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IN THE HIGH COURT OF DELHI AT NEW DELHI**Reserved on: 07th November, 2023****Date of decision: 02nd February, 2024**

+ CRL.A. 359/2017 & CRL.M.(BAIL) 1540/2021

SONU SURENDER

..... Appellant

Through: Ms. Supriya Juneja, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for the State
with SI Suresh Kumar, P.S. New
Usman Pur.**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed assailing the judgment of conviction and order on sentence dated 02.02.2017 and 03.02.2017 respectively, passed by the learned Special Court (POCSO Act)/ASJ-01, North East, Karkardooma Courts New Delhi, in SC No. 44917/2015 whereby the appellant has been convicted for the commission of the offences punishable under Sections 376 (2) (i) and 376 (2) (n), 506(II) of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Prevention of Children from



Sexual Offences Act, 2012 ('POCSO Act') in case FIR No. 581/2014 registered at P.S. New Usmanpur.

2. On being convicted for the commission of the said offences the learned Trial Court had sentenced the appellant to undergo rigorous imprisonment for 10 years for the offence punishable under Sections 376 (2) (i) and 376 (2) (n) of the IPC alongwith a fine of ₹2,000/- and in default of payment of fine, further simple imprisonment for 1 month.

3. The brief facts necessary for the disposal of the present appeal have been set out as follows:

i. On 20.06.2014, the victim, a girl aged about 10 years, was sleeping outside her room in the *verandah* on a cot and her mother was sleeping on the floor. During the night when everyone else there had fallen asleep, one person named Sonu, i.e., the appellant, came and tried to wake her up in order to get her alongwith him to his room (house).

ii. At first, the victim refused to go along with the appellant and fall asleep however, the latter covered her mouth and forcibly took her into his room. She tried to raise hue and cry but her mouth was tied with his shirt due to which she unable to scream or speak anything. On reaching the room of appellant, he removed her clothes and then, pulled out his clothes as well.

iii. Thereafter, the appellant was over her body and inserted his penis into her vagina three to four times. Though her mouth was covered but somehow she managed to raise hue and cry. On hearing the low voice of her daughter (victim), the mother came to the room of the appellant looking out for her daughter. But the appellant managed to keep the



victim beneath the bed (*takhat*) and covered her up with the bed sheet and told the mother that he has no knowledge of the whereabouts of her daughter.

iv. However, when the mother turned on the lights of the room, the brother of the victim came to the room of the appellant and found his sister lying naked beneath the bed (*takhat*). Then, the appellant put on his clothes and managed to run away from the spot before the police could arrive there.

v. The mother helped her daughter in wearing the *payjami* and then, called and informed the police about the happening of the incident. The police came and took the victim to the hospital for her medical examination and thereafter, recorded her statement on the basis of which the present case was registered.

vi. During the course of investigation, statement of the victim was recorded under Section 164 Cr.P.C. and the appellant was arrested and after the culmination of the investigation, a chargesheet was filed against the appellant for the offences punishable under Sections 376 (2) (i) and 376 (2) (n), 506(II) of the IPC and 6 of the POCSO Act.

vii. The charges were framed against the appellant on 03.09.2014 to which the latter pleaded not guilty and claimed trial. During the course of trial, the prosecution examined 17 witnesses to prove the charges levelled against the appellant. Thereafter, the recording of statement under Section 313 of the Cr.P.C. of appellant, the impugned judgment of conviction was passed by the Trial Court. Thus, this appeal has been filed challenging the impugned judgment of conviction.



4. During the course of trial, when the statement of the appellant was recorded before the Court he took the defence that the mother of the victim had taken some money from him and to avoid the repayment, she had falsely implicated him in this case through her daughter.

5. The learned Trial Court has noted that the victim was the main key witness in the instant case and she had been a sterling witness whose version of the incident has been corroborated by her mother and brother. It is further noted that she had been consistent about the material facts stated in her statement made before the learned MM under Section 164 of the Cr.P.C., in the information given to the police and in her deposition recorded before the Trial Court during the course of trial.

6. The learned Trial Court has observed that though there were certain improvements in the statements of the victim recorded under Sections 161 and 164 of the Cr.P.C. but since she had not been confronted with these as is required under Section 145 of the Indian Evidence Act, no benefit can be derived by the appellant in respect of the same. It is also noted that there is corroborative circumstantial evidence which has come on record in the form of the testimony of the mother, and brother of the victim as PW-5 and PW-6 respectively to support the case of the prosecution to prove the charges levelled against the appellant. It is also noted that the allegations made by the victim have also been corroborated by the medical evidence. The impugned judgment also reflects that the testimony of PW-9, who is the father of the victim, is entirely contradictory to the testimony of the victim (PW-1), her mother (PW-5) and her brother (PW-6). However, as per PW-5 and PW-6, the



father of the victim (PW-9) was not present in the house when this incident had happened as he was sleeping in another tenanted room at some distance.

7. Despite there being a contradictory testimony of PW-9, the learned Trial Court has observed that even if his testimony is ignored, it would not cause any harm to the case of the prosecution as it is duly corroborated by the statements of PW -1, PW-5 and PW-6. The learned Trial Court has further observed that the appellant has not led any defence evidence to disprove the case of the prosecution. However, in his statement under Section 313 of the Cr.P.C., he has merely taken a defence that mother of the victim had borrowed some money from him and to avoid repayment of the same she has implicated the appellant in the present case.

Submissions on behalf of the Appellant/Convict

8. At the very outset, it is the case of the appellant that there have been material improvements, inconsistencies and contradictions in the statement of the child victim in the present case which renders her testimony as unreliable and the same is ought to be discarded and the learned Trial Court has wrongly placed reliance on such statements of the victim for convicting the appellant in the present case. The learned counsel for the appellant submitted that the victim in the present case was a child of 10-12 years at the time of the alleged incident and therefore, there is high possibility that she has been tutored by her respective family members as the same is evident from her testimonies recorded during the course of investigation as well as trial. To support this contention, the learned counsel has placed reliance on the case of **Santosh Prasad @ Santosh Kumar v. State of Bihar, (2020) 3 SCC 443**.



9. Learned counsel appearing for the appellant further submitted that the learned Trial Court has not taken into consideration the confrontation and contradictions which had come on record by cross-examination of the prosecution witnesses and have given an undue weightage to the examination-in-chief's of the prosecution witnesses. It is further submitted that the key prosecution witnesses on whom prosecution has placed reliance are interested witnesses and there is no independent witness to support their case.

10. It is pointed out that history of the incident as recorded in MLC as well as in the statement of the prosecutrix under Section 161 of the Cr.P.C. (Ex. PW-1/A) is unreliable as the doctor, Ms Midhhat Siddiqui (PW-14) has admitted in her cross-examination that the history of the incident in the MLC of the victim was recorded on the basis of the statements made by the victim and her mother rather than on any medical evidence. Therefore, it is submitted that the same cannot be relied on as being tutored by the victim and her mother so as to implicate the appellant. It is further pointed out that the doctor (PW-14) has also deposed that the victim has washed her genital area before her medical examination was conducted and that as per MLC, there is an '*old hymen tear*' and there were no external injury marks in person on the victim.

11. With respect to the DD No. 5A, which has been recorded at the first instance, learned counsel for the appellant submitted that the same records the expression that there is a quarrel with a lady ('*lady ke saath jhadha*'). It is also the case of the appellant that the IO (PW-17) in her testimony had admitted that she had gone to the room of the appellant in his absence where the alleged incident had happened. Therefore, the learned counsel for appellant submitted that the possibility of fabricated evidences being



implanted against the appellant cannot be ruled out in the present case. It is further submitted that Mangal Sain (PW-9), the father of the prosecutrix has admitted in his cross-examination that the appellant was arrested at around 04:00 P.M. on 23.06.2014, which raises a suspicion as to the DNA results as the same could have been planted to implicate the appellant.

12. It is pointed out that PW-16, in his testimony as recorded during the trial has admitted that the statement of the prosecutrix was not recorded prior to her medical examination. Therefore, it is submitted that the statement of the prosecutrix under Section 161 of the Cr.P.C. was entirely an afterthought which was made solely to corroborate the MLC and falsely implicate the appellant in the present case.

13. Learned counsel for the appellant submitted that the allegations with respect to the prior incident on 19.06.2014 and 20.06.2014 were not put to the accused person during his examination under Section 313 of the Cr.P.C. before the Court. Learned counsel further submitted that the defences taken by the appellant in his statement under Section 313 of the Cr.P.C. has been neglected by the Trial Court and were not taken into consideration at all while passing the impugned judgment.

Submissions on behalf of the State/Prosecution

14. Learned APP for State submitted that the appellant has been rightly convicted by the learned Trial Court and the impugned judgment is not liable to be interfered with. He also submitted that the victim (PW-1) in her deposition before the Trial Court as well as in her statement made before the police and statement recorded before the learned MM under Section 164 of the Cr.P.C. has supported the case of the prosecution and has been consistent



on her version stated before the police at the first instance. It is further pointed out that the mother and brother of victim (as PW-5 and PW-6 respectively) have also corroborated the version of the victim.

15. Learned APP for State further submits that the testimony of the father of victim (PW-9) has also corroborated the case of the prosecution except for few minor contradictions, which are immaterial to the case of the prosecution. It is submitted that MLC alongwith the FSL report also corroborates the testimony of the victim and thus, rules out any remote possibility of false implication. He further submitted that the appellant has failed to prove or bring any fact on record to support the defence taken by him during his examination before the Trial Court.

16. Heard learned counsel for the appellant and learned APP for State and have perused the trial court record.

17. Statements given by the victim/PW-1 recorded under Sections 161 and 164 of the Cr.P.C. and her testimony recorded before the Court has been analyzed by the learned Trial Court in the impugned judgment in the following manner: -

“1. On 20.06.2014, the victim, a minor girl aged about 10 years was sleeping outside her room on a cot while her mother was sleeping on the floor. In the night when everybody was sleeping, the victim woke up and found their neighbour Sonu was trying to awake her and he tried to call her inside his room but she refused and he went away. The victim slept and when she again opened her eyes, she found herself in the room of Sonu with her mouth tied as a result of which she could not make and sound. Sonu was lying upon her and was penetrating his male organ into her vagina. On hearing the murmuring of the victim, her mother came to the room of Sonu in her search but in the meanwhile, Sonu put the victim below the bed and spread a bed-sheet. When the brother and mother of the victim came to the room of Sonu, they found him naked and he



started wearing his pant on seeing them. The victim's mother and brother recovered her from under the bed and found her without her pajama. Her mother made her wear pajama and called the police. Police arrived and took the victim to the hospital where she was medically examined. Her statement was recorded on which the present case was registered.

8. The present case was registered on the statement of the victim herself which has already been mentioned in detail herein above. The victim was examined U/S 164 Cr.PC and in her statement Ex. PW1/C, she stated that she was sleeping on the terrace alone. The accused came and tied her hands and legs. He then took off her salwaar and frock and also his clothes and then did wrong act with her and kissed her. When she cried, he slapped her. In the meanwhile, her mother started calling her and on hearing voice of victim's mother, accused fled away.

9. In her deposition before the Court, she deposed that on the 23rd date, she was sleeping in the verandah on a cot and in the meanwhile, accused came there and woke her up and called her in his room but she refused. Thereafter, he shut her mouth and forcibly took her in his room where he first of all removed her clothes. She deposed that she could not raise an alarm as the accused had tied her mouth with his shirt. She further deposed that the accused removed her clothes and then removed his clothes also and then he kissed on her shoulders, put his hands on her hands and then removed his lower apparel and then he inserted something big into her *susuwali jagah* and he did so three-four times. She further deposed that somehow she managed to cry and her mother heard her cry and came to search her and made inquiries from the accused but he kept her under the cot in his room. Her mother switched on the light of his room and she and her (victim's) brother took her out from underneath the cot. She further deposed that her mother gave clothes to her to wear and then she gave beatings to the accused and then police was informed but the accused managed to run away. She also deposed that the accused had done same act with her on the 19th date as well. The victim admitted her statement U/S 164 Cr.P.C and also identified the accused in the Court.

11. The witness replied to the further questions very confidently. She deposed that she could not raise alarm as the accused had tied her mouth and that after the accused fondled with her legs, she again slept and did not complained to her mother as the accused had left her on her asking. She also deposed the time of the incident stating that her mother



came in the room of the accused at about 3.30 am and the electricity supply resumed at about 3.00 am and further that the accused had taken her into his room at about 2.00 am and her mother came at about 3.00 am. She explained that she was aware of the time as there was a clock in the room of the accused which was placed on the TV set. She also explained that the accused had lifter her in his lap and taken to his room. He further deposed that the police arrived at about 4.30 am and her father had also come with 2-3 uncles and one aunt from the ground floor and one uncle from the second floor also came there.”

18. Upon appreciation of the statements and disposition of the victim, it is seen that the same are not completely free from inconsistencies and improvements but the issue is whether the same can be a reason to discard the testimony of the victim. In the case of **Phool Singh v. State of M.P., (2022) 2 SCC 74**, the Hon'ble Supreme Court has observed and held as under,

“11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] , this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under : (SCC pp. 394-96 & 403, paras 8 & 21)

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be



relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

19. Similarly, in the matter of **State of H.P. v. Lekh Raj, (2000) 1 SCC 247**, the Hon’ble Supreme Court has observed that minor discrepancies in the version of the witnesses lends credence to the version stated by the victim rather than it being a ground to discredit the same. The Hon’ble Supreme Court has observed and held as under,

“7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish v. State of M.P.* [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere



congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.”

20. It is a settled law that the statement of witness has to be considered in totality after taking into consideration the age, social and economic background, nature of the offence and the strata to which the witness belongs. In this case, the victim was a 10 year old minor at the time of commission of offence and came from a socially and economically weaker section of the society. But despite the same, as observed by the learned Trial Court, she has confidently deposed in her cross-examination describing the acts of the appellant with clarity.

21. A Co-ordinate Bench of this Court, in cases with regard to child witnesses and broad principles regarding the evidentiary value of the same has discussed the same in detail in case of **Prem Bahadur @ Bhoj Bahadur v. State, 2019:DHC:3513**, and has observed and held as under,

"63. The following guiding principles, governing the admissibility and reliability of the evidence of child witnesses, are readily discernible from the above cited judicial pronouncements:

- (i) There is no absolute principle, to the effect that the evidence of child witnesses cannot inspire confidence, or be relied upon.
- (ii) Section 118 of the Indian Evidence Act, 1872 discounts the competence, of persons of tender age, to testify, only where they are prevented from understanding the questions put to them, or from giving rational answers to those questions, on account of their age.



(iii) If, therefore, the child witness is found competent to depose to the facts, and is reliable, his evidence can be relied upon and can constitute the basis of conviction.

(iv) The Court has to ascertain, for this purpose, whether (a) the witness is able to understand the questions put to him and give rational answers thereto, (b) the demeanour of the witness is similar to that of any other competent witness, (c) the witness possesses sufficient intelligence and comprehension, to depose, (d) the witness was not tutored, (e) the witness is in a position to discern between the right and wrong, truth and untruth, and (f) the witness fully understands the implications of what he says, as well as the sanctity that would attach to the evidence being given by him.

(v) The presumption is that every witness is competent to depose, unless the court considers that he is prevented from doing so, for one of the reasons set out under Section 118 of the Indian Evidence Act, 1987. It is, therefore, desirable that judges and Magistrates should always record their positive opinion that the child understands the duty of speaking the truth, as, otherwise, the credibility of the witness would be seriously affected, and may become liable to rejection altogether.

(vi) Inasmuch as the Trial Court would have the child before it, and would be in a position to accurately assess the competence of the child to depose, the subjective decision of the Trial Court, in this regard, deserves to be accorded due respect. The appellate court would interfere, therewith, only where the record indicates, unambiguously, that the child was not competent to depose as a witness, or that his deposition was tutored. Twin, and to an extent mutually conflicting, considerations, have to be borne in mind, while ascertaining the competency of a child witness to justify. On the one hand, the evidence of the child witness has to be assessed with caution and circumspection, given the fact that children, especially of tender years, are open to influence and could possibly be tutored. On the other hand, the evidence of a competent child witness commands credibility, as children, classically, are assumed to bear no ill-will and malice against anyone, and it is, therefore, much more likely that their evidence would be unbiased and uninfluenced by any extraneous considerations.

(vi) It is always prudent to search for corroborative evidence, where conviction is sought to be based, to a greater or lesser extent, on the evidence of a child witness. The availability of any such corroborative evidence would lend additional credibility to the testimony of the witness."



22. During the cross-examination of the victim (PW-1), the defence had an opportunity of confronting her regarding inconsistencies regarding her previous statements recorded under Sections 161 and 164 of the Cr.P.C. Apart from the one fact with regard to the appellant bringing three shirts with which he tied her legs, hands and mouth, no other inconsistency was put to PW-1 for the purposes of contradiction as required under Section 145 of the Indian Evidence Act, 1872. So far as the aforesaid inconsistency is concerned, she (PW-1) gave an explanation that she had mentioned this fact to the police but they probably omitted to record the same.

23. Testimonies of PW-5 and PW-6, who are mother and brother of PW-1, corroborate the version of the victim (PW-1) thereby supporting the case of the prosecution. The statements of PW-5 and PW-6 are consistent and free from any material irregularities. Nothing has come on record to impeach their credibility in their cross-examination. Therefore, the same cannot be discarded mainly on account of them being related to the victim.

24. So far as testimony of PW-9, who is father of the victim, it is observed that his testimony is contrary to the version of PW-1 as well as PW-5 and PW-6. As per the version of PW-1 as well as PW-5, the father of the victim (PW-9) was not even present in the house at the time of incident as he was sleeping in another tenanted room in *gali* no. 8 in the same locality which was at some distance away from their house where the incident took place. He further deposed that he had accompanied PW-5 and PW-6 in search of PW-1, which is again contrary to the statement of PW-1, who had stated that her mother and brother had entered the room of the appellant searching for her



and her father, came later. Testimony of the PW-9 reflects that he was not a witness to the incident. Therefore, these contradictions as pointed hereinabove would not make any dent in the case of the prosecution which relies upon the testimonies of PW-1, PW-5 and PW-6.

25. The testimony of PW-1 is further corroborated by the medical evidence placed on record by the prosecution. The MLC on record exhibit Ex. PW-1/A shows presence of “*old hymen tear*” and the result of DNA analysis by way of FSL report exhibit Ex. PW-10/C has affirmed the presence of appellant’s DNA in the exhibits of the victim. Nothing has been brought on record by the appellant to discredit the aforesaid medical and scientific evidence.

26. In the statements of the accused recorded under Section 313 of the Cr.P.C., the appellant has failed to provide any satisfactory explanation to the incriminating evidence put to him. The defence taken by the appellant is that the mother of the victim owed him money and in order to avoid the payment of the same, the appellant has been falsely implicated in the present case. It is pertinent to note that nothing has been placed on record with respect to the said defence taken by the appellant.

27. In view of the above discussion this Court is of the opinion that prosecution has satisfactorily discharged the burden of proving the guilt of the appellant beyond reasonable doubt and therefore, judgment of conviction dated 02.02.2017 is upheld.

28. *Vide* the order on sentence dated 03.02.2017, the appellant has been sentenced rigorous imprisonment for 10 years and fine of Rs. 2,000/- for the offence punishable under Sections 376 (2) (i) and 376 (2) (n) IPC and in



default of payment of fine, to undergo further simple imprisonment for a period of one month.

29. In the present case, as discussed hereinabove, the appellant has been found to have committed offence punishable under Sections 376 (2) (i) and 376 (2) (n) of the IPC and Section 6 of POCSO Act. However, as per Section 42 of the POCSO Act, in case an offender is found guilty of any offence punishable under the provisions of the POCSO Act as well as under any other law for the time in force, then he shall be liable to punishment only under such law or the POCSO Act which provides for punishment which is greater in degree.

30. Section 6 of POCSO Act provides for punishment for aggravated penetrative sexual assault. Prior to the amendment by Act 25 of 2019, the said provision provided 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.”

31. Sections 376 (2) (i) and 376 (2) (n) of the IPC as they stood prior to the amendment by Act 22 of 2018, the said provision provided as under:

"376. Punishment for rape.- (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description 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.]

(2) Whoever,-



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

32. The learned Trial Court, following the mandate of Section 42 of the POCSO Act, held the appellant guilty for the offence punishable under Sections 376(2) (i) and 376(2) (n) of the IPC, while observing as under:

"29. Section 376(2)(i) and (n) IPC provide for punishment which shall not be less than 10 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. Section 6 of the POCSO Act provides for punishment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. A comparison of the two provisions would show that they provide for an identical punishment. However, the definition of life imprisonment, appearing in Section 376(2)(i) and (n) IPC makes it more severe and greater in degree than that provided in Section 6 POCSO Act. Thus, as per the requirement of Section 42 of the POCSO, the accused has to be held guilty for the offence punishable under Section 376(2)(i) and (n) IPC."

33. In the present case, the order on sentence was passed on 03.02.2017 and therefore, the case of the appellant is covered by the aforesaid provisions of Sections 376 (2) (i) and 376 (2) (n) of the IPC as they stood prior to the 2018 amendment. The appellant has been awarded a sentence of 10 years, which is the minimum prescribed sentence for the offence of rape under sub-section (2) to the Section 376 of the Indian Penal Code as it stood then. Therefore, the order on sentence passed by learned ASJ is in accordance with law and has no infirmity hence, the same is upheld.



34. In view of the above, the appeal is dismissed and disposed of accordingly.
35. Pending applications, if any, also stand disposed of.
36. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
37. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

FEBRUARY 02, 2024/sn