

S. S. MANIYAR LAW COLLEGE, JALGAON

Dr. Annasaheb G.D.Bendale Memorial

**16th NATIONAL MOOT COURT
COMPETITION.**

25th & 26th Feb, 2023





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Moot Problem

Mr. Alex
Vs
Union of Scandina

Mr. Alex, a 30 year old man, is a school teacher. It is been alleged that the Mr Alex sexually assaulted one of the girl student from his school. The FIR was lodged and Mr. Alex was arrested. As per the First Information Report, Mr. Alex has been charged under section 376 Penal Code of Scandina and Section 5(i) r/w Section 6 of the POCSO Act. In accordance with the FIR the offence occurred six months prior to the complaint being made. This occurred as a result of the victim's fear of coming forward with a complaint against the accused.

After the arrest of Mr. Alex, the police investigating team sent Mr. Alex for the medical examination where the reports of the medical examination propounded that Mr. Alex is capable of having sexual intercourse. The medical report also highlighted some simple injuries on his arm which may have resulted from human nails. The victim was also examined medically. As per the medical reports of the victim, there was no evidence of recent sexual assault on her. Nonetheless, the statement of the victim was recorded under section 164 of CrPC which was in accordance with the complaint from the FIR. Along with this, under section 161 of CrPC the statement of Parents of the victim was also recorded in which they stated that their daughter was sexually assaulted by the accused Mr. Alex. After the police submitted the chargesheet, the accused Mr. Alex filed the discharged application and the same was rejected by the court. Proceeding with the matter the charges were framed against the accused for the offence punishable under section 5(i) r/w section 6 of POCSO Act. The charge under section 376 of Penal Code of Scandina was dropped. The accused Mr. Alex submitted a plea of innocence and demanded a trial. Subsequently, trial commenced.

As the trial began, the Special Public Prosecutor under section 29 and 30 of POCSO Act refused to lead the evidence and submitted that the court was to presume the accused guilty of having committed the offences charged under POCSO Act unless he proved otherwise. On the account of that the accused would have to lead the evidence of his innocence as the prosecution has already released his burden of submitting the evidence. During the trial, the accused Mr. Alex led the evidence of hostility between himself and the victim's parents over money which the



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victims' parents borrowed from Mr. Alex to prove that the complaint was distorted and malicious. As witness of the case, the neighbours and relatives of Mr. Alex was also examined and testified to the enmity between the accused and the parents of the victim. After all the stages of the matter the case reached to the final argument and both the parties argued and the judgement was reserved. In its final verdict, the trial court found out that the accused has failed to controvert the presumption against him under the POCSO Act of having committed the sexual offences as the evidence of enmity did not, in fact, disprove the accusations' falsity. As per the judgement, the trial court proceeded to convict the accused for the offences charged and sentence him to ten years imprisonment and fine of Rs.50,000.

After being convicted, Mr. Alex appealed his conviction in the High Court. Concomitantly Mr. Alex has also challenged the constitutionality of Section 29 and Section 30 of POCSO Act as it infringes his valuable right of defence and violates Article 14, 19, 20(3) and Article 21 of the Constitution of Scandina. He pleaded that the POCSO Act's sections 29 and 30 be abolished since they are arbitrary and violate constitutional provisions. Notice is issued on the constitutional challenge to the Union of Scandina. Prepare pleadings and argue on both sides on the constitutionality of the said provisions.

Issues:

1. Whether the Doctrine of Reverse Burden is constitutionally Valid under the POCSO Act?
 2. Whether Section 29 and 30 of the POCSO Act takes away valid defences available to the accused and there is substantial shifting of burden of proof to the accused, which is contrary to the settled legal principles?
- The participants can frame additional issues.
 - The above-mentioned moot problem is hypothetical in nature.
 - The law of Scandina is similar to law of India