
THE CONTROVERSIAL CASE OF POCSO: ATTORNEY GENERAL OF INDIA VS SATISH AND OTHERS

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ABSTRACT

Indian society operates in a cyclical manner, with laws being made whenever they are necessary to safeguard a certain group of the population. The social welfare lens is replaced with the microscope of skepticism a few years after it is put into effect by screams of “Abuse! Overuse!”. Every facet of the law is investigated, and hyper-technicalities are created to obscure the legislation’s genuine objective and purpose.

Forum: Supreme Court of India

Citation: 2021 SCC online SC 42

Appellant(s): Attorney General for India, National Commission for Women, State of Maharashtra

Bench(s): Justice UU Lalit, Justice S Ravindra Bhat and Justice Beta M Trivedi

Introduction

In *Attorney General for India v. Satish and others* (2021), the Hon'ble Supreme Court overturned the decision of the Bombay High Court that held that skin-to-skin contact is a requirement for an offence of sexual assault to be established under the Protection of Children from Sexual Offences (POCSO) Act, 2012. The case started when the Attorney General of India, the National Commission for Women, and the State of Maharashtra appealed two rulings by Justice Ganediwala of the Bombay High Court. The facts, arguments put out, and the Supreme Court's ruling in this case will all be highlighted by the author in this article.

Facts of the Case

The prosecution's argument is that the defendant lured the child, who was 12-year-old girl (Prosecutrix) at the time of commission of offence, to his home on the pretense of giving her a guava, then touches her breast and made an attempt to take her clothes off. Subsequently, when the prosecutrix screamed, appellant was found to have exited the room while bottling the prosecutrix still inside. A neighbor was disturbed by the prosecutrix screams, and they alerted the prosecutrix mother, who was looking for the prosecutrix. When the prosecutrix mother asked the appellant about the whereabouts of her daughter, he denied her presence in his house. However, when the mother walked inside his house, she discovered that the door of the room was locked. The young prosecutrix was crying inside his bolted room when the prosecutrix mother opened door of the room. After hearing her daughter, the mother took the child to the police station, where an FIR against the accused was lodged.

Procedural history

After the trial, the sessions court found the defendant guilty of violating Section 354,363,342 of IPC (Assault or criminal force against a lady with the intent to violate her modesty,

Kidnapping, Wrongful Confinement) and section 8 of the POCSO (Sexual Assault). The Judgment was then challenged by the accused in the High Court of Bombay (Nagpur Bench) challenging the validity of the judgment delivered by the Special Court.

Judgment by the High Court

The following facts were recognized by the High Court

- That the young girl was 12 years old when the incident was committed.
- That what happened at the crime site is corroborated by the testimony of the mother and the small child.
- The accused attempted to take off the girl's salwar while pressing against the child's breast. The High Court then considers whether "pressing off breast" and "try to remove salwar" would qualify as "sexual assault" under section 7 of the POCSO Act, which is punishable under section 8 of POCSO.

According to Section 7 of the POCSO Act, "Sexual Assault" is defined as any act with sexual purpose that involves physical contact without penetration and involves touching a child vagina, penis, anus, or breast or compelling a child to do so.

The High Court determined that the grouping by the appellant did not constitute sexual harassment under section 7 of the POCSO Act because it was done through the minor's cloth and there was no skin-to-skin contact. The High Court was of the view that the detailed evidence that could support in knowing whether the top was removed, or whether the hand was placed inside the top was unavailable. However, it is important to keep in mind that this would fall under the purview of Section 354. IPC (Assault or Criminal force against a lady with the intent to violate her modesty). In the view of the stringent nature of the punishment provided for the offence stronger evidence and severe claims are indispensable. The presiding Judge has also correctly observed that the crime's penalty must be commensurate with its magnitude. The minimum sentence for insulting a woman's modesty under IPC is one to five years in prison, whereas sexual assault under the POCSO Act carries a sentence of imprisonment between three to five years.

Thus, the Court properly absolved the plaintiff of the violation of Section 8 of the POCSO Act but found him guilty of violating Sections 354 of the IPC and sentenced him to a year in jail. The Court forfeited the appellant's bail bond and issued a non-bailable warrant against him in light of the fact that he had already been granted bail.

Issue with the Case after High Court Judgement

Whether the actions of “pressing the breast of a female” and “an effort to remove a female’s salwar/garment” would constitute “sexual assault” as that term is defined in Section 7 of the POCSO Act and is punishable by Section 8.

Judgment of Supreme Court

- In the case of accused Satish, the Bombay High Court's decision was overturned by the Supreme Court and reinstated the Special Court's decision. The accused was found guilty of the offences listed in Sections 342, 354 and 363 of the IPC, as well as Section 8 of the POCSO Act. For the offence under Section 8 of the POCSO Act, Satish was ordered to serve three years of rigorous imprisonment, pay a fine of Rs. 500, and serve one month of simple jail as a substitute. No separate sentence was given to the defendant for the other IPC offences since he had already received a term for the primary offence under Section 8 of the POCSO Act.
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Analysis of the Judgment

- **Adverse Impact on the Victim-** The irrationality of the judgement will have an adverse impact on the victims of such heinous crimes. The roots of good touch and bad touch have been tampered. This interpretation, along with horrifying inquiries like the length of victims to report sexual crimes by victims. It is disturbing to imagine the plights of the victims when their suffering is not even recognized by the courts. To top it all off, the abuser faces lesser punishment when he is charged under the Section of IPC which is one year rather than being charged under the sections of POCSO under which stricter punishment of five years is mandatory. This judgment goes against the basic intent and purpose of the POCSO Act, which was to impose harsher penalties than those provided by the IPC and guarantee a higher level of punishment for crimes committed against the minors.
- **Illogical Interpretation-** The interpretation of the definition of skin-to-skin contact by the Court is irrational on the ground that pressing breast without skin-to-skin contact does not come

under the definition of Sexual Assault of POCSO. The definition of Sexual Assault given by the Court should be progressive rather than the regressive so that the people can rely on the Court to get justice if any sexual crimes is committed against children.

Relevant Cases

Satish Vs State of Maharashtra (2021), Bombay High Court (Nagpur Bench)

Libnus Vs State of Maharashtra (2021), Bombay High Court (Nagpur Bench)

Attorney General of India vs Satish Chandra and others

Conclusion

Sexual Assault and other Sexual offences against adolescents and juveniles are frequently reported from all around the nation. In India, a nation with nearly 44 crore children, child sexual abuse is still a major pervasive problem. National Crime Records Bureau (NCRB) published its annual "Crime in India" report providing statistics on crimes committed in India in 2020. In the last three years, according to its data 4,18,385 crimes against children were recorded. Of these, child sex abuse offence under the Protection of Children against Sexual Offences (POCSO) Act, 2012, alone accounted for 1,34,383-or roughly one third-of the recorded incidents. The problem of Child Sexual Abuse has been a global problem and has been recognized as a severe public health issue. Children who are victims of such activity often suffer from significant trauma, which would have long term effects on their body. The survivors of the CSA are more likely to experience personality problems and other psychiatric illnesses. The stay order imposed by the Supreme Court may be the small solace we all needed given how much trouble this verdict has already caused in the society. However, does not much in respect to change the way that society thinks or the judges who preside over the case and give the sentence.