

Home › Case Briefs › Know Why Karnataka Hc Recommended A Trial Court Judge To Undergo Training In Karnataka Judicial Academy Vis-À-Vis Pocso Cases

## Know why Karnataka HC recommended a Trial Court Judge to undergo training in Karnataka Judicial Academy vis-à-vis POCSO cases

*The High Court was shocked to find that the Trial Judge have not understood properly what is meaning of the theory beyond reasonable doubt in appreciating the evidence in POCSO cases.*

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**Karnataka High Court:** While considering the instant appeal challenging judgment and order of acquittal in a POCSO case, the Bench of **Hanchate Sanjeevkumar, J.\***, took strict note of the insensible and inhuman way Additional District and Special Judge, Ballari, appreciated the evidence in the instant case and delivered a verdict of acquittal. *“The appreciation of the evidence does not mean that finding fault with the prosecution case with an intention to search fault in the prosecution case”*. Upon reading the order of acquittal, the Court found that the POCSO Judge assigned flimsy reasons and appreciated the evidence on record in a casual way. The Court noted that POCSO Court Judge had not understood

properly what is meaning of the theory beyond reasonable doubt in appreciating the evidence in POCSO cases.

The Court went on to observe that the POCSO Judge's faulty way of handling cases of such nature requires some training. Therefore, it was recommended that the Additional District and Special Judge, Ballari who delivered the verdict in the instant case, to undergo training in the Karnataka Judicial Academy.

**Background:** On 20-02-2018, the minor daughter of the complainant was playing in front of their house. The accused in order to outrage modesty, called her, pulled her and also removed zip of her backside cloth and behaved indecently with an intention to commit sexual assault on the victim. Therefore, a FIR was lodged before the police for offences punishable under Sections 354-A and 354-B of the Penal Code, 1860 and Sections 8 and 10 of the POCSO Act.

The matter reached the Trial Court and after a full- fledged trial, the POCSO Court passed a verdict of acquittal.

**Contentions:** Aggrieved by the verdict, the State appealed before the High Court and contended that there was convincing evidence against the accused available from the victim, father, mother and grandmother of the victim. However, disbelieving their evidence is not correct, as contrary to law and evidence produced before the Court. Therefore, it was submitted the approach of the POCSO Court is perverse and illegal.

Per contra, the counsel for the accused insisted that the POCSO Court rightly analysed the evidence.

**Court's Assessment:** Upon perusal of the facts, contentions and the impugned order, the Court had to consider that whether the Prosecution had established that the accused committed the offences under Sections 354-A and 354-B of the Penal Code, 1860 and Sections 8 and 10 of the POCSO Act.

The Court took note of the reasons assigned by the POCSO Court Judge, upon which he had arrived at the conclusion of acquitting the accused. The High Court pointed out that it is constrained to appreciate the prosecution evidence once again in the backdrop of the Trial Court having done the same before. However, the High Court noted that the Trial Court had gone to appreciate the evidence on record too technically without appreciating them in correct and true perspective. *"The POCSO Court has expected eyewitness to the incident. This is completely erroneous, perverse and inhuman approach by the POCSO Court. The evidence in these types of cases is to be considered on all the circumstance in order to ascertain and to get impression what would have been occurred to the victim from the evidence produced by the prosecution before the Court. Hyper technical reasons are not permissible".*

The Court strictly observed that the POCSO Court Judge just found fault with prosecution witnesses. *"Appreciation of evidence, beyond reasonable doubt does not mean that adopting too much technicality in appreciating the evidence, rendering the whole prosecution case as unbelievable"*. The Court pointed out that the "theory of beyond reasonable doubt" means expecting higher degree of preponderance of probabilities and the natural conduct of human beings. On these principles of law, the evidence on record is to be appreciated.

Analysing the evidence presented by the prosecution, the Court found that the evidence presented by father and mother of the victim (PW 1 and 2) was relevant and admissible as per principle of *Res gestae*. Minor discrepancies aside, the Court also found the victim's (PW 3) statement to be trustworthy. Similarly, the Court found the evidence by other prosecution witnesses (PW 4 and 5) to be relevant as well. *"Upon analysing and considering the evidence, it is proved that the accused has committed offences alleged"*.

The Court pointed out that in such cases, the witnesses that are available are the parents and relatives and minor victim. The POCSO Court wanted and expected independent witnesses and eyewitnesses which was highly impossible, hence rendering unjustifiable judgment of acquittal.

The Court further pointed out that even though injuries were absent during the victim's medical examination, that does not mean that offence has not been committed. *"The POCSO Court has committed serious error in rejecting medical examiner's evidence on the reason that there are no visible injuries found on the chest part of the victim, when the chest part of the victim was squeezed. This observation and finding of the POCSO Court are palpably erroneous"*. It was pointed out that the POCSO Court deciding the degree of force applied on a minor victim child, is absurd.

The Court thus found that the prosecution was able to prove guilt of the accused beyond reasonable doubt. The Court further pointed out that the POCSO Court while acquitting the accused had assigned flimsy reasons and thus committed serious error in appreciating the evidence on record. Therefore, excessive technical approach to the appreciation of evidence by the POCSO Court Judge was highly unreasonable and had shocked conscience of the Court.

*"Appreciating evidence on the theory beyond reasonable doubt is not expecting 100% preponderance of probabilities. The theory beyond reasonable doubt means requiring high degree of probability. It is the natural phenomena to occur of minor discrepancies that cannot be exaggerated in reasoning, in acquitting culprit"*.

The Court further pointed out that finding fault with prosecution witness at every line and adopting too much technicality while appreciating evidence is nothing but travesty of justice, and the same was by the POCSO Court judge in the present case.

Therefore, from the evidence analysed and appreciated, the judgment of acquittal made by the POCSO Court is highly and seriously erroneous, thereby shocking the conscience of the

Court.

Based on the manner of appreciating evidence in the instant case, the Court found the POCSO Court Judge to be lacking professionalism, and therefore recommended the Trial Judge to retrace their steps and seek training from the Karnataka Judicial Academy on how to handle POCSO cases.

Furthermore, the Court found the accused guilty of the offences under POCSO Act and Penal Code, 1860 and found liable to be convicted. The Court allowed the appeal and set aside the impugned order of the POCSO Court.

The Court also sentenced the accused, observing that the victim was an 8 and ½ years old child against whom the accused committed heinous offence as above stated. Therefore, if leniency is shown while awarding sentence that would not deter the other culprits in the society.

[**State of Karnataka v. Venkatesh, 2023 SCC OnLine Kar 112, decided on 18-12-2023**]

### **\*Judgment by Justice Hanchate Sanjeevkumar**

Advocates who appeared in this case :

**For appellant-** Praveen Devaraddiyavar, HCGP

**For respondent-** Anwar Basha B., Advocate for R1; Sonu Suhel, Amicus Curiae for R2

**Buy Penal Code, 1860 [HERE](#)**



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