



CRIMINAL APPEAL NO. OF 2026
@ SPECIAL LEAVE PETITION (CRIMINAL) NO.7030 OF 2026

VERSUS

STATE OF CHHATTISGARH ... RESPONDENT(S)

JUDGMENT

ARAVIND KUMAR, J.

“It’s not worth the tears of that one tortured child who beat itself on the breast with its little fist and raved in its stinking outhouse, with its unexpiated tears to ‘dear, kind God’! It’s not worth it, because those tears are unatoned for. They must be atoned for, or there can be no harmony. But how?”

1. Heard. Leave Granted.
2. Ivan Karamazov, in Dostoevsky's *The Brothers Karamazov*, rejects harmony at the cost of a child's tears. Indeed, a child

which is tormented reaches out to the kind God for answers, for it does not understand the agony or the harrowing experience it had and simply wants to understand why. Those innocent painful tears have to be atoned for. We cannot restore the childhood or the beautiful dreams that the child carried but we can soothe the child with the powers bestowed on us, to show the child that there is someone to dry its tears.

- 3.** Before us stands Balesh Kumar Kuraiti, the Appellant who is accused of committing aggravated penetrative sexual assault on a victim minor girl aged 3. The case of the prosecution begins with the lodging of the First Information Report No. 35/2016¹ before the Police Station of Ambagarh Chowki in Rajnandgaon District by the father of the victim, Dinesh Tope (PW-2). He accounts that in the evening of 17.02.2016, at about 7.00 pm, he was at the house of Bansilal Sori (PW-5) when he heard the sound of a child crying or two cats fighting. At that time, Tejram (PW-4), victim's father's uncle, came and told Dinesh Tope (PW-2) that when he had gone to urinate in Ashok's Badi, he too heard the same sound and when he threw

¹ Hereinafter referred to as 'FIR'

a stone at the direction of the sound, it stopped. But while returning back, Tejram (PW-4) heard the sound of a girl crying.

4. When the father of the victim, Dinesh Tope (PW-2), returned to his house along with Tejram (PW-4), the mother of the victim, Devki Bai (PW-1), told them that the victim child (PW-6) has suffered injury marks on both her cheeks, nose, lips and was bleeding from her private part. She also told PW-2 that the Appellant-Accused, who was a guest at their aunt Desh Bai's house, was carrying the victim on his lap at about 6.30 pm and then took her away. After some time, the victim returned back crying and had injuries on her body. PW-1 also told PW-2 that their child had been raped.
5. The incident was reported before the police and FIR No. 35/2016 was registered on 17.02.2016 against the Appellant-Accused for offences under sections 376(2)(i) of the Indian Penal Code, 1860² and sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.³ The investigation was conducted by R. K. Singh Rana (PW-19), who seized the victim's pajamas and undergarments at Ashok's Badi. Pending

² Hereinafter referred to as the 'IPC'

³ Hereinafter referred to as the 'POCSO Act'

investigation, both the victim (PW-6) and the accused were subjected to medical examinations following the latter's arrest.

- 6.** Following the investigation and the arrest of the Appellant-Accused on 18.02.2016, the case was tried by the Additional Sessions Judge, FTC, Rajnandgaon (Chhattisgarh)⁴ who had framed charges under section 376(2)(i) of IPC and sections 6 and 8 of the POCSO Act.
- 7.** The Learned Trial Court weighed in on the corroborative witness testimonies of the victim (PW-6), the mother (PW-1) and father of the victim (PW-2) along with documentary evidence such as the Forensic Science Laboratory Report and Medical Examination of the victim child (PW-6) and the Appellant-Accused. The injuries found on the victim child (PW-6) were supported by the deposition of Dr. Subhadra Thakur (PW-21) who found abrasions on the left cheek, nose and upper lip along with lacerated wounds on the genitalia of the victim. The victim child was further subject to medical examination before Dr. V.P. Khunte (PW-18) on 18.02.2016 who inferred that the victim child was subjected to forcible sexual assault due to swollen external genitalia, cuts and

⁴ Hereinafter referred to as the 'Trial Court'

bruises on the vagina which also caused pain to the victim child.

- 8.** The victim (PW-6), aged three in her testimony before the Learned Trial Court categorically stated that the Appellant-Accused had taken her on his lap and threw her on the ground. She further deposed that the Appellant-Accused bit her cheeks and took her to Badi where he threw her and removed her undergarments. The Forensic Laboratory Reports also confirmed the presence of human sperm on the vaginal slide of the victim child. On perusal of the deposition of the child and the medical reports, we have no doubt in observing that the Appellant-Accused has indulged in such a criminal act, making it difficult for us to comprehend the unimaginable trauma endured by a child so young.
- 9.** Upon careful appreciation of the oral and documentary evidence, as well as the testimonies of the witnesses, the Learned Trial Court vide Judgment dated 18.04.2017, found the Appellant-Accused guilty of offences punishable under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act, 2012. Crucially, during the hearing on sentence, the Learned Trial Court observed that despite this being the Appellant-Accused's first offence, the gravity and heinous nature of the

crime warranted no leniency. Consequently, the Court sentenced the Appellant-Accused to imprisonment for life along with fine of Rs. 10,000/- (Ten Thousand Rupees) and in default for payment of fine, additional sentence of simple imprisonment of 1 year, for both offences, i.e., under Section 376(2)(i) of the IPC and Section 6 of the POCSO Act, 2012. The said sentences on both the offences were to run concurrently.

- 10.** Assailing the judgment of conviction awarded by the Learned Trial Court, Appellant-Accused approached the High Court by way of Criminal Appeal No. 872/2017. Although the Learned High Court of Chhattisgarh at Bilaspur, vide Judgment dated 14.02.2024 confirmed and affirmed the conviction of the Appellant-Accused, it modified the sentence awarded from imprisonment for life to 20 years of rigorous imprisonment for both offences, i.e., Section 376(2)(i) of IPC and Section 6 of POCSO Act (Amendment Act, 2019) in view of the application of Section 42 of the POCSO Act.
- 11.** Dissatisfied with the concurrent conviction and sentence imposed on the said accounts, the Appellant-Accused has preferred the present Special Leave Petition. He has raised his grievance on the imposition of higher minimum punishment as

per the 2019 Amendment to the POCSO Act and the approval of his conviction. This Court vide Order dated 13.04.2026 issued notice strictly on the limited question on the quantum of sentence. Undisputedly, the sole issue for consideration before us is with respect to whether the sentence imposed by the High Court is correct under law. Thus, we make no observations on the conviction of the Appellant on the said offences and the conviction awarded by the Trial Court as confirmed by the High Court requires no interference. With that in mind, we frame the following question of law -

ISSUE

Whether the High Court is justified in reducing the substantive sentence of the Appellant-Accused from life imprisonment to 20 years rigorous imprisonment by taking the 2019 Amendment to the POCSO Act into consideration?

- 12.** We answer this question in the negative for the following reasons and inferences drawn from the careful study of the law on sentencing and judicial precedents -

In Re: Clarification on Section 6 as it stood before and after the Amendment Act of 2019

- 13.** Section 6 of the POCSO Act 2012 (before the Amendment) stipulated –

“Section 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.”

- 14.** From a bare reading of this provision, it is to be understood that the minimum punishment for an offence of aggravated penetrative sexual assault is a minimum of ten years of rigorous imprisonment which may extend to imprisonment for life and also fine.

- 15.** Section 6 after enactment of Amendment Act of 2019 stated-

“Section 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.** Following the Amendment in 2019, which was brought into force with effect from 16.09.2019, the phrase “*which shall mean imprisonment for the remainder of natural life of that person*” was added after the words “*imprisonment for life*”. It also enhanced the minimum sentence from rigorous imprisonment of 10 years to rigorous imprisonment of 20 years. The backdrop of amendment as explained in the Statement of Objects and Reasons to the Amendment Act is primarily to take stringent action against perpetrators of child sexual abuse, who by their repeated barbaric acts destroy not only the childhood but also disturb the mental construct of that child and lead to destructive social disintegration in the generations to come. With the paramount interest of the life of the child, the said amendment was effected to and needless to say, it operated prospectively.
- 17.** The expression “*imprisonment for life*”, as it stood prior to the amendment, signifies a sentence of imprisonment for life and although in literal sense it means that the accused shall remain imprisoned for the remainder of his life, it does not specifically bar any statutory remedy available. Imprisonment for life *simpliciter* entitles the convict to seek the benefit of early release as per the statutory regime subject to the fulfilment of

the prescribed conditions therein. Such considerations, however, have to be mandatorily fulfilled for the accused person to avail the benefit of early release such as remission.

18. The jurisprudence on retrospective applicability of criminal laws has been squarely laid down in a catena of rulings of this Court. The invocation of Article 20(1) of the Constitution also makes it clear that every person has a fundamental right only to be convicted of an offence under the law that was in operation at the time of commission of the criminal act. Thus, on *prima facie* construction, we are of the view that the High Court erred in applying the punishment prescribed under the Amended Act of 2019, enhancing the minimum punishment under Section 6 of the POCSO Act.

19. Most recently, this Court in *Satauram Mandavi v. State of Chhattisgarh & Anr.*⁵ has squarely observed that Court cannot impose a sentence that was not within the statutory framework when the criminal offence was committed. Thus, Section 6 of the POCSO Act as it stood prior to the 2019 Amendment shall be applicable in the case of the Appellant-Accused herein.

In Re: Punishment as under Section 376(2)(i) of IPC

⁵ 2025 INSC 892

20. Since the Appellant-Accused is sentenced for two offences, in order to ascertain the true meaning of the sentences imposed, we deem it appropriate to look into Section 376(2)(i) as it stood before its omission.

“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, —

(a)-(h)....

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

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.”

21. A bare reading of Section 376(2)(i) of IPC (as it stood before its omission) indicates that any offence falling under Section 376(2)(i) would attract rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life. Significantly, life imprisonment under the said provision means “*imprisonment for the remainder of that person’s natural life*”, meaning thereby that there are

almost bleak to no chances of an accused being released early from prison.

In Re: Applicability of Section 42 of the POCSO Act in the instant matter

We find it imperative to also discuss the position of Section 42 of the POCSO Act as the High Court has placed reliance on the same for modifying the sentence imposed. Section 42 for reference is extracted below -

“42. Alternate punishment.— Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], [376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.”

- 22.** In essence, Section 42 entails that if an accused is convicted under both the IPC and POCSO, the greater of the punishment imposed amongst the two shall prevail.
- 23.** In the instant matter, the Trial Court imposed a sentence of imprisonment for life for both the offences under Section 376(2)(i) as well as under Section 6 of POCSO to run

concurrently. Thus, by application of Section 42, the one that prescribes higher punishment must prevail. Pertinently, as discussed above, Section 376(2)(i), in our opinion imposes a higher punishment with the stipulation that imprisonment for life shall mean imprisonment for the remainder of that person's natural life. However, the said clarification is absent under Section 6 of the POCSO Act as it stood prior to the amendment. Although, on a preliminary look, we reckon that the punishment under Section 376(2)(i) is greater in degree due to the express stipulation that imprisonment shall be for the remainder of the person's natural life, we are guided by the principles laid down by this Court in various other instances recounted below –

- 24.** The case of *Swamy Shraddananda v. State of Karnataka*⁶ which was then affirmed in the case of *Union of India v. V Sriharan alias Murugan and Ors*⁷ squarely sets out the dilemma regarding sentencing and stated that the question of fixing the number of years within the broad spectrum of imprisonment for life is a question for the Courts to decide. For in a case where the term imprisonment for life is stipulated to

⁶ (2008) 13 SCC 767

⁷ (2016) 7 SCC 1

mean imprisonment for the remainder for the person's natural life, it is for the Court to decide on the whether the accused is to stay incarcerated for the rest of his life or has a possibility of early release depending on other facts and circumstances.

25. The latest ruling of this Court in the case of *Gyanendra Singh @ Raja Singh v. State of Uttar Pradesh*⁸ dealing with offences under Section 376(2)(i) of the IPC and Section 3/4 of the POCSO Act has also considered the said position of law. At paras 30 - 31, this Court observed -

“30. Keeping in view the aforesaid exposition of the law, we thus, direct that the ends of justice would be served by restoring the judgment of the trial Court and directing that the sentence of life imprisonment awarded to the accused, by the trial Court, for the offence under Sections 3/4 of the POCSO Act shall stand revived.

31. For the offences punishable under Sections 376(2)(f) and 376(2) (i) of IPC, the accused is sentenced to undergo imprisonment for life, as awarded by the trial Court, without the stipulation that the life term will enure till the natural life of the appellant and a fine of Rs. 5,00,000/- and in default, to further undergo imprisonment of two years. Both the sentences shall run concurrently.”

26. Although in the case of Gyanendra, the High Court had specified that the accused therein shall be imprisoned for life

⁸ 2025 INSC 335

which shall mean for the remainder of his life, from the exposition of law laid down by this Court it is clear that the Courts have the discretion to decide the years of imprisonment to be undergone incase the sentence is of imprisonment for life.

In Re: Failure of the High Court to record any reasons while modifying the sentence awarded by the Trial Court.

- 27.** The High Court has grossly erred in modifying the sentence imposed by the Trial Court. The High Court cryptically records that although the date of offence is prior to the enforcement of the Amendment to Section 6 of POCSO in 2019 by which the minimum sentence was enhanced from 10 years to 20 years imprisonment, the High Court was of the opinion that 20 years of rigorous imprisonment for both offences would suffice.
- 28.** We are unable to comprehend the rationale of the sentence imposed by the Learned High Court. On one hand, the High Court considers the fact that the victim was a minor girl aged 3 but thereafter finds it appropriate to reduce the sentence to 20 years rigorous imprisonment for both offences, i.e., Section 376(2)(i) of IPC and Section 6 of POCSO Act (Amendment Act, 2019) in view of the application of Section 42 of the POCSO Act, which in our considered opinion and reasoning above is not tenable as per Article 20(1) of the Constitution.

- 29.** The Trial Court, after duly considering all the evidences *inter alia*, documentary and oral evidence had rightly taken the view that the maximum statutory punishment recognised has to be imposed on the Appellant-Accused. Thus, we set aside the judgment of the High Court and restore the judgment of the Trial Court.
- 30.** The Appellant-Accused is hereby sentenced to undergo imprisonment for life with a fine of Rs. 10,000/- for offences under Section 6 of POCSO Act, 2012 (prior to amendment) and imprisonment for life with a fine of Rs. 10,000/- for offences punishable under Section 376(2)(i) of IPC without the stipulation that the imprisonment shall run till the natural life of the Appellant-Accused. Both the sentences shall run concurrently and the sentences shall include the term already undergone by the Appellant.
- 31.** Before we part with this matter, we find it necessary to make certain observations. This is regrettably not the first case to come before the courts involving the sexual abuse and brutal violation of a child. What is particularly disturbing is the increasing frequency of such offences, which, if left unchecked, threatens the very moral and social fabric of society in the years to come.

- 32.** A child who ought to grow up in an atmosphere of love, trust and security but instead learns fear, mistrust and vulnerability. The innocence once stolen can mostly never be returned. The trauma suffered by a child, if left unaddressed and unhealed may influence the manner in which that child perceives relationships, authority and society itself. It can impair emotional well-being, education, self-worth and the ability to lead a life of dignity. The damage extends beyond the individual victim, affecting families, communities and ultimately the collective conscience of the Society, which leads to social disintegration.
- 33.** While no sentence can erase the pain inflicted upon a child, we hold the responsibility of holding offenders accountable, deterring such crimes and also reaffirming society's commitment to safeguarding its children. The obligation is also to ensure that every child survivor receives timely psychological care, rehabilitation, and a supportive environment to rebuild a life that has been so cruelly disrupted. Every act of child sexual abuse is an assault upon humanity itself which aims at rule of law. It begins with safe homes that lead to the safer society.

- 34.** With greatest concern to our children, we deem it appropriate to direct all the appropriate authorities concerned, right from the police, to ensure that the legal process is less intimidating and more reassuring to the children who are unfortunate sufferers of harsh illegal acts. There has to be timely and effective enforcement of justice and protection to the child victims at all times.
- 35.** The Appeal is allowed on the terms discussed above. All other points of law, fine and victim compensation scheme as discussed by the High Court are untouched and shall remain good under law.
- 36.** Pending applications(s), if any, shall stand disposed of.

.....J.
[ARAVIND KUMAR]

.....J.
[VIPUL M. PANCHOLI]

**NEW DELHI;
AUGUST 12th, 2026.**