

LEADING JUDGMENTS
ON
POCSO ACT

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Some Leading Judgments Pertaining to POCSO Act

- Age of the victim to be determined as per the provisions of the JJ Act. *Jarnail Singh vs. State of Haryana*, AIR 2013 SC 3467; *Mahadeo vs. State of Maharashtra*, (2013) 14 SCC 637; *State of M.P. vs. Anoop Singh*, (2015) 7 SCC 773; *Ali Mohammad vs. State of U.P.*, Special Appeal No. 559/2015 (Allahabad-DB) Judgment dated 25.08.2015.
- Mental age of the child not to be considered. Age determination only by determining the 'Chronological Age' or 'Biological Age' – *Dr. Manjula Krippendor vs. State (NCT of Delhi) & Another*, (2017) 15 SCC 133.

- Imputation of criminal liability of Doctors under Section 19 & 21 only when the evidence is of a nature which should indicate grave suspicion and not when there is mere likelihood of suspicion – **Dr. Sr. Tessy Jose vs. State of Kerala, Criminal Appeal No. 961 of 2018**, Judgment dated 01.08.2018.
- Broad guidelines about protecting the identity of the child has been laid down by the Apex Court in **Nipun Saxena vs. Union of India & Others, (2019) 2 SCC 703**.

- Guidelines of the Hon'ble Supreme Court to ensure timely justice and protection of dignity of the child during the course of investigation and trial – **Alakh Alok Srivastava vs. Union of India, W.P. (C) No. 76 of 2018, Judgment dated 01.05.2018.**

- Dealing with the question, whether the Special Court under the POCSO Act would have jurisdiction to the exclusion of the Special Court under the SC/ST Act, the Hon'ble Allahabad High Court in **Rinku vs. State of U.P. (Criminal Misc. Bail Application No. 33075/2018, Judgment dated 11.02.2019)** has held that looking into the object and purpose of the two enactments and the legislation which is later in point of time, the provisions of POCSO Act have to be followed where the accused is charged for the offences under both the enactments. Thus where an accused is tried for offences under both the enactments, the appropriate court to try the offence would be the Court designated under Section 28 of the POCSO Act.

- Where the victim is deaf and dumb, the Court should see that the victim is not subjected to aggressive cross examination. As the victim has a limited vocabulary, which is expressed through sign language, the deposition should not be extended in nature. Further as such a victim is not in a position to protect herself fully, the offender found guilty warrants maximum punishment – **Chander Singh vs. State, Crl. A. 751/2014, date of Judgment June 03, 2016 (Delhi High Court).**

Oath to the Interpreter/Translator

- As the POCSO Act lays down (S. 38) that the assistance of a translator or interpreter may be taken, while recording the evidence of the child, it is necessary that oath or affirmation should be administered to such a person, in terms of the Oaths Act, 1969 or Rule 44 & 45 of the G.R. (Criminal), 1977. **State of Rajasthan vs. Darshan Singh, (2012) 5 SCC 789**

Deaf and dumb child witness

- Chander Singh vs. State, Cri. Appeal No. 751/2014, Date of Judgment- 03 June, 2016 (Delhi).
- Hanumant vs. Bangar v. State of Maharashtra, Cri. Appeal No. 493/2019, Date of Judgment- 26 June, 2019 (Bombay).
- Mithailal v. State of Bihar, Cri. Appeal (SJ) No. 31/2015 (Patna).
- Sampath v. State, Cri. Revision No. 1271/2011 (Madras), Date of Judgment- 20 July, 2018.

Child Witness

- Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341
- Ranjeet Kumar Ram v. State of Bihar, 2015 (6) Scale 529
- Nivrutti Pandurang Kokate v. The State of Maharashtra, (2008) 12 SCC 565
- Yogesh Singh v. Mahabeer Singh, (2017) 11 SCC 195
- Panchhi v. State of U.P., (1998) 7 SCC 177
- Satish v. State of Haryana, (2018) 11 SCC 300

- State of Madhya Pradesh v. Ramesh, (2011) 4 SCC 786
- Rameshwar v. State of Rajasthan, AIR 1952 SC 54
- Mangoo v. State of M.P., AIR 1995 SC 959
- Nivrutti Pandurang Kokate v. State of Maharashtra, (2008) 12 SCC 565

- State of U.P. v. Krishna Master, (2010) 12 SCC 324
- Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516
- Digamber Vaishnav v. The State of Chattisgarh, Cri. Appeal Nos. 428-430 of 2019 (SC), DOJ 05 March, 2019.
- P Ramesh v. State , Cri.Appeal No. 1013 of 2019 (SC) DOJ 9 July, 2019.

- Child witness to be provided all protection during the trial.
- Sufficient interval to be provided to the child.
- Appropriate arrangements for preventing the child from coming in contact with the accused.
- Questions can be asked only by the Presiding Officer.
- Cross-examination if necessary through Video Conferencing.

Mahendra Chawla v. UoI, AIR Online 2018 SC 289

- Harmonizing the provisions of POCSO Act and the IPC, the provision under Exception 2 Section 375 IPC has been read down and accordingly sexual intercourse with one's own wife, if she is below 18 years of age amounts to rape.

Independent Thought v. UoI, (2017) 10 SCC 800.

Presumption

- The presumption u/s 29 is not absolute. It would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption under Section 29.
- The suggestion that even if foundational facts are not established, the prosecution can involve the statutory presumption, would render Section 29 vulnerable to the vice of unconstitutionality. The statutory presumption would stand activated only if the prosecution proves the fundamental facts.

Anmol Dudhram Barsagade vs. State of Maharashtra (Cri. Appeal No. 600/2017, Date of Judgment- 23.04.2018).

- It is trite law that negative cannot be proved (See S.T. Khimchand Vs. Y Satyam, (1972) 4 SCC 562). In order to prove a contrary fact, the fact whose opposite is sought to be established must be proved first.
- To hold otherwise, would compel the court to mechanically accept the mere ipse dixit of the prosecution and give a stamp of judicial approval to every prosecution however potently absurd or inherently improbable it may be.

Sahid Hussain Biswas vs. State of West Bengal, CRA No. 736/2016, Calcutta High Court).

- Even if the prosecution establishes such facts and the presumption is raised against the accused, he can rebut the same either by discrediting prosecution witnesses through cross-examination or the accused could lead evidence to prove his defence, in order to rebut the presumption.

Navin Dhanisam Bariya Vs. State of Maharashtra (Cri. Appeal No. 406/2017), Date of Judgment – 25.06.2018).

- The word “is prosecuted” u/s 29 does not mean that the prosecution has no role to play in establishing the primary facts constituting the offence. Upon the prosecution laying the foundation of its case by leading cogent and reliable evidence the onus shifts upon the accused to prove the contrary.

Subrata Biswas vs. The State (CRA No. 011/2018 (Cal.), Date of Judgment – 11 June, 2019.

Bail to the Accused

While entertaining bail application of an accused under the POCSO Act, the Court has to consider:

- The provision of Section 29, which lays down presumption as to certain offences (Ss. 3, 5, 7 & 9) has to be taken into consideration.
- Ordinarily, to enable the prosecution (victim) to give her statement fearlessly and without any pressure, it would be necessary that she deposes when the accused is in custody.
- Taking note of threat perception, bail be not granted, until material witnesses are examined.

State of Bihar vs. Rajballav Prasad @ Rajballav Prasad Yadav, AIR 2017 SC 630.

Principle of Sentencing

- Offence committed against minor girl child (here 7 years) cannot be viewed lightly and considering the serious nature of the crime, post conviction, suitable punishment/sentence shall be awarded. **Kumar Ghimray vs. The State of Sikkim (Cri. Appeal No. 719/2019, Date of Judgment 22 April, 2019 (SC).**
- The Court should ordinarily show no leniency in sentencing.

Prem Bahadur @ Bhoj Bahadur vs. State, Cri. Appeal No. 888/2017, Date of Judgment 22 July, 2019.

- The degree of damage to the child, in such cases, is physical and psychological in equal measure. It is impossible for a court, peopled, after all, by lay human beings, to even conceptualize, let alone visualize, what a child, such as the prosecution, must have undergone.
- Rape is, on every occasion and without exception, a crime of power, more than one of lust, and, when committed on a child, is a brute and unrelenting savage expression thereof. No clemency or mercy, whatsoever, can be shown to the perpetrator of such an act, especially when the perpetration is in full possession of the senses and faculties of the perpetrator.

