charges levelled against the accused, considered both oral and documentary evidence available on record to re-appreciate whether the trial judge committed an error as contended by the appellant's counsel during the course of his argument, in keeping the principles laid down in the judgments referred supra and hence analysis of evidence available on record, the complainant who has been examined as P.W.1 set the law in motion by lodging the complaint in terms of Ex.P.1. This Court has to look into the contents of the complaint wherein she has stated that her son is aged about 3½ years and also says that herself and her relatives came to Mutt and stayed in the Mutt. That on 10.04.2017, herself and others took the food and had the deep sleep. It is also stated that while going to bed, locked all the doors and her son Sujay was also sleeping by the side of her. On the next day 11.04.2017 at about 05.30 a.m., one Rajaiah made her to wake up, stating that child is not there. Having woke up, searched the child, but not found and door of the Mutt was opened and

immediately herself, her grandmother Gowramma, relative Mahadevamma, Ashwini and all have searched, but not found the child. It is alleged in the complaint that someone else kidnapped the child. At that time, this accused came from outside and he was enquired about the child, but he did not give any answer and hence, suspected the role of the accused in the complaint. It is also stated that her health as well as the others health were not in order and when the child was not found, gave the complaint. Based on the complaint at 10 a.m., Police have registered the case in Crime No.36/2017 for the offence punishable under Section 363 of IPC at the first instance. This complaint was received by P.W.20 and law is set in motion by issuing FIR.

49. The P.W.20 in his evidence, he says that he had received the complaint from P.W.1 and immediately registered the case for the offence punishable under Section 363 of IPC, issued the FIR and sent the same to the Court and also to the higher authority. The complaint is marked as Ex.P.1 and signature is marked as Ex.P.1(a) and FIR is marked as Ex.P.45

and his signature is marked as Ex.P.45(a). Thereafter, entrusted the case file to C.P.I for further investigation. In the cross-examination, it is elicited that on receipt of the complaint, he appointed his staff for searching of the child and accused and sent HC-648 to the crime spot. But, he has not received any information from the Hospital i.e., HMR and while lodging the complaint, her relatives are also accompanied. But, he cannot tell the names. The lodging of complaint process was completed within 10 minutes, at that time, P.W.1 was all right. She categorically says that she brought the written complaint.

50. The other witness is P.W.13. In his evidence, he says that having come to know that child was missing, he went to Mutt and he also searched. The P.W.1 is the mother of the child and he wrote the complaint Ex.P.1 as P.W.1 is narrated and he identifies his signature in Ex.P.1. In the cross-examination, suggestion was made that he wrote the complaint and Chaithra had signed and the same was denied. But, he says that P.W.1 only narrated, as per her instructions, he wrote the complaint. Having considered the contents of the complaint is concerned,

the evidence of P.W.13 is very clear that he wrote the complaint as per the instructions of the complainant and this Court has to look into the evidence of P.W.1 with regard to the lodging of complaint is concerned and in her evidence, she categorically deposes with regard to the conduct of the accused in terms of the contents of the complaint and categorically deposes that she had suspected the role of the accused and also identifies her signature in the complaint. Hence, in the complaint itself suspected the role of the accused at the first instance while lodging the complaint at 10 'o' clock. The evidence of P.W.13 is very clear that he wrote the complaint and P.W.20 had registered the case and set the law in motion and the evidence of these witnesses corroborates each other to set the law into motion.

Analysis of evidence for homicidal

51. It is the case of the prosecution that accused kidnapped the child and committed the murder. It is their case that Clonazepam was administered to the child and also to the sambar which was seized.

52. The prosecution mainly relies upon the evidence of P.W.14-Doctor. In his evidence, he says that he is working in the Hosanagara Public Hospital from last 9 years and that on 11.04.2017, Gowramma, Mahadevamma, Ashwini, Shankaraiah and Chaitra came to hospital and admitted and they took the treatment and one Shankaraiah given the letter in terms of Ex.P.36 and seized the sambar when the same is produced and sent the same to the Police for chemical examination and Ex.P.37 is the document to that effect. The other evidence is that on 12.04.2017 he conducted post mortem in the early morning 7:30 a.m., to 8:30 a.m., and also collected the viscera and the same was sent to chemical examination and reserved the opinion and having received the opinion from the FSL, found Article 1, 2, 3, 6 and 12 Clonazepam and hence, gave the report that child died due to consumption of Clonazepam medicine tablet and also drowning. He gave the P.M report in terms of Ex.P.38 and also identifies his signature as Ex.P.38(a). He also identifies MO.3-tablets and in that tablets Clonazepam is there and the same is given for insomnia and anxiety and in case of Fits, the same will be given. This witness was subjected to cross-

examination. In the cross-examination, he admits that relatives of the patients only brought the sambar, but he did not instruct the same and relatives of the patients only brought them to the Hospital and also admits that if there was a seriousness of health used to advise to go to higher hospital. It is elicited that blood was not found in the mouth of the deceased, but there was a froth in the mouth of the deceased and also there was a swelling in the stomach. He admits that he did not mention the timings of death. In order to digest the food, it requires 4 hours. It is suggested that MO.3 is effective tablets and the same was denied, but says that by giving 0.5 mg dose, child will not die, but it is suggested that child was not died on account of drowning and the same was denied. He categorically says that the child was not died while drowning him and when the child was alive, by that time only thrown into the water. However, he admits that he has not mentioned the same in the report. It is suggested that whether accused had purchased sleeping tablets from him, but, he says he does not remember the same. It is suggested that he has not given the report and the same is denied.

53. The counsel appearing for the appellant would vehemently contend that time since death is not mentioned in the report and hence, the same cannot be believed. The said contention cannot be accepted and there was no delay and child was found on the very next day afternoon and the same will not go to the very root of the case of the prosecution as contended by the counsel appearing for the appellant and nothing is elicited from the mouth of P.W.14 that child is not died on account of Clonazepam was found and drowning and not disputed the same and only suggestion was made that he did not conduct post mortem and also not given any opinion and the same is denied.

54. Having considered the evidence of the Doctor- P.W.14 who conducted the post mortem and he has not given the opinion immediately but, he kept pending the opinion and gave the opinion only on the basis of the chemical examination report and his report is also based on scientific examination and Ex.P.38 P.M report is very clear that cause of death is on account of the same and hence, it is a case of homicidal.

55. The case is rest upon circumstantial evidence and Court has to examine whether the chain of events and also whether there is a each link is established by the prosecution to prove the case of prosecution and if no chain link is established, then entitled for acquittal and if chain link is established, case for conviction. The Trial Court accepted the case of prosecution and convicted and now this Court has to re-examine the material available on record by analyzing the evidence.

Motive for committing the murder.

56. The main contention of the prosecution is that the accused was not having good reputation and though he was working with Swamiji-P.W.15, but he had developed habit of snatching the mobile and money and hence, the same was noticed by P.W.1, P.W.2, P.W.4 and others including P.W.11 and P.W.14 and hence, this Court has to take note of the evidence of witnesses. The P.W.1, P.W.2, P.W.4, P.W.5, P.W.11 and P.W.15 speaks about the very conduct of the accused.

57. The evidence of P.W.1 is very clear that the accused was loitering in the Mutt and spending money and used to

snatch the mobile and even committing the theft of the money of the Swamiji and the disciples of the Mutt were also noticed the said conduct of the accused and the P.W.1 and P.W.2 used to scold him and hence, he was having hatreadness against P.W.1 and P.W.2 and even he got sustained injury to his hand in the accident and also P.W.2 scolded him why he got injured at the time of coronation, but he used to demand money to go to hospital frequently and abused him to leave the Mutt and hence, he was having hatreadness against her and also her mother and mother returned to her village, but herself, P.W.3, P.W.4 and P.W.5 were there. The P.W.2 also re-iterated the same and categorically says that he used to snatch mobile as well as money of Swamiji and people are also making complaint against him and he has advised.

58. P.W.4 also deposes the relationship between the Swamiji of Mutt and also the accused. She categorically says that when they advised him, he used to quarrel with them and even Swamiji also advising him including P.W.1 and P.W.2. He

used to quarrel with them also and hence, he was having hatreadness against them.

59. P.W.11 also in his evidence, he says that accused was not having good reputation and he used to snatch the belongings of the devotees and the Swamiji. Swamiji used to advise him on several occasions. The P.W.11 also re-iterates that when he had sustained the injury, he used to demand money from the Swamiji and hence, both Swamiji, P.W.1 and mother of P.W.1 i.e., P.W.2 have scolded him and hence he was having hatreadness.

60. The other witness is P.W.15, who is the head of the Mutt and Swamiji in his evidence, he says that P.W.1 and their family members are devotees of the Mutt and accused is also the son of his sister's daughter. The P.W.4 Mahadevamma is also wife of his brother. The P.W.12 is the son of P.W.4 and also he re-iterates that he used to snatch the belongings of the devotees and also says that his money was also stolen by him on several occasions and he advised him and also even instructed him to leave the Mutt, but he has continued in the Mutt stating that he

would not repeat the same. It is also his evidence that P.W.1 and P.W.2 have also scolded him not to do like that and hence, he was having enmity against P.W.1 and her mother-P.W.2.

61. Having taken note of the evidence of these witnesses, during the course of cross-examination, nothing is elicited with regard to the accused had developed the hatreadness against P.W.1 and P.W.2 and with regard to the advice is concerned by all of them, nothing is elicited. In the cross-examination of P.W.1, a suggestion was made that P.W.1 and her family members were misusing the funds of the Mutt and the said suggestion was denied. It is elicited that on that day accused was sleeping along with Vijaykumar on the first floor and except eliciting this answer, nothing is elicited from the mouth of P.W.1. The P.W.1 denies the suggestion that Swamiji was looking after the accused with love and affection and the same was denied. It is elicited that P.W.1 and her mother looking into the financial affairs of the Mutt. It is suggested that with regard to the financial aspect, there was a Galata between the P.W.1 and her mother and Swamiji and the same was denied. It is the

suggestion that accused was instructing them not to misuse the funds of Swamiji and hence, both of them were abusing him and these suggestions are denied.

62. In the cross examination of P.W.2, it is elicited that when the mother of the accused passed away, accused was aged about 14 years and he used to call P.W.2 as Aunt and also answer is elicited that she used to give money to the accused and these are the admissions elicited from P.W.2, but nothing is elicited with regard to developing of hatreadness. It is suggested that they were misusing the funds of the Mutt and the same came to know the knowledge of the accused and hence, deposing falsely and the said suggestion is denied and nothing is elicited with regard to accused was questioning the financial acts of P.W.1 and P.W.2.

63. The P.W.4 was also subjected to cross examination. In the cross examination, nothing is elicited with regard to the evidence of P.W.4 that he was quarreling with P.W.1, P.W.2 and P.W.4 when they advised him and even not disputed the evidence of P.W.4.

64. The other witness is P.W.11. The P.W.11 was also subjected to cross examination. In the cross-examination of P.W.11 also, did not dispute the evidence with regard to his bad reputation and Swamiji as well as P.W.1, P.W.2 and P.W.4 used to scold him and no cross-examination at all to this effect.

65. It is also important to note that P.W.15 is none other than the relative of the accused that is accused is the sister's grandson. In the cross-examination of P.W.15, except eliciting the answer that when the accused was snatching money, but devotees were not making complaint since they were having afraid of him and even with regard to the bad reputation and antecedents, even in the evidence of P.W.15 also, not disputed.

66. Having considered the evidence of P.W.1, P.W.2, P.W.4, P.W.11 and P.W.15, it is very clear that accused was having hatreadness against the P.W.1 and P.W.2. The prosecution has proved the motive for committing the murder.

67. The judgment which is relied upon by the counsel appearing for the appellant reported in **(2023) 11 Supreme Court Cases 255** also discussed with regard to the

circumstantial evidence. Prosecution must fulfill that it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between may be and must be is long and divides vague conjectures from sure conclusions and also facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty and circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with innocence of the accused and must show that in all human probability the act must have been done by the accused. The motive is one of the significant factors for consideration of circumstantial evidence and in view of the principles laid down by the judgment of the Apex Court with regard to the circumstantial evidence, this Court has to analyze the material since five golden principles constitute the panchasheela of the proof of a case based on circumstantial

evidence. The Court has to draw an inference with respect to whether the chain of circumstances is complete and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion. The accused alone is the perpetrator of the crime in question.

68. In the case on hand, when the motive is alleged and though disputed the evidence of P.W.1, P.W.2 and P.W.5, only making the suggestions that they were having ill-will against the accused, but the evidence of P.W.11 and P.W.15 is not disputed regarding hatreadness. Even the witness P.W.15, who happens to be the close relative of the accused, categorically deposed with regard to the accused was having hatreadness. Having considered the evidence available on record, the motive is proved by the prosecution.

Preparation to commit murder

69. The second limb of argument of the counsel appearing for the appellant that even preparation is not proved and though prosecution relies upon the evidence of the preparation and the same is not proved and even relies upon the evidence of P.W.9

and his evidence is not consistent with regard to the preparation is concerned. In keeping this argument is concerned, this Court has to consider the evidence of the Investigating Officer. According to him, the accused led him to Mutt and produced the tablets which were used and mahazar was drawn and empty tablets slips and also the tablets were seized, to that effect, the prosecution relies upon the evidence of independent witness P.W.7 and he categorically says that on 13.04.2017 he was called to the Police Station wherein found CPI, staff and pancha and accused were there. When the accused was enquired, he revealed that he kept the tablets in the bag and hence, all of them went to Mutt and accused took him to Mutt and showed suitcase and removed 3 tablets sheet and one was empty, in another sheet only 2 tablets were there and in another sheet entire tablets were there and hence, mahazar was drawn and seized the same and photo was taken. He identifies his signature in the mahazar Ex.P.22 and photos also, he identifies Ex.P.23 to Ex.P.26 which were taken at the time of process of mahazar and seizure and he also identifies photos Ex.P.27, Ex.P.28 and MO.3. He was subjected to cross-examination and in the cross-

examination, he says that he went to Police station around 9:45 a.m., but he did not enquire the accused and they went to Mutt at around 10 a.m., and this process taken half an hour, but he cannot tell specifically about the contents of the mahazar and he also not put any specific mark to those tablets. It is suggested that MO.3 is nowhere connected to this incident and the same is denied. Having perused this cross-examination, no question was put to him that he was not called to Police Station and accused not led him to Mutt and produced the tablet. The evidence of P.W.7 is very clear with regard to the seizure of tablets is concerned.

70. The P.W.8 also speaks about that when he had been to the medical shop in order to purchase the medicines, Police came and accused also brought and accused told that he had purchased the tablets from the said shop and Police have drawn the mahazar and photos were taken and he identifies the photo Ex.P.29 and also the mahazar as Ex.P.30 and signature. In the cross-examination, except eliciting the answer that he does not know the medical shop name and also the photographer, nothing

is elicited, but he categorically admits that he cannot tell what has written in the mahazar.

71. The other witness is P.W.9 who is the owner of the medical shop. He categorically says that accused used to come and purchase the medicine from him. It is his evidence that on 13.04.2017, Police came along with the accused and accused showed his shop and on enquiry of the Police, he revealed that he gave the tablets based on the prescription i.e., Clonazepam 0.5 mg that was purchased on 20.03.2017 and he is having a receipt and given the zerox copy and the same is marked as Ex.P.31 and also identifies the signature and Police also drawn the mahazar in terms of Ex.P.30. He identifies his signature and identifies photo Ex.P.29 and other receipt register photo as Ex.P.32. He gave the ownership document which is marked as Ex.P.33 and Ex.P.34 and identifies his signature in Ex.P.33 and Ex.P.34 and also identifies MO.3. This witness was subjected to cross-examination. In the cross-examination, he admits that C.P.I instructed to produce the document and on the very same day, he went and gave the same, but he cannot tell contents of

Ex.P.33 and he has not given instructions to prepare the mahazar and accused came to his shop once and again he cannot say the particular date, but the accused disclosed that he is in Moolegadde Mutt and hence, he was having acquaintance with him. He categorically says that he will not give any tablet without the prescription and categorically says that he gave the prescription of Dr.Lingaraju. In the cross-examination also, no suggestion was made to the witness P.W.9 that accused did not purchase the said tablets and material of documentary evidence as well as the evidence of P.W.7, P.W.8 and P.W.9 is very clear that there was a seizure of tablets and also mahazar was drawn. P.W.9 evidence is very clear that accused only had purchased the Clonazepam 0.5 mg. These evidences are very clear with regard to the preparation is concerned that he had purchased the sleeping tablet 0.5 mg and prosecution having considered the evidence of P.W.7, P.W.8 and P.W.9, proved the preparation made by the accused.

Recovery of body

72. The prosecution mainly relies upon the evidence of P.W.3 and I.O –P.W.21 that body was recovered at the instance

of the accused. It is the case of the prosecution that prior to disclosure by the accused, none of them were aware of death of the boy, only on revealing of the same in his voluntary statement, prosecution came to know about the same. The counsel appearing for the appellant would vehemently contend that prosecution not proved the recovery and the evidence of P.W.3 and P.W.21 is not trustworthy.

73. The counsel in support of his argument relied upon the judgment of the Apex Court reported in **(2023) 11 Supreme Court Cases 255** in case of **Subramanya V/s State of Karnataka** and the judgment of this Court was reversed by the Apex Court and brought to notice of this court paragraph No.69 i.e., discovery of dead body and mainly contended by referring paragraph No.76 and 77 whether the prosecution has been able to prove and establish the discoveries in accordance with law. The Apex Court also extracted Section 27 of the Evidence Act in paragraph No.76. In paragraph No.76, the Apex Court held that the first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have

deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

74. The Apex Court in paragraph 78 of the said judgment also discussed with regard to that whether the accused while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the site of burial of the dead body and other incriminating articles and the IO has to call two independent panch witnesses. Once the two independent witnesses would arrive at the police station, thereafter in their presence the accused should be asked to make an appropriate statement as he may desire with regard to pointing out the place where he is said to have hidden the weapon of offence etc. When the accused makes such statement, the same should be incorporated in the first part of the panchanama for the purpose of Section 27 of the Evidence Act which is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his

willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden, then on the recovery of the same should be in the second part of panchanama.

75. Having considered the principles laid down in the judgment referred supra, this Court has to examine whether there is such compliance in the case on hand. This Court would like to rely upon the evidence of PW21, who is the IO, who recorded voluntary statement of the accused. PW21 categorically deposes that accused in his voluntary statement has stated that he killed the child-Sujay using the sleeping tablet and thereafter thrown him in the stream and he also made the statement that if accompanies him, he would show the place and hence, that portion of the voluntary statement is marked as Ex.P46(a). It is also his evidence that immediately he called two panch witnesses i.e., CW2 and CW3 and both of them agreed to become the panchas and accused led the panch witnesses to the spot and showed the spot where he thrown the dead body and

body was also discovered at the instance of the accused and panchas removed the dead body from the stream and kept the same on the bund of the stream and mahazar was drawn in terms of Ex.P18. Now, this Court has to examine the contents of Ex.P18 regarding recovery of dead body is concerned. The first part of the mahazar Ex.P18 discloses that having secured the panch witnesses, accused was asked in their presence regarding what he is going to do and hence, accused made the statement that he kidnapped the child in the midnight at around 12.30 p.m. and he had thrown him on the stream and he also made the statement that if they comes along with him, he would also point out the same and the same is found in the first part of the mahazar in paragraph 2. Thereafter, he led the IO as well as panch witnesses and taken them near the stream and showed the place where he had thrown the child in the stream. This second part of panchanama discloses that one of the pancha removed the dead body and kept the same on the bund of the stream. Even it discloses that there are trees surrounding the said stream and the same is not visible from the Mutt. The

mahazar also discloses that they collected one liter of water for chemical examination.

76. In the cross examination of PW21 with regard to this procedure is concerned, nothing is elicited from PW21-IO except eliciting that both panchas came together and also answer elicited that he did not sign the voluntary statement as Rudresh, but he had signed the same as Heeremat R. S. and also not seized any articles at the instance of accused. It is only suggested that someone killed the child and kept the same on the bund of the said stream and the same was denied. Even there is no any effective cross-examination that he did not record voluntary statement and accused did not give any information and also no suggestion is made that accused did not get the panch witnesses and asked the accused to reveal and even no suggestion is made that accused did not lead the panch witnesses and also PW1 for discovery of the dead body.

77. Now, this Court has to examine the evidence of PW3 who is one of the panch witness regarding discovery of the dead body at the instance of the accused. The witness says that he

was asked to come to the police station at around 3.00 p.m., in connection with committing the murder of a boy and he found the police, accused and also CW3 in the police station. The evidence of PW3 is very clear that police asked the accused in his presence and accused revealed that he put sleeping tablet and then took the boy and committed the murder. The accused also deposed that he would show the place and the police also made the video recording and taken the photographs of making such statement as per Ex.P8. It is also his evidence that all of them went in the jeep and accused had shown the stream and the same was not flowing but there was a pond and 5 photos were taken in terms of Ex.P9 to P13 in that place and accused had showed the pond and body was floating and he also identified the photographs at Ex.P14 and P15 and he is also there in Ex.P8 to P15. He categorically says that he only removed the dead body from the pond and kept the same on the bund of the pond. He also identifies the dead body as per Ex.P2 to P5 and police also collected the water in the bottle. He himself filled the water in the said bottle and also identifies the photos at Ex.P15 to 17.

78. This witness was subjected to cross-examination. In the cross-examination, it is elicited that he had been to the police station at around 3.00 p.m., and found CPI, his staff and CW3. He was called upon to come to police station at around 2.50 p.m., and they left the police station at around 3.10 p.m., and in total 5 persons went in the jeep and reached the spot at 3.30 p.m., and also given the location of the place and also he gives details of boundaries of the spot and panchanama was drawn at the spot and the same was written by the constable and he did not give details how to write the mahazar and then only he had signed the same. In the cross examination of PW3, it is suggested that he did not go to spot and mahazar was not drawn in the spot and accused did not take him to spot and showed and nothing is elicited and the same is denied. The evidence of PW3 is consistent with the evidence of PW21-IO. Hence, it is very clear that on disclosure of information by the accused himself, two panch witnesses were secured to the police station. It is also clear that enquired the accused in the police station itself and he stated that he will take them to the spot where he had thrown the dead body. Accordingly, took the

panch witnesses and police staff and showed the dead body. Hence, it is very clear that the observations made by the Apex Court in paragraph 78 is fulfilled by the IO by securing the accused person and enquired the accused in the presence of panch witnesses and panch witnesses were part of the information received from the accused and recovery of dead body. Thus, there is a clear compliance. The principles laid down in the judgment with regard to the recovery is concerned will not comes to the aid of the accused but it comes to the aid of the prosecution as the same is complied.

79. The conditions necessary for the applicability of Section 27 of the Act include the discovery of fact in consequence of an information received from the accused and discovery of such fact is deposed by both PW1 and PW3 and at that time, accused is in police custody when he gave the information and so much of information relates distinctly to the fact thereby discovered is admissible as held in the judgment of **MOHD. INAYATULLAH vs STATE OF MAHARASHTRA** reported in **(1976) 1 SCC 828** and so also the information must

be such as has caused discovery of the fact and information must relate distinctly to the fact discovered as held by the Apex Court in the judgment of **EARABHADRAPPA vs STATE OF KARNATAKA** reported in **(1983) 2 SCC 330** and the same is complied and the contents of panchanama no doubt, it is not substantive evidence as held in the case of **MURLI vs STATE OF RAJASTHAN** reported in **(2009) 9 SCC 417,** but law is settled that substantive evidence is that what has been stated by the panchas or the persons concerned in the witness box.

80. But PW21-IO categorically deposed with regard to the recording of voluntary statement in terms of Ex.P46 and portion of voluntary statement is marked as per Ex.46(a) regarding recovery and the same is substantiated by examining the witness PW3 who is the panch witness and he categorically deposes with regard to the first part of panchanama and second part of panchanama disclosure by the accused as well as recovery of the dead body and the same has been proved. Hence, the principles laid down in the judgments referred supra

were complied regarding information from the accused as well as recovery at the instance of the accused.

81. Though counsel appearing to the appellant would vehemently contend that the recovery is not proved and the same not inspires the confidence of the Court but fairly admits before the Court that there is no any evidence before the Court that before the information from the accused as well as recovery at the instance of the accused, no one had any information with regard to that what had happened. The Court has to take note of the fact that at the first instance, missing complaint was given and subsequently, Section 302 of IPC was invoked. It is important to note that in the complaint itself suspected the role of the accused who not only taken the dead body in the midnight but also thrown the same on the stream but he was not present in the early morning and the Mutt door was unlocked and he came when the people are searching the child. But on an enquiry, he was very silent when he was asked about the child and the conduct of the accused was also a material with regard to the recovery is concerned.

82. This Court also would like to rely upon judgment of the Apex Court reported in **(2023) 16 SCC 510** in a case of **RAMANAND ALIAS NANDLAL BHARTI VS STATE OF UTTAR PRADESH** with regard to discovery of evidence and discovery of weapon and blood stained clothes, non-recording of disclosure of accused by the IO before two independent witnesses and absence of proof as to contents of panchanama and accepting the evidence of discovery, the contents of the panchanama must be proved and therefore, IO in his deposition has to prove the contents of the panchanama and further held that even if the independent witnesses to the discovery panchanama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In this judgment, it is very clear that recovery must be proved by examining independent witnesses and also the proposition has to prove the contents of the panchanama. This Court in detail discussed the panchanama which is marked as Ex.P18. It is very

clear that the accused disclosed the fact in the presence of panch witnesses. In the case on hand, PW3 is the panch witness who is an independent witness and he has spoken about the disclosure statement as well as recovery of the dead body in his presence and his evidence is also credible and nothing is elicited from the mouth of PW21-IO as well as in the evidence of PW3 to discredit the same. Hence, the principle laid down in the judgment with regard to Section 27 of the Evidence Act with regard to recovery is concerned is proved in the case on hand and even as observed by the Apex Court with regard to its scope.

83. The counsel also relied upon the judgment of the Apex Court reported in **2025 SCC ONLINE SC 1439** in the case of **KATTAVELLAI @ DEVAKAR vs STATE OF TAMILNADU** and brought to notice of this Court with regard to the recovery is concerned. In paragraph 25, the Apex Court with regard to the recovery is concerned held that in the confession given by the convict, certain information regarding the location of material objects was divulged, that limited portion of the confession

become admissible according to Section 27 of the Indian Evidence Act. That is the correct proposition in law. While considering the said proposition of law also taken a note of judgment in the case of **BIJENDER vs STATE OF HARYANA** reported in **(2022) 1 SCC 92**. No dispute with regard to the admissibility of Section 27 of the Indian Evidence Act that portion of the confession become admissible.

84. In the case on hand also, voluntary statement is marked as Ex.P46 and portion of the voluntary statement is marked as Ex.P46(a) regarding recovery. The Apex Court also discussed in the said judgment in paragraph 26 that the circumstances in which recovery was made from the location as disclosed and comes to the conclusion that the same is not sufficient to take the recovery of the objects as a circumstance against the appellant/convict that the objects recovered also have to be verified and tested and the same was not done. But in the case on hand, it has to be noted that the recovery of the dead body is from an isolated place i.e., no one can visible the same and PW3 also categorically says that the same cannot be

visible and even mahazar statement also clearly discloses that the said stream was surrounded with trees. Though counsel would vehemently contend that the same is open to all but the same is also not substantiated. It is very clear that the said stream was behind the mutt and general public cannot access the same and the same is within the part of the Mutt and the same is located behind the Mutt and topography of the place is also could be identifiable with the photographs which are marked before the Court. Even witness PW3 also categorically deposes that the place in which body was thrown is an isolated area and hence, the same is a open space cannot be accepted as contented by the counsel appearing for the appellant.

85. The counsel appearing for the appellant also would vehemently contend by relying upon paragraph 41 of the judgment that non-examination of the other witnesses. The said submission also cannot be accepted since, it is not the question of quantity of the evidence and the Court has to look into the quality of the evidence. The witnesses have already been examined with regard to prove the fact that motive for

committing a offence by examining PW1, PW2, PW4, PW5, PW11 and PW15 and also the other witnesses with regard to the preparation is concerned i.e., PW7 to PW9. Though there were two panchas, the information of the accused is concerned was proved by examining PW3 and not examined other pancha since no need to examine both the witnesses when the evidence of PW3 is credible with regard to information given by the accused and led the panch witness as well as other officials to the spot where the body was thrown and recovery was made at the instance of the accused only. Hence, this judgment will also not comes to the aid of the counsel appearing for the appellant with regard to the recovery is concerned.

86. Now, the question before this Court is with regard to the medical evidence to which this Court already comes to the conclusion by relying upon the evidence of the doctor PW14 that it is a case of homicidal.

87. Now, this Court has to examine the scientific officer evidence who has been examined as PW18 and his evidence is very clear that he had received the sealed packet from the IO for

examination and it contains 12 items. He found the Clonazepam contents in Article 1, 3 and 6 and so also in Item No.12 but not found the clonazepam contents in Item Nos.2, 4, 5, 7 to 11 and he gave the report in terms of Ex.P41 and he identifies his signature at Ex.P41(a). He also identifies MO3-tablets. It is his evidence that the clonazepam was not found in the blood of Gowramma, Mahadevamma, Ashwini, Shankaraiah and Chaitra. But reason is given that they were taking medicine immediately. But blood sample was collected on the next day. In view of taking of treatment and delay in taking the blood sample, the same was not found as deposed. It is also explained that the blood sample should have been taken within 4 hours and then clonazepam contents will be more. It is also clarified that in the blood of the child, clonazepam was found as the body was not working in view of blood circulation was stopped and hence the same was found. But in the cross-examination, nothing is elicited from the mouth of this witness except eliciting that in Article 2, 4, 5, 7 to 11 clonazepam contents were not found. Even the same is also spoken by the witness in the chief evidence itself. It

is also elicited that if sambar was eaten, the same would found or otherwise it will not found.

88. The other witness is PW19 who is the Deputy Director of Biology Department, FSL who also conducted the examination of the samples and she did not found diatom when she examined the water and she gave the report in terms of Ex.P43 and she identified signature as Ex.P43(a). She also categorically deposes that if a person lies on the water, if he drinks the water and if any diatom found in the water and the same will go to the body. If a person lost his conscious prior to laying into the water and no diatom in the water, the same will not found. It is also the categorical evidence is that diatom was not found in the water. This witness also subjected to cross-examination. In the cross-examination, it is elicited that if diatom is found in the water, the same will found in the viscera of the person who died, if diatom found, the same is on account of drowning.

89. Having considered the evidence of PW18 and PW19, it is very clear that the body of the boy found the clonazepam contents but not found in the body of others. The reason also

assigned that the blood was collected on the next day but prior to that, they took the treatment. The evidence is very clear that on the very next day, when they found dizziness, they all went to the hospital and they were under medication. Thus, the evidence of PW18 and PW19 is very clear with regard to the presence of clonazepam in the body of the child. The very contention of the counsel appearing for the accused that the same was not found in the witnesses who went and took the treatment and only found in the body of the deceased is doubtful and the said contention cannot be accepted since the same is explained by the PW18 clearly and nothing is elicited in the cross examination of PW18 with regard to the explanation offered by the PW18 regarding non-presence of clonazepam in the body of these witnesses. Hence, it is clear that the boy was died on account of consumption of clonazepam contents as well as drowning.

90. The counsel appearing for the appellant also relied upon the judgment of Apex Court reported in **2025 SCC ONLINE SC 1827** in the case of **PUTAI vs STATE OF UTTAR**

PRADESH and brought to notice of this Court paragraph 69 with regard to the circumstantial evidence is concerned, wherein it is held that in an incriminating circumstance so strong that even taken in isolation, the same would prove the guilt of the accused. May be proved or must be proved and the fields where the material objects allegedly belonging to the child victim and her dead body were found is open and accessible. This Court already discussed in detail that the place where the dead body was found is in the isolated place and surrounded with the trees and the same is not visible. Hence, this judgment will not help the counsel for the accused since the same is not the open space.

91. No doubt, if any strong suspicion that the child victim might have been assaulted in the field of accused that itself is not sufficient. But in the case on hand, there is an information at the hands of the accused and body was also recovered at the instance of the accused and the same is disclosed in the statement of the accused and hence, Section 27 of the Evidence Act is aptly applicable to the case on hand.

92. The counsel for the appellant also relied upon the judgment reported in **(2025) 8 SCC 315** in the case of **VAIBHAV vs STATE OF MAHARASHTRA** and brought to notice of this Court paragraphs 18 and 19 wherein discussed with regard to circumstantial evidence is concerned holding that an incriminating evidence available on record and subsequent conduct of the appellant in trying to show concern to the father of the deceased despite knowing about the death. But in the case on hand, on enquiry, the accused was very silent in the early morning. Only on apprehending of the accused, he revealed the same. In paragraph 29 of this judgment, proposition was held that the burden is on the prosecution and then shifts on the defence. But defence not made any attempt to explain the circumstances. But prosecution proved the material on record. Hence, this judgment also will not come to the aid of the counsel for the appellant.

93. The Apex Court recently on 16.01.2026 in the case of **TULASAREDDI @ MUDAKAPPA AND ANOTHER vs STATE OF KARNATAKA AND OTHERS** reported in **2026 SCC ONLINE SC**

89 held that mere recovery at the instance of the accused itself is not enough to convict the accused and disclosure statements alone not enough for conviction unless chain of evidence is complete. No dispute with regard to this principle is concerned. But in the case on hand, it has to be noted that all the circumstances goes against the accused i.e., motive for committing the murder and the same is spoken by PW1, PW2, PW4, PW5, PW11 and PW15 and their evidence is consistent with regard to the motive is concerned. The preparation to commit the murder is also spoken by the witnesses for having purchased the tablet and recovery of the tablet and also he had purchased the tablet from the medical shop and these witnesses i.e., PW7 to PW9 have supported the case of prosecution for proving of preparation. The recovery of the dead body at the instance of the accused is also proved by examining PW21 as well as PW3 and their evidence is consistent. The medical evidence with regard to the homicidal as well as the FSL report also consistent and scientific evidence also clearly discloses that recovery is made i.e., blood samples from the body of the deceased and the same was positive and the remaining tablets were also

recovered at the instance of the accused by drawing the mahazar and mahazar witness also supports the case of prosecution.

94. Having taken note of both oral and documentary evidence placed on record, it discloses that though case is rest upon the circumstantial evidence, the circumstances against the accused is proved with regard to the motive, preparation, recovery of dead body and also the tablets at the instance of the accused. Medical evidence and scientific evidence are also goes against the accused. When each chain link is established, we do not find any ground to interfere with finding of the Trial Court with regard to invoking of Section 302 of IPC is concerned. But the Trial Court not convicted the accused for kidnapping the child is concerned since there was no material in this regard and we confirm the same. Accordingly, we answer point No.(1) as 'negative'.

Point No.(2):

95. Having heard learned counsel appearing for the appellant and also learned HCGP appearing for the respondent-

State, we have perused the material available on record. It is the case of the prosecution that the accused had committed murder of a boy, who is aged 3½ year old, since the accused was having hatredness against P.Ws.1 and 2 as well as P.W.4, since all of them were scolding him and advising him to mend his attitude and conduct and he is bringing bad reputation to the Mutt. This Court having analyzed the material available on the record comes to the conclusion that the circumstantial evidence points out the very role of the accused in committing the murder of a boy who is aged 3½ years old.

96. Having considered the sentence imposed by the Trial Court that the accused has to undergo imprisonment for life that he has to remain in prison, until his natural death. The Court has to take note of the fact that whether the said sentence commensurate with the charges levelled against him. It is settled law that while imposing sentence, the Court has to take note of gravity of the offence, the charges levelled against the accused and the manner in which the offence is committed. The motive for committing the murder is only hatredness against

P.W.1, mother of the deceased, P.W.2, the grand-mother of the deceased and P.W.4, the great grand-mother of the deceased.

97. The counsel appearing for the appellant also relied upon the judgment of the Apex Court in **KIRAN v. STATE OF KARNATAKA** reported in **2025 SCC ONLINE SC 2863**, wherein the Apex Court raises a question in paragraph No.8 that whether the Sessions Court is competent to award a sentence of imprisonment for life till the remainder of life and prohibit the benefit of set-off as provided under Section 428 of the Cr.P.C. The Apex Court discussing the material on record, in paragraph No.13, comes to the conclusion that in appropriate cases as a uniform policy, punishment of imprisonment for life beyond any remission can be awarded, substituting the death penalty; not only by the Supreme Court but also by the High Courts. The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Courts. Having taken note of the principles laid down in the judgment, wherein question was also raised in paragraph No.8 and so also in paragraph No.13, a conclusion

was arrived by the Apex Court, wherein it is categorically held that the Supreme Court as well as High Courts can impose life sentence beyond any remission can be awarded substituting the death penalty. But powers of the Sessions Court not conferred and the same was only on the Constitutional Courts i.e., Supreme Court as well as High Court.

98. Having perused this principle laid down in this judgment and also the judgment of the Trial Court, while sentencing the accused, the Trial Court imposed life imprisonment that he has to suffer sentence till his natural death. Hence, it is very clear that Section 428 of Cr.P.C. cannot be invoked in view of specific sentence and no right accrues to the accused to seek for any remission when the imprisonment for life is imposed, till the remainder of life. Hence, the Session Court cannot prohibit the benefit of set off as provided under Section 428 of Cr.P.C. Therefore, with regard to sentence is concerned, it requires interference that, imprisonment for life till natural death is converted to imprisonment for life. Accordingly,

we answer point No.(2) as 'affirmative' and it requires modification.

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

ORDER

The Criminal Appeal is allowed in part.

The judgment of conviction dated 27.11.2017 passed in S.C.No.10018/2017 for the offence Section 302 of IPC is confirmed. However, the sentence is modified as life imprisonment by setting aside the life imprisonment until his natural death.

Sd/-
(H.P. SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

SN/MD/ST/RHS