

MOOT PROBLEM - NO. 1

(FOR PRELIMINARY ROUND)

Mr A is arrested and tried for offences punishable under S.376, IPC and S.5(i) r/w S.6 of the POCSOA. As per the first information report, the offence occurred six months prior to the complaint being made. This was due to the fact that the victim had been too afraid to complain against the accused. After his arrest, the police investigating the case sent him for medical examination. Medical examination suggested that Mr A was capable of having sexual intercourse. He also had simple injuries on his arm which might have been caused by human nails. The victim girl was also examined medically. Medical examination suggested no evidence of recent sexual assault on the victim. However, the statement of the victim was recorded under Section 164, Cr.P.C. which was consistent with the complaint that led to the FIR. Further, statements of the parents of the victim were recorded under S.161, Cr.P.C. which also stated that the victim had been sexually assaulted by the accused. Upon submission of the chargesheet, the accused filed for discharge in the present case. The said application was rejected by the court which then proceeded to frame charge against the accused for offences punishable Section 5(i) read with 6 of the POCSOA. The charge under S.376, IPC was dropped. The accused entered a plea of not guilty and claimed to be tried. Thereafter, trial commenced.

Opening the trial for the prosecution, the Special Public Prosecutor refused to lead any evidence before the trial court and instead submitted that the court was to presume the accused guilty of having committed the offences charged under POCSOA unless he proves otherwise. Therefore, he submitted, that the prosecution had already discharged its burden, and the accused would have to lead evidence. The accused led evidence of mutual enmity between himself and the parents of the victim over a property dispute to prove that the complaint was falsely and maliciously made. Neighbours and family members of the accused were examined as witnesses who testified to the existence of such enmity. Thereafter, final arguments were made and the judgment was reserved. In its verdict, the trial court held that the accused had been unable to rebut the presumption against him under the POCSOA of having committed the offences as evidence of enmity did not in fact prove that the allegations were falsely made. Thereafter, the trial court proceeded to convict the accused for the offences charged and sentence him to ten years imprisonment and fine of Rs.10,000.

Mr.A appeals his conviction in the High Court. He simultaneously challenges the constitutionality of S.29 and S.30 of the POCSOA as depriving him of rights under Article 21 of the Constitution. Notice is issued on the constitutional challenge to the Union of India. Prepare pleadings and argue on both sides on the constitutionality of the said provisions.