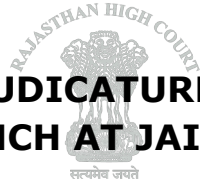


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Criminal Appeal (Db) No. 366/2018

Mahesh Kumar S/o Shri Mangalchand, Aged About 22 Years, R/o
Nagalkalan, Police Station Govindgarh, District Jaipur.
(Presently Lodged In Central Jail, Jaipur)

----Appellant/Accused

Versus

State Of Rajasthan, Through PP.

----Respondent

For Appellant(s)	:	Mr. Deepak Chauhan Mr. Vishal Pareek Mr. Harsh Joshi Mr. Sahil Rajpurohit Mr. Ashok Chaudhary
For Respondent(s)	:	Mr. Amit Punia, PP

**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL**

Order

18/03/2026

(Per Hon'ble Mr. Justice Mahendar Kumar Goyal)

Learned Public Prosecutor has submitted the status report dated 27.02.2026 submitted by SHO, Police Station Govindgarh, District Jaipur (Rural) which is taken on record.

This appeal is directed against the judgment dated 07.08.2018 passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 (for brevity 'learned trial Court') in Sessions case No. 24/2017 (220/14) NCV No. 183/17 whereby the accused-appellant (for short 'the appellant') has been convicted and sentenced as under:-

1. **Section 323 IPC:-** 6 months rigorous imprisonment and fine of Rs.1,000/-; in default whereof, 15 days' additional rigorous imprisonment.

2. **Section 376(2)(i) IPC:-** Life imprisonment which shall mean imprisonment of remainder of the natural life of the accused and fine of Rs.50,000/-; in default whereof, one year's additional rigorous imprisonment.

The relevant facts in brief are that Smt. Chawli (PW-1) submitted a written report (Ex.P1) dated 15.03.2014 at about 4.00 PM with the SHO, Police Station Govindgarh, District Jaipur (Rural) alleging therein that the appellant had subjected her minor daughter aged 12-13 years to rape. Based thereupon, an FIR No. 97 dated 15.03.2014 came to be registered for the offence under Section 376(2)(i) IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'Act of 2012'). After investigation, the appellant was charge-sheeted. Charges under Sections 341, 323 and 376(2)(i) IPC and Sections 3/4 of Act of 2012 were framed. After trial, he has been convicted and sentenced, as stated hereinabove.

At the threshold, eschewing merits of the case, learned counsel for the appellant prayed that while maintaining the conviction, the substantive sentence awarded to him may be reduced to the period already undergone.

Addressing the Court on mitigating circumstances obtaining in the instant case for reducing the sentence, he submitted that the incident is alleged to have taken place at 7.00 AM on 15.03.2014 and as per the testimony of prosecutrix (PW-2), the

police had reached her home at 8.00 AM but, no FIR was lodged at that time and a written report was submitted as late as at about 4.00 PM. Inviting attention of this Court towards her cross-examination, he submitted that she has admitted to have made her statement under Section 164 Cr.P.C. before the Magistrate as tutored by the Police personnel. She has further admitted that she was informed by the police that if the statement was not made as told by them, no case would be made out and therefore, she had made the statement as told to her by the police personnel. He further contended that she has also admitted that she had supplied a fresh underwear to the investigating agency and not the one worn by her at the time of incident as requested. Learned counsel contended that the DNA report remained inconclusive. He, therefore, prayed that the appeal be partly allowed in terms as prayed hereinabove.

Per contra, learned Public Prosecutor, opposing the prayer, submitted that the appellant has been found guilty of subjecting a minor girl to rape and, therefore, he does not deserve any leniency qua sentence.

Heard. Considered.

Since, the learned counsel for the appellant has given up the challenge to the impugned judgment to the extent of findings of guilt, we confirm it to the extent of conviction of the appellant. We, now, consider the prayer made by the learned counsel for the appellant to reduce the sentence.

As per the arrest memo (Ex.P12), the appellant was aged about 22 years at the time of incident. The custody certificate

appended with the status report dated 27.02.2026 reflects that as on 26.02.2026, the appellant had served the actual sentence of 11 years 8 months and 15 days and the total sentence of 13 years and 25 days including remission. It is also revealed from the documents appended with the status report that he has successfully availed the benefit of first parole of 20 days from 07.06.2023 to 26.06.2023, 30 days' second regular parole from the 02.07.2024 to 31.07.2024 and third regular parole for 40 days from 06.08.2025 to 13.09.2025 which is also evident of his good jail conduct. As per the status report, the appellant has no other criminal antecedent.

At the relevant time, i.e. 15.03.2014, the minimum sentence which could be awarded under section 376(2)(i) was 10 years whereas, under section 4 of the Act, 2012 it was seven years.

Their Lordships have in the case of **Nawabuddin Vs. State of Uttarakhand: MANU/SC/0165/2022**, held as under:

[illegible]

However, the punishment provided for the offence under Section 6, as it stood prior to its amendment and at the time of commission of the offence in the instant case for aggravated penetrative sexual assault was rigours 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. Now as per the amended Section 6 with effect from 16.08.2019, the minimum punishment provided is twenty years and 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. Therefore, at the relevant time the minimum punishment provided for the offence Under Section 6 of the POCSO Act, 2012 was ten years RI

and which may extend to imprisonment for life. It is reported that today the Accused is aged 70-75 years of age and it is also reported that he is suffering from Tuberculosis (TB). Therefore, considering such mitigating circumstances we are of the opinion that if the life sentence is converted to fifteen years RI and the fine imposed by the Trial Court confirmed by the High Court to be maintained, it can be said to be an adequate punishment commensurate with the offence committed by the accused."

In the backdrop of aforesaid precedential law and the mitigating circumstances as put forward by the learned counsel for the appellant as also discussed hereinabove, we think that if the substantive sentence awarded is reduced to the sentence already served by the appellant, it would serve the ends of justice.

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, 2012 Jaipur vide judgment dated 07.08.2018 in Sessions Case No.24/17 (220/14), NCV No.183/2017, 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 two 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 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant namely **Mahesh Kumar S/o Shri Mangalchand** 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 judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J

Anu/80