

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.272 OF 2017

Suresh @ Pintya Kashinath Kamble Appellant
Versus
The State of Maharashtra Respondent

Mr. Drupad Patil, *Amicus Curiae* appointed in the matter.
Mr. Yogesh Y. Dabke, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL, J.
DATE : 21st SEPTEMBER, 2022**

PC. :

1. This matter is placed before me by an administrative order. Criminal Appeal No.272/2017 is already disposed of by a judgment and order dated 25.1.2018 passed by the Single Judge Bench of this Court (Coram: A.M. Badar, J.). The operative part of the judgment and order reads thus:

“(i) The appeal is partly allowed.

(ii) Conviction and resultant sentence imposed on the appellant/accused for the offences punishable under Sections 376 of the IPC and for the offence punishable under Section 6 of the POCSO Act is quashed and set aside.

(iii) Instead, the appellant/accused Suresh @ Pintya Kashinath Kamble is convicted for the offence punishable under Section 18 read with Section 6 of the POCSO as well as for the offence punishable under Section 511 read with Section 376(2) of the IPC.

(iv) The appellant/accused is sentenced to suffer rigorous imprisonment for one half of the imprisonment for the life and he shall also be liable to pay fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for one month for the offence punishable under Section 18 read with Section 6 of the POCSO Act.

(v) As the appellant/accused is sentenced for committing the offence punishable under Section 18 read with Section 6 of the POCSO Act by imposing punishment, which is greater in degree, no separate sentence for commission of offence punishable under Section 511 read with Section 376 (2) of the IPC is imposed on him.

(vi) Rest of the impugned Judgment and Order of the learned trial Court is maintained. The appeal stands disposed of accordingly.”

2. The Registry of this Court received a letter dated 2.8.2022 sent by the Superintendent, Kolhapur Central Prison. It was mentioned in the letter that this Court has

sentenced the appellant to suffer half of the life imprisonment. According to the Jail Superintendent, he could not understand exactly how much sentence the appellant has to undergo. The Jail Superintendent had requested for guidance in that behalf from the Sessions Court at Sangli where the trial was conducted. The Additional Sessions Judge and District Judge-2, Sangli informed the Superintendent, Kolhapur Central Prison that since the order was passed by this Court, it would be proper if the guidance is sought from this Court. After receiving this letter dated 18.4.2022 from the Sessions Court, the Jail Superintendent sent this urgent letter dated 2.8.2022 addressed to the Registrar, Appellate Side of this Court. The Jail Superintendent has specifically sought directions in the form of guidance as to how many years the appellant has to be detained in the prison to serve his sentence.

3. I had appointed learned counsel Shri Drupad Patil as a *amicus curiae* to assist the Court. I have heard him. I have also heard Shri Dabke learned APP for the State.

4. Shri Patil relied on certain provisions of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act), Indian Penal Code and Code of Criminal Procedure, 1973. He also relied on certain judgments. He submitted that Section 2(2) of POCSO Act and Section 57 of IPC cover the issue completely. Apart from that a Single Judge Bench of this Court in the case of **Chandrakant Vithal Pawar Vs. State of Maharashtra**¹ has also clarified the issue. He submitted that these provisions and the earlier judgment were clear and, therefore, there was no occasion for the Superintendent of Jail to seek any guidance from this Court in this behalf. He submitted that the Superintendent should have approached the Law & Judiciary Department and the Home Department for seeking guidance instead of approaching this Court when there was no ambiguity or confusion in the operative part of the judgment.

5. Learned APP Shri Dabke has also supported the submissions of Shri Patil.

1 2011 SCC OnLine Bom 1731

6. I have considered these submissions. Before discussing the provisions of these Acts, it is necessary to reproduce Section 18 of the POCSO Act, which reads thus :

“18. Punishment for attempt to commit an offence. – Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.”

7. Similarly Section 511 makes similar provision which reads thus:

“511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term

which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.”

8. The operative part of the order passed in Criminal Appeal No.272/2017 reproduces the wording used in both these sections. Therefore, there was no ambiguity or confusion as far as the operative part of the judgment and order dated 25.1.2018 passed in Criminal Appeal No.272/2017 is concerned. The Jail Superintendent is expected to execute this sentence by following the operative part of the order.

9. Section 2(2) of the POCSO Act reads thus:

“2. Definitions.--

(1) xxxx

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) and the Information Technology Act, 2000 (21 of

2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.”

10. Hence, for the words and expressions not defined under POCSO Act they will have to be given meaning in consonance with their meaning in IPC. The wording ‘life imprisonment’ is not defined under POCSO Act. However, those words are used under IPC and, therefore, reference will have to be made to IPC provisions and they will have to be relied on. In this particular question, the quantum of sentence is to be looked at. When it is mentioned that it should be one-half of the life imprisonment then the exact meaning will have to be found from IPC and there IPC provides the answer under Section 57, which reads thus :

“57. Fractions of terms of Punishment.-- In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.”

This section leaves no scope of doubt, ambiguity or confusion as to how the term should be calculated when

the accused is sentenced to suffer half of the life imprisonment. It provides that in such case when the fractions of imprisonment for life is to be calculated then life imprisonment should be reckoned as equivalent to imprisonment for twenty years. Thus, half of life imprisonment in such cases would mean imprisonment for ten years.

11. This particular aspect is already decided by this Court in the case **Chandrakant Pawar** (supra). Paragraphs-31 & 32 of the said judgment read thus :

“31. As noted above, minimum sentence of imprisonment for the offence of rape under section 376(2)(a) is rigorous imprisonment for 10 years. Therefore, the minimum sentence which may be awarded for attempt to commit rape would be rigorous imprisonment for five years. However, the maximum sentence for the offence of rape under section 376(2) (a) of the Penal Code, 1860 is life imprisonment. Therefore, the maximum sentence for attempt to commit rape could be half of life imprisonment.

32. Section 57 of the Penal Code, 1860 provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. In view of this, for

the offence of attempt to commit rape punishable under section 376(2)(a) read with section 511 maximum sentence would be rigorous imprisonment for 10 years.'

This, further clarifies the entire situation.

12. Hence, no further explanation or guidance is necessary. The Jail Superintendent can seek guidance from these provisions and the judgment referred herein and calculate the exact sentence which the appellant has to undergo.

13. Before parting with this order, I must record appreciation for the efforts put in by the *amicus curiae* Shri Drupad Patil. Shri Dabke learned APP has also ably assisted the Court.

14. With these observations, the Registry is directed to inform the Jail Superintendent of this order at the earliest.

(SARANG V. KOTWAL, J.)