

Gyanendra Singh @ Raja Singh

v.

State of U.P.

(Criminal Appeal No(s). 1257 of 2025)

07 March 2025

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the conviction of the appellant ought to have been recorded under the IPC or whether the provisions of the Special law, i.e., Section 42A of Protection of Children from Sexual Offences Act, 2012, would prevail thereby, vitiating the sentence awarded to the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC.

Headnotes[†]

Sentence/Sentencing – Protection of Children from Sexual Offences Act, 2012 – ss.42, 42A – Interpretation – Penal Code, 1860 – ss.376(2)(f) and 376(2)(i) – Appellant convicted for offences u/ss.376(2)(f) and 376(2)(i), IPC and ss.3/4, POCSO Act, life imprisonment awarded – Appeal rejected by High Court with certain modification – Plea of the appellant that as the offences were overlapping, POCSO Act being special law would prevail over IPC and hence, the appellant could not have been convicted for both the offences:

Held: Conviction of the appellant for the offences punishable u/ss.376(2)(f) and 376(2)(i), IPC and ss.3/4, POCSO Act is wholly justified – Under s.42, POCSO Act, when the alleged acts or omissions constitute offence both under the IPC and the POCSO Act then, the law which prescribes the punishment of greater degree would have to be applied – s.42 and s.42A, POCSO Act operate in completely different spheres – s.42A, POCSO Act cannot be interpreted so as to override the scope and ambit of enabling provision, i.e., s.42, POCSO Act – Since, ss.376(2)(f) and 376(2)(i), IPC provide for a higher sentence as compared to ss.3/4, POCSO Act, the trial Court was justified in choosing

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Gyanendra Singh @ Raja Singh v. State of U.P.

the former to award punishment in terms of s.42, POCSO Act – However, the High Court erred in directing that the appellant would have to serve life imprisonment for remainder of his natural life as provided u/ss.376(2)(f) and 376(2)(i), IPC – Under these provisions it is not mandated that the convict must be awarded life imprisonment – The sentence of life imprisonment awarded by the trial Court for the offence u/ss.3/4, POCSO Act revived – For offences punishable u/ss.376(2)(f) and 376(2)(i), IPC, the accused to undergo imprisonment for life, as awarded by the trial Court, without the stipulation that the life term will enure till the natural life of the appellant and fine, as directed. [Paras 19, 21, 23, 25, 26, 30, 31]

Case Law Cited

Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka [2023] 4 SCR 669 : (2023) 9 SCC 817; *Navas @ Mulanavas v. State of Kerala* [2024] 3 SCR 913 : 2024 SCC Online SC 315; *Veerendra v. State of Madhya Pradesh* [2022] 4 SCR 225; *Swamy Shraddananda v. State of Karnataka* [2008] 11 SCR 93 : (2008) 13 SCC 767 – referred to.

List of Acts

Protection of Children from Sexual Offences Act, 2012; Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Sections 42, 42A of Protection of Children from Sexual Offences Act, 2012; Sections 376(2)(f) and 376(2)(i) of Penal Code, 1860; Offence both under the IPC and the POCSO Act; Punishment of greater degree; Sentence of life imprisonment; Imprisonment for remainder of person's natural life; Rigour of the sentence awarded increased; Sentence of life imprisonment; Life term; Till the natural life; Special law; General law.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1257 of 2025

From the Judgment and Order dated 02.08.2019 of the High Court of Judicature at Allahabad in JA No. 6590 of 2016

Digital Supreme Court Reports**Appearances for Parties**

Advs. for the Appellant:

R Balasubramanian, Sr. Adv., Santosh Kumar Pandey,
B Venkatraman, Debasish Mishra.

Adv. for the Respondent:

Adarsh Upadhyay, Ms. Pallavi Kumari, Shashank Pachauri.

Judgment / Order of the Supreme Court**Judgment**

Mehta, J.

1. Heard.
2. Delay condoned.
3. Leave granted.
4. This appeal, preferred on behalf of the appellant-accused¹, takes an exception to the judgment dated 2nd August, 2019, passed by the High Court of Judicature at Allahabad² dismissing Jail Appeal No. 6590 of 2016 preferred by the appellant.
5. The Division Bench, while dismissing the appeal, affirmed the judgment and order dated 16th September, 2016, passed by the learned Additional Sessions Judge Court No.2, Fatehpur³ in Sessions Trial No. 06 of 2016, arising out of Case Crime No. 236 of 2015 registered at Police Station Chandpur, District Fatehpur, convicting the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) of the Indian Penal Code, 1860⁴ and Sections 3/4 of Protection of Children from Sexual Offences Act, 2012⁵. The appellant was awarded punishment of imprisonment for life along with a fine of Rs. 25,000/-. In default of payment of aforesaid fine, it was ordered that the appellant was to undergo two months of additional imprisonment on each count.

¹ For short, 'appellant'.

² Hereinafter, being referred to as the 'High Court'.

³ Hereinafter, being referred to as the 'trial Court'.

⁴ Hereinafter, being referred to as 'IPC'.

⁵ Hereinafter referred to as 'POCSO Act'.

Gyanendra Singh @ Raja Singh v. State of U.P.

6. Brief facts of the case are that the appellant, Gyanendra Singh @ Raja Singh, is the father of victim (PW-2) who was of about 9 years at the time of the incident. On 28th October, 2015, an FIR⁶ came to be lodged by the wife of the appellant, Smt. Rajani, at P.S. Chandpur, District Fatehpur, alleging *inter alia*, that she had gone to her parental house about two months ago with her youngest son Krishna, aged about 2 years, leaving her minor daughter, the victim herein, aged about 9 years, and a son named Vishnu, aged about 4 years at her matrimonial house in the custody of her husband, *i.e.*, the appellant. On 22nd October, 2015 at about 8:00 p.m., the appellant enticed the minor victim (PW-2) and took her to the rooftop and committed sexual assault upon the child. She was detained on the roof by threatening her. The minor victim came down from the roof in the morning and narrated the whole incident to her grandfather, Ram Naresh Singh (PW-3), who, in turn, telephonically informed the informant about the occurrence. The appellant went absconding after the incident. The informant (PW-1) got frightened because of the incident and did not go to her matrimonial home. She somehow mustered the courage and approached the police station along with her father Ranjeet Singh and father-in-law, Ram Naresh Singh (PW-3), as well as the victim and filed the FIR⁷ against the appellant. It was, *inter alia*, urged in the FIR that the child victim should be medically examined. It was also stated in the FIR that a day prior to the lodging of the report, the informant had approached the District Headquarter, Fatehpur from where she was redirected to approach P.S. Chandpur for lodging the FIR.
7. Investigation was undertaken by Rajesh Kumar Singh (PW-7), Investigating Officer (I.O.). The minor victim was subjected to medical examination by Dr. Manisha Shukla (PW-4) who opined that no external injury was found on the body of the victim. On internal examination, redness was seen present over the labia minora in the vagina of the victim and her hymen was intact. Forensic material was collected from the oral, vaginal, vulval and anal swab of the minor victim, slide was prepared and sent for pathological examination, D.N.A. mapping and examination of presence of spermatozoa. The place of the incident was inspected, the site plan was prepared and accordingly, the appellant was arrested.

6 (Exh. Ka.1) FIR Case Crime No. 236 of 2015.

7 *Supra* note 4.

Digital Supreme Court Reports

8. The certificate of date of birth was collected from the school. The child was examined under Section 164 of Code of Criminal Procedure, 1973⁸ wherein she made an emphatic allegation of penetrative sexual assault against the appellant.
9. Investigation was concluded and the charge-sheet was filed against the appellant in the trial Court for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC and Sections 3/4/5 of the POCSO Act. The trial Court framed charges against the appellant for the said offences, who pleaded not guilty and claimed trial. As many as 9 witnesses were examined and 8 documents were exhibited by the prosecution in its evidence. After the completion of prosecution evidence, the appellant was questioned under Section 313 CrPC and was confronted with the allegations as appearing in the prosecution case, which the appellant denied and claimed to have been falsely implicated. The appellant stated that he had earlier lodged an FIR against his wife, the informant herein, and his father (PW-3) and therefore, a false case had been registered against him. He further stated that at the time of the incident, the child was residing with his sister. No evidence was led from the side of the defence.
10. Upon hearing the arguments advanced by the defence counsel and the public prosecutor and appreciating the evidence available on record, the learned trial Court convicted and sentenced the appellant as stated above.⁹ The appeal preferred by the appellant was rejected by the High Court *vide* judgment dated 2nd August, 2019, which is assailed in this appeal by special leave.
11. While entertaining the special leave petition, notice limited to the question of sentence was issued by this Court *vide* order dated 2nd September, 2024.
12. Shri R. Balasubramanian, learned senior counsel appearing for the appellant advanced a solitary submission urging that the trial Court ought not to have convicted the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) IPC because the acts alleged are defined as offences in both category of laws, i.e., the general

8 Hereinafter, referred to as 'CrPC'.

9 Refer, Para 5 of this judgment.

Gyanendra Singh @ Raja Singh v. State of U.P.

laws, *i.e.*, the IPC, as well as in the special law, *i.e.*, the POCSO Act. Since the offences are overlapping, the special law would prevail over the general law and hence, conviction of the appellant could not have been recorded by the trial Court for both the offences. He placed reliance on Section 42A of the POCSO Act and urged that the said provision makes it clear that the provisions of the POCSO Act are not in derogation of any other law and that the provisions of the POCSO Act have an overriding effect on the provisions of any other law to the extent of inconsistency.

13. Shri R. Balasubramanian, learned senior counsel, further urged that the trial Court awarded sentence of life imprisonment to the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC, but the High Court in the appeal against conviction, has modified the judgment of the trial Court and has increased the rigor of the punishment by directing that the appellant would have to undergo life imprisonment for the remainder of his natural life as provided under Sections 376(2)(f) and 376(2)(i) of IPC and that there would be no requirement of a separate sentence for the offence punishable under Sections 3/4 of the POCSO Act. The learned counsel submitted that without there being any appeal for enhancement of sentence, the High Court, in an appeal against conviction filed by the appellant, ought not to have enhanced the rigor of the punishment awarded to the appellant and, to this extent, the judgment of the High Court is illegal and deserves to be set aside.
14. *Per contra*, learned counsel appearing for the respondent-State vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that the appellant has been convicted for a reprehensible act and the heinous offence of subjecting his own minor daughter to forcible sexual assault and as such, the High Court¹⁰ was fully justified in awarding the enhanced punishment to the appellant under Sections 376(2)(f) and 376(2)(i) of IPC. On these grounds, he implored this Court to dismiss the appeal and affirm the judgment of the High Court.
15. We have gone through the submissions advanced at the Bar and have gone through the material placed on record.

¹⁰ Vide its order dated 02.08.2019, in the case no. Jail Appeal No. 6590 of 2016

Digital Supreme Court Reports

16. Shri R. Balasubramanian, learned senior counsel for the appellant, fairly did not assail the guilt of the appellant as recorded by the trial Court and affirmed by the High Court but in spite thereof, we have carefully scrutinized the material available on record and find that there is wholesome evidence justifying the conviction of the appellant for the offences as alleged.
17. The only moot question which thus, requires adjudication is whether the conviction of the appellant ought to have been recorded under the IPC or whether the provisions of the Special law, *i.e.*, Section 42A of POCSO Act, would prevail thereby, vitiating the sentence awarded to the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC.
18. Sections 42 and 42A of the POCSO Act would be relevant to adjudicate this issue and are reproduced hereinbelow for ready reference: -

“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, 376AB, 376B, 376C, 376D, 376DA, 376DB], [376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], 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.

42A. Act not in derogation of any other law.— The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”

19. A bare perusal of Section 42 of the POCSO Act, would make it clear that when the alleged acts or omissions constitute offence both under the IPC and the POCSO Act then, the law which prescribes the punishment of greater degree would have to be applied.

Gyanendra Singh @ Raja Singh v. State of U.P.

20. Shri R. Balasubramanian, learned senior counsel, tried to draw a distinction by urging that Section 42A of the POCSO Act, provides that where there is an inconsistency between the provisions of the POCSO Act and any other law, the provisions of the special law would have an overriding effect to the extent of the inconsistency. He submitted that since the offence under Sections 3/4 of the POCSO Act does not carry punishment of imprisonment for life, which means imprisonment for remainder of person's natural life, the accused could only have been punished under the said provision and not under Sections 376(2)(f) and 376(2)(i) of IPC, looking to the inconsistency in the sentence provided.
21. We feel that the said submission lacks merit. On the face of it, the fields of operation of Section 42 and Section 42A are in completely different spheres. Section 42 specifically deals with the quantum of punishment mandating that when a particular act or omission constitutes an offence, both under the POCSO Act and also under the provisions of the IPC or the Information Technology Act, 2000 then, the offender found guilty of the offence would be liable to punishment under the POCSO Act or under the provisions of the IPC whichever provides a punishment of a greater degree.
22. Section 42A of POSCO Act, on the other hand, deals with the procedural aspects and gives an overriding effect to the provisions of the POCSO Act over any other law for the time being in force where, the two acts are inconsistent with each other. Hence, the provisions of Section 42A of POSCO Act, by no stretch of imagination, can be interpreted so as to override the scope and ambit of enabling provision, *i.e.*, Section 42 of POCSO Act.
23. Consequently, we are of the view that conviction of the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC and Sections 3/4 of POCSO Act is wholly justified. However, we feel that the High Court erred while directing that the appellant would have to serve life imprisonment for remainder of his natural life as provided under Sections 376(2)(f) and 376(2)(i) of IPC.
24. We may note that the said direction was passed in an appeal against conviction filed by the appellant. Sections 376(2)(f) and 376(2)(i), are punishable as below: -

“376. Punishment for rape.— (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either

Digital Supreme Court Reports

description 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].

(2) Whoever, —

(a)-(e)....

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g)-(h)....

(i)¹¹ commits rape, on a woman incapable of giving consent; or 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."

(emphasis supplied)

25. Thus, under this provision, the Courts have been given discretion to award punishment for a term sentence of minimum 10 years or of imprisonment for life. Where the sentence awarded in the discretion of the Court is for life, the same shall mean imprisonment for the remainder of that person's natural life. Hence, there is no mandate of law that under these provisions, the convict must be awarded life imprisonment.
26. The trial Court, however, had awarded imprisonment for life to the appellant while convicting him for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC. Since, the said Sections of IPC provides for a higher sentence as compared to Sections 3/4 of POCSO Act, the trial Court was justified in choosing the former to award punishment in terms of Section 42 of POCSO Act. However, we have to consider whether the award of imprisonment for life, which means imprisonment for remainder of person's natural life,

¹¹ Clause (i) omitted by Act 22 of 2018 S.4. (w.e.f. 21-4-2018).

Gyanendra Singh @ Raja Singh v. State of U.P.

was warranted in the facts and circumstances of the case. This Court in case of **Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka**¹², held as below:-

“14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by “secondly” in Section 53 of the IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A CrPC.”

27. The High Court, while deciding the appeal against conviction preferred by the appellant, observed that the sentence of life imprisonment awarded by the trial Court for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC would extend to the remainder of the natural life of the appellant. This direction was merely a clarification to keep the sentence in tune with the language of the sentencing provision. Nevertheless, the fact remains that because of this clarification, the rigour of the sentence awarded has been increased to the effect that the appellant would have to spend the remainder of his natural life in prison without any possibility of early release.
28. Hon'ble Shri K.V. Vishwanathan, J., speaking for a three-Judge Bench of this Court, in **Navas @ Mulanavas v. State of Kerala**¹³ considered the issue of sentencing beyond the period of 14 years and held as below:-

“17. The question before us is what should be the appropriate sentence and whether the High Court was justified in adopting the *Swamy Shraddhananda v. State of Karnataka*, (2008) 13 SCC 767 line of cases and even it was justified whether the fixing of the quantum at 30 years without remission was the appropriate sentence, in the facts and circumstances of the case?

. . .

¹² (2023) 9 SCC 817

¹³ 2024 SCC Online SC 315

Digital Supreme Court Reports

25. *Swamy Shraddananda (supra)*, since affirmed subsequently in ***Union of India v. V. Sriharan alias Murugan*, (2016) 7 SCC 1**, resolved a judge's dilemma. **Often it happens that a case that falls short of the rarest of the rare category may also be one where a mere sentence of 14 years (the normal benchmark for life imprisonment) may be grossly disproportionate and inadequate. The Court may find that while death penalty may not be warranted keeping in mind the overall circumstances, a proportionate penalty would be to fix the period between 14 years and for the imprisonment till rest of the life without remission.** Addressing this issue felicitously in *Swamy Shraddananda (supra)* Justice Aftab Alam speaking for the court, held as follows:

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh *or it may be highly disproportionately inadequate*. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs

Gyanendra Singh @ Raja Singh v. State of U.P.

to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.”

(emphasis supplied)

29. In the case of **Veerendra v. State of Madhya Pradesh**, this Court, while considering the case involving the offences under the POCSO Act as well as under 376(2)(i) of the IPC, confined the life imprisonment to mean actual imprisonment for a period of 30 years. While doing so, the Bench relied upon the celebrated judgment of this Court in the case of **Swamy Shraddananda v. State of Karnataka**.¹⁴
30. Keeping in view the aforesaid exposition of the law, we thus, direct that the ends of justice would be served by restoring the judgment of the trial Court and directing that the sentence of life imprisonment awarded to the accused, by the trial Court, for the offence under Sections 3/4 of the POCSO Act shall stand revived.
31. For the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC, the accused is sentenced to undergo imprisonment for life, as awarded by the trial Court, without the stipulation that the life term will enure till the natural life of the appellant and a fine of Rs. 5,00,000/- and in default, to further undergo imprisonment of two years. Both the sentences shall run concurrently.
32. The fine, upon being deposited, shall be paid to the victim.
33. The appeal is partially allowed in these terms.
34. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal partially allowed.

¹⁴*Headnotes prepared by:* Divya Pandey