

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.206 of 2021

Arising Out of PS. Case No.-131 Year-2018 Thana- KARAHGAR District- Rohtas

Miraj Mian, Son of Kayum Mian @ Kayamuddin, Resident of Village-
Kargahar, Police Station- Kargahar, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Advocate
Mr. Akshay Ashish, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 17-07-2023

By the impugned judgment and order dated
29.01.2021/ 30.01.2021 passed by the learned Exclusive Special
Court (POCSO) cum Additional Sessions Judge-VI, Rohtas at
Sasaram in POCSO Case No. 20 of 2018, Kargahar P.S. Case
No. 131 of 2018, the appellant has been convicted and
sentenced as under:-

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
376(2) of the IPC	RI for Life	60,000/-	RI for one year
6 of the POCSO Act	X	X	X



2. The victim's name is not being disclosed in the present judgment in tune with the requirement under Section 228A of the Indian Penal Code and has been referred to as the child/victim in the present judgment.

3. Father of the victim is the informant on whose *fardbeyan* Kargahar P.S. Case No. 131 of 2018 came to be registered for commission of offence punishable under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short). According to the *fardbeyan* recorded by an Assistant Sub-Inspector of Police at Sadar Hospital, Sasaram at Sadar Hospital, Sasaram on 10.04.2018, at about 8:00 p.m., on the said date, at 1:00 p.m. when he was nearly 500 yards away from his house, he heard cries from a nearby hut. No sooner did he reach near the hut, he saw the appellant fleeing away. He thereafter saw his minor daughter completely nude and profusely bleeding. He managed to lift her daughter to his house. He, thereafter rushed to apprehend the appellant and after having apprehended him, produced before the police at the police station. In the meanwhile, the informant's wife also came to the police station with the victim. On having been enquired by the police officials at the police station, the victim disclosed the



name of the appellant, who had taken her inside the hut and committed wrong with her (gandaa-kaam). This led to registration of the aforesaid F.I.R. The appellant was arrested on 10.04.2018 itself and was remanded to judicial custody on 11.8.2018. The victim was examined by a Medical Board constituted by the Deputy Superintendent, Sadar Hospital, Sasaram on 10.04.2018 at 8:30 PM before which she was taken to Primary Health Centre, Kargahar. Following is the finding of the Medical Board:-

"Examined the victim (name concealed) aged about 6 years, D/o Baban Singh, Vill + Post-Kargahar, Dist-Rohtas at 8:30 PM on 10.04.2018 on police requisition provided by Md. Anul Hoda Khan, S.I. P.S. Kargahar dated 10.04.2018 by a Medical Board constituted by D.S. Sadar Hospital, Sasaram consisting of Dr. Kanchan Kumari, Dr. Naresh Prasad and Dr. S.S. Prasad.

Treatment History:- Pt was treated firstly at P.H.C. Kargahar vide registration no. 574E/10/4/18 written on EMG OD slip bleeding p/v and treatment given as injection gentamycin and injection T.T.

Examination of the victim:-

M.I.- Til over the right side of upper lip

(1) No external injuries found over the any part of the body except private part where cotton was placed and bandage apply. No undergarment was present.

(2) Axillary hair absent. Breast not develop.



3. On removing blood soaked bandage and cotton found as follows :-
Pubic hair absent

-Bleeding P/V seen clot

-Hymen rupture

-Fourchett lacerated longitudinally extending downward over posterior wall of vaginal canal deeply up to the rectum.

- Vaginal swab taken and prepared the slip and sent to the pathologist, Sadar Hospital, Sasaram for Microscopic Examination and report.

(4) Treatment given in O.T : —
under IV Anaesthesia tear repaired with vicryl No. 1. Complete Hemostasis required. Rectal examination done and found rectum tear. Dressing done. Treatment and follow-up done.

(5) Microscopic Examination of vaginal swab done by the pathologist, Sadar Hospital, Sasaram Dr. S.S. Prasad, Report on dated 10.04.2018 as follows:-

Spermatozoa- Not found either alive or dead

RBC- Present Plenty

WBC- 10-20/HPF, Epithelial Cell – 8-8/HPF

Conclusion:- Though no spermatozoa found in vaginal swab on Microscopic Examination on the basis of clinical findings noted by the Medical board. The board is unanimous opinion that the victim has been raped."

4. The victim's statement was recorded under Section 164 of the Cr.P.C. on 16.04.2018. Before recording of the statement, learned Additional Chief Judicial Magistrate put



certain questions to her so as to ascertain whether she was able to understand the questions and was capable of answering them. The victim, in her statement recorded under Section 164 of the Cr.P.C. explicitly mentioned that the appellant on allurement of giving her chocolate, had lifted her and taken her in a hut and thereafter, after putting off her pant, inserted his penis and committed wrong with her. After she screamed, her father (the informant) came. It is evident from the report of the Medical Board that the age of the victim as on the date of occurrence was found to be around six years. It is the prosecution's case that the victim's age was six years as on the date of occurrence.

5. It is worthwhile mentioning that the date of occurrence being 10.04.2018, the provisions under the Indian Penal Code and the POCSO Act shall have application as they existed on the date of occurrence. This observation we have made in the background of the fact that there has been amendments in Section 376 of the Indian Penal Code which came into effect from 21.04.2018. Similarly, Section 6 of the POCSO Act, which contains the penal provision, has subsequently been amended by Act 25 of 2019 with effect from 16.08.2019. Section 376 (2) of the Indian Penal Code before amendment read as under :-



376(2) Whoever,-

(a) being a police officer, commits rape-

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii): on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on



such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

6. Section 376(2) of the Indian Penal Code prescribed punishment with rigorous imprisonment for a term not less than ten years but which could be extended to imprisonment for life meaning imprisonment for the remainder of that person's natural life. After amendment in the Indian Penal Code with effect from 21.04.2018, the clause (i) of Sub-Section 2 of Section 376 has been deleted and separate provision has been made by introducing Section 376 AB in the Indian Penal Code. Post-amendment, with effect from 21.04.2018, punishment for rape on a women under 12 years of age has been prescribed under Section 376 AB of the IPC as rigorous imprisonment for a term not less than 20 years which could be extended to imprisonment for life meaning imprisonment for the remainder of that person's natural life and with fine or with death.



7. In the present case, the police upon completion of investigation submitted charge-sheet against this appellant for the offences punishable under Section 376 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act. Cognizance of the offences was taken and subsequently charge was framed on 24.04.2018 for commission of offence punishable under Section 376 of the IPC and Sections 4 and 6 of the POCSO Act. The appellant denied the charge and claimed to be tried.

8. At the trial, the prosecution examined altogether eight witnesses including the victim (PW-7), the informant (PW-5), the informant's wife (PW-3), the doctors, who had examined the victim as members of the Medical Board as PW-5 and PW-6 (In the memo of evidence, PW-5 has wrongly been mentioned as PW-4). The Investigating Officer deposed at the trial as PW-8. In addition to the oral evidence, the prosecution also adduced following documentary evidence in support of the charge :-

Exhibit-1 Signatures and handwriting on *fardebayan*.

Exhibit-2 Signature on Seizure list

Exhibit-2/1 Signatures of witness on seizure list

Exhibit-3 Complete seizure list

Exhibit-4 Report of Medical board

Exhibit-4/1 Signature of Dr. S.S. Prasad on Medical Board Report.

Exhibit-5 Formal FIR

Exhibit-6 Forwarding on FIR

Exhibit-6/1 Signatures and handwriting of ASI Mithilesh



Exhibit-7 Signatures of PW-8 on seizure list.

9. After closure of the prosecution's evidence, the appellant was questioned by the trial court under Section 313 of the Cr.P.C. so as to give the appellant an opportunity to explain the circumstances which emerged against him based on the evidence of the prosecution's witnesses. The learned trial court put the specific question to the appellant that on 10.04.2018, at about 1:00 PM, he had committed rape on six years old female child to which the appellant simply denied the circumstances emerging from the evidence adduced at the trial and asserted in his answer that a false case was instituted against him and he was innocent.

10. The trial court, after having appreciated the evidence of the prosecution's witnesses, reached a conclusion that the prosecution was able to prove the charge of commission of offences punishable under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act beyond all reasonable doubts. The trial court noted that since the age of the victim was found to be 6 years, the appellant's act constituted aggravated penetrative sexual assault within the meaning of Section 6 of the POCSO Act. After having held the appellant guilty of the aforesaid offences, the trial court decided to impose punishment



of rigorous imprisonment for remainder of his natural life for the offence punishable under Section 376 (2) of the IPC meaning imprisonment for remainder of his natural life with a fine of Rs. 60,000/-. The trial court has further directed that out of total fine amount, the convict shall pay Rs.50,000/- to the victim and in default of fine, he will be required to undergo one year's rigorous imprisonment. Taking into account the provision under Section 42 of the POCSO Act, the trial court decided not to impose separate punishment for the offence punishable under Section 6 of the POCSO Act since the sentence imposed for the proved offence under Section 376(2) of the IPC was greater in degree than the punishment under Section 6 of the POCSO Act.

11. Mr. Rama Kant Sharma, learned Senior counsel appearing on behalf of the appellant has submitted that the entire prosecution's case is false and highly improbable. He contends that it is not usual for a person to have proceeded to apprehend the appellant first leaving his injured daughter unattended without any medical treatment, who, according to the prosecution's case, was profusely bleeding when she was found by the informant. He has submitted that according to the informant, as disclosed in the *fardbeyan*, he went in search of the appellant instead of looking after his injured daughter, which



is against the natural conduct of a person. He has secondly submitted that since the appellant was apprehended immediately after the alleged occurrence had taken place, in the wake of the nature of allegation of commission of rape of a minor child, he ought to have been subjected to medical examination as contemplated under Section 53A of the CrPC. He further submits that the failure on the part of the police/prosecution to get the appellant medically examined soon after he was apprehended, is a major lacuna which renders the prosecution's case doubtful. He has referred to the evidence of the Investigating Officer and has submitted that according to the Investigating Officer blood stained clothes of the victim was seized and sent to the Forensic Science Labrotary for scientific examination but without waiting for the FSL report, the chargesheet was submitted and the FSL report was never brought on record even at the trial. He has also submitted that if this court is not inclined to interfere with the finding of conviction recorded by the trial court, considering the age of the appellant, which is a mitigating circumstance, this court may consider modifying the term of sentence. He has submitted that the appellant has no criminal history and it cannot be said that there is no chance of his reformation. He argues that the



sentence awarded by the trial court of imprisonment for life to mean the appellant's natural life is too harsh in the facts and circumstances of the case.

12. Learned Additional Public Prosecutor appearing on behalf of the State has argued that the victim, a minor child, has been consistent in her statement before the police and the Magistrate under Section 164 of the CrPC as well as in her deposition at the trial. She has clearly narrated the manner in which the penetrative sexual assault was committed by this appellant on her. Her evidence has been duly corroborated by the medical evidence. Further, other circumstances have been duly proved by the other witnesses including the victim's father and mother. He has submitted that based on the evidence adduced at the trial, the prosecution was able to prove basic ingredients constituting offence punishable under Section 6 of the POCSO Act. He accordingly submits that in such circumstance, Section 29 of the POCSO Act operates with full force. He submits that as the prosecution was able to make out a case of commission of offence punishable under the provisions of POCSO Act, it was the duty of the appellant to prove to the contrary as required under Section 29 of the POCSO Act. He has submitted that no attempt has been made in the present case



by the appellant to prove that it was not he who had committed the offence so as to get over the presumption contemplated under Section 29 of the POCSO Act.

13. We have perused the impugned judgment of the trial court and the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties noted above. Before we refer to the relevant depositions of the prosecution's witnesses and the documentary evidence adduced at the trial, we deem it appropriate to take note of Sections 29 and 30 of the POCSO Act which read thus:-

"29. Presumption as to certain offences.-

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is



established by a preponderance of probability."

14. In the present case, the age of the victim is not much under controversy. She has been found by the Medical Board to be about 6 years of age much less than 12 years. The victim in her statement under Section 164 of the Cr.P.C. recorded by the learned Magistrate gave explicit description of penetrative sexual assault caused by this appellant. In her deposition at the trial as PW-7, she specifically deposed that the appellant after having removed her pant had inserted her penis whereafter, she had started bleeding. It is noteworthy that according to her, she was taken into the hut by the appellant on allurement of giving her chocolate. In her examination-in-chief, she deposed that she had not eaten the chocolate. She was cross-examined at the trial. She deposed at the trial that she had though taken the chocolate from the appellant, she had not opened it, which was still there in her hand when she was being sexually assaulted. On careful reading of the evidence of the victim, we find that the same appears to be truthful and unwavering. Once a victim of rape, particularly, a child is found to be truthful in her deposition, in our opinion, the said evidence is adequate to establish charge of commission of offence punishable under Section 376(2) (i) of the Indian Penal Code



and Section 6 of the POCSO Act. Further, the medical evidence has fully corroborated the prosecution's case, inasmuch as, the doctor Kanchan Kumari (PW-5) (wrongly mentioned as PW-4) deposed at the trial that the victim was firstly treated at the Primary Health Centre, Kargahar. She had found the hymen of the victim ruptured. In paragraph 4 of her deposition, she testified that there was no external injury found over any part of the body except private part where cotton was placed and bandage applied. The medical report has been proved at the trial which suggest that the victim was subjected to sexual assault, which is evident from her deposition in paragraph 8 at the trial.

15. We do not find much force in the submission advanced on behalf of the appellant that the case of the prosecution in the present facts and circumstances of the case has been weakened because no medical examination of the appellant was conducted as contemplated under Section 53A of the Cr.P.C.. The requirement under Section 53 A of the Cr.P.C. of medical examination of a person charged of commission of a sexual offence is not a mandatory requirement, in our considered view. The submission that the finding of conviction is unsustainable for the reason that the FSL report of the victim's clothes, which were sent for scientific examination was not



brought on record at the trial, is also not acceptable in the facts and circumstances of the present case where the victim, a minor innocent child has given a vivid description of the manner in which the sexual assault was committed by the appellant upon her.

16. We reiterate at this juncture that the consistent, unwavering and reliable evidence of the victim, a minor child in the present case, is sufficient proof of commission of sexual assault by this appellant punishable under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act, which is duly corroborated by the medical evidence and other circumstances.

17. The prosecution's witnesses have fully supported the prosecution's case. At this juncture, we need to briefly deal with the provisions under Sections 29 and 30 of the POCSO Act. In no uncertain terms Section 29 prescribes that if a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the POCSO Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Section 30 provides that in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the



Special Court shall presume the existence of such mental state but it shall be a defense for the accused to prove that he had no such mental state with respect to the Act charged as an offence in that prosecution. Sub-Section (2) of Section 30 provides that for the purpose of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond all reasonable doubts and not merely when its existence is established by a preponderance of probability. In the present case, we notice that there was no attempt at all made by or on behalf of the appellant to get over the presumption under Section 29 of the Act. No attempt was made by the appellant to rebut the presumption, let alone prove the contrary to what was alleged against him. Section 30 contemplates presumption of culpable mental state of a person charged of an offence punishable under various Sections of the POCSO Act.

18. Taking into account the evidence of the prosecution's witnesses, the documentary evidence adduced at the trial and the provisions under Sections 29, 30 of the POCSO Act, we are of the view that the finding of conviction recorded by the trial court does not suffer from any legal infirmity requiring this Court's interference. We accordingly uphold the impugned finding of conviction recorded by the trial court.



19. After having convicted the appellant of the offences punishable under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act, the learned trial court has sentenced the appellant to imprisonment for life meaning remainder of his natural life.

20. Mr. Rama Kant Sharma, learned Senior Counsel appearing on behalf of the appellant has submitted that imposition of maximum punishment of life imprisonment to mean remainder of the natural life of the appellant is too harsh. He has submitted that consequence of such punishment requiring a convict to spend the whole life in prison is graver than punishment of death. He contends that considering the age of the appellant it cannot be said that there is absolutely no chance of his reformation.

21. A supplementary affidavit has been filed on behalf of the appellant which has been sworn by his wife, wherein it has been stated that the age of the appellant is thirty years, who is a poor landless person and prior to institution of the present case against him, he was earning his livelihood for himself and the family by stitching clothes (tailoring) in the village with which he was able to maintain his family and two minor children (nine years and five years) and was also contributing



for the maintenance of his old parents. He has submitted that the appellant's socio-economic background, his family condition and the fact that he has no criminal antecedent are some of the mitigating circumstances which this Court may consider by appropriately modifying the order of sentence imposed by the trial court.

22. As has been noticed hereinabove in the case at hand, the trial court, after having held the appellant guilty of the offences punishable under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act, has sentenced the appellant to imprisonment for life meaning remainder of the appellant's natural life, considering the gruesome way in which a six year old child was subjected to penetrative sexual assault. Applying the provision under Section 42 of the POCSO Act the trial court has not imposed a separate sentence for the offence punishable under Section 6 of the POCSO Act.

23. Mr. Sharma, learned Senior Counsel has placed reliance on the Supreme Court's decisions in the case of *Soman vs. State of Kerala* reported in (2013) 11 SCC 382, *State of Punjab vs. Prem Sagar and others* reported in (2008) 7 SCC 550, *Shailesh Jasvantbhai and another vs. State of Gujarat and others* reported in (2006) 2 SCC 359, *Union of India vs.*



Kuldeep Singh reported in (2004) 2 SCC 590, *State of Karnataka vs. Puttaraja* reported in (2004) 1 SCC 475, *State of M.P. vs. Ghanshyam Singh* reported in (2003) 8 SCC 13, *Dhananjoy Chatterjee vs. State of W.B.* reported in (1994) 2 SCC 220, *Ramashraya Chakravarti vs. State of Madhya Pradesh* reported in (1976) 1 SCC 281 and a Division Bench decision of this Court dated 26.06.2023 rendered in Criminal Appeal (DB) No. 338 of 2021 in support of his submission for modifying the order of sentence.

24. Learned Additional Public Prosecutor has submitted that considering the gravity of the offence and the shockingly debased conduct of the appellant for which he has been convicted, the sentence imposed by the trial court cannot be said to be excessive requiring this Court's intervention.

25. Before we consider the submissions advanced by Mr. Sharma, we deem it apt to notice the penal provision for commission of rape on a woman when she is under 16 years of age [376(2)(i) of the IPC] as the same existed prior to amendment with effect from 21.04.2018, which was as under :-

".....shall be punished with rigorous imprisonment for a term which shall not be less than ten year, but which may extend to imprisonment for life, which shall mean imprisonment for remainder of that person's natural life and shall also be



liable to fine."

26. Consequent upon amendment, by Act 22 of 2018 with effect from 21.04.2018 in the Indian Penal Code, Clause (i) of Section 376(2) has been deleted and 376AB has been inserted which prescribes punishment for rape on a woman under 12 years of age as under :-

".....with rigorous imprisonment for a term which shall not be less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death."

27. If pre-amendment and post-amendment penal provisions for commission of offence of rape of a woman under 12 years of age are compared, it can be easily seen that pre-amendment the punishment could vary from minimum imprisonment for a term of ten years to the maximum of imprisonment for life to mean imprisonment for the remainder of that person's natural life, whereas after amendment the Legislature has in its wisdom considered 20 years as the minimum punishment to be imposed for commission of rape on a woman under 12 years of age. The maximum punishment, post-amendment is death and includes imprisonment for life meaning imprisonment for the remainder of that person's natural



life.

28. The conduct of the appellant leading to his conviction which has been affirmed by the present judgment is not such as would require imposition of minimum punishment of ten years as was prescribed before amendment with effect from 21.04.2018. Maximum punishment, which could be imposed under the unamended provision i.e. imprisonment for the remainder period of the appellant's natural life, has been imposed by the trial court in the present case.

29. Further, Section 6 of the POCSO Act, 2012 before it came to be amended with effect from 16.08.2019 read as under :-

"6. Punishment for aggravated penetrative sexual assault.- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine."

30. Under the said provision, the minimum punishment of ten years extendable for imprisonment for life was prescribed for committing aggravated penetrative sexual assault. Section 6 of the POCSO Act came to be amended by Act 25 of 2019 which reads as under :-



***"6. Punishment for aggravated penetrative sexual assault.-(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.
(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."***

31. Under the POCSO Act also, after amendment with effect from 16.08.2019, the minimum punishment for committing offence of aggravated penetrative sexual assault has been prescribed as imprisonment for a term which shall not be less than 20 years. It also prescribes punishment for imprisonment for the remainder period of the convict's natural life or with death.

32. Section 42 of the POCSO Act makes provision for alternative punishment if a person is convicted of certain offences punishable under the provisions of the IPC and states that notwithstanding anything contained in any other law for the time being in force, the person found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code, punishment for which is greater in degree.



33. The said provision in the present case needs to be applied with reference to the provision under the IPC and the POCSO Act as the same operated as on the date of occurrence. It is manifest on comparison of Section 376(2)(i) of the IPC as the same existed prior to its amendment with effect from 21.04.2018 and the penal provision as the same existed for the offence punishable under Section 6 of the POCSO Act as on the date of occurrence that the punishment under Section 376(2)(i) was greater in degree than Section 6 of the POCSO Act.

34. After having perused the supplementary affidavit filed on behalf of the appellant to the effect that the appellant is a landless person aged 30 years; as on date he has a family with his wife and two minor children aged nine and five years; the appellant has no criminal antecedent as has been asserted in the affidavit and there is nothing on record against him for the period spent by him in incarceration, we do not find any reason to reach a conclusion that there is no likelihood of the appellant's reformation. These are mitigating circumstances, in the Court's opinion, to revisit the sentence which has been imposed by the trial court after holding him guilty of the offences.

35. The question now arises as to what sentence would



be appropriate in the present set of facts and circumstances, keeping in mind the legislative changes. As on the date of occurrence, the Legislature in its wisdom had prescribed minimum of ten years of rigorous imprisonment for the offence punishable under Section 376(2)(i) of the IPC. Soon after the date of occurrence, which led to the appellant's conviction, amendment came to be introduced in the IPC which now prescribes 20 years of minimum imprisonment for offence of commission of rape on a woman below 12 years. The imprisonment for life till remainder of natural life of a convict was there under the old provision and is there subsequent to amendment in the IPC with effect from 21.04.2018.

36. Considering the entire circumstances and the legislative changes, we are of the view that it would not be just for this Court to modify the sentence of imprisonment to a term less than 20 years of imprisonment which is the minimum punishment that can be imposed now. The Court cannot loose sight of the grave consequences of the gruesome manner in which the offence has been found to have been committed by the appellant on a six year old minor female child. At the same time, the Court is required to do a balancing exercise for the purpose of imposition of sentence taking into account the



mitigating circumstances as have been noted above.

37. In the facts and circumstances as discussed above, we deem it just and proper to modify the order of sentence of imprisonment from life imprisonment till remainder of the appellant's natural life to a term of 20 years of rigorous imprisonment with remission as may be applicable under the law. Rest of the terms of the impugned judgment and order of the trial court shall remain unaltered.

38. This appeal is allowed in-part to the extent noted above.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Kundan/Rajesh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2023
Transmission Date	02.08.2023

