

INSIDE THE COURTROOM

I

have been working as the Program Manager for Aagaaz at Prerana for the past eight months.

Aagaaz works with child victims of sexual violence. Under this project, our team intervenes with the child victims referred to us by the local Child Welfare Committee (CWC) for their social rehabilitation. For cases where we are appointed as Support Persons (as per the POCSO Rules 2020) by the CWC, we also extend assistance to the child throughout the process of investigation and trial. In my role as a Support Person, I have found that working in close association with the child protection and legal justice system is fraught with dynamic challenges. One particular court hearing remains etched in memory.

"A wise man never climbs the stairs of a court."

As a child, I would overhear my grandfather pass on this advice to his friend on the telephone. A child's mind is imaginative, this statement would make me imagine a looming court with huge wide stairs that people would huff and puff to climb, and that is why my grandfather would advise against it. Today, as a social worker, I wonder if reality is very different from my childhood imagination.

It was a Saturday morning, when I received a phone call from the Investigating Officer (I/O) stationed at a local Police Station in Mumbai Suburbs. He mentioned that Prerana has received summons from the court for the hearing of a case registered under POCSO Act, 2012 for one of the child victims I was working with. While I was a Support Person in another case filed for the said client, for the case mentioned by the I/O there wasn't a



Support Person appointment. On mentioning this, the I/O shared that it is the client's mother who requested the court for our presence in this hearing too. Considering the trust placed in us by the client's family, we decided that we would accompany the child and the mother to the court in the said case.

The FIR for the case was registered in 2017 when Ragini * (name changed) was a child. It was a case of kidnapping and sexual assault against Ragini, who is a person with intellectual disability. 7 years have elapsed since the registration of the case for it to come to the evidence stage, in contradiction to the POCSO law which states that the trial should be completed within one year from the cognizance of the offense. Today, Ragini is 23 years old.

On the day of the hearing, when I met Ragini, she greeted me with a smile. The innocence and trust in her smile tugged at my heart for I was apprehensive about the court proceedings that would take place that day. To begin with, the summons issued to Prerana mentioned our support in the capacity of a special educator. It was thus imperative to clarify that my qualification was that of a social worker and not a special educator. A formal letter was submitted to the court highlighting the same. In response to the letter, the court queried if I would be willing to extend support during the examination-in-chief considering my rapport with Ragini. I agreed to the same but requested the court to appoint a special educator in the circumstance if I was unable to extend the support required by the child due to her special needs. I also appealed to the court to take cognizance of the fact that my client is a person with a disability before proceeding forward with the hearing; a certificate of disability was submitted to that effect. The public prosecutor requested the judge, time apart for consideration with the mother and me before the trial began.



The public prosecutor mentioned to us that the court case can be transferred to another court room which had a woman judge and a special public prosecutor. He wanted to make sure that the prosecutor and judge being male members in the current courtroom did not affect the outcome of the case. I consulted the mother to discuss further steps. We also discussed with Ragini to ascertain her comfort level. Both said that they would like to understand my perspective on this matter. We are taught as social workers to always uphold the client's self determination, but what if in a critical circumstance, their decision is to trust you to call the shots? At that moment, I felt a sense of panic envelop me.

Here, I was standing in front of a courtroom in the matter of a case that had been dragging on for 7 years, having to make a critical decision in a few minutes that could impact the outcome of the case. I once again approached Ragini's mother to hear about their decision, but she maintained her stance. Following which, I reached out to a team member to discuss and rationalize what could be done. Over the last 8 months, I have found that when social workers reach out to each other to discuss approaches to navigating complex situations, we are able to objectively evaluate our options and arrive at logical decisions. We decided that since this case had come to hearing after a long period of time and considering that the child and her mother had arrived at the court today, we would continue in the same courtroom. The pros and cons of this decision were also discussed with Ragini and her mother.

Fortunately, the judge decreed that the trial would happen in-chamber. This was the first time that I stepped inside a judge's chamber. Ragini and I were asked to sit in front of the judge in his direct line of vision. Ragini's mother sat on our right while the public prosecutor and the defense lawyers of the two alleged accused sat on our left.

All the classes on communication techniques teach you about non-verbal communication but none prepared me enough for the power dynamics in the room that day. Each member in the room was walking a tightrope with Ragini at the center. I was expected to be in sync with the public prosecutor for the next two hours, a man I was meeting for the first time that day.

The judge initiated by saying, “Ms. *Deepti*, you are my eyes and ears in today’s trial.” placing a concrete responsibility on my shoulders and thus the day’s proceedings began. The examination-in-chief began with the public prosecutor asking my client her name and address, which she was able to respond to accurately. On being asked about her birth date, she was confused. She was also unable to accurately share her age. I stepped in to mention that Ragini’s intellectual disability makes it difficult for her to cognize the idea of time and requested that the questions being posed to her be phrased in the understanding of this. The public prosecutor then asked her about the incident in 2017 as registered in the FIR with a cue she could cognize. I could sense Ragini getting overwhelmed. I had previously discussed with her about a breathing technique taught to us for psychosocial first-aid that helps individuals orient and ground themselves if overwhelmed.

Ragini closed her eyes, I requested her to visualize the happenings of the incident while I counted to a beat of 5. On the count of 5, she opened her eyes and began sharing about the incident, how she left her home in 2017 and was walking on the streets alone when she met the alleged accused. The judge simultaneously had to record the statement provided by Ragini by directing the court stenographer, but for a

person with disability that break in narrative poses a challenge. She would once again forget her train of thought; wherein I stepped in to give her cue of the last sentence she shared to begin the statement once again. One does wonder if this start-stop method of recording statements makes it difficult for the victim to share their account, especially if it is a child or a person with a disability. Alternatively, an AV (Audio/Video) recording of the statement would be more conducive in such trials.

In her statement-in-chief, Ragini recollected being lured and kidnapped. She began sharing the incidence of sexual abuse. Her recollection of the incident was distressful to hear, more so for the mother who eventually stepped out of the judge’s chamber. As per the POCSO Act, 2012 sexual assault and penetrative sexual assault are defined separately, and the punishment on conviction is stricter in the case of penetrative sexual assault. The judge, the public prosecutor and the defense lawyers in the room were awaiting if Ragini’s statement would lead to a mention of penetrative sexual assault. While Ragini was able to recollect and share the incidence of sexual assault, it was challenging for her to articulate sexual penetration.

It is to be noted that while at this point, she is an adult in age, her mind functions like a 7-year-old child. For a child with this kind of an intellectual disability it is difficult to comprehend, and articulate penetrative sexual assault. Repeated attempts by the public prosecutor to record the nature of the assault were retraumatizing for Ragini. I thus requested the judge for a break of 10 minutes. On resumption, interpreting the section (3) of the POCSO Act, I tried to ask Ragini in a simpler language, “*if any particular body part of the accused had come in contact with your body part*”, on this, the defense jumped with an objection for the question to be leading.



But the judge permitted the question citing that articulating the act of sexual abuse, especially for a child or a person with intellectual disability is not easy. Ragini still found it difficult to cognize the question and give an answer.

The trial proceeded further to an identification parade where Ragini was able to recognize the alleged accused. The judge requested the trial to proceed further to conduct cross on the same day to expedite the case. The defense began their line of questioning, and one such question posed to my client tried to probe into her sexual history. My training at Prerana on cases of sexual assault and violence, especially studying the precedent of monumental judgments like the Mathura Case held me in good stead. I objected to my client's sexual history being probed into and the judge sustained it.

The defense continued to pitch leading questions for a positive response which confused my client. Understanding the subtext and the tonality of such questions were not possible for her. Invoking section 33 (2) of the POCSO Act, I appealed to the judge to mediate the cross questions and pose them to my client. The judge directed the defense to refrain from posing leading questions leading to affirmative answers and mediated in instances where the questions were unclear to my client.

The court hearing in its entirety took us 8 hours which left my client exhausted. The bright smile that she greeted me with at the beginning of the day was not within reach by the time we reached the end of that day. While the POCSO Act, 2012 advocates for a child-friendly hearing, for common people, the justice system is daunting and tiring. I recollect a moment during the cross when my client had become exhausted and suddenly said,

"I want to go home; at 6 o'clock our house will have water." She was worried about filling water at home for her family. One reckons that the stairs of the court were indeed wide and steep.

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