

IN THE COURT OF SH. ANKIT MEHTA, ASJ (SC-POCSO)-02
WEST DISTRICT, TIS HAZARI COURT, DELHI

In the matter of:-

CNR No.	DLWT01-005568-2018
Sessions Case No.	432/2018
Crime No. of the offence and the Police Station	FIR No. 301/2018 dated 12.04.2018, PS Ranhola
Date of conviction	30.04.2024
Date of order on sentence	07.06.2024

अंकित मेहता
ANKIT MEHTA
असिस्टेंट सेशन जज
Additional Sessions Judge
Tis Hazari Court, Delhi-54

State **Vs.** **'VC'**
S/o Sh. 'SNR'
R/o Village XXX, PS Behra, Distt. Darbhanga,
Bihar (*complete name and address withheld to protect the identity of the victim*)

ORDER ON SENTENCE

1. 'VC' has been convicted for the offences punishable under Section 376 (2) (i) & (n) of the Indian Penal Code, 1860 (hereinafter referred to as IPC), Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) and Section 9/10 of Prohibition of Child Marriage Act, 2006 (hereinafter referred to as PCM Act), vide judgment dated 30.04.2024.
2. This order is bifurcated in two parts i.e. Part A and Part B. Part A deals with sentencing and Part B deals with compensation to the victim.

Name of the counsel for Victim Virender Verma is mentioned in ordersheet the ordersheet will be available on Monday



PART-A- SENTENCE

ARGUMENTS ON POINT OF SENTENCE

3. Ld. Counsel for the convict argued that a lenient view may be taken against the convict. It was argued that convict is a first time offender and there is no previous history of involvement in any other case.

It was argued that the convict comes from a very poor strata of the society and this fact should be taken into consideration while sentencing the convict. It was argued the convict has faced a long trial. It was also pressed that the convict is aged around 48-49 years and that life imprisonment would be too harsh for him.

It was argued that the convict is a family person who has his mother who is aged about 66 years and two children who are both girls aged around 13 and 17 years.

Ld. Counsel argued that although the accused has been convicted for offence of rape, however, one still cannot lose sight of the fact that the convict had been married to the victim by the local villagers. Ld. Counsel argued that it is a not a case where the convict in order to satisfy his lust pounced upon a girl rather the convict did not even know the victim before he was married to her. Ld. Counsel argued that it has come on record that the first wife of the convict had expired and he was looking for a spouse who would look after his two minor daughters as well who were then around 6 years and 10 years. After some time, convict was told by the local people of his village that there was a girl in the village whose mother was mentally ill and due to old age of naani (maternal grandmother) of the victim, the naani herself was looking for a suitable husband for the victim. Ld. Counsel argued

that while law of the country is supreme, however, the societal background behind the marriage of the victim with the convict cannot be ignored completely. It was prayed that minimum possible sentence may be imposed upon the convict.

4. Convict 'VC' submitted that a lenient view may be taken and minimum punishment should be imposed upon him. He further submitted that he is not in a position to pay the expenses incurred by the State on his prosecution as well as compensation to the victim.
5. Per contra, Ld. Spl. PP for the State argued that the offences for which the convict has been convicted are heinous in nature and that victim has suffered at the hands of the convict. It was argued that the victim, who was merely around 13 years and 08 months of age at the time of incident, has suffered mental trauma due to the incident. It was argued that poverty is not a mitigating factor for the purpose of awarding sentence upon the convict. Therefore, it was submitted that maximum punishment should be awarded to the convict.

OBSERVATIONS OF COURT

6. I have heard arguments on the point of sentence on behalf of the convict as well as Ld. Spl. PP for the State and perused the record.
7. First and foremost, it is expedient to refer to Section 42 of the POCSO Act which stipulates 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, 307, 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 under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.”

8. Thus, as can be seen, Section 42 of the POCSO Act stipulates that where an act or omission constitutes an offence punishable under POCSO Act and also under few Sections of the IPC as mentioned in Section 42 POCSO Act, then the offender shall be liable for punishment under POCSO Act or the IPC, whichever provides for punishment greater in degree. Accordingly, convict ‘VC’, who has been convicted under the provisions of POCSO Act as well as IPC, can be sentenced under only one provision i.e. either the POCSO Act or IPC.
9. The incident/s in the present case pertain from 23.02.2017 to 12.04.2018. Section 376 (2) (i) and (n) IPC (as before amendment w.e.f. 21.04.2018) stipulated that whoever, commits rape on a woman when she is under sixteen years of age or 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.
10. As mentioned above, the incident/s in the present case pertain from 23.02.2017 to 12.04.2018. Thus, Section 6 POCSO Act (as before

amendment w.e.f. 16.08.2019) stipulated that 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.

11. A comparison of the maximum punishment prescribed under Section 376 (2) (i) & (n) IPC (life imprisonment which shall mean for the remainder of that person's natural life) *viz-a-viz* Section 6 of POCSO Act (life imprisonment simpliciter) reveals that the sentence under IPC is greater in degree and therefore, this Court deems it fit to award sentence under the IPC. Thus, in the present case, considering Section 376 (2) (i) and (n) IPC and Section 6 POCSO Act, the convict shall be sentenced under Section 376 (2) (i) and (n) IPC and not under Section 6 POCSO Act. Further, convict 'VC' shall be sentenced under Section 9/10 PCM Act.

QUANTUM OF SENTENCE

12. As per the facts of the case, convict 'VC' had been got married by the local villagers to the victim who was around 13 years and 08 months of age on 23.02.2017 i.e. date of marriage given by the accused himself. Convict was found guilty of the offences punishable under Section 376 (2) (i) & (n) IPC, Section 6 POCSO Act and Section 9/10 PCM Act.
13. While there is no denying that the victim has suffered mental trauma due to the forceful marriage and the rape committed by the convict, however, this Court also finds that convict 'VC' has two



minor daughters who are now 13 years and 17 years of age from the first marriage of the convict. The first wife was stated to have already died prior to marriage of the convict with the victim herein. This Court is of the opinion that it is essential that the two children are also able to grow under the shelter and protection of their father if not immediately but maybe in some time. As per the nominal roll dated 05.06.2024, the convict has suffered incarceration of around 06 years and 1 month. Further, as per the nominal roll, the details of pending cases is mentioned as 'nil'; the details of other convictions, if any, is mentioned as 'nil' and overall jail conduct is mentioned as 'satisfactory'.

14. This Court finds that sentence has to be commensurate with the nature and gravity of offence, the manner in which the crime was committed, condition of the victim, age of the accused, whether the accused is a habitual offender and other relevant factors. There is no straight jacket formula for the same and as such, both the aggravating and mitigating factors need to be considered. Further, sentencing needs to balance the twin objective of deterrence and reform of the accused.

15. Considering the overall facts of the case as mentioned in the preceding paragraphs, this Court does not deem it a fit case to award sentence of life imprisonment till the remainder of natural life as prescribed under Section 376 (2) (i) and (n) IPC.

16. Accordingly, considering the submissions made by the counsels and considering the aggravating/mitigating circumstances, convict is sentenced to undergo the following punishments:



(i) Rigorous imprisonment for a period of 10 years (ten years) and a fine of Rs. 5,000/- for the offence punishable under Section 376(2)(i) IPC. In case of default in payment of fine, he shall undergo simple imprisonment of 15 days.

(ii) Rigorous imprisonment for a period of 10 years (ten years) and a fine of Rs. 5,000/- for the offence punishable under Section 376(2)(n) IPC. In case of default in payment of fine, he shall undergo simple imprisonment of 15 days.

(iii) Simple imprisonment for a period of 02 years (two years) for the offence punishable under Section 9, Prohibition of Child Marriage Act.

(iv) Simple imprisonment for a period of 02 years (two years) and a fine of Rs. 5,000/- for the offence punishable under Section 10, Prohibition of Child Marriage Act. In case of default in payment of fine, he shall undergo simple imprisonment of 15 days.

17. Benefit of Section 428 Cr.P.C. shall be given to the convict for the period already undergone by him during the trial. All the sentences shall run concurrently.

18. The convict has been informed about his right to prefer an appeal against the Judgment dated 30.04.2024 and the present order on sentence dated 07.06.2024.



PART-B- COMPENSATION

19. Grant of compensation is an important component of the order on sentence. The compensation to the victim is to be granted under Section 33(8) of the POCSO Act, 2012 r/w Rule 7 of the POCSO Rules, 2012 (as was applicable at the time of incident i.e. 23.02.2017 to 12.04.2018) and Section 357-A Cr.P.C. along with Delhi Victim Compensation Scheme, 2018 (Part II).
20. In pursuance of order dated 27.11.2020 passed by Hon'ble High Court of Delhi in *Karan Vs. State of NCT of Delhi in CrI. Appeal No. 352/2020, decided on 17.12.2020*, verification report has been filed by DLSA (West) with respect to income and assets affidavit of the convict and victim impact report has also been filed. Further, an affidavit with respect to expenses incurred by the prosecution through Ld. Spl. PP for the State has been obtained and perused.

STATE EXPENSES

21. As per the affidavit filed by the State, the amount incurred on the prosecution of convict 'VC' is Rs. 13,772/-.
22. As per the affidavit dated 04.05.2024 with respect to income and assets filed by the convict, he does not have any paying capacity and he belongs to a very poor strata of the society.
23. As per the verification report dated 28.05.2024 filed by Ld. Secretary, DLSA, West District, the convict does not have any movable/immovable property in his name in Delhi as well as in Bihar. The house in Delhi, belongs to his mother, where his mother



resides alongwith two granddaughters i.e. the daughters of the convict. The bank account of the convict has a paltry sum of Rs. 137/- only as on 16.05.2024. Thus, as per the said report dated 28.05.2024, convict does not have sufficient resources to pay state expenses or compensation.

24. In view of the aforesaid facts and circumstances mentioned above, this Court is of the considered opinion that the convict does not have financial capacity to pay the expenses incurred by the State on his prosecution. Accordingly, the cost of prosecution incurred by the State i.e. Rs.13,772/- as per the affidavit filed by the State, is not being imposed upon the convict.

COMPENSATION TO THE VICTIM

25. Victim Impact Report (VIR) dated 28.05.2024 has been filed by DLSA (West). Ld. LAC for the victim alongwith Ld. Counsel for DCW submitted that due to the incident, the victim has suffered a great mental trauma. It is submitted that the victim has been staying at a children home since 2021 on the directions of Child Welfare Committee. Further, as per the VIR, a sum of Rs. 25,000/- was awarded as interim compensation to the victim, however, due to non-availability of bank account of the victim, the same could not be processed. As per the VIR, as on today, a bank account of the victim has been opened.

It is further submitted that as per the VIR, the victim is suffering from 50% intellectual disability and a certificate to this effect was provided by the Child Welfare Officer to the DLSA. The said certificate is dated 11.08.2022 and was issued by Department of Empowerment of Persons with Disabilities,



Ministry of Social Justice and Empowerment, Government of India. However as per VIR it has not been stated that the disability is due to the incident in question.

Further, Ld. Counsel for DCW specifically argued that the entire compensation may not be released to the victim in a single trench.

It is submitted that adequate compensation may be granted to the victim. It is further submitted that the victim belongs to poor strata of society and keeping in view her needs and financial condition of the family, compensation may be granted to the victim as per Delhi Victim Compensation Scheme, 2018 (Part II).

26. Ld. Spl. PP for the State submitted that the compensation of the victim should be decided as per the requirements of the victim, the financial condition of the family and as per Section 33(8) POCSO Act.

OBSERVATIONS BY COURT

27. This Court has heard the submissions of Ld. Spl. PP for the State as well as Ld. Counsel for the victim and Ld. Counsel for DCW.
28. This Court has considered the factors mentioned under POCSO Act/Rules to determine the final compensation amount.
29. As already mentioned above, as per Victim Impact Report dated 28.05.2024 filed by Ld. Secretary, DLSA, West District, the victim has suffered emotional harm/trauma, mental and physical shock. The victim is also currently stated to be suffering from 50%

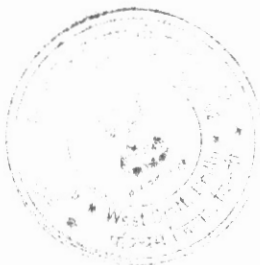
intellectual disability and a certificate with respect to same was also annexed with the VIR. However, it has not come on record that the victim has suffered intellectual disability due to the incident. As per record, whereabouts of father of victim are not available, mother of victim is herself not mentally stable and her maternal grandmother (*naani*) who had raised the victim has already expired. The victim has not received any compensation till date as the interim compensation awarded earlier could not be processed.

30. The schedule appended to Part-II of Delhi Victim Compensation Scheme stipulates that the compensation in cases of 'rape' may be granted from Rs. 4 lakhs to Rs. 7 lakhs and hence the said schedule will be applicable in the present case.

31. Hon'ble High Court of Delhi in case titled as *X Vs. State of Delhi (Acting through its Secretary) and anr., CrI. A No. 63/2022, decided on 20.10.2022* has held as under:

"121. In view of discussion, the questions are answered as under :
(a) Maximum compensation laid down in the schedule is to be considered as minimum;
(b) The **final compensation** to the survivor of the child sexual abuse should be the maximum amount mentioned in the schedule for instance, for "rape" maximum compensation mentioned is 7 lakhs. Since the cases are under POCSO, the CSA survivor is also entitled to 7 lakhs plus 50% of 7 lakhs i.e. 10.5 lakhs. This is to be awarded by the Special Court and to be disbursed by DSLSA/DLSA.

32. The convict does not have the paying capacity, therefore, no compensation can be given by him to the victim. In view of the



circumstances, this Court deems it appropriate that the compensation to the victim be granted under Section 357A Cr.P.C. by the DLSA (West) from the Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2018.

33. Keeping in view the aforesaid facts and circumstances of the case and the submissions made by the Ld. Spl. PP for the State as well as Ld. Counsel for DCW and directions issued by the Hon'ble High Court of Delhi in *X Vs. State of NCT of Delhi (Supra)*, the maximum compensation laid down in the schedule is being considered as minimum which is :

(a) Rs. 7,00,000/- (Rupees Seven Lakhs) in cases of 'rape'.

(b) Since the victim in the present case was minor at the time of incident, additional 50% of the value of maximum compensation is also being granted i.e. 50% of Rs. 7,00,000/- i.e. equal to Rs. 3,50,000/-.

Hence, the victim is entitled to compensation of Rs. 10,50,000/- (Rupees Ten Lakh Fifty Thousand only).

Accordingly, the final observations on compensation are as under:

- i. **Full and final compensation amount of Rs. 10,50,000/- (Rupees Ten Lakh Fifty Thousand only) is awarded to the victim under the applicable POCSO Act/Rules r/w Section 357 A of Cr.P.C. under Delhi Victim Compensation Scheme, 2018 for the**



rehabilitation of the victim.

- ii. As per Clause 11 of Delhi Victim Compensation Scheme (as amended up to date), 75% of the final compensation amount shall be deposited in the Fixed Deposit account and shall be drawn only on attainment of the age of majority of the victim, but not before 03 years of the deposit. Remaining 25% amount shall be deposited in the bank account of the victim.
- iii. Further it is clarified that balance 75% of the final compensation amount shall be not be released in a single trench to the victim. The said amount shall be released on a monthly basis to the victim till the total amount is exhausted as per Delhi Victim Compensation Scheme (as amended up to date).
- iv. Interest on the sum/compensation amount shall be paid as per Delhi Victim Compensation Scheme (as amended up to date).
- v. It is made clear that as per Delhi Victim Compensation Scheme, in exceptional cases, amount may be withdrawn earlier also, for reasons such as education or medical or other pressing and urgent needs of the beneficiary at the discretion of DLSA.
- vi. The Ld. Secretary, DLSA (West District), Tis Hazari Courts, is directed to disburse the amount of compensation as per rules after verifying the identity of the victim and the bank account, if any, from the IO of this case, within 30 days from the date of receipt of this order.



A copy of this order be sent to Ld. Secretary, DLSA, West District, for compliance with respect to compensation granted to the victim.

A copy of this order be given to the victim through Ld. LAC for the victim.

A copy of this order be given to the convict free of cost.

File be consigned to Record Room after due compliance.

Announced in the open court

on 07th day of June, 2024



(ANKIT MEHTA)
ASJ (SC-POCSO)-02, West District,
Tis Hazari Courts, Delhi

ACJ/SC-POCSO-02
TIS HAZARI COURTS, DELHI-04