

SATISH RAGDE VS STATE OF MAHARASHTRA

Prithviraj C. Ghatе*

In the Nagpur Bench of Bombay High Court

NAME OF THE CASE: Satish Ragde v/s State Of Maharashtra

CITATION: Criminal Appeal No. 161 of 2020

DATE OF THE CASE: 19th January, 2021

APPELLANT: Satish Ragde

RESPONDENT: The State of Maharashtra through police station Officer, Gittikhadan, Nagpur

BENCH/JUDGE: Pushpa v. Ganediwala

INTRODUCTION

So to begin with, let me start with a brief description of the POCSO Act, 2012, and how it came into being.

India has one of the biggest populations of children in the world. Census information from 2011 shows that India features a populace of 472 million children under the age of eighteen. Protection of children by the state is guaranteed to Indian citizens by an expansive reading of Article 21¹ of the Indian constitution and also mandated given India's status as a signatory to the UN Convention on the Rights of the Child.

22 May 2012, was when the POCSO (Protection of Children from Sexual Offenses) Act came into being. India, being a nation with the highest number of youths, also resulted in a number of crimes being committed against the sexually unaware, unaware and mentally/physically vulnerable children aged below 18 years, with no proper legislation, guidelines, and jurisdiction to cover with. Section 375² of the IPC (Indian Penal Code) was the only section that was

*BBA LLB, THIRD YEAR, DECCAN EDUCATION SOCIETY'S SHRI. NAVALMAL FIRODIA LAW COLLEGE.

¹ Constitution Of India, 1950, Article 21

² Indian Penal Code, 1860, Section 375

relatable to any type of sexual harassment or even rape, but this was only limited to such a scenario where the offender was always supposed to be a 'man' and the victim, a 'woman'.

This particular act was enacted to protect children from sexual offences and to introduce children-friendly judicial procedures to deal with such offences. The act was formulated on such grounds that it was supposed to be gender-neutral, as it did not discriminate between the offender and victim on grounds of sex, or gender.

Section 2(d)³ of the POCSO Act further defines a "child" as being "one who is under 18 years of age", thus laying a strong foundation stone of being accessible to all children, no matter what. Also, any non-penetrative sexual attack or crime against a boy/girl would not have been established under the arrangements of IPC. In the absence of the POCSO Act, there would be no law penalizing any child pornography and the offenders would have fled the law and its jurisdiction easily.

The Act has turned out to be a milestone regarding the protection of youths against sexual offenses or harassment due to its unique and specific definitions of the contained sections, setting the tone for a vibrant and vigilant environment. Section 19⁴ of the Act mandates every being who is aware or suspects a crime against a child taking place, and to report it immediately, with due responsibility, to a nearby police station or Special Juvenile Police Unit. Section 21⁵ of the Act further states that any person who is in charge of a company, or institution, fails to report the commission of sexual offenses of a child, under their charge or supervision, is liable for imprisonment up to 6 months or a fine or both.

The particular act in conversation, though deemed perfect, with its various provisions for protecting children, seems to have some loopholes, or at least some that our judicial authorities find vague, resulting in unfair justice to the accused. The said judgement of one such case led to such outcry, discontent, and ambiguity over the existence of the Act, that the Hon'ble Supreme Court of India had to intervene and overrule the judgement, stating a landmark guideline and direction for further such cases. I will try with my utmost efforts to cover that one recent landmark case and its future repercussions in the legal world.

³ POCSO Act, 2012, Section 2(d)

⁴ POCSO Act, 2012, Section 19

⁵ POCSO Act, 2012, Section 21

FACTS OF THE CASE

The victim, an 'unnamed' 12-year-old girl resident of Gittikhadan, Nagpur, was lured by the accused, Satish Ragde into his house on the pretext of offering her a guava. The victim reluctantly agreed to the same. On entering the house, the accused, instead of fulfilling the promise for a guava, tried to press her breast. As she started to escape from his clutches and started screaming, he started to remove her salwar. The mother of the victim, on not being able to find her for quite some time, was looking and calling out for her daughter in the nearby area, when the neighbour of the victim, having heard the screams, came out and pointed to the house of the victim to the mother, still in search for her daughter.

Meanwhile, the accused, dragged the victim, onto the first floor, and locked them in a room closing the latch from the outside. When the mother knocked on his door, she found him coming down the stairs from the first floor and questioned about the presence of the daughter which was simply denied by him.

The mother then pushed herself into his house, and after a careful search, found her daughter, in a locked up room on the first floor, crying with her hands tied, and mouth taped shut. The daughter then narrated the entire story to her mother, who then in a furious rage, directly approached the nearest police station and filed a FIR. The police, after conducting a thorough investigation, filed a chargesheet before the Special POCSO Court at Nagpur. The Court then sentenced the accused to 3 years of rigorous imprisonment, with a fine of up to Rupees 1500.

He was convicted of the following charges-

Section 342⁶ of the IPC (illegally confining another person)

Section 354⁷ of the IPC (any person with the intent or knowledge that his action would lead to the outrage of modesty of a woman)

⁶ Indian Penal Code, 1860, Section 342

⁷ Indian Penal Code, 1860, Section 354

Section 363⁸ of the IPC (any person who takes another person, aged below 18 years, or of unsound mind, out of the care or custody of his/her legal guardian, without the guardian's permission or consent, is said to have committed the crime of kidnapping)

Section 7⁹ of the 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 8¹⁰ of the POCSO Act (states the punishment for sexual assault, with a descriptive term for imprisonment, up to 3 years, which may be extended up to 5 years, or a fine, or both).

The accused, then appealed before the Hon' High Court, Nagpur Bench, to acquit him of his sentence, and stay his conviction.

ISSUES RAISED BY THE APPELLANT

- a) Whether the aforementioned crime relates to Sections 7 and 8 of the POCSO Act.
- b) Whether touching the breasts of the accused, from the outside of the salwar, resulted in any skin-to-skin contact, amounting to sexual penetration, and would fall under the guidelines of Section 7 of the POCSO Act.
- c) Whether the act of removing the salwar of the victim, falls under the pretext of 'sexual assault', and results in being convicted under Section 7 of the POCSO Act, and hence be punishable under Section 8 of the POCSO Act.

ARGUMENTS RAISED BY BOTH SIDES

By the appellant-

The learned counsel for the appellant contended that the term 'sexual intent' could not be brought to a mere confinement and that sexual assault was defined by the POCSO Act, but 'assault', or 'criminal force', are terms defined in the IPC and not the POCSO Act.

⁸ Indian Penal Code, 1860, Section 363

⁹ POCSO Act, 2012, Section 7

¹⁰ POCSO Act, 2012, Section 8

The counsel further contended that the first half of Section 7 of the POCSO Act, said that 'touching the sexual parts of a child' may not require physical touch, but it also clearly read that 'any other act was done with a sexual intent with a physical touch and not sexual penetration' would definitely require physical touch, and in this case, the respondent side has not been able to prove that it has been committed.

The counsel further said that the 'victim', being a 12-year-old girl was a mentally vulnerable, immature, and sexually unaware person, and might have narrated a bizarre incident in the heat of the moment to her mother who then related it to the police. The whole idea seemed inappropriate to him, he said contending that their testimonies are of no use to the case.

By the respondent-

The learned counsel for the respondent argued that the entire act of luring the victim into the house, and trying to remove her salwar amounted to 'sexual assault'.

The counsel also provided testimonies of three individuals, the victim, her mother, and the neighbour, as witnesses.

The counsel also argued that the victim narrated the entire incident to her mother immediately after it occurred, and therein the mother narrated the same incident to the police. Hence the mental vulnerability or immaturity of the girl should not be questioned, and the fact that both the girl and mother narrated the incident accurately and same, proves that the crime was committed.

The counsel further said that the terms 'touch' and 'physical contact' have been used interchangeably in the IPC, and hence would fall under the guidelines of Section 7 of the POCSO Act.

The counsel also contended that the most important requirement for an offence was 'mens rea' (herein the sexual intent of the accused), and his acts of touching the girl's breast should be sufficient enough to prove his guilt and crime.

The counsel also read Section 7 of the POCSO Act, which said that physical touch with sexual intent without 'penetration' amounted to a necessary component of the offence, and was very much present.

JUDGEMENT BY THE HON'BLE HIGH COURT BENCH OF NAGPUR¹¹

Hon' Justice Pushpa V. Ganediwala, heard the following case and said that the learned counsel from the appellant's side was unable to prove from the list of evidence that the mother and girl could not be accepted as viable testimonial witnesses.

She further stated that there was no reason to conclude that the girl was mentally vulnerable, or immature, as she has made no irrational claims, and stuck to her testimony since the start, making them coherent and valid under Section 6(6)¹² of the Indian Evidence Act, 1872.¹³

The Hon'ble Justice further said that though sexual intent was present, and that the accused, Satish Ragde, did press the breast of the girl, it cannot be proved whether he did that by removing her salwar or putting his hand underneath, thus leading to the conclusion that there was no 'skin-to-skin' contact, or sexual penetration, which is not relevant to the Section 7 of POCSO Act, and only a serious offence described under Section 363 of the IPC (offending the modesty of a woman) that prescribes of rigorous imprisonment upto 1 year, and a fine of Rupees 500. He was acquitted of charges under Sections 7 and 8 of the POCSO Act, that the Special Court of Nagpur, previously convicted him of.

OUTCOME AND REPERCUSSIONS

The judgement, as was claimed by the Indian media and women, led to ambiguity on the existence of the POCSO Act, and if there was no 'skin-to-skin touch', or 'sexual penetration', what would sexual assault then mean, and if such was the loophole, serious offenders could still get away with this particular excuse, with further claims that how could a woman Judge be so intolerant towards sexual offences against another woman? A vague and inappropriate judgement like this could further result in a pre-POCSO era where crimes against children were also defined under IPC, leading to serious ambiguities, and also resulting in a drastic increase against the girl child as a whole. Citizens in a wild uproar dejected this particular judgement, and demanded some or the other intervention, or injunction by the Hon'ble Supreme Court Of India, as this particular case had now turned into a landmark one, that would guide further such cases, and the most important, protection of the vulnerable children, and if not thoroughly examined, could lead to a dangerous precedent and wreak havoc over the land.

¹¹ <https://indiankanoon.org/doc/158325618/>

¹² Indian Evidence Act, 1872, Section 6(6)

¹³ <https://indiankanoon.org/1953529/>

This resulted in the Attorney General of India Mr. KK Venugopal, the National Commission For Women and its Chairperson Mrs. Rekha Sharma, and the Government Of Maharashtra, sending petitions and making appeals to the Hon' Supreme Court, requesting an injunction, and overruling the judgement, thus clearing the cloud of ambiguity, and sending a sound message.

Intervention by the Hon'ble Supreme Court of India:

A Supreme Court Bench consisting of Justices Uday Umesh Lalit, S Ravindra Bhat, and M Bela Trivedi, decided to hear the case after the Attorney General Of India submitted a petition, requesting temporary injunction of the judgement of the Hon' Bombay High Court, and filed an appeal against the said decision in the apex court. The Bench further contended that the overall meaning of a particular statute or term should be used in reference to its direct relevance, and should not be stretched to fill in the relevance of the case, or the imagination of the judge overhearing the case. Such an act results in the particular Act, being limited to particular incidents, deeming to be useless.

The Supreme Court Collegium further removed the acceptance of a proposal to promote and alleviate Justice P.V. Ganediwala to the post of the Chief Justice of the state's highest authority court (The Bombay High Court). The Bench lastly contended the similar example of a landmark case, Jigar Singh vs. State Of Himachal Pradesh, wherein it was well-established that when two interpretations of a particular case are possible, the interpretation that is more favourable to the 'child' should be favoured.

Journal of Legal Research and Juridical Sciences

ANALYSIS

As per my analysis, it is very obvious that the Hon' High Court did not consider the offender's offence and intent to be quite serious, as when an appeal is made to a Higher Court the victim is hopeful of more serious charges being convicted, whereas the crucial charges under Sections 7 and 8 were evoked by the court. The judgement dejected the basic principle that the POCSO Act was based on, with the minor being more vulnerable and unaware, and proved to be an irrelevant and dangerous one, marking a tone that was similar to the pre-POCSO era, where such offences had no prescribed punishments, sections, or statutes, and the offenders could escape scot-free, or by serving lesser legal punishments.

The Supreme Court Bench also noted that Section 7 of the POCSO Act read, "Whoever, with sexual intent touches". Here the term touch is not to be constrained to the meaning of 'skin-to-

skin' touch, and it has a much wider relevance. The Bench further stated by saying that if the makers of the POCSO Act wanted its reach and jurisdiction to be short-reaching and limited, they would have defined the term 'penetration' mentioned in it, or even added the term 'skin-to-skin' touch, and defined it, when it was not done, to prevent the offender from using it as a mere excuse or loophole.

As was also mentioned in the *Jigar Singh vs. State Of Himachal Pradesh* case,¹⁴ if two interpretations were actually possible, the court should have gone with one favouring the child, and its safety, whereas the court failed to do so. The particular judgement by the High Court was thus overturned, as it defined the basic principles of 'human justice' and 'protection of the rights of a child', as was observed by the Supreme Court Bench.

CONCLUSION

Personally, my conclusion, and I can assure you that it is not my opinion alone, that the Hon' High Court Bench should not have gone so deep and delved into the meaning of the particular statute. This exercise resulted in the failure of the primary motive of the creation of the Act, which was to grant protection and justice to the child. The Court should have related the common and basic relevant meaning of the statute in accordance with the Case, and it was this failure that resulted in a huge uproar by the Indian masses, and the subsequent intervention of the Hon'ble Supreme Court of India, and the overturning of the judgement.

The Court should have looked into the primary object for conducting that particular offense, and that was mens rea (sexual intent), which was present throughout the case since the start when the accused lured the victim into his house, pressed her breast, and tried to remove her salwar. All this was testimonial and evidently present and proved too, and the court should have relied on these facts and granted the judgement in favour of the girl, sentencing the victim under Sections 7 and 8 of the POCSO Act, and Sections 342, 353, and 364 of the IPC, whereas it squashed the offences and sentences under POCSO, and acquitted him.

The Supreme Court Bench also mentioned later that sexual intention (mens rea) was important and crucial to deciding the case and not sexual penetration, also that indirect touch would also relate to 'sexual penetration'. To sum up, Hon'ble Justice Ravindra S. Bhatt while delivering the judgement observed, "It is no part of any judge's duty to stretch the simpler terms of a

¹⁴ Cr. MP(M) No. 1112 of 2014 Judgement given on, 24th September 2014

statute beyond recognition and to the point of destruction, and hence rejecting the cry of the times that children urgently need the assurance of a law intended to protect their autonomy and dignity, as POCSO does."¹⁵



¹⁵ <https://www.legalwind.org/post/case-analysis-satish-ragde-vs-state-of-maharashtra>