In the Court of

Session Trial No.

IN THE MATTER OF:

STATE OF RAJASTHAN

VERSUS

PRAGYA PRATEEK SUKLA & Ors.

Crime No. -
U/S 376(2)(h), 305 I.P.C. r/w 5,6, 21 POCSO,
S. 3(2)(v)(vi) SC/ST Act
P.S. Nokha, District Bikaner

WRITTEN ARGUMENTS ON BEHALF OF THE COMPLAINANT- MAHENDRA RAM MEGHWAL

I. Matriculation or equivalent certificate is sufficient evidence to determine the age of the child, who is victim of crime

1. That the Investigating Officer("IO"), Mr. Satnam Singh has deposed before the Court that he has only obtained the record from the College regarding the age of the victim. He further deposed that at the time of admission to B.S.T.C College, the 12th standard mark sheet and transfer certificate is submitted to the College. That the College record on the age of the victim is based on the 12th marksheet of the victim and therefore the College record is a certificate equivalent to the matriculation certificate of the victim.

2. Furthermore, the IO has also deposed before the court that it is untrue that the 12th marksheet does not mention the birth date of the student.

3. That Section 34(2) of the POCSO Act provides that: *"If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination."*

4. In a number of cases, the higher courts have held that the age of the victim has to be, *prima facie*, determined by looking at the school certificate/mark-sheet of the victim. This parameter has been upheld, previously in accordance with **Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007,** which is now incorporated under **Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter JJ Act, 2015)**.

5. Both under Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 and Section 94(2) of JJ Act 2015, the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; shall be the evidence to determine the age of the child.

   Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 provides:

> *(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –*
>
> *(a)* ***(i) the matriculation or equivalent certificates, if available; and in the absence whereof;***
>
> *(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

Section 94(2) of JJ Act 2015 provides:

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

6. In **Jarnail Singh v. State of Haryana, (2013) 7 SCC 263,** the Hon'ble Supreme Court held:

> *"…**Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime.** For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. **In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon.** Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon…"*

7. In ***Sanjeev Kumar Gupta v. State of Uttar Pradesh, (2019) 12 SCC 370***, the Hon'ble Supreme Court held:

> *"The [Juvenile Justice] Act of 2015 came into force on 15 January 2016. Section 111 repeals the earlier Act of 2000 but stipulates that despite the repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the new legislation. Section 94 contains provisions in regard to the determination of age...*
>
> ***Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the***

> ***birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided.*** *Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category."*

8. The record of the College therefore proves that the victim was a minor.

II. <u>Consent of the victim irrelevant in cases of minor</u>

9. It has been held in a number of judgments that once it is clear that the victim is a minor, the issue of her consent does not arise in determining the conviction of the accused under POCSO and the Indian Penal Code.

10. In ***Firoz Khan v. State of Rajasthan,*** D.B. Criminal Appeal No. 1778/2017, decided on 2 August 2019, a Division-bench of the Hon'ble High Court of Rajasthan at Jodhpur, held:

> *"11. Now we come to the offences under the Indian Penal Code and the POCSO Act for which the accused appellant has been convicted. The entire prosecution case is based on the statement of the victim (PW-10) who virtually admitted in her sworn testimony that the relations between she and Firoz Khan were consensual. Even* ***the defence took up a definite stand about consensual physical relationship between the accused and the victim****. Thus, the fact that the accused indulged in penetrative sexual relationship with the victim is well proved by the prosecution evidence and is even admitted by the defence. Nonetheless, while deposing, the girl gave out her age to be of 17 years. The incident took place about 2 years before her statements were recorded.* ***The defence tried to controvert the prosecution case regarding the age of the victim claiming that she had attained the age of majority as on the date of the incident. However, on going through***

> ***the evidence of PW-17 Arjun Ram, the Principal of the School where the victim was initially admitted and where she studied, it is clear that in her admission form of the Ist standard (Ex. P/9), the date of birth of the victim is mentioned as 05.08.1999. The incident took place in July, 2014. Meaning thereby, the girl was below 15 years of age on the date of commission of offence.*** *As this admission form was filled way back in the year 2004, there is no reason to doubt the veracity of the date of birth of the victim recorded therein. The victim clearly stated that the accused offered to marry her and thereafter, she went away from the house of her father and joined the accused at the Raniwara bus-stand. Manifestly thus, it is clearly a case of a minor girl being kidnapped from the guardianship of her father under an allurement of marriage. True it is, that on going through the statements of the victim (under Sections 161 and 164 Cr.P.C.) with which she was confronted in her cross-examination, it is manifest that in both these statements, the victim divulged that the physical relations between her and the accused appellant were established purely with her consent.* ***However, the consent of a minor girl is irrelevant in view of the clear language of the Clause "Sixthly" of Section 375 IPC which reads that a man is said to commit rape if he penetrates his sexual organ into any orifice of a woman with or without her consent when she is under eighteen years of age. Thus, the consent of the minor is immaterial … the conviction and sentences awarded to the appellant for the offences under Sections 344, 363, 366, 376, 376(2)(i) and 376(2)(n) and Section 3/4 of the POCSO Act are affirmed.****"*

11. In **Bharti Jatav v. State of M.P.**, Criminal Appeal No. 1004/2014, decided on 14 August 2019, a Single-judge Bench of the Hon'ble Madhya Pradesh High Court held:

> *"****Since this Court has already come to a conclusion that the prosecutrix was minor below the age of 16 years, therefore, her consent is immaterial.*** *Accordingly, this Court is of the considered opinion that there is no good reason to burden this judgment by adjudicating that whether the prosecutrix was a consenting party or not. Under these circumstances, the conviction of the appellant for offence under Sections 363, 366, 376(1) of IPC and under Section 4 of POCSO Act, 2012 is hereby affirmed."*

Rape offence is proved

12. That the victim was a minor (as per College records), and the report of the medical board (CHC Nokha) suggests that sexual intercourse had recently occurred before her death. These two conditions are sufficient to constitute a rape offence under the POCSO Act and I.P.C.

Nexus between rape offence and the accused proved:

13. That the Regional Forensics Science Lab, Rajasthan, Bikaner report no. RFSL/BKN/Exam/141/16 establishes the nexus between the rape offence and the accused, Mr. Vijendra Singh. The report observes that human semen was found in exhibits 1, 2, 3, 5, and 6 which were vaginal swab, vaginal smear, undergarment of the victim and the underwear and 'chaddar' of the accused Vijendra Singh. The chaddar/ bedsheet seizure report dated 1.04.2016 at Exh. P-21 notes that the bedsheet/chaddar was seized from the room of accused Vijendra Singh, that was found on the bed in his room. The bedsheet was seized and the seizure report has been signed by the IO. The Forensics report along with the bedsheet seizure report clearly establishes that there was sexual intercourse between the accused Vijendra Singh and the victim.

III. <u>Ignorance of victim's minor age cannot be a defence in POCSO cases</u>

14. That the ignorance of the victim's minor age cannot be claimed as a defence in POCSO cases can be understood from a number of authoritative judgments on 'mistake of fact' and 'mistake of law' in reference to the minor age of the victim.

15. In ***Krishna Maharana v. King-Emperor*, (1929) I.L.R. 9 Pat. 647,** it was held:

> *"The first point raised by the learned Advocate for the appellant is that the learned Sessions Judge should not have told the jury that even if the appellant had honestly believed Narayani to be over 16 years of age, and it turned out that she was in fact under 16, the appellant would still be guilty of an offence under section 366 of the Penal Code, 1860. In support of this contention* ***the learned Advocate has referred to Dr. Gour's well-known work on the Penal Law of India, paragraph 3829 of the fourth edition. There are some remarks in this paragraph which imply that good faith, that is to say, an honest belief that the girl was over 16 years of age, would be a good defence in a prosecution under the section. But apparently the only section of the Penal Code, 1860 under which such a defence can be pleaded is section 76 and the learned Advocate has not been able to urge that section 76 has any possible application to the present case.*** *That section applies to acts committed by a person who in good faith believes himself to be bound by law to commit them and in the present case there is no room for the pretence that even if the appellant had been asked by Narayani's mother to take the girl away to Calcutta, a story which the jury has unanimously disbelieved, the appellant "believed himself to be bound by law" to take the girl away.* ***It does not seem necessary in this connection to deal with the annotations of Dr. Gour on section 76 of the Penal Code, 1860 referring to the well-known English case of Queen v. Prince, (1875) 44 L.J.M.C. 122. It was held by the majority of the Court in that case that Prince was guilty of the misdemeanour charged notwithstanding that he mistakenly believed the girl's declaration of her own age as 18.*** *The English law was subsequently altered, and in the present case we have to deal with section 361 of the Penal Code, 1860 which is framed in such terms as to make it immaterial what the offender took the age of the girl or victim to be."*

16. In ***Swadeshi Cotton Mills Co. Ltd. v. Govt. of U.P***., (1975) 4 SCC 378, the Hon'ble Supreme Court held:

> *"Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law…"*

17. The accused principal and warden had access to the admission documents of the victim, as they were running the administration of the institute. They could have easily cross-checked the age of the victim from the documents submitted to their institute.

IV. Punishment for failure to report a case under POCSO Act

18. The accused Pragya Prateek Sukla was the Principal of the College at the time of the occurrence of the offence and therefore the person in-charge of the institution. The accused Priya Sukla was the warden of the College, which means she was responsible for the safety of the girls at the hostel. This also makes her the person in-charge of the institution u/s 19 and 21 of the POCSO Act. Both the accused ought to have reported the offence to the police, the minute the minor victim was found by them in accused Vijendra Singh's room.
19. That the victim was a subordinate under the supervision of both accused- Principal Pragya Sukla and Warden Priya Sukla, and therefore were obligated to inform about the offence under Sec.19 and 21 of the POCSO Act
20. Under Section 19(1) of the POCSO Act, whoever has knowledge that an offence under POCSO has been committed, he shall provide such information to,— (a) the Special Juvenile Police Unit; or (b) the local police. The failure to report the offence shall amount to criminal liability. An additional burden is provided under Section 21(2) on the persons in-charge of any institution.
21. Section 21 of POCSO Act provides:

> *"(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such 11 offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or*

with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine. (3) The provisions of sub-section (1) shall not apply to a child under this Act.*"*

22. The spirit of the above provisions was reiterated by the Hon'ble Supreme Court in the case of ***Shankar Kisanrao Khade v. State of Maharashtra*****, (2013) 5 SCC 546.** The Hon'ble Court (speaking through Hon'ble Justice M.B. Lokur) passed the following directions for compliance:

"(1) The persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc. or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have been committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping upmost secrecy to the nearest Special Juvenile Police Unit (SJPU) or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow-up action casting no stigma to the child or to the family members…

(6) The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening the offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law."

23. In ***Lizy Paul v.State of Kerala*****, 2019 SCC OnLine Ker 6097: Crl. M.C. No. 796 of 2019, decided on 29 January 2019**, the Hon'ble Kerala High Court explained the content of Sections 19 and 21 in clearest terms, and held:

> *"Section 19 of the [POCSO] Act is lucid and clear. It starts with a non obstante clause. It says that not withstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under the Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Special Juvenile Police Unit or the local police. The procedure to be followed thereafter is also detailed. Section 21 has two limbs. Sub Clause (1) provides for punishment of a person who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20 or who fails to record such offence under sub-section (2) of Section 19.* ***Sub clause (2) provides for punishment of any person, being in-charge of any company or an institution (by whatever name called) fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control."***

In the above case, the Headmistress of a school was charged under Sections 19(2) r/w. 21(2) of POCSO Act. The allegation against the Headmistress was that she failed to report the commission of the offence (sexual assault on several students by a school teacher) under sub-section (I) of Section 19 of the Act to the Special Juvenile Police Unit or to the local police and thereby committed the offence punishable under Section 19 (2) r/w Section 21 (2) of the Act. The Headmistress claimed that she had reported the matter to the corporate management of the school, and therefore she would not be liable under the POCSO Act. The Kerala High Court rejected this line of defence, and held:

> *"The learned Senior counsel appearing for the petitioner submitted that initially when the FIR was registered, the petitioner was not named as an accused. In the course of investigation, an additional report was submitted by which the petitioner was roped in as the 2nd accused.*

According to him, St Mary's A.L.P. School is under the corporate management run by the Thalassery Arch Diocese and the Corporate Manager is the person in charge of the institution. The petitioner being a subordinate officer under the Corporate Manager, she is only bound to report the matter to the Corporate Manager, which she has done. The Corporate Manager visited the school and took statements of all concerned…

The contention that the petitioner is not the person in-charge does not appeal to me. Every person, including the child, who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed is bound to report the incident. I am also not impressed with the contention of the petitioner that her duty is to report the matter to the corporate management and not to the authorities mentioned under Section 19 of the Act. <u>The said provision was enacted to ensure that crimes against children are reported promptly and no attempt is made to cover it up.</u>*"*

24. The Hon'ble High Court of Chhattisgarh, in the case of ***Kamal Prasad Patade v. State of Chhattisgarh***, 2016 CriLJ 3759, also emphasized the mandatory obligation on the in-charge of any institution to report the offence under POCSO to the police. It held:

"A conspectus of the afore-stated judgments would show that ***Section 21(2) of the POSCO Act is a penal provision which obliges any person being in-charge of the institution to give information before the police about the commission of an offence under the POSCO Act. The said provision has been enacted for the purpose of screening the offender relating to commission of offence under the POSCO Act with an intention that information relating to commission of offence under the POSCO Act must reach to the police authorities with all***

> ***expedition so that wheels of investigation for the offences under the POSCO Act will start running at the earliest*** *and once the information relating to commission of offence actually reaches to the Police Station, the requirement of Section 19(1) of the POSCO Act stood satisfied and therefore, no prosecution for non-reporting the matter under Section 21(2) of the POSCO Act would lie against the Head of the Institution."*

25. The accused Pragya Prateek Sukla (Principal of the College) and accused Priya Sukla (the warden of the College) were the persons in-charge of the institution, and failed in their mandatory obligation to report the offence under POCSO Act to the police, and therefore are liable to be convicted under Sections 19 and 21(2) of the POCSO Act.

V. <u>Abetment to Suicide</u>

26. That accused Priya Shukla, the warden, and her husband Pragya Pratik Shukla, the principal, had made the minor victim write an apology letter after finding her in accused Vijendra Singh's room past midnight on 29.03.2016. They were responsible for the minor victim and she was under their supervision and care. Further, as elucidated above, they knew that she was a minor. Upon finding her in a quite obviously dangerous situation, they had made the victim write an apology letter instead of reporting a potential rape, and caring for her.

27. Further, the IO Satnam Singh has deposed before the court in no uncertain terms that it was accused Priya Sukla herself who had submitted the apology letters signed by accused Vijendra Singh and the deceased victim to him, which have been exhibited at Exh. P- 55 and 56 respectively. The IO's statement establishes that accused Priya Sukla was in

possession of the apology letters when she handed them over to the IO at the time of investigation.

28. The depositions of the nurse Leena Gupta and the watchman Hanuman Singh corroborate the fact that Priya Shukla and Pragya Pratik Shukla had made the victim write an apology letter.

29. Further, forensic report by the State Forensic Science Laboratory, Jodhpur dated 28.06.2016 confirms that the handwriting in the apology letter dated 29.03.2016 claimed to be the victim's, showing similarities with the answer booklet bearing the name of the victim student.

30. Instead of supporting the victim (a minor and a Scheduled Caste girl), the accused Priya Shukla, the warden, and her husband Pragya Pratik Shukla, the principal, shamed her by forcing her to write an apology in the middle of the night. The accused were in a position of power (as in-charge of the institute), who misused their authority in contravention of the law.

31. Furthermore, the accused Vijender Singh (while being a teacher) committed aggravated penetrative sexual assault on the victim, for which she was shamed before everyone in her institute.

32. There was anxietment and humiliation given by the accused, which led to the commission of suicide by the victim.

33. That causing public humiliation may be considered as constituting abetment of the suicide has been accepted by the Hon'ble Supreme Court in the cases of ***Praveen Pradhan v. State***

of Uttaranchal,* (2012) 9 SCC 734** and ***Dammu Sreenu v. State of A.P.,* (2009) 14 SCC 249.** Furthermore, the Hon'ble Supreme Court held in the case of ***Ude Singh v. State of Haryana, (2019) 17 SCC 301:

> *"If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide."*

34. The victim, being a Scheduled Caste minor, was forced to write an apology, leading to her humiliation and loss of dignity. The multi-layered experiences of humiliation and oppression of Scheduled Caste girls has been recorded in a recent judgment of the Hon'ble Supreme Court in the case of ***Patan Jamal Vali v. State of Andhra Pradesh,*** AIR 2021 SC 2190:

> *"**The experience of rape induces trauma and horror for any woman regardless of her social position in the society. But the experiences of assault are different in the case of a woman who belongs to a Scheduled Caste community**... When the identity of a woman intersects with, inter alia, her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds. Transwomen may face violence on account of their heterodox gender identity. In such a situation, it becomes imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination for a blind Scheduled Caste woman... The... discussion highlights the social and economic context in which sexual violence against women from SC & ST communities occurs. This contextualized legal analysis has to be adopted by the Court which is sensitive to the nature of evidence that is likely to be produced in a case where various marginalities intersect".*

This factor also needs to be considered while deciding the issue of abetment of suicide under Section 305, IPC.

VI. The offence constitutes an "atrocity" under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

35. In **Patan Jamal Vali v. The State of Andhra Pradesh,** AIR 2021 SC 2190**,** the Hon'ble Supreme Court held that:

> *"To deny the protection of Section 3 (2) (v) on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion. It is to render the experiences of the most marginalized invisible. It is to grant impunity to perpetrators who on account of their privileged social status feel entitled to commit atrocities against socially and economically vulnerable communities. This is not to say that there is no requirement to establish a causal link between the harm suffered and the ground, but it is to recognize that how a person was treated or impacted was a result of interaction of multiple grounds or identities. A true reading of Section 3(2)(v) would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence…*
>
> ***It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "on the ground of" under Section 3(2) (v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise…***
>
> ***The current regime under the SC & ST Act, post the amendment, has facilitated the conduct of an intersectional analysis under the***

Act by replacing the causation requirement under Section 3(2)(v) of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases such as these."

36. The above observations on the applicability of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall apply to the present case, since the victim was a Scheduled Caste minor, and the accused were aware of her caste location. She studied in the institute, where her documents were submitted, and the accused had access to those documents, by being in-charge of the institute.

VII. Presumption as to offences in Atrocities and POCSO cases

37. That section 8 of the SC, ST (Prevention of Atrocities) Act, 1989 provides that unless contrary is proved, a Special Court shall presume that the accused has abetted the offence. The special court shall also presume that the accused was aware of the caste identity of the victim, unless contrary is proved.

38. Section 8 of the Act reads as under:

8. Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that—
(a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;
(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.
c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the vaste or tribal identity of the victim, unless the contrary is proved

39. That as provided under Sections 29 and 30 of POCSO Act, there is a presumption that an accused charged under Sections 3,5,7 and 9 of the aforesaid Act has committed such an offence and such an accused is obligated to prove his innocence

40. Section 29 under the POCSO Act reads as under:

> *"Presumption as to certain offences - Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."*

41. Section 30 under the POCSO Act reads as under:

> *"(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
> *(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.*
>
> *Explanation.--In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.*

Drafted by: Disha Wadekar, Advocate, with inputs from: Anurag Bhaskar

Submitted & Signed by

Advocate(s) for the Complainant:

Date: 02.09.2021
Place: Bikaner