
LACK OF AGE PROOF OF THE VICTIM IN P.O.C.S.O. LEADING TO ACQUITTAL OF THE ACCUSED: A JUDICIAL PERSPECTIVE

Dr. Sumer Rizwan Shaikh¹

Nowhere in your birth certificate did it say life would be fair - Trevor Jones

Abstract

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was enacted to provide a robust legal framework for protecting children from sexual offences. One of the most crucial elements in prosecuting offences under the Act is the determination of the age of the victim, since the applicability of the statute depends entirely on whether the victim is a minor. However, several criminal cases have resulted in acquittal due to the prosecution's failure to conclusively establish the age of the victim through legally admissible evidence.

Indian courts have repeatedly emphasised that the prosecution must prove beyond reasonable doubt that the victim was below eighteen years of age at the time of the alleged incident. The absence of reliable documentary proof such as birth certificates, matriculation certificates, or other statutory records has frequently created evidentiary gaps that benefit the accused. Consequently, courts have relied on judicial precedents and statutory guidelines under the Juvenile Justice (Care and Protection of Children) Act, 2015 for determining age.

This article analyses important judicial pronouncements where lack of proper age proof resulted in acquittal of the accused in POCSO cases. The study evaluates the evidentiary requirements for age determination and examines how courts balance the need to protect child victims with the fundamental principle of criminal jurisprudence that guilt must be established beyond reasonable doubt.

Keywords: POCSO Act, Age Determination, Birth Certificate, Juvenile Justice Act, Criminal Evidence, Child Protection Law

¹ The author is an Assistant Professor at M.C.E. Society's A.K.K. New Law Academy & Ph.D. (Law) Research Centre,

1. Introduction

Birth registration plays a vital role in establishing the legal identity of an individual. It provides official recognition of a person's existence and records essential details such as date and place of birth and parental identity. In many countries, birth registration is a routine administrative process; however, in several parts of the world, including developing regions, birth registration remains incomplete or inaccessible.

According to international child protection studies, a significant percentage of children under the age of five worldwide are not registered at birth. The absence of such registration results in the lack of formal identity documentation, which can adversely affect access to healthcare, education, and legal protection.

In the context of criminal law, particularly offences under the **Protection of Children from Sexual Offences Act, 2012**, the proof of age becomes a decisive factor. The statute defines a child as any person below the age of eighteen years. Therefore, the prosecution must conclusively establish that the victim was a minor at the time of the alleged offence.

Indian courts have consistently emphasised that criminal convictions cannot be sustained if the prosecution fails to establish the age of the victim through legally acceptable evidence. In numerous cases, courts have acquitted the accused due to the absence of reliable documentary proof regarding the victim's age.

This article examines the judicial approach to cases where lack of age proof resulted in acquittal under the POCSO Act.

2. Object of the Study

The primary objective of this research is to analyse judicial decisions in which the absence of reliable age proof of the victim resulted in acquittal of the accused under the POCSO Act.

The study aims to:

1. Examine the legal significance of age determination in POCSO cases.
2. Analyse judicial precedents where prosecution failed to prove the age of the victim.
3. Understand the evidentiary standards prescribed under Indian law for determining age.
4. Identify procedural gaps in investigation and prosecution that lead to acquittals.
5. Suggest reforms to ensure effective implementation of the POCSO Act.

3. Research Methodology

The present research is based on the **doctrinal method of legal research**. This method involves systematic analysis of statutory provisions, judicial decisions, and authoritative legal literature.

Primary sources include judgments of the **Supreme Court of India and various High Courts** interpreting provisions of the POCSO Act and the Juvenile Justice Act.

Secondary sources include textbooks, law journals, government reports, and scholarly articles on child protection laws and criminal evidence.

4. Statement of Research Problem

Despite the stringent provisions of the POCSO Act, several prosecutions fail because the age of the victim cannot be established beyond reasonable doubt.

In many cases:

- Birth certificates are unavailable.
- School records contain inaccurate or unverified entries.
- Medical age determination tests provide only approximate estimates.

Such evidentiary shortcomings create reasonable doubt regarding the applicability of the POCSO Act, often resulting in acquittal of the accused.

This research seeks to analyse the judicial reasoning in such cases and examine whether the existing legal framework adequately addresses this issue.

5. Judicial Pronouncements

5.1 *P. Yuvaprakash v. State (2023)*

In *P. Yuvaprakash v. State*, the Supreme Court held that a school transfer certificate cannot automatically be treated as proof of date of birth unless it satisfies the evidentiary requirements prescribed under **Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015**.¹

The Court emphasised that the hierarchy of documents prescribed under the statute must be strictly followed while determining the age of the victim.

5.2 *Rishipal Singh Solanki v. State of Uttar Pradesh (2021)*

In *Rishipal Singh Solanki v. State of U.P.*, the Supreme Court laid down guidelines for age determination and clarified the sequence of documentary evidence that must be considered.²

The Court held that preference must be given to:

1. Birth certificate issued by municipal authority
2. School or matriculation certificate
3. Medical age determination test (in absence of documentary proof)

5.3 Abuzar Hossain v. State of West Bengal (2012)

The Supreme Court in *Abuzar Hossain v. State of West Bengal* reiterated that age determination must be conducted strictly according to statutory procedures.³

The Court emphasised that medical opinion should be considered only when documentary evidence is unavailable.

5.4 Vishwanath Ahirwar v. State of Uttar Pradesh (2023)

The Allahabad High Court in *Vishwanath Ahirwar v. State of U.P.* acquitted the accused after observing that the victim's school records were unreliable.⁴

The Court noted that the admission form had not been filled by the victim's parents but by an unidentified individual, thereby casting doubt on the authenticity of the recorded date of birth.

The Court relied on *Jarnail Singh v. State of Haryana* to determine the procedure for age verification.⁵

5.5 Maherban Hasan Babu Khan v. State of Maharashtra (2023)

In *Maherban Hasan Babu Khan v. State of Maharashtra*, the Bombay High Court held that entries in school registers have no evidentiary value unless the source of the information regarding the date of birth is clearly established.⁶

The Court further observed that in the absence of reliable proof that the victim was below eighteen years of age, the provisions of the POCSO Act cannot be invoked.

5.6 Deepak Kumar v. State of Bihar (2023)

The Patna High Court in **Deepak Kumar v. State of Bihar** held that conviction under the POCSO Act cannot be sustained if the prosecution fails to establish the minority of the victim.⁷

The Court emphasised that medical age determination tests provide only approximate estimates and cannot substitute documentary proof.

5.7 Radheshyam Sah v. State of Bihar (2023)

In *Radheshyam Sah v. State of Bihar*, the Patna High Court emphasised that under **Section 34(2) of the POCSO Act**, the trial court must determine the age of the victim before proceeding with the trial.⁸

Failure to follow this statutory mandate can result in miscarriage of justice.

6. Analysis

The judicial decisions analysed in this study reveal several important trends in the adjudication of POCSO cases.

First, courts insist on strict compliance with statutory guidelines regarding age determination. The hierarchy of documents prescribed under **Section 94 of the Juvenile Justice Act, 2015** is treated as mandatory.

Second, courts have repeatedly emphasised that entries in school records are not conclusive unless the source of information regarding the date of birth is verified.

Third, medical age determination tests such as ossification tests are treated as supplementary evidence rather than primary proof. Courts recognise that such tests may have a margin of error of up to two years.

Finally, the judiciary continues to uphold the fundamental principle of criminal law that the accused must be given the benefit of doubt when the prosecution fails to prove its case beyond reasonable doubt.

7. Conclusion

The determination of age is a crucial element in prosecutions under the POCSO Act. The absence of reliable age proof creates serious evidentiary challenges that may ultimately result in acquittal of the accused.

Judicial decisions indicate that courts are committed to ensuring that convictions under the POCSO Act are based on reliable and legally admissible evidence. At the same time, the judiciary remains mindful of the need to protect child victims and uphold the objectives of the statute.

To strengthen the effectiveness of the POCSO Act, it is essential to improve birth registration systems, ensure accurate record-keeping in educational institutions, and train investigators in proper evidence collection.

Only through such measures can the criminal justice system ensure that both the rights of victims and the principles of fair trial are preserved.



1. *P. Yuvaprakash v. State*, Crim. App. No. 1898 of 2023 (SC).
2. *Rishipal Singh Solanki v. State of Uttar Pradesh*, (2022) 8 SCC 602.
3. *Abuzar Hossain v. State of West Bengal*, (2012) 10 SCC 489.
4. *Vishwanath Ahirwar v. State of U.P.*, Crim. App. No. 323 of 2021 (All HC).
5. *Jarnail Singh v. State of Haryana*, (2013) 7 SCC 263.
6. *Maherban Hasan Babu Khan v. State of Maharashtra*, Crim. App. No. 9 of 2021 (Bom HC).
7. *Deepak Kumar v. State of Bihar*, Crim. App. (SJ) No. 1011 of 2022 (Pat HC).
8. *Radheshyam Sah v. State of Bihar*, Crim. App. (DB) No. 587 of 2021 (Pat HC).

