

PRESUMPTIONS UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012: A JURISPRUDENTIAL ANALYSIS

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Abstract — The Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) was enacted as an umbrella legislation to prevent and punish all forms of sexual offences against children. The legislation is result of a sustained effort of the civil society organizations in making India a safe place for children and provides for not only strict punitive measures but a well thought after welfare mechanism is also part of the legislative scheme. The legislation not only defines varied offences of sexual character that may be committed against children, it also lays down child friendly procedure at every stage of the process of its implementation. In doing so, the POCSO Act has even deviated from certain established principles of criminal justice system, the most important being presumption of innocence. The POCSO Act raises twin-presumptions, one relating to actus reus and the other relating to mens rea. Over the years, the true import and connotation of these presumptions has drawn attention of the courts and efforts have been made to interpret the provisions of POCSO Act relating to the presumptions in a manner that in spite of the twin-presumptions, a fine balance is struck between the rights of the accused and the interest of the community in seeing that the child sex abuser is convicted.

This paper delves upon the law and jurisprudence of presumptions in general and the twin-presumptions in

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the POCSO Act in particular. The authors argue that the presumptions in the POCSO Act should not be construed differently from similar presumptions in other legislations and also that the presumption of innocence, though stands diluted in the POCSO Act, cannot be completely brushed aside by the court to the detriment of the accused.

Keywords: Child Sexual Abuse, Presumption of Innocence, Presumption of Guilt, *Actus Reus*, *Mens Rea*, Conviction Rate.

I. INTRODUCTION

A study conducted by the Ministry of Women and Child Development, Government of India in 2007¹ revealed, what was an open secret, that more than half of children in India face some form of sexual abuse by the time they turn 18 and even more shocking fact was that boys outnumber girls in facing such abuse. This was probably the wakeup call for the Indian society which has always remained in denial mode on the issue of child sexual abuse and the policy makers hitherto living in their ivory castle, had to respond by enacting the Protection of Children from Sexual Offences Act, 2012 (hereinafter the POCSO Act). The POCSO Act is an outcome of social realisation that special measures are required for special circumstances. Curiously, this happened almost after two decades of India's ratification of the United Nations Convention of Rights of Child, 1989 (UNCRC) in 1992, mandating member States to take all possible measures to prevent child sexual abuse.

The statement of objects and reasons of the POCSO Act recognises that the extant laws do not adequately address the issue of child sexual abuse and a large number of such offences are neither specifically provided nor adequately punished.² Even if they did punish sexual abuse, male children were left out of its purview. POCSO Act is a self-contained legislation and not only defines various offences of child sexual abuse, has its own child friendly procedure for safeguarding the wellbeing and best interest of child at every stage of judicial proceeding. As originally enacted, the POCSO Act was supplemented by the Protection of Children from Sexual Offences Rules, 2012 (POCSO Rules, 2012). The POCSO Act was amended in 2019 to provide for more severe

¹ Study on Child Sexual Abuse in India: 2007, available at <<https://resourcecentre.savethechildren.net/node/4978/pdf/4978.pdf>> (accessed on May 19, 2020).

² Para 3, Statement of Objects and Reasons, POCSO Act.

punishments for certain offences³ and the POCSO Rules, 2012 were also replaced by the new POCSO Rules, 2020.⁴

The recent data on crime, compiled and published by the National Crime Record Bureau (NCRB), paints a grim picture of child sexual abuse cases. As per the latest data available, the total share of child sexual abuses cases registered under the POCSO Act account for more than 25% of all the offences against children. In the year 2017, there were 32608 cases of child sexual abuse under the POCSO Act⁵ and the number grew by 18% to 39827 cases in 2018.⁶ The conviction rate depicts an even more worrying trend and has kept hovering around 28%.

While the POCSO Act is to be viewed as a piece of welfare legislation, its predominant characteristic lies in the penal provisions and special procedures, all aimed at ensuring that the accused do not escape the tentacles of law unpunished. It is, therefore, surprising for many that a special law, having special procedural safeguards and measures to ensure time-bound trial of child sexual abuse cases has not come any good when it comes to the rate of conviction.

This paper makes a microscopic jurisprudential analysis of the legal presumptions created under the POCSO Act and tries to understand the legal implications of the same. The principal issue addressed in the paper is: Whether the presumptions under POCSO Act have made the general presumption of innocence stand on its head and thereby render the job of prosecution in securing conviction easy? In the process, the paper also draws inferences and conclusions based on the reported case law on the issue of legal presumptions under POCSO Act.

II. SCHEME OF PRESUMPTIONS UNDER THE POCSO ACT

A peculiar feature of the POCSO Act is that it provides for presumptions to be made by the trial court in relation to both *actus reus* (criminal conduct or result of criminal conduct) and *mens rea* (guilty mind). While presumptions are commonplace in the law of evidence,⁷ special laws may also have presumptions relating to relevant facts of which proof has to be made.⁸ Taxonomically,

³ <<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>> (accessed on May 19, 2020).

⁴ <<http://egazette.nic.in/WriteReadData/2020/218601.pdf>> (accessed on May 19, 2020). The POCSO Rules, 2020. came into force on March 9, 2020.

⁵ Crime in India, 2017 at p. 307.

⁶ Crime in India, 2018 at p. 307.

⁷ See, Ss. 113, 113-A, 113-B, 114, 114-A of the Indian Evidence Act, 1872.

⁸ See, S. 118 of the Negotiable Instrument Act, 1881.

presumptions are of two kinds: (a) discretionary presumptions (the court may presume) and (b) mandatory presumptions (the court shall presume). Former is a presumption of fact and latter a presumption of law. Both the discretionary and mandatory presumptions are, however, rebuttable.⁹

The law relating to presumptions is a product of human experience and logic and helps the courts in overcoming procedural difficulties in making proof of an offence. The Law Commission of India has observed that "...one of the devices by which the law usually tries to bridge the gulf between one fact and another, where the gulf is so wide that that it cannot be crossed with the help of the normal rules of evidence, is the device of inserting presumptions. In this sense, it is possible to consider the question whether, on the topic under discussion, any presumption rendering the proof of facts in issue less difficult, ought to be inserted into the law."¹⁰ The chief function of a rebuttable presumption is to determine upon whom the burden of proof lies using that term in the sense of adducing evidence.¹¹ In practical terms it means that when a presumption of a certain fact is drawn, the party, otherwise under an obligation to prove that fact, need not adduce evidence to prove the fact. But, the presumption being rebuttable, the other party shall be allowed to lead evidence to disprove the fact presumed.

The POCSO Act draws a mandatory presumption of *actus reus* in Section 29¹² and a similar presumption of *mens rea* in Section 30.¹³ The languages in which the two presumptions have been cast make it clear that the presumptions are rebuttable. A cursory look at the presumptions in POCSO Act leave an impression that from the point of prosecution, the Special Court (the trial court) shall presume the commission of the offences (as enumerated in Section 29) and shall also presume the guilty mind wherever such guilty mind is an element of the offence. Does this mean that contrary to the presumption of innocence, which is indubitably a foundational principle of criminal justice

⁹ V. Nageshwar Rao, *The Indian Evidence Act* (2nd Ed., LexisNexis) at p. 52.

¹⁰ 91st Report of Law Commission of India on Dowry Death and Law Reforms (1983), para 1.4.

¹¹ Hodge M. Malek, *Phipson on Evidence* (19th edn., Sweet & Maxwell) at p. 2031.

¹² **Presumption as to Certain Offences.**— Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3,5,7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

¹³ **Presumption of Culpable Mental State.**— (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

system¹⁴, and which burdens the prosecution with the onerous duty of proving the guilt of the accused beyond reasonable doubt, the POCSO Act takes this burden off the prosecution's shoulders, placing a reverse burden of proof of innocence on the accused?

III. PRESUMPTION OF INNOCENCE

The proposition that an accused is presumed to be innocent till proven guilty, has become a cliché. Of several moral principles pervading the criminal justice landscape, presumption of innocence arguably assumes pride of place. In *Jose v. Sub-Inspector of Police*¹⁵, the Supreme Court quoted Ian H. Dennis¹⁶ on the question of presumption of innocence and the burden of proof: "The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the Rule that the burden of proof in a criminal case is on the prosecution to prove the Defendant's guilt. As explained above, the burden of proof Rule has a number of functions, one of which is to provide a Rule of decision for the fact-finder in a situation of uncertainty. Another function is to allocate the risk of misdecision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the Rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the Defendant is innocent therefore requires the state to prove the Defendant's guilt." The Supreme Court said that this quote marks a preference for hazarding wrongful acquittal over risking wrongful conviction. Prof. Andrew Ashworth is of the view that wrongful conviction being a deep injustice and a huge moral harm, there is "... the universal insistence on respect for the right of fair trial, and with it the presumption of innocence."¹⁷

Presumption of innocence has been held to be a facet of fair trial and part of human rights.¹⁸

However, presumption of innocence does not mean that the accused shall be treated on par with a person not facing any criminal charges. It means that an accused, who is not yet convicted, can still be legally deprived of his personal liberty pending trial.¹⁹

¹⁴ See, Kumar Askand Pandey, *Principles of Criminal Law in India – Cases and Materials* (1st Ed. Central Law Publications) at p. 12.

¹⁵ (2016) 10 SCC 519.

¹⁶ *The Law of Evidence* (5th edn., Sweet & Maxwell) at p. 445.

¹⁷ "Four Threats to the Presumption of Innocence", *International Journal of Evidence and Proof* (2006), Vol. 10 (4), at p. 247.

¹⁸ See, *Narendra Singh v. State of M.P.*, (2004) 10 SCC 699 :2004 Cri LJ 2842; *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294: 2005 Cri LJ 2533; *Babu v. State of Kerala*, (2010) 9 SCC 189.

¹⁹ See, *Allison v. HM Advocate*, [2010] UKSC 6.

IV. MAKING SENSE OF PRESUMPTION OF GUILT

While presumption of innocence is the rule, law may provide for a reverse presumption i.e. the presumption of guilt. Reference may be made to Illustration (a) of Section 114, the Indian Evidence Act, 1872:

The Court may presume-

- a) *That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.*

This presumption may even be raised in a case of theft and murder where the accused is found in possession of stolen goods soon after murder took place.²⁰ It is to be noted that the application of the said presumption cannot be extended to other offences. The presumption of guilt creates a reverse onus on the accused inasmuch as the accused is required to adduce evidence in favour of his innocence. As a general rule, presumption of guilt is built upon existence of a relevant incriminating fact. Presumption of guilt may not be drawn without showing that a certain fact or facts *prima facie* exist. Although it is settled that presumption of innocence is subject to statutory exceptions, such presumption can only be guardedly invoked to avoid miscarriage of justice and wrongful conviction.²¹ The statutory provisions allowing the courts to draw presumption of guilt must conform to the twin tests of reasonableness and protection of liberty enshrined in the Constitution of India. In *Noor Aga v. State of Punjab*²², it has been held that reverse onus which essentially means presumption of guilt is not in itself unconstitutional. It does not relieve the prosecution of the obligation to prove guilt beyond reasonable doubt. In *Subhash Kashinath Mahajan v. State of Maharashtra*²³ the Supreme Court has reiterated that presumption of innocence is a human right and there cannot be a presumption of guilt to deprive the accused of right to life without an opportunity to defend. Evidently, presumption of guilt can be drawn only upon certain foundational facts.²⁴

V. JURISPRUDENTIAL ANALYSIS OF PRESUMPTIONS UNDER POCSO ACT

- (i) **Presumption that the accused has committed the offence**-The first presumption under the POSCO Act relates to commission of crime where, upon prosecution of certain offences, the Special Court *shall*

²⁰ *Tulsiram Kanu v. State*, AIR 1954 SC 1; *State of Rajasthan v. Talevar*, (2011) 11 SCC 666.

²¹ *Babu v. State of Kerala*, (2010) 9 SCC 189.

²² (2008) 16 SCC 417.

²³ (2018) 6 SCC 454 : AIR 2018 SC 1498.

²⁴ See, e.g., the Prevention of Corruption Act, 1988; the Negotiable Instruments Act, 1881; the Narcotic Drugs and Psychotropic Substances Act, 1985.

presume that the accused has committed the offence(s) in question. Unlike the statutory presumption of guilt in other statutes, Section 29 of POCSO Act apparently does not require proof of any *foundational fact* for raising this presumption. Therefore, it seems that upon mere prosecution, the accused shall be presumed guilty. But, initiation of prosecution is itself dependent on certain foundational facts which are narrated by the investigation in the police report (the chargesheet). No prosecution can be initiated without the satisfaction of the Special Court that there is a *prima facie* case against the accused to proceed with the trial. Once the trial commences, presumption of guilt shall be made which may be rebutted by the defence.²⁵

Explaining the scope of the presumption under Section 29 of the POCSO Act, the Kerala High Court in *Joy V.S. v. State of Kerala*²⁶ said that:

“Section 29 of the Act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that the court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The courts must be on guard to see that the application of the presumption, without advertent to essential facts, shall not lead to any injustice. The presumption under Section 29 of the Act is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential basic facts. If the accused is able to create serious doubt on the veracity of the prosecution case or the accused brings on record materials which would render the prosecution version highly improbable, the presumption would get weakened.”

Though the observations were made in the context of bail, there is no reason that why the position would be any different during trial. Manifestly, initial burden is upon the accused to show that he is not involved in the said crime and once he succeeded to raise doubt about genuineness or veracity of the allegations nurtured on behalf of prosecution or he succeeded to show his

²⁵ *Sagar Dinanath Jadhav v. State of Maharashtra*, 2018 SCC OnLine Bom 1280 : 2018 Cri LJ 4271.

²⁶ 2019 SCC OnLine Ker 783.

innocence by preponderance of probabilities, then the burden to prove charges against accused for the allegation of sexual assault, will be shifted upon the prosecution to prove the guilt of the accused.²⁷ Presumption under Section 29 cannot be invoked where the prosecution has failed to establish its case against the respondent-accused, inasmuch as DNA of respondent did not match with the male DNA recovered from the undergarments of the child victim.²⁸

The Bombay High Court has gone to the extent of holding that even filing of charge sheet against the accused is not sufficient to draw presumption under Section 29. It would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption under Section 29 of the POCSO Act to operate. Otherwise, all that the prosecution would be required to do is to file a charge sheet against the accused under the provisions of the said Act and then claim that the evidence of the prosecution witnesses would have to be accepted as gospel truth and further that the entire burden would be on the accused to prove to the contrary. Such a position of law or interpretation of the presumption under Section 29 of the POCSO Act cannot be accepted as it would clearly violate the constitutional mandate that no person shall be deprived of liberty except in accordance with procedure established by law.²⁹ In *Amol Dudhram Barsagade. v. State of Maharashtra*³⁰ the Bombay High Court has held as follows:

“The submission that the statutory presumption under Section 29 of the POCSO Act is absolute, must be rejected, if the suggestion is that even if foundational facts are not established, the prosecution can invoke the statutory presumption. Such an interpretation of Section 29 of the POCSO Act would render the said provision vulnerable to the vice of unconstitutionality. The statutory presumption would stand activated only if the prosecution proves the foundational facts, and then, even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond reasonable doubt. Suffice it if the accused is in a position to create a serious doubt about the veracity of the prosecution case or the accused brings on record material to render the prosecution version highly improbable.”

Explaining that why Section 29 cannot be interpreted to enable the court to draw an absolute presumption of guilt, the Calcutta High Court in *Sahid*

²⁷ *Pandurang Narayan Jadhav v. State of Maharashtra*, 2019 SCC Online Bom 634 :(2019) 2 Bom CR (Cri) 73

²⁸ *State (NCT of Delhi) v. Saan Mohd.*, MANU/DE/0826/2020.

²⁹ *Navin Dhaniram Baraiye v. State of Maharashtra*, 2018 SCC OnLine Bom 1281: 2018 Cri LJ 3393.

³⁰ Criminal Appeal No. 600/2017; decided on 23.04.2018 (Nagpur Bench).

*Hossain Biswas v. State of W.B.*³¹ has said that under the POCSO Act an accused is to prove a negative fact, i.e. he has to prove that he did not commit the offence and he is innocent. Now it is an established proposition that negative cannot be proved on its own.³² In order to prove a negative fact, the fact whose opposite is sought to be established must be proposed first. It is, therefore, an essential prerequisite that the foundational facts of the prosecution case must be established by leading evidence before the aforesaid statutory presumption is triggered in to shift the onus on the accused to prove the contrary. To hold otherwise would amount to giving judicial approval to the prosecution version howsoever imaginary, absurd or farfetched it may be.³³

It has also been held that for invoking the presumption under Section 29, the prosecution shall prove the foundational facts beyond reasonable doubt, on the other hand, the defence may rebut the presumption by a preponderance of probabilities.³⁴ In *Raju v. State of Rajasthan*³⁵ where the prosecution failed to indisputably prove that the victim was under the age of 18 years on the date of commission of crime, the Rajasthan High Court refused to draw the presumption under Section 29. Therefore, the position that emerges from the analysis of case law is that while prosecution may be initiated upon *prima facie* existence of incriminating facts, presumption of guilt requires that the foundational facts are proved beyond reasonable doubt. Looking at Section 29 in this manner is the only way in which it can be saved from the vice of unconstitutionality.

- (ii) **The presumption of *mens rea***- The second presumption that is provided in Section 30 of the POCSO Act relates to existence of culpable mental state. Also a mandatory presumption, apparently no *foundational facts* are required for raising this presumption. While it is true that a statutory offence may or may not include guilty mind in the definition, it has been a settled position in India that a penal provision must be interpreted subject to the doctrine of *mens rea* i.e. *actus non facit reum nisi mens sit rea*, an act alone does not make a person guilty unless he had a guilty mind, unless the application of *mens rea* is excluded either expressly or by necessary implication.³⁶ However, the presumption of culpable mental state under Section 30 of POCSO Act implies that proof of guilty mind is not required where the definition does not contain the element of *mens rea* and where it is required, the same shall be presumed.

³¹ 2017 SCC OnLine Cal 5023.

³² *Sait Tarajee Khimchand v. Yelamarti Satyam*, (1972) 4 SCC 562.

³³ *Ragul v. State*, 2017 SCC OnLine Mad 27032.

³⁴ *Navin Dhaniram Baraiye v. State of Maharashtra*, 2018 SCC OnLine Bom 1281: 2018 Cri LJ 3393.

³⁵ 2017 SCC OnLine Raj 3865 : (2017) 4 RLW 3498.

³⁶ Kumar Askand Pandey, *Principles of Criminal Law in India – Cases and Materials* (1st Ed., Central Law Publications), at p. 106.

Section 30 of POCSO Act has borrowed its content from Section 10C of the Essential Commodities Act, 1955 and is in *parimateria* with the latter.³⁷ In the context of the presumption created under Section 10C of the Essential Commodities Act, 1955, it has been held by a Division Bench of Orissa High Court that: “No doubt, Section 10C raises a presumption that culpable mental state exists, but it is a rebuttable presumption and it will be open for the accused to prove that he had no such mental state with respect to the act charged. In our opinion, Section 10C itself indicates that *mens rea* is a necessary element to attract the provisions of the Act, but by virtue of legal fiction, a presumption arises which can be rebutted by an accused.”³⁸ In both the provisions, the accused is required to prove absence of guilty mind beyond reasonable doubt. This requirement of proof of guilty mind beyond reasonable doubt is quite unusual because, generally, the reverse onus on the defence—wherever it lays—may be discharged by preponderance of probabilities.³⁹ It is beyond doubt that statutory presumption has a mere evidentiary value and the same may be rebutted by preponderance of probabilities.⁴⁰

It is true that that the quantum of sentence under the two Acts is different and the punishments under the POCSO Act are more severe. However, the fact that the punishments under the POCSO Act are more severe is even a greater reason for inferring that the presumption of *mens rea* under this Act is to be interpreted as not placing a higher burden on the defence than is ordinarily placed to prove its case by preponderance of probability. The rule being, that greater the sentence, stronger the presumption of innocence.

Section 30 of POCSO Act not only replaces the presumption of innocence with the presumption of guilt, the standard of proof beyond reasonable doubt normally cast upon the prosecution is transferred and laid on the accused. In view of the foregoing discussions vis-à-vis Section 29, the presumption of culpable mental state under the POCSO Act is unconstitutional. Curiously, Section 30 has not received any independent attention and scrutiny by the courts focusing on its apparent contradiction with other statutory presumptions. This may be because of the reason that the two presumptions do not apply to all the offences under the POCSO Act together. While Section 29 applies to

³⁷ **Presumption of Culpable Mental State.**— (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

³⁸ *Shri Laxmi Trading Co. v. ADM (Civil Supplies Section), Rourkela*, 1989 Cri LJ 659.

³⁹ *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190 : AIR 1990 SC 1459.

⁴⁰ *M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39.

commission/abetment/attempt of offences defined under Sections 3, 5, 7 and 9; Section 30 mandates drawing of presumption only in those cases where guilty mind is a constituting element of offence e.g. Sections 7, 9 and 11. Therefore, for a prosecution for the offence of penetrative sexual assault defined in Section 3 of POCSO Act, the presumption under Section 30 has no application as the offence does not require any culpable mental state and the prosecution need not prove it. In a trial for the offence of aggravated sexual assault defined in Section 9 of the POCSO Act, both the presumptions shall apply as the offence of sexual assault defined in Section 7 requires 'sexual intent' as a constituting element.

VI. CONCLUSION

The presumptions under the POCSO Act have been created with the object of easing the burden on prosecution. However, the prosecution cannot ride piggyback the presumption of guilt to reach the destination of conviction. The courts have correctly interpreted Section 29 according to which upon proof of some foundational facts, the Special Court shall raise a presumption that the accused has committed the offence as alleged and the presumption being rebuttable, the defence may still prove the contrary by preponderance of probabilities. Presumption of culpable mental state under Section 30 also allows the accused to prove absence of guilty mind but this may be done only by meeting a higher standard of proof i.e. proof beyond reasonable doubt. The requirement of proof beyond reasonable doubt cast on the defence not only reverses the onus of proof, shifting it from prosecution to the defence, but it has the effect of completely negating the presumption of innocence which is the constitutional principle of our criminal jurisprudence. It is submitted that clause (2) of Section 30 of the POCSO Act should be omitted to bring this presumption of culpable mental state in sync with the established jurisprudential norms of criminal justice administration. The fact that cases initiated under the POCSO Act have a dismal conviction rate is no reason to gloss over the cardinal principle of presumption of innocence and the reverse presumptions in this Act should be allowed to be implemented in the true spirit of the criminal jurisprudence.