



1CRA-6751-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL  
&  
HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY  
ON THE 28<sup>th</sup> OF NOVEMBER, 2025  
CRIMINAL APPEAL No. 6751 of 2023  
*THE STATE OF MADHYA PRADESH*  
*Versus*  
*SHASHIKANT JOGI*

Appearance:

*Shri Manas Mani Verma - Government Advocate for the  
appellant/State.*

ORDER

*Per. Justice Vivek Agarwal*

This Criminal Appeal is filed by the State being aggrieved of the judgment dated 24.01.2023 passed by learned Special Judge (POCSO Act), Tikamgarh (M.P.) in Special Case No. 27 of 2022, whereby learned trial Court has convicted and sentenced the accused Shashikant Jogi (respondent herein) as under:

| Conviction |           | Sentence     |                   |                              |
|------------|-----------|--------------|-------------------|------------------------------|
| Section    | Act       | Imprisonment | Fine if deposited | Imprisonment in lieu of fine |
| 376(2)(n)  | IPC       | Nil          | Nil               | Nil                          |
| 5(L)/6     | POCSO Act | 20 years RI  | Rs.20,000/-       | R.I. for 01 year             |

2. Learned Government Advocate for the State submits that the



accused has been sentenced only under Section 5(L)/6 of POCSO Act and has been directed to under go rigorous imprisonment for a period of 20 years and fine of Rs.20,000/- with default stipulations of one year rigorous imprisonment.

3. It is further submitted that, the appeal of the State is only on the ground that, once conviction was recorded under Section 376(2)(N) IPC, then there was no reason for the trial Court to not have sentenced the accused under Section 376(2)(N) of IPC.

4. When this Court drew attention of learned Government Advocate towards the Provisions of contained in Section 42 of the POCSO Act, 2012, which it appears was not gone through by the counsel who prepared this memo of Appeal on behalf of the State before preparing the memo of appeal, then it is evident that Section 42 of the POCSO Act, 2012 reads as under:

**"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, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), 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."*



5. When these provisions are taken into consideration, then it is evident that, statute itself provides that 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.

6. Section 376(2)(N) of IPC provides that, a person who commits rape repeatedly on the same woman, 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, whereas Section 6 of the POCSO Act, 2012 provides for punishment 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 the natural life of that person and shall also be liable to fine, or with death.

7. Thus, it is evident that, punishment prescribed under Section 6 of POCSO Act or offence under Section 5(L) of the POCSO Act is higher in degree, then the one prescribed under Section 376(2)(N) of IPC, therefore, when provisions contained in Section 42 of POCSO Act which deals with alternate punishment is taken into consideration, it is apparent that, learned counsel who prepared the memo of appeal, did not



bother to even go through the basic provisions of the POCSO Act and mechanically prepared the appeal, therefore, appeal having been filed without application of mind deserves to fail and is **dismissed**.

8. For bothering the system without there being any justification, cost of Rs.20,000/- is imposed on the State to be paid to the High Court Legal Services Committee for the utilization of such cost for the benefit of poor litigant. The Cost shall not be debited to the public exchequer but to be recovered from the delinquent official. State shall first deposit the cost and will be free to recover it from the delinquent officer/officers.

9. Let an enquiry be also conducted against the Law Officer of the Law & Legislative Affairs Department who had given opinion and sanction for filing of appeal without reading the provisions under Section 42 of the POCSO Act.

10. In case the delinquent is a judicial Officer then, Registrar General of the High Court and if the delinquent is non-Judicial Officer then the Chief Secretary, Law and Legislative Department is directed to call for the explanation, conduct a departmental enquiry and punish the delinquent Officer who had failed to apply his mind before giving permission to file appeal and submit the Action Taken Report before this Court within a period of 60 days from today. Enquiry be also conducted against the DPO/AGP who had given the opinion for filing the appeal on behalf of the State.



11. Let Enquiry Report in a sealed cover be produced before the Court for its perusal in its Chamber.

**(VIVEK AGARWAL)**  
**JUDGE**

**(RAMKUMAR CHOUBEY)**  
**JUDGE**

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