2026:CGHC:17114-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 128 of 2024

Madvi Hidma @ Sonu @ Raju S/o Shri Mukka Aged About 35 Years R/o Tondamarka, Thana Chintagufa, District Sukma (C.G.) Present Address- Staff Quarter Potacabin Errabore, Thana Errabore, District : Sukuma, Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through Police Station Errabore, District : Sukuma, Chhattisgarh

---- Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. Alok Kumar Dewangan, Advocate
For Respondent/State	:	Mr. Sourabh Sahu, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon’ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

15/04/2026

1. Learned counsel for the State submits that the notice issued to the mother of the victim (PW-2) has been duly served upon her; however, none appears on her behalf to oppose the appeal/application for

suspension of sentence and grant of bail. Though the matter was listed for consideration of the application for suspension of sentence and grant of bail, however, with the consent of the parties, the appeal has been finally heard.

2. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') has been filed by the appellant against the impugned judgment of conviction and order of sentence dated 21.11.2023, passed by the learned Additional Sessions Judge (FTC), Dakshin Bastar, Dantewada (C.G.), in Special Sessions Case No. 46/2023, whereby the appellant has been convicted and sentenced in the following manner:—

CONVICTION	SENTENCE
U/s. 450 IPC	R.I. for 10 years with fine of Rs. 1,000/-, in default of payment of fine, additional R.I. for 01 year.
U/s. 363 IPC	R.I. for 03 years with fine of Rs. 1,000/-, in default of payment of fine, additional R.I. for 01 year.
U/s. 366 IPC	R.I. for 03 years with fine of Rs. 1,000/-, in default of payment of fine, additional R.I. for 01 year.
U/s. 324 IPC	R.I. for 03 years with fine of Rs. 1,000/-, in default of payment of fine, additional R.I. for 01 year.
U/s. 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act')	Imprisonment for life, till natural death, with fine of Rs. 5,000/-, in default of payment of fine, additional R.I. for 01 year.
All the sentences are directed to run concurrently.	

3. Brief facts of the case are that on 24.07.2023, the mother of the victim lodged a report that her minor daughter aged about 6 years 10 months, who was residing in Potacabin Ashram, Errabore, was found missing during the intervening night of 22.07.2023 and on being found, she complained about pain and disclosed that one person had taken her to another room and committed sexual assault upon her. After lodging of the report, the police registered the offence under appropriate sections of IPC and Section 6 of the POCSO Act. The victim was sent for her medical examination to District Hospital, Sukma, where she was medically examined by PW-7/Dr. Srishti Barwa, who after her medical examination, gave report (Ex. P-8) and found bite mark on her cheek and opined regarding attempt of sexual assault. With respect to the age of the victim, the police have seized the relevant school record establishing her date of birth as 19.09.2016. The spot map (Ex. P-5) was prepared and other seizure proceedings were carried out by the police. The appellant was arrested on 27.07.2023 and he too was sent for his medical examination, wherein he was found capable of performing sexual intercourse. Statement of the witnesses under Section 161 Cr.P.C. and statement of the victim under Section 164 Cr.P.C. have been recorded and identification proceedings were also conducted during investigation. After completion of usual investigation, charge-sheet was filed before the learned trial Court against the appellant for the offence under Sections 450, 363, 366, 324, 376(AB) of IPC and Section 6 of the POCSO Act.

4. The learned trial Court has framed charges against the appellant for the offences under Sections 450, 363, 366, 324 and 376(AB) of IPC and Section 6 of the POCSO Act. The appellant denied the charges and claimed to be tried.

5. In order to prove the charge against the appellant, the prosecution has examined as many as 13 witnesses. Statement of the appellant under Section 313 of the Cr.P.C. has also been recorded, in which he denied the circumstances appearing against him, pleaded innocence and submitted that he has been falsely implicated in the case.

6. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court has convicted the appellant and sentenced him as mentioned in the earlier part of the judgment; hence, this appeal.

7. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. It is contended that there are material omissions and contradictions in the evidence of the prosecution witnesses and their testimony is not reliable to base conviction. It is further submitted that the identification of the appellant is doubtful inasmuch as the victim herself admitted that she was shown the appellant by the police prior to identification. There is no independent eyewitness to the incident and most of the prosecution witnesses have turned hostile. The medical evidence does not support the case of the prosecution as no internal injury was found on the body of the victim and the FSL report also does not corroborate the

allegation of sexual assault. It is further argued that the statement of the victim is not wholly reliable and appears to be the result of tutoring. Therefore, it is submitted that the appellant has been falsely implicated and is entitled to be acquitted of the charges levelled against him.

8. Per contra, learned State counsel would oppose the submissions made by learned counsel for the appellant and submit that the prosecution has successfully proved its case beyond reasonable doubt. It is contended that the testimony of the victim is cogent, consistent and inspires confidence, and there is no reason to disbelieve the same. The age of the victim has been duly proved by the prosecution on the basis of documentary evidence, establishing that she was below 12 years of age at the time of the incident. It is further submitted that even in absence of corroboration, the sole testimony of the victim is sufficient to sustain conviction in such cases. The medical evidence and other circumstances on record also lend support to the prosecution case. Therefore, the learned trial Court has rightly appreciated the evidence in its proper perspective and has convicted and sentenced the appellant, which calls for no interference by this Court.

9. We have heard learned counsel for the parties and considered their rival submissions made herein above and also gone through the records of the trial court with utmost circumspection.

10. The first and foremost question arises for consideration would be the age of the victim, as to whether on the date of incident, the victim was minor and less than 12 years of age or not.

11. The prosecution has relied upon the documentary evidence with respect to the age of the victim. The date of birth of the victim has been found to be 19.09.2016, which has been duly considered by the learned trial Court on the basis of record available in the case. As per the said document, on the date of incident i.e. 22.07.2023, the victim was aged about 6 years 10 months and 3 days. In cross-examination, no material has been brought on record to discredit the said document nor it has been suggested that the date of birth mentioned therein is false or incorrect. Further, from the evidence of the victim and her mother, it is apparent that the victim was of tender age at the time of incident. The age of the victim has also not been specifically challenged in their cross-examination. Therefore, from the oral as well as documentary evidence, it stands duly proved that the victim was minor and less than 12 years of age at the time of incident.

12. So far as the alleged offence is concerned, we again examined the evidence available on record. PW-1 is the victim of the offence. After verifying her competence, as required under the provisions of the POCSO Act, her evidence has been recorded by the learned trial Court. She stated in her evidence that while she was sleeping in the hostel during night, the appellant came there and took her from the room. Thereafter, the appellant removed her clothes and committed

bad act with her by inserting his private part into her private part. She further stated that the appellant bite her cheek and due to the said act, she suffered pain and bleeding. After the incident, she ran away and disclosed the same.

In cross-examination, though she stated that at the time of incident it was dark and she was sleeping, therefore she could not see as to who had taken her, but in her later statement she firmly stated that the appellant took her with him and committed rape upon her. She also stated that the person who committed the offence had beard and a protruded stomach. She maintained in her cross-examination that the person who committed the offence can be recognized by her. She denied the suggestion that she is deposing falsely at the instance of police or her parents. Despite lengthy cross-examination, nothing substantial has been elicited to discredit her testimony on the material particulars of the prosecution case.

13. So far as the contention of the defence regarding absence of injuries and lack of medical corroboration is concerned, it is well settled that in cases of sexual assault, particularly involving a minor victim, absence of injury on the private parts of the victim is not decisive. The medical evidence in the present case indicates that no internal injury was found, however, a bite mark was present on the cheek of the victim. The doctor has also opined that in cases of minor girls, even slight penetration or attempt thereof may not necessarily result in visible injuries and if there is delay in medical examination, such signs may

not be detected. It is a settled principle of law that the testimony of the victim, if found reliable and trustworthy, does not require corroboration from medical evidence in all cases. Therefore, merely on the ground that the medical report does not conclusively establish penetration, the otherwise cogent and consistent testimony of the victim cannot be disbelieved.

14. In the case of ***Satyapal v. State of Haryana***, 2009 (6) SCC 635, the Hon'ble Supreme Court has observed that:

> “18. In Modi's Medical Jurisprudence, 23rd Edn., at pp. 897 and 928, it is stated:
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> > "To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without the emission of semen, or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains.”

15. Further, in the case of ***Appabhai v. State of Gujarat***, 1988 Suppl. SCC 241, the Hon'ble Supreme Court has observed that:

> “13. ……..The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.”

16. In the case of '**State of Himanchal Pradesh v. Sanjay Kumar @ Sunny**' 2017 (2) SCC 51, it has been held by the Hon'ble Supreme Court that :

> "30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of

attracting social stigma. Another deterring factor which many times prevent such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long lasting effects on such victims.

31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such

cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {See Bhupinder Sharma v. State of Himachal Pradesh, (2003) 8 SCC 551}. Notwithstanding this legal position, in

> the instant case, we even find enough corroborative material as well, which is discussed hereinabove."

17. PW-2, the mother of the victim, has supported the prosecution case in material particulars. She has deposed that after the incident, the victim was found in a disturbed condition and immediately disclosed the occurrence to her. She has further proved that a report was lodged promptly thereafter. Her evidence provides immediate post-occurrence corroboration to the version of the victim and strengthens the credibility of the prosecution case by ruling out any possibility of deliberation or false implication after an unexplained delay.

18. PW-7, Dr. Srishti Barwa, who medically examined the victim, has proved the medical report (Ex. P-8). The medical examination revealed the presence of a bite mark on the left cheek of the victim. Though no internal injuries or forensic confirmation of semen or spermatozoa were found, the medical officer has opined that in cases involving minor victims, particularly where there is delay in examination and possibility of post-incident cleaning or washing, absence of such biological traces is not unusual. It is settled law that medical evidence is only corroborative in nature and cannot override the credible and trustworthy testimony of the victim.

19. With respect to identification of the appellant, the record reflects that identification proceedings were conducted during investigation. However, PW-1 has admitted in cross-examination that the appellant

was shown to her by the police prior to such proceedings. This does affect the evidentiary value of the test identification parade. Nonetheless, it is equally well settled that identification of the accused in Court during trial constitutes substantive evidence, and conviction can safely be based upon such identification when it is supported by reliable testimony of the victim and other surrounding circumstances.

20. The age of the victim stands proved through documentary evidence, particularly the school record showing her date of birth as 19.09.2016. On the date of incident i.e. 22.07.2023, the victim was approximately 6 years 10 months and 3 days old. The said documentary evidence has remained unchallenged in cross-examination. The oral evidence of PW-1 and PW-2 also supports that the victim was of tender age at the relevant time. Thus, the minority of the victim stands conclusively established.

21. The defence has argued that absence of internal injuries and non-confirmatory FSL report creates doubt in the prosecution case. However, in offences of sexual assault, particularly involving a child victim, absence of physical injuries or biological traces cannot be treated as determinative. The nature of medical evidence in the present case does not contradict the prosecution version; rather, it only indicates absence of certain forensic findings, which, in the facts of the case, does not dilute the consistent and cogent ocular testimony of the victim.

22. On a cumulative appreciation of the evidence of PW-1 (victim), PW-2 (mother), PW-7 (medical officer), and the documentary evidence regarding age, this Court finds that the prosecution has successfully established the substratum of its case. The testimony of the victim is cogent and substantially consistent on material particulars. The minor discrepancies pointed out by the defence do not go to the root of the matter so as to dislodge the prosecution case. The learned trial Court has, therefore, rightly appreciated the evidence in its correct perspective.

23. From the evidence on record, it has clearly come that the victim was residing in the Potacabin Ashram at the relevant time and the appellant was also present in the said premises during the intervening night of the incident. The victim (PW-1) has consistently stated that the appellant came to the room, took her away and committed sexual assault upon her, and she has also referred to the bite injury caused on her cheek during the occurrence. The testimony of PW-2, the mother of the victim, further establishes that after the incident the victim disclosed the occurrence to her, whereupon prompt action was taken and the matter was reported to the police. It is not the case of the defence that there exists any material on record to demonstrate that the victim was tutored or falsely implicated at the instance of her mother or any other person. The plea of false implication raised by the appellant remains a bald assertion, unsupported by any cogent or reliable evidence. The alleged suggestion regarding tutoring or police influence has not been substantiated by any material particulars so as

to discredit the consistent version of the victim and the corroborative testimony of the mother. In absence of any credible evidence suggesting animosity or motive for false implication, the consistent and cogent testimony of the victim, duly supported by the evidence of PW-2 and medical evidence, inspires confidence and does not suffer from any material infirmity warranting rejection.

24. From all the aforesaid evidences on record, it clearly emerges that the learned trial Court has rightly held that the appellant has committed the offence against the victim and that the victim was subjected to sexual assault by the appellant. The findings recorded by the learned trial Court are based upon a proper and lawful appreciation of the oral and documentary evidence available on record, particularly the consistent testimony of the victim, corroboration by her mother and medical evidence, as well as the settled principles of law governing appreciation of evidence in cases of sexual offences involving minor victims. This Court finds no perversity or illegality in the findings recorded by the learned trial Court warranting interference in the conviction of the appellant.

25. Minute examination of the evidence makes it clear that the appellant has committed the offence against the minor victim and subjected her to sexual assault, for which he has been rightly held guilty by the learned trial Court. This Court finds that the findings recorded by the learned trial Court with regard to conviction are based on proper appreciation of evidence and do not suffer from any illegality or

perversity warranting interference. Accordingly, the conviction of the appellant is hereby affirmed.

26. In the case of ***State of Punjab v. Gurmit Singh***, 1996 (2) SCC 384, the Hon'ble Supreme Court has held that :

> “21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. 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 inspirers 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."

27. Further, in the case of ***Prahlad v. State of Haryana***, 2015 (8) SCC 688, the Hon'ble Supreme Court has observed in para 17 and 18 that :

> "17. It has to be borne in mind that an offence of rape is basically an assault on the human rights of a victim. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. Everyone in any civilised society has to show

respect for the other individual and no individual has any right to invade on physical frame of another in any manner. It is not only an offence but such an act creates a scar in the marrows of the mind of the victim. Anyone who indulges in a crime of such nature not only does he violate the penal provision of the IPC but also right of equality, right of individual identity and in the ultimate eventuality an important aspect of rule of law which is a constitutional commitment. The Constitution of India, an organic document, confers rights. It does not condescend or confer any allowance or grant. It recognises rights and the rights are strongly entrenched in the constitutional framework, its ethos and philosophy, subject to certain limitation. Dignity of every citizen flows from the fundamental precepts of the equality clause engrafted under Articles 14 and right to life under Article 21 of the Constitution, for they are the “fon juris” of our Constitution. The said rights are constitutionally secured.

18. Therefore, regard being had to the gravity of the offence, reduction of sentence indicating any imaginary special reason would be an anathema to the very concept of rule of law. The perpetrators

> of the crime must realize that when they indulge in such an offence, the really create a concavity in the dignity and bodily integrity of an individual which is recognized, assured and affirmed by the very essence of Article 21 of the Constitution."

28. So far as the sentence awarded to the appellant is concerned, the appellant has been convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012, which provides for punishment for aggravated penetrative sexual assault, prescribing imprisonment for a term which shall not be less than twenty years, and which may extend to imprisonment for life, meaning imprisonment for remainder of natural life, along with fine. The offence in the present case, as found proved, falls within the ambit of aggravated penetrative sexual assault having regard to the age of the victim and the nature of allegations established on record. It is necessary to quote here the punishment provided for aggravated penetrative sexual assault under Section 6 of the POCSO Act, 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."

29. In this regard, learned counsel for the appellant would submit that in light of the decision rendered by the Supreme Court in the matter of ***Vipul Rasikbhai Koli Jankher v. State of Gujarat,*** 2022 LiveLaw (SC) 288, the sentence awarded to the appellant by the trial Court is liable to be reduced.

30. The Hon'ble Supreme Court, in the matter of **Vipul Rasikbhai** (supra) relying upon its earlier decisions rendered in the matters of **Dharambir v. State of Uttar Pradesh**, (1979) 3 SCC 645 and **Maru Ram v. Union of India**, (1981) 1 SCC 107 held in paragraphs 7 and 8 as under :-

> "7. In determining the quantum of sentence, the Court must bear in mind the circumstances pertaining to the offence and all other relevant circumstances including the age of the offender. The appellant has undergone actual imprisonment for a period of 11 years as on date.

In **Dharambir v. State of Uttar Pradesh** (supra) a two-Judge Bench of this Court specifically noted the impact of longer prison sentences on convicts who are young. Justice V R Krishna Iyer, speaking on behalf of the Court had noted the impact of prolonged incarceration:

> "2. We, however, notice that the petitioners in this case are in their early twenties. We must naturally give thought to the impact on these two young lives of a life sentence which means languishing in prison for years and years. Such induration of the soul induced by indefinite incarceration hardens the inmates, not softens their responses. Things as they are, long prison terms do not humanise or habilitate but debase and promote recidivism. A host of other vices, which are unmentionable in a judgment, haunt the long careers of incarceration, especially when young persons are forced into cells in the company of callous convicts who live in sex-starved circumstances. Therefore, the conscience of the court constrains it to issue appropriate directions which are

> policy-oriented, as part of the sentencing process, designed to make the purpose of punitive deprivation of liberty, constitutionally sanctioned, is decriminalisation of the criminal and restoration of his dignity, self-esteem and good citizenship, so that when the man emerges from the forbidding gates he becomes a socially useful individual. From this angle our prisons have to travel long distances to meet the ends of social justice."

8. In our view, the ends of justice would be met by directing that instead and in place of the sentence of life imprisonment which has been imposed for the conviction under Section 376, the appellant shall stand sentenced to a term of 15 years' imprisonment. We are not inclined to uphold the argument of the respondent-state that only the sentence of life imprisonment would meet the ends of justice. The principles of restorative justice finds place within the Indian Constitution and severity of sentence is not the only determinant for doing justice to the victims. In **Maru Ram v. Union of India** (supra), Justice V

R Krishna Iyer had poignantly highlighted the linkages between victimology and restorative justice :

> “74. ….. Some argument was made that a minimum sentence of 14 years' imprisonment was merited because the victim of the murder must be remembered and all soft justice scuttled to such heinous offenders. We are afraid there is a confusion about fundamentals in mixing up victimology with penology to warrant retributive severity by the back-door. If crime claims a victim criminology must include victimology as a major component of its concerns. Indeed, when a murder or other grievous offence is committed the dependants of other aggrieved persons must restore the loss of heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty. “Can storied urn or animated bust call to its mansion the fleeting breath ?” Equally emphatically, given perspicacity and freedom from

> sadism, can flogging the killer or burning his limbs or torturing his psychic being bring balm to the soul of the dead by any process of thanatology or make good the terrible loss caused by the homicide ? Victimology, a burgeoning branch of humane criminal justice, must find fulfillment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn. The State itself may have its strategy of alleviating hardships of victims as part of Article 41. So we do not think that the mandatory minimum in Section 433-A can be linked up with the distress of the dependents.

31. In the matter of "**Rajabala v. State of Haryana and others**" 2016 (1) SCC 463, the Hon'ble Supreme Court has observed in para 1 and 2 that:-

> "1. In Gopal Singh v. State of Uttrakahand[1], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the

doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner.We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The

> discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."
>
> [Emphasis supplied]

2. Seven years prior to that, in Shailesh Jasvantbhai v. State of Gujarat [2], it has been held that:-

> "7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of

"order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such

> serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N.[3]"
>
> [Emphasis supplied]
>
> And again:- "The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal"."

32. The learned trial Court has sentenced the appellant for the offences under Sections 450, 363, 366 and 324 of the IPC and Section 6 of the

Protection of Children from Sexual Offences Act, 2012. For the offence under Section 6 of the POCSO Act, the appellant has been sentenced to imprisonment for life till remainder of natural life along with fine. Under Section 6 of the POCSO Act, the minimum sentence prescribed is rigorous imprisonment for twenty years, which may extend to imprisonment for life, meaning imprisonment for remainder of natural life. The sentences awarded under the IPC provisions are within the statutory limits prescribed for the respective offences. Having regard to the peculiar facts and circumstances of the present case, the age of the victim, the nature of evidence on record, and the overall circumstances in which the offence was committed, this Court is of the considered view that it would meet the ends of justice if the sentence awarded to the appellant under Section 6 of the POCSO Act is reduced from imprisonment for remainder of natural life to rigorous imprisonment for the period of twenty years. The fine sentence and default stipulation awarded under Section 6 of POCSO Act is maintained. The conviction and sentences awarded under Sections 450, 363, 366 and 324 of the IPC is also maintained. All the sentences are directed to run concurrently.

33. The appeal is **partly allowed** to the extent indicated hereinabove.

34. The appellant is reported to be in jail. He shall serve the entire sentence as modified by this Court. He shall be entitled to the benefit of set-off of the period already undergone by him during investigation, trial as well as during the pendency of the present appeal.

35. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

36. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

alok/ved

HEAD NOTE

In cases of rape, the offence causes an incurable dent in the victim’s personal sovereignty; her testimony, if found credible and trustworthy, can be relied upon without corroboration, as she stands on a higher pedestal than an injured witness, and conviction can be sustained even in the absence of physical injuries on her body.