



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

ON THE 2nd OF FEBRUARY, 2026

CRIMINAL APPEAL No. 337 of 2016

SHIVA

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Mukesh Kumawat, learned counsel for the appellant.

*Shri Sonal Gupta, learned Additional Advocate General for the
respondent / State.*

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JUDGMENT

Per. Justice Alok Awasthi

Today this appeal was listed for consideration of I.A. No.14272/2025, which is a repeat (second) application under Section 430 of the Bhartiya Nagarik Suraksha Sanhita for suspension of jail sentence and grant of bail, however, this appeal is finally heard on the quantum of punishment.

02. The present Criminal Appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973 being aggrieved by the judgment of conviction and sentence dated 11.07.2013 passed by the VIIth Additional Sessions Judge, Indore in Session Trial No.44/2013, whereby the appellant has been convicted for commission of offences punishable under Sections 363 & 366 of the Indian Penal Code and sentenced to undergo 05 years



rigorous imprisonment along with fine of Rs.1,000/- and 07 years' rigorous imprisonment along with fine of Rs.2,000/- respectively. The appellant has also been convicted under Section 376(2)(i)(m) of the IPC, Section 3/4, 5(i)(m)/6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo Life Imprisonment for remainder of the life along with fine of Rs.5,000/-. With default clause to further undergo 02 months', 06 months' & 01 year's additional rigorous imprisonment respectively.

02. As per prosecution story, on 12.04.2012 at about 12:30 pm, one Kamal, who is a labour lodged a report that early in the morning at about 08:00 am, his uncle Prakash told him that your daughter (minor aged about 04 years) is missing. When they went to look for the child, she was found with Prakash near a drain in Chandravanshi Khati Dharmshala, thereafter, they took her to Choithram Hospital. After being informed by the hospital, the father of the minor girl went there. When she was asked, it has been said that a dark-skinned man gave her cold drink (Pepsi), took her in the lap and sat on her. She was bleeding from genital and when she cried, the accused ran away. A women picked her up and thereafter her uncle came and took her to hospital.

03. On the same day at about 1:00 pm, Dr. Parvez from Choithram Hospital informed the police that victim has been brought to the hospital by her uncle Prakash for treatment. In fact, during the investigation of another, information was received at Rangwasa Phata Railway Line that a man had taken a young girl and they were going to apprehend him. Later on, Kamal came to know that his minor daughter was raped. Upon reaching the



Choithram Hospital, it was revealed that the she had been taken to M.Y. Hospital. The police went on the spot and prepared a Naksha Panchnama and seized some articles from the spot, thereafter, the statements of witnesses were recorded. Thereafter, the FIR was lodged by the father of the victim. The police conducted the investigation and prepared the portrait of a person on the basis of information given by Ishwar from whose shop cold drink was bought. After conducting the Test Identification Parade and medical investigation, the present appellant was arrested. DNA samples of the accused were collected and sent of examination.

03. Upon completion of investigation, charge-sheet was filed. The appellant denied the charges and pleaded for trial. The prosecution examined 25 witnesses and exhibited 41 documents. In defense, the appellant examined three witnesses. After evaluating the evidences that came on record, the trial Court has convicted the appellant for the aforementioned offences.

04. Learned counsel for the appellant has argued that the present appellant has falsely been implicated in this case. The prosecutrix (PW-2) has not identified the appellant in the cross-examination. The prosecutrix is tutored witness, hence, her testimony cannot be believed. It is further submitted that DNA report reveals that semen of one another persons was also found from the vaginal slide of the prosecutrix, however, he has not been arrested. The appellant is arrested only on the basis of suspicion. PW-12 has stated in the statement that he has collected four blood samples of the appellant, however, only two samples was sent by the Investigating Officer for chemical examination and remaining samples were kept for implicating



the appellant in this crime, hence, it is case of false implication. On such premises, it has been prayed that the appeal be allowed.

05. Learned Additional Advocate General for the respondent / State argued in support of the impugned judgment of conviction & sentence. He argued that DNA report was found positive, hence, it can be said that it is a case of false implication. It is further submitted that looking to the heinous offence, the sentence awarded by the trial Court is just and proper and the criminal appeal is liable to be dismissed.

06. We have heard learned counsel for the parties at length and perused the record.

07. Perusal of the record depicts that the prosecutrix (PW-2) has identified the accused in a terrified manner before the trial Court by gesticulating towards the witness box and also stated about the heinous act of that appellant. Hence, it cannot be said that she is a tutored witness and her testimony cannot be denied. Therefore, the argument of counsel for the appellant that the prosecutrix is a tutored witness is not acceptable and is hereby rejected.

08. Ishwar (PW-6) in his examination-in-chief stated that on 12.04.2012, the accused came to his shop and bought five cold drink (Pepsi) from his shop, out of which he gave one cold drink to the prosecutrix. From the place of incident also, one pepsi stick was recovered. From the statement of this witness also, the involvement of the appellant is established.

09. Vijay (PW-24), who was worker in the shop of Ishwar (PW-6) has stated in the examination-in-chief that one person came to the shop along



with a minor girl (prosecutrix) and bought five Pepsi, out of which he gave one Pepsi to the minor girls. Statement of this witness corroborates with the statement of Ishwar. Hence, it cannot be said that it is a case of false implication.

10. DNA report (Ex-P/37) was also found positive, according to which the appellant's semen was found from the vaginal slide of the prosecutrix as well as from cloths. Hence, the involvement of the appellant cannot be disputed.

11. So far as the statement of Compounder (PW-12) is concerned, even if his statement is accepted to be as it is, the involvement of the appellant was proved because his semen was found in the vaginal slide of the prosecutrix. However, his testimony was not relied by the learned trial Court. Hence, the argument of counsel for the appellant that out of four samples only two blood samples of the appellant were sent for examination cannot be accepted, as his semen was found in the vaginal slide of the prosecutrix.

12. Perusal of the documents on record and the statements of witnesses, all gesticulates towards the involvement of the appellant in the crime. Hence, the plea of the appellant that it is a case of false involvement is not tenable and is hereby rejected.

13. In view of the above, the finding of the fact arrived at the by the trial Court does not warrant any interference, hence, the same are hereby affirmed. The only question which requires consideration by this Court is whether the sentence awarded by the trial Court under Section 376(2)(i)(m) of the IPC, Section 3/4, 5(i)(m)/6 of the Protection of Children from Sexual



Offences Act, 2012 i.e. Life Imprisonment for remainder of the life is just and proper or on higher side ?

14. Section 4 & 6 of the POCSO Act (unamended) are reproduced below:-

"4. Punishment for penetrative sexual assault.—

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

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."

15. Sections 4 & 5 of the POCSO Act (amended) are reproduced below:-

"4. Punishment for penetrative sexual assault—[(1)] *Whoever commits penetrative sexual assault shall be punished with 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 commits penetrative sexual assault on a child below sixteen years of age shall be punished with 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.*

(3) *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.]*

[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.]"

16. In the present case, the offence was committed on 12.04.2012 when the old Act was in force, hence, at the most, the appellant could have been sentenced to undergo Life Imprisonment. The term Life Imprisonment for remainder of life was inserted in Sections 4(2) & 6 by way of amendment No.25 of 2019 dated 06.08.2019. Hence, we are unable to gather as to how the learned trial Court has sentenced the appellant with imprisonment for remainder of life, especially when the amended provisions was not in vogue at that relevant point of time.

17. The Apex Court while dealing with similar kind of case in *Satauram Mandavi v/s The State of Chhattisgarh & Another Neutral Citation 2025 INSC 892 = 2025 LiveLaw (SC) 744* by taking the prop of Article 20(1) of the Constitution of India has held that *no person shall be convicted of any offence except for violation of a law in force at the time of the commission of act charged as an offence, nor be subject to a penalty greater than that which might have been inflicted under the law in force at the time of commission of offence*. The Apex Court has further held that *the constitutional bar against the retrospective imposition of a harsher penalty under Article 20(1) is clear and absolute. The trial Court, in applying the*



principle the enhanced sentence introduced by the 2019 Amendment to Section 6 of the POCSO Act, has effectively subjected the appellant to punishment greater than that which was permissible under the law in force at the time of commission of the offence which clearly violative of the bar contained in Article 20(1) of the Constitution of India. The Apex Court upheld the conviction, however, sentence of life imprisonment for remainder of the life was quashed and was modified to that of rigorous imprisonment of life. In this case also, the prosecutrix was minor aged about five years. The relevant paragraphs of the judgment are reproduced below:-

"9. This Court, having found no merit in the challenge to conviction, had confined its notice to the question of sentencing. However, we find merit in the appellant's submission that since the offence was committed on 20.05.2019, the amended provision of Section 6 of the POCSO Act, which came into force on 16.08.2019, could not have been applied to his case.

10. In this regard, Article 20(1) of the Constitution of India is relevant and reads as under:

"20. Protection in respect of conviction for offences –

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

11. The Constitutional bar against retrospective imposition of a harsher penalty under Article 20(1) is clear and absolute. The Trial Court, in applying the enhanced sentence introduced by the 2019 Amendment to Section 6 of the POCSO Act, has effectively subjected the appellant to a punishment greater than that which was permissible under the law in force at the time of commission of the offence which is clearly violative of the bar contained in Article 20(1) of the Constitution of India.



12. *The sentence of "imprisonment for life, meaning remainder of natural life," as per the amended provision, did not exist in the statutory framework on 20.05.2019, the date of the incident. Under the unamended Section 6, the maximum punishment permissible was imprisonment for life in its conventional sense and not imprisonment till the remainder of natural life.*

13. *Accordingly, while we uphold the conviction of the appellant under Section 6 of the POCSO Act, we modify the sentence to that of rigorous imprisonment for life, as understood under the unamended statute, and set aside the sentence of imprisonment for the remainder of the natural life. The fine of ₹ 10,000/- is maintained."*

18. In view of the above and taking note of the judgment passed by the Apex Court in the aforesaid case, we have no hesitation to hold that the trial Court has erred in awarding the sentence of Life Imprisonment for remainder of the life. Hence, the conviction of the appellant under Section 376(2)(i)(m) of the IPC, Section 3/4, 5(i)(m)/6 of the POCSO Act is hereby affirmed, however, sentence of Life Imprisonment for remainder of the life is hereby quashed and modified to that of rigorous imprisonment for life. The fine amount of Rs.5,000/- is hereby maintained. The conviction and sentence of the appellant under Sections 363 & 366 of the IPC are also confirmed.

19. *Ex consequenti*, the Criminal Appeal stands allowed in part.

20. Pending application(s), if any, stand(s) disposed of.

Record of the trial Court be sent back.

(VIJAY KUMAR SHUKLA)
JUDGE

(ALOK AWASTHI)
JUDGE

