

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal No. 89/2018

Heera Lal S/o Shri Bhawnar Lal, age 25 years, R/o Gujaro Ki Dhani, Bhawanta Road, Kuchaman, District Nagor.
(At Present Confined in Central Jail Ajmer)

-----Accused-Appellant

Versus

State of Rajasthan through Public Prosecutor

-----Respondent

For Appellant(s)	:	Mr. Vinay Pal Yadav
For Respondent(s)	:	Mr. Amit Kumar Punia, P.P.

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

23/02/2026

Pursuant to order of this Court dated 18.02.2026, learned Public Prosecutor has submitted the status report dated 18.02.2026 furnished by the Station House Officer, Police Station Rupangarh, District Ajmer alongwith the custody certificate of the appellant, which is taken on record. He has also submitted the report dated 03.07.2025 furnished by the same Station House Officer whereby, the complainant namely Shri Mithu Ram has been informed of hearing of this appeal.

By way of this criminal appeal, the accused-appellant (for brevity "the appellant") has assailed the legality and validity of the judgment dated 14.02.2018 passed by the learned Special Judge, Protection of Children from Sexual Offences Act, Cases, Ajmer (for short "the learned trial Court") in Sessions Case No.72/2017

(06/2014), CIS No.477/2014 whereby, he has been convicted and sentenced as under:-

1. Under Section 5/6 read with Section 29 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the Act of 2012"):- Life imprisonment and fine of ₹1,00,000/-; in default whereof, six months' additional rigorous imprisonment.

The relevant facts, in brief, are that the complainant- Mithu Ram (PW-3) lodged a written report (Exhibit P.-1) on 13.11.2013 at about 4:00 PM with the Police Station Rupangarh, Tehsil Kishangarh, District Ajmer wherein, it was alleged that on that very day, at about 2:00 PM, his daughter, aged two years was kidnapped and subjected to rape by the appellant. Based thereupon, an FIR No.160 dated 13.11.2013 came to be registered for the offence under Section 376 IPC and under Sections 3, 4 and 8 of the Act of 2012. After investigation, the appellant was charge-sheeted under Sections 376 IPC and Sections 3/4 and 7/8 of the Act of 2012. Charges under Section(s) 5/6 read with Section 29 of the Act of 2012 were framed against him and after trial, the appellant has been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgment, learned counsel for the appellant contended that the victim could not be examined on account of her tender age but, the testimony of so-called eye witnesses namely Smt. Lichhmi (PW-1) and Ms. Resham (PW-2), suffers from contradictions and improvements on material aspects of the case.

However, eschewing merits of the case, learned counsel for the appellant submitted that he would feel contended if, while maintaining his conviction, the substantive sentence awarded to him is reduced to the period already undergone. He submitted that the appellant is in custody, including remission, for a period of more than thirteen years and ten months, his jail conduct has remained satisfactory and has a family with a poor financial condition to support. He, therefore, prayed that the appeal be allowed in the aforesaid terms.

Per contra, opposing the prayer, learned Public Prosecutor submitted that in view that the appellant has been found guilty of subjecting a two years old girl to rape, he is not entitled for any leniency qua sentence.

None appears for the complainant despite information.

Heard. Considered.

Vide judgment impugned dated 14.02.2018, the appellant has been held guilty of subjecting a minor girl aged two years to the offence of rape based on the ocular testimony of eye witnesses namely Smt. Lichhmi (PW-1) and Ms. Resham (PW-2). The allegation stands medically corroborated. Even otherwise, the findings have not been assailed on their merit.

However, we find force in the submissions made by the learned counsel for the appellant qua reduction in substantive sentence awarded to him. As per the custody certificate submitted alongwith the status report dated 18.02.2026, the appellant has already served the sentence, as on 18.02.2026, including remission, of thirteen years and ten months. His jail conduct has been reported to be satisfactory. As per the report dated

18.02.2026 furnished by the Station House Officer, Police Station Kuchaman City, District Didwana-Kuchaman, a part of the custody certificate dated 18.02.2026, the appellant has no criminal antecedent other than the instant case, has an old mother, the wife and three sons in his family with poor financial condition.

Vide judgment impugned, the appellant has been convicted under Sections 5/6 read with Section 29 of the Act of 2012. The incident pertains to the year 2013 and on the relevant date, the unamended Section 6 of the Act of 2012 provided the punishment 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.”

In the instant case, the appellant has been sentenced to life imprisonment, i.e., the maximum punishment that could have been awarded under Section 6 of the Act of 2012 on the relevant date.

A coordinate Bench of this Court has, in case of **Dushyant @ Chhota Lala @ Devendra versus State of Rajasthan: D.B. Criminal Appeal No.1038/2007**, vide its judgment dated 28.01.2015, while dealing with an identical situation wherein, the appellant was found guilty of subjecting a minor girl aged six years to the offence of rape, referring to and relying upon the precedential law of the Hon'ble Supreme Court of India in the cases of **Sunil Dutt Sharma versus State (Govt. of NCT of Delhi)** reported as **(2014) 4 SCC 375** and **Bavo @ Manubhai**

Ambalal Thakore versus State of Gujarat: AIR 2012

Supreme Court 979, held as under:-

"To fortify the submission, counsel for the appellant has placed reliance upon the judgment rendered by us in **Chanda Lal @ Harchanda Vs. State of Rajasthan DB Criminal Appeal No.947/2005 decided on 26th November, 2014**. Counsel for the appellant has submitted that in the case of Chanda Lal @ Harchanda (supra) age of the victim was also 5½/6 years this Court has dealt with the prayer of the counsel for Chanda Lal @ Harchanda by observing as under: -

"Shri N.A.Naqvi, Senior Counsel has also very fairly stated that taking the entire perspective of the case, he will only urge and pray before this Court that there were no aggravating circumstances available with the trial Court to award maximum sentence i.e. life imprisonment. The learned counsel has stated that to award the maximum sentence, there must be compelling reasons for the trial Court and such reasons are to be stated in the order whereby sentence is awarded. The learned Counsel has stated that recently Hon'ble Apex Court in case of **Sunil Dutt Sharma Vs. State (Govt. of NCT of Delhi)** reported as (2014) 4 SCC 375 while dealing with case of Section 304-B IPC had observed that Court should take notice of aggravating and mitigating circumstances while awarding sentence. The learned counsel for the appellant has also placed reliance upon **Bavo @ Manubhai Ambalal Thakore V. State of Gujarat AIR 2012 Supreme Court 979** to contend that Hon'ble Apex Court considering the agony of protracted trial has awarded minimum sentence of ten years. The

learned counsel states that in the present case, incident had taken place 11 years ago i.e. in the year 2003 and since then, appellant is in the corridors of the Court. It is contended before us that since, appellant was not released on bail during the trial and his sentence was also not suspended during appeal, thus he continue to languish behind the bars since 04th September, 2003, when his formal arrest was effected.

The learned Public Prosecutor except age of the prosecutrix could not divulge any other reason to persuade us to maintain the sentence awarded by the trial Court.

Hence, taking ratio of law laid in **Sunil Dutt Sharma (supra)** which in turn had relied upon **Sangeet and Another Vs. State of Haryana (2013) Volume 2 SCC 452** and taking aggravated circumstances i.e. age of the prosecutrix and the mitigating circumstance that the appellant is sole bread earner of the family, he is in the corridors of the Court from last 11 years, we follow the mandate of law laid in case of **Bavo @ Manubhai Ambalal Thakore (supra)** and while maintaining the conviction of the appellant, reduce the sentence of life imprisonment awarded upon the appellant by the trial Court to ten years rigorous imprisonment. However, we enhance the fine awarded by the trial Court from Rs.5,000/- to Rs. 10,000/- while maintaining the default clause prescribed by the trial Court."

We find no reason to take a contrary view and thus, following the judgment rendered by us in **Chanda Lal @ Harchanda (supra)** as he was in his youth when offence was committed, and is in corridors of Courts for about last nine years. Hence, we reduce the sentence of life imprisonment awarded upon the

appellant by the trial Court to ten years rigorous imprisonment. However, we enhance the fine of Rs.1000/- awarded by the trial Court to Rs. 10,000/- and in default of payment of fine, the appellant shall undergo one year rigorous imprisonment.

With the above modification and reduction in the sentence i.e from life imprisonment to ten years, the present appeal stands disposed of by enhancing fine from Rs. one thousand to Rs. ten thousand. The appellant in default of payment of fine, shall undergo one year rigorous imprisonment."

This Court has, in the case of **Ranjeet S/o Chothmal versus State of Rajasthan through P.P.: D.B. Criminal Appeal No.481/2018**, vide its order dated 02.02.2026 wherein, the appellant was held guilty of offence under Section 376(2)(i) IPC read with Section 5/6 of the Act of 2012 involving a minor girl aged five years, proceeded to hold as under:-

"In view of the fact that a five years girl was subjected to aggravated penetrative sexual assault, normally, we would not have interfered with the sentence of life imprisonment but, there are mitigating circumstances in the instant case in favour of its reduction. As per the status report dated 30.01.2026 furnished by SHO, Police Station Vigyan Nagar, District Kota City, parents of the appellant have already expired and he has a wife and three daughters. The appellant was aged about thirty two years at the time of commission of offence, i.e., in the year 2013 rendering him aged about forty five years as on date. The status report does not reflect that there is any other male member in the family to its take care. From the material on record, it is also reflected that he has no other criminal antecedent to his credit and his jail conduct has remained satisfactory. He remained on parole twice and has never misused the liberty. The appellant has already served the substantive sentence of more than fourteen years including remission. Their Lordships have, in the

Resultantly, this appeal is partly allowed in following terms:-

- (1) While maintaining conviction of the appellant recorded by the learned Special Judge, Protection of Children from Sexual Offences Act, Cases, Ajmer in Sessions Case No.72/2017 (06/2014), CIS No.477/2014, the substantive sentence awarded to him is reduced to the period already undergone.
- (2) The appellant be set at liberty forthwith if not required to be detained in any other case.
- (3) The fine part is maintained.
- (4) The appellant is granted three months' time to pay the fine failing which the learned trial Court shall ensure that he serves the default sentence.

In view of the provisions of Section Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023 (437-A CrPC), the appellant- **Heera Lal S/o Shri Bhawnar Lal** is directed to furnish a personal bond in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in that event of Special Leave Petition being filed against the judgement or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

Pending application(s), if any, also stands disposed of accordingly.

(SAMEER JAIN),J

(MAHENDAR KUMAR GOYAL),J