

INNOVATIONS IN DEVELOPMENT AND EMPOWERMENT ALTERNATIVES

A good idea is half the battle won



Written By:

Ms. Namrata
Chandorkar

Research
Associate,
IDEA

Case Analysis: Satish v. State of Maharashtra

Intent of Legislation > Strict Interpretation of Statute

Intent of Legislation > Strict Interpretation of Statute

Just a week ago, in yet another heartbreaking incident of child molestation, the judgment of the Bombay High Court (Nagpur Bench) has stirred a discussion over the interpretation of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “POCSO Act”).

The factual matrix of the incident pertains to sexual assault as defined by the POCSO Act in Section 7. The undisputed facts of the concerned case are, the Accused, aged 39, isolated the Prosecutrix, aged 12, in a room, and pressed her breast while attempting to remove her salwar. When she yelled, he locked her in the room and walked away. Shortly after, her mother arrived who found her crying in the locked room. The Prosecutrix narrated the whole incident to her mother, upon which the mother filed an FIR against the Accused. The Accused was charged with offences punishable under Section 309, 354, 361, and 342 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”) and Section 8 of the POCSO Act.

The case was heard by the Special Court, as established by Section 28 of the POCSO Act. The Court, in the particular case, held the Accused guilty of, amongst other offences, sexual assault as defined under Section 7 of the POCSO Act. The Accused appealed his case before the Bombay High Court (Nagpur Bench). The Single Judge overturned the judgment of the Special Court, and acquitted the Accused under the POCSO Act. This is where the question of interpretation of statute arises. Justice Ganediwala, who constituted the coram of this case, gave the following reasoning for her judgment:

1. The single question of consideration was whether “pressing of the breast” and “attempt to remove salwar” falls within the definition of “sexual assault” under POCSO Act. To constitute an offence under Section 7 of the POCSO Act, the following have to be established:

- a. Touching of the vagina, penis, anus, or breast of the child
- b. Presence of sexual intent

In this particular case, both these ingredients are satisfied by the factual scenario. Despite this, the Court held that since there was no evidence suggesting that the Accused tried to remove the top garment of the child, hence the offence of “sexual assault” is not established. The Court further held that since this offence is punishable with a higher quantum of imprisonment, “stricter proof of serious allegations” is required.

2. The Court compared the essence of the offences punishable under Section 354 of the IPC with Section 8 of the POCSO Act, and determined that the Accused is guilty under only section 348 of the IPC (reproduced hereunder).

“Section 7 (POCSO Act). Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

“Section 354 (IPC). Assault or criminal force on a woman with intent to outrage her modesty. - Whoever assaults or uses criminal force to any woman, with the intention to outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

The Court held that it is a basic principle of criminal jurisprudence that the punishment for an offence shall be proportionate to the seriousness of the crime. Section 354 of the IPC, which makes assaulting a woman an offence, is punishable with a sentence of minimum 1 year, and Section 8 of the POCSO Act prescribes a minimum sentence of 3 years.

The Court interpreted this comparison to mean that sexual assault on a child, should be of such a degree, that it is graver than using criminal force on a woman. By this rationale, the (mere) pressing of a 12 year old's breast without skin-to-skin contact, does not pass the bar of gravity set by Section 7 of the POCSO Act.

Critical Analysis of the Interpretation

While on any other day, this comparative analysis would have garnered much applause, it fails to qualify for any credit in the given case. While it is true that interpretation of statute requires us to approximate the intent of the legislature from the designated punishment to any offence, the same is only logical when the offences are of a similar genre. The POCSO Act was enacted to protect children from sexual assault and sexual harassment. Its preamble testifies to the same. Its conception was necessitated after it was realised that the usual mechanism of the IPC and the Criminal Procedure Code lacked the intensity of action required to prevent the horrific crime of child abuse. Under the POCSO Act, operation of procedural law also differs. As per Section 29 of the Act, the burden of proof shifts to the accused, as opposed to the general rule of burden of proof, which lies on the defence to prove the accused's culpability. An enactment of such kind suggests that the law is endeavouring to protect children from sexual offences.

Keeping all these factors in mind, Section 7 of the POCSO Act must be interpreted in consonance with the intent of the legislature. To compare a provision of the IPC with that of the POCSO is not only an unfair comparison, but it is an interpretation that shall undermine the very existence of any special legislation. Children, as victims, suffer psychological and physical trauma of a much different level than as adults. They have special needs and one cannot oversee the fact that the law sets, for minors (individuals below the age of 18), different rights and liabilities. Thus, giving Section 7 such a restricted interpretation defeats the purpose of the Act.

The Court interpreted this comparison to mean that sexual assault on a child, should be of such a degree, that it is graver than using criminal force on a woman. By this rationale, the (mere) pressing of a 12 year old's breast without skin-to-skin contact, does not pass the bar of gravity set by Section 7 of the POCSO Act.

Critical Analysis of the Interpretation

While on any other day, this comparative analysis would have garnered much applause, it fails to qualify for any credit in the given case. While it is true that interpretation of statute requires us to approximate the intent of the legislature from the designated punishment to any offence, the same is only logical when the offences are of a similar genre. The POCSO Act was enacted to protect children from sexual assault and sexual harassment. Its preamble testifies to the same. Its conception was necessitated after it was realised that the usual mechanism of the IPC and the Criminal Procedure Code lacked the intensity of action required to prevent the horrific crime of child abuse. Under the POCSO Act, operation of procedural law also differs. As per Section 29 of the Act, the burden of proof shifts to the accused, as opposed to the general rule of burden of proof, which lies on the defence to prove the accused's culpability. An enactment of such kind suggests that the law is endeavouring to protect children from sexual offences.

Keeping all these factors in mind, Section 7 of the POCSO Act must be interpreted in consonance with the intent of the legislature. To compare a provision of the IPC with that of the POCSO is not only an unfair comparison, but it is an interpretation that shall undermine the very existence of any special legislation. Children, as victims, suffer psychological and physical trauma of a much different level than as adults. They have special needs and one cannot oversee the fact that the law sets, for minors (individuals below the age of 18), different rights and liabilities. Thus, giving Section 7 such a restricted interpretation defeats the purpose of the Act.

Every judgement has an effect that goes way beyond its actual case. As a judicial precedent, this judgment translates into stating that as long as the clothes of a child are on, to violate that child's dignity is not sexual assault. The ramifications of such an interpretation are devastating and prone to instigate crime rather than halt it.

Thankfully, the Supreme Court, on the 27th of January, 2021, has stayed the said order of the Bombay High Court. The issue is now under the consideration of the Apex Court.