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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 5th March, 2024***

+ CRL.A. 361/2021

A.S.

..... Appellant

Through: Mr. Izhar Ahmad, Amicus Curiae

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Manjeet Arya, APP for State
with Insp. Ajay Kumar, PS Kalkaji

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The present appeal has been preferred by the appellant seeking quashing/setting aside of the impugned judgment dated 23.12.2019 and order on sentence dated 24.12.2019 passed by learned trial Court in case SC No.1297/2016, whereby appellant was held guilty of the offences punishable under Section 6 POCSO Act and was sentenced to undergo imprisonment for life with a fine of Rs.10,000/-, in FIR No.168/2013, registered at Police Station Kalkaji, Delhi. In default of payment of fine, he was further directed to undergo simple imprisonment for six months.

2. Pursuant to directions passed by this Court vide order dated 15.01.2024, the appellant has been produced in the Court and he submits



that he does not wish to contest the present appeal. However, he prays that his sentence be reduced to the minimum period prescribed under Section 6 of POCSO Act.

3. Mr. Izhar Ahmad, learned Amicus Curiae appearing on behalf of appellant submits that has already informed the appellant that if he accepts the sentence, he may have to undergo imprisonment for life to which he has not disputed and said he is ready to accept the sentence.

4. Learned Amicus Curiae further submits that the appellant's wife had expired in the year 2017 leaving behind his three minor children. There is no adult earning member in his family and the children of appellant are forced to run his shop to earn their livelihood. It is further submitted that the children of the appellant have left their studies and they are not even able to make both ends meet. There is no one in the family to look after them. Moreover, there is no adverse report issued by jail authority against the conduct of the appellant. It is further submitted that the appellant has been rewarded by the jail authorities for his tremendous work performance inside jail.

5. Learned Amicus Curiae submits that a lenient view be taken and appellant be sentenced to the period already undergone.

6. As per nominal roll dated 28.02.2024, the appellant has already undergone sentence for 10 years, 10 months and 3 days and earned remission of 1 year, 4 months and 14 days. Thus, as on date he has already undergone sentence for more than 12 years.

7. It is pertinent to mention here that Section 6 of POCSO Act was amended on 05.08.2019. Since the incident pertains to the year 2013,



therefore, Section 6 of POCSO (pre-amendment) shall apply to the facts of the present case, which reads 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.”

8. Since the appellant has already undergone sentence for more than 12 years, applying Section 6 of POCSO Act (pre-amendment) to this case, this Court reduce the sentence awarded to appellant to the period already undergone by him.

9. This Court is informed that the fine imposed by the learned trial Court has not yet been deposited by the appellant.

10. Subject to appellant depositing the fine amount of Rs.10,000/-, the appellant be released in the present case, if not wanted in any other case.

11. We appreciate the efforts put forth by learned Amicus Curiae Counsel. The Delhi High Court Legal Service Committee is directed to pay fees to Amicus Curiae Counsel as per rules and his entitlement.

12. With directions as aforesaid, the present appeal stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

MARCH 5, 2024/rk