

Groping 12-year-old child without removing her clothes not 'sexual assault' under POCSO Act, but only 'outraging modesty' under IPC: Bombay HC

The Court, therefore, acquitted the man for offence under POCSO while maintaining his conviction under Section 354 of IPC.



Nagpur Bench
[Neha Joshi](#)

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The act of pressing the breast of a child aged 12 years without removing her top will not fall within the definition of 'sexual assault' under Section 7 the *Protection of Children from Sexual Offences Act (POCSO)*, the [Bombay High Court](#) has ruled.

It would, however, fall within the definition of the offence under Section 354 of the Indian Penal Code (IPC), which criminalises outraging the modesty of a woman, the Court ruled.

Whereas the punishment for sexual assault under Section 8 of the POCSO Act is imprisonment of 3-5 years, the punishment under Section 354 is imprisonment of 1-5 years.

The order passed by the Nagpur Bench of the Bombay High Court reads,

"The act of pressing of breast of the child aged 12 years, in the absence of any specific detail as to whether the top was removed or whether he inserted his hand inside top and pressed her breast, would not fall in the definition of 'sexual assault'. It would certainly fall within the definition of the offence under Section 354 of the Indian Penal Code."

Justice **Pushpa V Ganediwala**, therefore, acquitted a man under Section 8 (punishment for sexual assault) of the POCSO Act. The Court, however, maintained his conviction under Sections 354 (assault of criminal force) and 342 (wrongful confinement) of the IPC, considering the act which he committed amounted to use of criminal force to outrage her modesty.

"Admittedly, it is not the case of the prosecution that the appellant removed her top and pressed her breast. As such, there is no direct physical contact i.e. skin to skin with sexual intent without penetration", the Court stated while acquitting him under the POCSO Act.

The appellant had allegedly taken the 12-year-old prosecutrix to his house on the pretext of giving her guava, and had pressed her breast and attempted to remove her salwar. At this point, the mother of the child came to the spot and rescued her daughter.

The accused was convicted by the trial court for offences punishable under POCSO Act and the IPC. He then approached the High Court challenging the conviction.

The question considered by the Court was whether pressing of the breast without removing the top of the child would fall within the definition of 'sexual assault' defined under Section 7 of the POCSO Act.

The Court examined Section 7 which states:

"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."

Based on the above definition, the Court concluded that the necessary ingredients for constituting the offence was that the act must have been committed with sexual intent and it must involve touching the vagina, penis, anus or breast of the child or 'any other act' which are similar to the acts specifically mentioned in the provision.

"The words 'any other act' encompasses within itself, the nature of the acts which are similar to the acts which have been specifically mentioned in the definition on the premise of the principle of 'ejusdem generis.' The act should be of the same nature or closure (sic) to that", the Court opined.

Justice Ganediwala opined that considering the stringent nature of punishment provided for the offence, stricter proof and serious allegations are required. She also observed that the punishment for an offence should be proportionate to the seriousness of the crime.

While sexual assault under Section 7 of POCSO carries a punishment of imprisonment between 3 to 5 years, the minimum punishment for outraging modesty of woman under Section 354 of IPC is only 1 year, the Court noted.

"Section 7 of the POCSO Act, defines sexual assault and the minimum sentence provided is three years and Section 354 of the Indian Penal Code, which is related to outraging the modesty of a woman, prescribes minimum sentence of one year. In the instant case, having regard to the nature of the alleged act by the appellant and having regard to the circumstances, in the opinion of this Court, the alleged act fit into the definition of the offence as defined in Section 354 of the Indian Penal Code", the Court ruled.

It, therefore, acquitted the convict under POCSO Act while upholding his conviction under Section 354 of IPC.

Considering that the appellant was out on bail, the Court forfeited his bail bond and issued a non-bailable warrant against him.

[Read Order]

Attachment

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Satish Ragde v. State of Maharashtra.pdf