

06.08.2026

Item No.1-2
VC Room

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Port Blair

(Via Video Conference)

(From Principal Bench)

CRA (DB) 6 of 2024

The State
Vs.
Shri Mukesh Kumar Yadav

With

CRA (DB) 4 of 2024

Ms. X (Victim lady)
Vs.
The State (UT of A&N Islands)

For the convict:

Mr. Md. Tabraiz

.....Advocate

For the State:

Mr. Sumit Kr. Karmakar

.....Advocate

**For the victim/De facto
complainant:**

Mr. Deep Chaim Kabir, Sr. Adv,

Mr. S. Ajith Prasad

.....Advocates

Dictated by Apurba Sinha Ray, J.

1. By a judgment dated 23.04.2026 we convicted the accused Mukesh Kumar Yadav under Sections 376/312 IPC after reversing the judgment of acquittal dated 24.04.2024 passed by the Learned Sessions Judge, Andaman and Nicobar Islands at Port Blair in connection with Sessions Case No. 32 of 2015

corresponding to Sessions Trial No. 16 of October, 2015. By our aforesaid judgment dated 23.04.2026 we directed the convict Mukesh Kumar Yadav *“to surrender before the learned Trial Judge by 22nd May, 2026 and on his surrender the learned trial judge shall take him into custody and shall pronounce and impose the proper sentence under Sections 376/312 IPC after hearing on the point of sentence in accordance with law”*.

2. On an appeal filed on behalf of the convict being criminal appeal nos. 2863-2864 of 2026 arising out of SLP (Crl.) Nos. 8660-61 of 2026, the Hon'ble Apex Court was pleased to set aside the aforesaid direction of this Court by which the convict was directed to surrender before the learned Trial Judge for receiving sentence under Sections 376/312 IPC. The Hon'ble Supreme Court by order dated 26th May, 2026 directed this Court to hear the convict on the point of sentence and thereafter to pass appropriate order of sentence.
3. Accordingly, on 03.08.2026 we heard the convict Mukesh Kumar Yadav who was produced in Court Remote Point, Port Blair, Andaman and Nicobar Islands on virtual platform after being identified by his learned counsel Mr. Md. Tabraiz. After communicating the order of conviction and possible quantum of sentence as prescribed in Section 376 and 312 of the IPC, 1860 the convict was taken into

custody. Thereafter, we recorded the submission of the convict, his learned senior counsel Mr. Md. Tabraiz, Mr. Kabir, learned senior advocate appearing for the de facto complainant and also Mr. Karmakar, the learned State counsel which are quoted herein below:

“2. The convict has submitted that he has got married and he has a five-year old daughter. He has further submitted that the victim has also got married and she has been living in her matrimonial home. He has prayed for a lenient term of sentence since according to Mr. Md. Tabraiz, learned senior counsel appearing for the convict, the alleged offence was committed in the year 2013 and at that time the law of the land permitted that in appropriate cases the Court can give lesser punishment after recording the reasons therefor.

3. Mr. Kabir, learned Senior Advocate appearing for the de facto complainant, does not dispute the existence of such provision of law at the relevant point of time.

4. Mr. Kabir, however, submitted that considering the degree of trauma that the victim lady went through, maximum punishment, as permissible under the law, should be imposed on the convict.

5. Learned Advocate for the State adopts the argument advanced by Mr. Kabir, learned Senior Counsel appearing for the de facto complainant/victim.

6. Hearing on the point of sentencing is concluded.”

4. The convict was sent to Central Correctional Home at Prothrapur through learned Sessions Judge, Andaman and Nicobar Islands at Port Blair with necessary directions so that the superintendent of the concerned Correctional Home can produce the convict this day at 1 pm in the same Court Remote Point, Port

Blair with escort for the purpose of Court pronouncing its verdict on the point of sentence.

5. Accordingly, the convict Mukesh Kumar Yadav is produced from the Central Correctional Home, Prothrapur with escort to the Court Remote Point at Circuit Bench of High Court at Calcutta at Port Blair, Andaman & Nicobar Islands. The learned Counsel of the parties are present on virtual platform.
6. We have considered the submission of the convict and his learned counsel. According to the convict, he has got married and he has a 5 year old daughter. He has further submitted that the victim has also got married and she has been living in her matrimonial home. The convict has prayed for a lenient term of sentence.
7. The convict's mitigating circumstances, as divulged by him, are that he has been married and out of the said wedlock one daughter was born who is aged about 5 years. Mitigating circumstances for the convict, as indicated by him, also includes that the victim has also got married and she has been living in her matrimonial home and therefore a lenient term of sentence will be appropriate at this stage.
8. It is true that the convict is a married man and the father of a five-year-old daughter. However, the allegation against him is that he committed sexual assault against a lady constable at the location where both were posted. If the convict was genuinely concerned about the well-being of his own daughter,

he should have shown greater respect towards a female colleague. The allegation specifies that he made a false promise of marriage, leading to cohabitation. Furthermore, when the victim became pregnant as a result, he manipulated her into taking pregnancy termination pills on two occasions to protect his own family's reputation. Consequently, the convict demonstrates a self-centered character, prioritizing his family's standing without regard for how his actions would destroy the reputation of another woman and her family in society. Therefore, the aggravating circumstances in this case far outweigh the mitigating factors discussed above.

9. Another mitigating factor submitted by the convict is that the victim has since married and is residing in her matrimonial home. However, the convict overlooks a crucial aspect of this matter: although the victim has married elsewhere, she continues to fight tooth and nail to secure justice from the court. She was actively represented through her learned counsel even during the sentencing hearing. Therefore, the victim's marriage to another gentleman does not diminish or mitigate the aggravating circumstances caused by the convict.

10. Mr. Tabraiz, learned senior counsel for the convict, has drawn our attention to the provision of Section 376 (1) which was prevalent in 2013. Section 376 (1) is quoted hereinbelow:

“376 (1) Whoever, except in the cases provided for in subsection (2), commits rape, shall be punished with rigorous 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.”

11. Mr. Md. Tabraiz, learned Senior Counsel has further submitted that as the offence was committed in the year 2013, and at that time the law of the land permitted that in appropriate cases, the Court can give lesser punishment after recording the reasons therefore, in this case also the Court may pass sentence lesser than the prescribed minimum.
12. Mr. Kabir and Mr. Karmakar, on the other hand, submitted that the victim lady went through a serious trauma during the relevant years and therefore, the convict should be sentenced with maximum punishment as permissible under the law.
13. Mr. Tabraiz, learned Senior Counsel appearing for the convict, further submitted that if the convict were sentenced to a term of imprisonment not exceeding three years, it might prevent his dismissal from service.
14. After giving anxious consideration to the prevalent law in 2013 as well as the submissions of Mr. Md. Tabraiz, it appears that the power of the Court to impose a lesser punishment for “adequate and special reasons” was done away with upon the promulgation

of the Criminal Law (Amendment) Act, 2013, with effect from February 3, 2013. The offences in the case at hand were committed from the month of June 2013 onward; therefore, this Court lacks the statutory authority to impose a sentence below the mandatory minimum. For a better understanding of this principle, we refer to the relevant observations of the Hon'ble Apex Court in the judgment of **Thongam Tarun Singh vs. State of Manipur reported in (2019) 18 SCC 77**. The relevant observations of the Hon'ble Apex Court is quoted hereunder:

“11. So far as quantum of sentence is concerned, Section 376 IPC punishment for rape has been amended by Act 13 of 2013 (with retrospective effect from 3-2-2013). As per the amended section, the minimum sentence of seven years is provided for the offence of rape which may extend to imprisonment for life. After the amendment, no discretion is vested with the Court to reduce the sentence. Prior to the amendment (Amendment Act 13 of 2013) for the punishment under Section 376(2)(g) IPC, it provided for rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. Prior to the amendment (Amendment Act 13 of 2013) by the proviso to Section 376(2) IPC, the Court has been vested with the discretion that for adequate and special reasons to be mentioned in the judgment, to impose a sentence of imprisonment of either description for a term of less than ten years.”

15. In the above judgment the incident occurred on 20.10.2012 and after considering the existing law

prevalent at that point of time, the Hon'ble Apex court reduced the sentence from 15 years' imprisonment to 8 years. However, the Hon'ble Court has mentioned in para 11 of the judgment that after the amendment no discretion is vested with the Court to reduce the sentence. In the case in hand the offence took place from the month of June, 2013 onwards and therefore, such provision of reduction of sentence to less than the minimum punishment on adequate and special reasons was not available.

16. We have carefully considered the material on record.

We have already noted the nature and manner of the offences committed by the convict. Being a police constable, he failed to uphold the dignity of his position within a disciplined force—where discipline in one's personal life, no less than in official duty, is a *sine qua non*. The convict paid no regard to the reputation or well-being of the victim, who was a colleague and a fellow lady constable posted at the same police station.

17. Last but not least, we have also considered the applicability of Section 360 of the Code of Criminal Procedure (Cr.P.C.), which governs whether a convict may be extended the benefit of probation for good conduct.

18. Upon a meticulous review of the record, it is clear that although the convict was a member of a

disciplined police force, he committed a heinous crime against a female colleague. As a member of a disciplined service, the convict was under a strict statutory and moral obligation not only to safeguard the lives and rights of citizens, but also to uphold and protect the modesty and dignity of women in society.

19. Moreover, we are not inclined to extend the benefit of probation under Section 360 Cr.P.C. to the convict for the following reasons:

Firstly, where the legislature has prescribed a mandatory minimum sentence for a serious statutory offence, the benefit of release on probation under Section 360 Cr.P.C. cannot be invoked to bypass or dilute the statutory mandatory minimum period of imprisonment.

Secondly, the crime of sexual assault is an offence of severe moral turpitude that deeply impacts the social order. Extending leniency in a crime of such grave nature would defeat the retributive and deterrent objectives of the criminal justice system.

Thirdly, the convict, being a police official, occupied a position of trust. Commission of such an offence by a custodian of law against a colleague posted at the same police station severely erodes public confidence in the law enforcement mechanism.

Finally, suspending or withholding the sentence of a police personnel convicted of a heinous sexual offence

on the ground of probation would send a wrong message to society, undermining general deterrence and leading to serious ramifications for the rule of law.

20. Accordingly, we decline to grant the convict the benefit of probation under Section 360 Cr.P.C.

21. Therefore, upon a holistic consideration of the matter, we deem it appropriate to impose the minimum sentence prescribed under Section 376(1) of the Indian Penal Code as per the law prevailing in 2013.

22. Accordingly, the convict, Mukesh Kumar Yadav, is sentenced to undergo seven years of rigorous imprisonment for the commission of the offence punishable under Section 376 of the Indian Penal Code (IPC), along with a fine of ₹1,00,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for six months.

23. He is further convicted under Section 312 of the IPC and is sentenced to undergo one year of rigorous imprisonment, along with a fine of ₹25,000/-, and in default of payment of fine, to undergo further rigorous imprisonment for three months.

24. Both substantive terms of imprisonment imposed under Sections 376 and 312 of the IPC shall run concurrently.

25. Ninety percent (90%) of the fine amount, if realized, shall be disbursed to the victim as compensation.
26. The period of detention already undergone by the convict during the investigation, inquiry, or trial, if any, shall be set off against the period of imprisonment under Section 428 of the Code of Criminal Procedure (Cr.P.C.).
27. The convict is also informed of his right to prefer an appeal before the Hon'ble Supreme Court of India with the assistance of the Supreme Court Legal Services Committee or the National Legal Services Authority (NALSA).
28. The Registrar, Port Blair is directed to supply a free copy of this order to the convict at once.
29. The Sessions GRO of the learned District and Sessions Judge, Andaman & Nicobar Islands at Port Blair is directed to take the convict in his custody and keep him in the Sessions Judge's Lock Up at Port Blair for the time being. He is further directed to place the copy of this order to the learned Sessions Judge, Andaman and Nicobar Islands at Port Blair who will issue a jail warrant in accordance with law indicating the terms of sentence imposed upon the convict by this Bench and send him to Central Correctional Home at Prothrapur for serving out the sentence.
30. Trial Court Record be sent back to the learned Trial Court at once alongwith a copy of this order.

31. A Copy of this order be sent to Lieutenant Governor, Andaman and Nicobar Islands and DGP, Andaman and Nicobar Islands for information and necessary action.
32. A copy of this order be sent to the learned Registrar of Circuit Bench of High Court at Calcutta at Port Blair at once for information and necessary action. He is further directed to submit a compliance report before this Court after completion of all formalities as indicated above by 5 p.m. this day through the Learned Registrar General, High Court at Calcutta.
33. Accordingly, **CRA (DB) 6 of 2024** and **CRA (DB)4 of 2024** are hereby disposed of.
34. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.
35. Urgent photostat certified copies of this Order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)