

Section 29 of the POCSO Act

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In News

- Delhi High Court has ruled that the presumption of guilt engrafted in Section 29 of the Protection of Children from Sexual Offences (POCSO) Act gets triggered and applies only once trial begins, that is after charges are framed against the accused. POCSO Act Section 29 Implication.

What is Section 29 ?

- **POCSO Act Section 29** : When a person is prosecuted for committing an offence of sexual assault against a minor, the special court trying the case shall presume the accused to be guilty.
 - This reverse burden on the accused to prove his innocence was incorporated in the POCSO Act keeping in view the low conviction rate of sexual offences against children.
 - Presumption of guilt on the part of the accused if he is prosecuted for committing, abetting or attempting offences under Sections 3, 5, 7 and 9 of the Act.
- **Importance of the act is that**
 - To take care of the child who has limited capabilities.
 - To achieve its object of protection of children.

Delhi High Court Ruling

- If a bail plea is being considered before charges have been framed, Section 29 has no application.
- Trial commences when charges are framed against an accused and not before that.

- Only at the stage when charges are framed does the court apply its judicial mind to whether there is enough evidence on record to frame a precise allegation, which the accused must answer.
- Therefore, it is only once charges are framed that the accused knows exactly what he is alleged to be guilty of; and therefore, what guilt he is required to rebut.
- Also set out fresh norms while deciding a bail plea at the post-charge stage.
- In addition to the nature and quality of the evidence before it, the court would also factor in certain real-life considerations.
- This includes whether the offence allegedly involved threat, intimidation, violence or brutality.

Key factors


Real-life considerations for court while deciding bail

Age of the minor victim: The younger the victim, the more heinous the offence alleged

Age of the accused: The older the accused, the more heinous the offence alleged

Comparative age of victim and accused: The more their age difference, the more the element of perversion in the offence alleged

Familial relationship: The closer such relationship, the more odious the offence alleged



WHAT DOES SECTION 29 OF THE POCSO ACT SAY

When a person is prosecuted for committing an offence of sexual assault against a minor, the special court trying the case "shall presume" the accused to be guilty

Protection of Children from Sexual Offences Act, 2012

- It was enacted to protect the children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well-being of children.
- It defines a child as any person below eighteen years of age and regards the best interests and welfare of the child as a matter of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.

- It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography.
- It deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority like a family member, police officer, teacher, or doctor.
- It also casts the police in the role of child protectors during the investigative process.
- The Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.
- It was amended in August 2019 to provide more stringent punishment, including the death penalty, for sexual crimes against children.