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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 30 OF 2023

Dr. Vasudev Deshpabhu, S/o Rajendra
Deshprabhu, Aged 60 years, Occupation:
Landlord, Presently R/o. Flat No. B-501,
Saldanha Business Towers, 5th Floor,
Mapusa, Bardez Goa. ... Appellant

Versus

1. State of Goa, Through Mapusa Police Station, Mapusa Goa.
2. Public Prosecutor, Office of Advocate General of Goa, High Court Complex, Porvorim Goa. ... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Mr. Terence Sequeira and Ms. Sailee Kenny, Advocates for the Appellant.

Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondents.

CORAM: **BHARAT P. DESHPANDE, J.**

RESERVED ON: **13th FEBRUARY 2024**

PRONOUNCED ON: **29th FEBRUARY 2024**

JUDGMENT:

1. The Appeal was admitted on 12.12.2023 and thereafter, it was taken up for final disposal. The private paper book was filed to facilitate the early disposal of the present Appeal.

2. Heard the learned Senior Counsel Mr. Lotlikar appearing along with Mr. Terence Sequeira and Ms. Sailee Kenny for the Appellant and the learned Additional Public Prosecutor Mr. Nikhil Vaze for the Respondents.

FACTS:

3. The Appellant was chargesheeted before the Children's Court for the offences punishable under Sections 504, 324, 506 and 201 of IPC and Section 8(2) read with Section 2(m)(i)(ii) of the Goa Children's Act, 2003.

4. The charges against the Accused which is revealed from the charges framed by the learned Trial Court is that on 03.10.2013 at around 17:30 hours on the 5th floor of Saldanha Business Tower, Mapusa, Bardez, Goa, the Accused insulted the minor victim boy aged 17 years and his two minor friends with an intent to provoke breach of peace, threatened the minor victim boy and his minor friends with dire consequences and voluntarily caused hurt to the minor victim boy with an instrument i.e. the hard wooden object and destroyed the said wooden object in order to conceal the evidence. It is further claimed that the Accused committed child abuse by intimidating and assaulting the victim boy.

5. The Appellant/Accused pleaded not guilty and claimed to be tried. The Prosecution in all examined 12 witnesses to prove the case of the Prosecution. The statement of the Accused was recorded under Section 313 of Cr.P.C. No defence witness was examined. The learned Children's Court after evaluating the material on record found that the Accused is guilty of the offences punishable under Sections 324 and 201 of IPC including Sections 2(m)(i) and 8(2) of the Goa Children's Act and awarded imprisonment as well as fine as found in the operative part of the impugned judgment.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

6. The only contention that has been raised by Mr. Lotlikar, the learned Senior Counsel appearing for the Appellant is that the matter is required to be tried and decided only by the Magistrate and not the Children's Court. In this regard, he would submit that first of all, there is no child abuse as even though the victim was 17 years old, it is only a solitary incident and not covered under the definition of child abuse. He would submit that since Section 8(2) of the Goa Children's Act is not applicable, the entire proceedings conducted by the Children's Court stand vitiated. He submits that the matter needs to be remanded to the learned Magistrate having jurisdiction to try the matter and decide the entire matter afresh.

In this respect, Mr. Lotlikar would submit that the Accused was not knowing the victim or his friends and therefore, the question of child abuse would not arise at all. He submits that the 5th floor of the said building is owned and possessed by the Appellant himself and that the victim and his friends had no business at all to enter the 5th floor. Even otherwise, Mr. Lotlikar would submit that the Appellant only questioned the victim and his friends about their presence on the 5th floor and then they ran away and in that process, the victim fell down. It is submitted that the Appellant then called the ambulance and shifted the victim to the hospital. Mr. Lotlikar finally claimed that even if it is considered that a single blow of a stick would amount to child abuse, then it would be the only question to be decided in this matter.

7. Mr. Lotlikar has placed reliance on the following decisions of this Court:

- (i) *Priya Karekar Vs. Police Inspector & Others [WPCR No. 141 of 2016 dated 20.02.2021];*
- (ii) *Dr. Dilip Amonkar Vs. State & Anr. [WPCR No. 42 of 2016 dated 23.06.2016];*
- (iii) *Suresh Narvekar Vs. State [WPCR No. 4 of 2010 dated 28.01.2010];*
- (iv) *Mr. Vaibhav Faldessai & Anr. Vs. Officer in Charge & Anr. [CRIR No. 482 of 2022 dated 10.04.2023] and*
- (v) *Smt. Smita Khaunte Vs. Police Inspector & Anr., 2015 SCC Online Bom 5633.*

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

8. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the victim was 17 years old and therefore, any assault on the victim amounts to physical abuse, which is covered under the definition of child abuse. He submits that the chargesheet was properly instituted before the Children's Court having jurisdiction to try any offence against a child as provided under Section 30 of the Goa Children's Act. He submits that the powers of the Children's Court are that of the Sessions Court as provided under the Cr.P.C. and therefore, the contentions raised on behalf of the Appellant need to be discarded.

9. The learned Additional Public Prosecutor would then submit that the offences against the Accused have been proved beyond reasonable doubt. The victim as well as his friends clearly identified the Accused and deposed firmly that the assault on the victim was only by the Accused himself. He would further submit that though the victim and his friends went on the 5th floor of the said building, it was not expected from the Accused to assault them instead of asking them to leave the said place. Finally, he claimed that the contention that the victim fell down on the steps and sustained injuries is ruled out as the victim as well as his

friends specifically deposed about the assault, which has not been rebutted successfully.

10. The learned Additional Public Prosecutor placed reliance on the decision of this Court in the case of **Rohan Dhungat & Others Vs. State, 2019 SCC Online Bom 376.**

11. The rival contentions fall for consideration as under:

<u>Points for determination</u>	<u>Finding</u>
(I) Whether the victim is covered under the definition of child and whether the assault on him is covered under the definition of child abuse ?	In the Affirmative
(II) Whether the conviction and sentence awarded by the Children's Court need any interference ?	In the Negative

FINDINGS:

12. Point No. (I): There is no dispute that the victim was 17 years old and therefore, the definition under Section 2(d) of the child clearly covers the victim.

13. Section 2(d) of the Goa Children's Act reads thus:

“2. Definitions.— In this Act, unless the context otherwise requires,—

....

(d) “Child” means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this Act;

[Provided that in so far as a victim in an offence of rape is concerned, “child” shall mean any person who has not completed sixteen years of age;]

14. A perusal of this definition would clearly go to show that a child means any person who has not completed 18 years of age. It is not the case of the Appellant that any other law wherein the age is lesser than 18 years is applicable to the matter in hand.

15. Victim (PW-4) clearly deposed that as on the date of the incident i.e. on 03.10.2013, he was below 18 years of age. The birth certificate of the victim is placed on record at Exhibit-19 showing his date of birth as 26.10.1996. The incident took place on 03.10.2013, which shows that on the date of the incident, the victim was below 18 years of age.

16. The definition of child abuse in Section 2(m) reads thus:

“2. Definitions.— In this Act, unless the context otherwise requires,—

....

(m) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:—

(i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death;”

17. Child abuse not only refers to maltreatment, whether habitual or not, of the child, but also includes any of the following i.e. psychological and physical abuse.

18. The term physical abuse includes assault of a child even on a solitary incident. It is not necessary that such physical abuse must be habitual or continuous. The definition itself makes it clear that child abuse refers to maltreatment, whether habitual or not. The

words “or not” after the word “habitual” indicate that even a solitary incident of psychological or physical abuse or otherwise amounts to child abuse. The object of the Goa Children’s Act is to protect, promote and preserve the best interests of Children in Goa and to create a society that is proud to be child friendly. Thus, even physical abuse in the form of assault is included within the definition of child abuse as found in Section 2(m) of the Goa Children’s Act. The contention raised by Mr. Lotlikar is that solitary incident cannot be covered under child abuse, is required to be rejected.

19. In the case of **Priya Karekar** (supra), the learned Single Judge of this Court was dealing with the aspect of child abuse, referred to the Division Bench decision in the case of **Dr. Dilip Amonkar** (supra). Thus, the decision in the case of **Dr. Dilip Amonkar** (supra) needs to be considered.

20. In the case of **Dr. Dilip Amonkar** (supra), the Petition was filed for quashing of the chargesheet, filed before the Goa Children’s Court. The Petitioner in that case was the Head of the Surgery Department of GMC. One child aged 16 years was admitted to Pai Hospital at Vasco with severe abdominal pain on 01.07.2010. Dr. Pai from the said Pai Hospital requested the

Petitioner to come to Vasco to perform the emergency operation on the said child. Accordingly, the Petitioner went to Pai Hospital on 03.07.2010 and upon clinical examination, observed that there was acute appendicitis requiring urgent surgery. The Petitioner then performed the surgical operation. The said child/patient was subsequently discharged on 05.07.2010, however, the child was readmitted on 09.07.2010 and was treated by Dr. Shantaram N. Surme. The said Dr. Surme advised that the child needed immediate admission to GMC as she was showing signs of distress. The said child was then admitted to GMC on 10.07.2010 and was operated on 11.07.2010. However, on 15.07.2010, the child developed complications and accordingly, succumbed on 29.07.2010. The death of the child was registered as a medico-legal case. The Petitioner being the Head of the Surgery Department recommended that the matter be registered as unnatural death. The post-mortem report was submitted. However, on 02.08.2010, the sister of the deceased filed a complaint at Vasco Police Station claiming that the death of the child was due to medical negligence. An inquiry was conducted by the committee wherein a crime was registered against the Petitioner on the basis of such report for the offences under Sections 304, 468, 471, and 201 read with Section 34 of the IPC.

21. With regard to the above facts in the case of **Dr. Dilip Amonkar** (supra), the Division Bench of this Court discussed the definition of child abuse and concluded that the treatment given by the Doctor cannot be considered as child abuse as defined under Section 2(m). Thus, the facts of the matter are totally different wherein the Petitioner was a Doctor who treated the child and such treatment, was considered as medical negligence and not as child abuse. Accordingly, the observations in the case of **Dr. Dilip Amonkar** (supra) will not help the Appellant in the present matter. Similarly, the observations of the learned Single Judge in the case of **Priya Karekar** (supra) will also not be of any help to the Appellant in the present matter.

22. **Suresh Narvekar** (supra) is the decision of the learned Single Judge of this Court wherein the challenge was thrown to the jurisdiction of the Children's Court qua Section 2(m) of the Goa Children's Act. In that case, a complaint was lodged stating that on 09.04.2008, near Malim Jetty, the committee members of Vithoba Rukmini Temple and one Suresh Narvekar bursted fire crackers during palkhi procession in a negligent manner and without exercising proper care and caution. The Petitioner was seated in the dicky compartment of a Maruti van whereas the deceased children were sitting in the van. The lid of the dicky was

open and the fire crackers were stored in the dicky portion. The Accused/Petitioner was lighting fire crackers with the help of a paper roll torch behind the van. The Petitioner ignited the crackers in quick succession, which resulted in catching fire inside the van. The Petitioner/Accused jumped out of the dicky and closed the lid whereas the Accused who was driving the van ran away from the vehicle thereby trapping the minor children inside. In these circumstances, the learned Single Judge of this Court discussed child abuse and negligence and found that Section 8(2) of the Goa Children's Act is not applicable. The matter in hand is totally different and distinguishable from the case of **Suresh Narvekar** (*supra*).

23. In the case of **Mr. Vaibhav Faldessai** (*supra*), the learned Single Judge of this Court was dealing with framing of charges by the Children's Court for various IPC offences along with Section 8(2) of the Goa Children's Act. The complaint in that matter alleged that the Complainant and his wife were present in the school when the Accused/Petitioner abused them with filthy words and at the same time, assaulted one Pankaj. Subsequently, the Complainant inquired about the incident with the minor victim, to which, it was informed that the Petitioner/Accused came under the influence of alcohol and sprayed pepper spray in the

eyes of the minor victim for no good reason. In such a situation, the learned Single Judge observed that spraying pepper spray in the eyes of the victim cannot be read in isolation and has to be considered in the totality of the circumstances forming the entire incident. It was further observed that such an incident cannot be said to be an incident involving child abuse for the reason that the spraying of pepper spray was not intentional on the child, but it was unfortunate that the child was present amongst the other major persons. This decision again is not helpful to the Appellant for the simple reason that the facts and circumstances in the matter in hand are distinctly separate and distinguishable.

24. In the case of **Smt. Smita Khaunte** (supra), the Division Bench of this Court was again called upon to consider quashing of the FIR where it was alleged that the Complainant in his complaint claimed that there was some religious function in his house wherein the Accused/Petitioner remained present and abused the Complainant as well as the Priest, who was performing the religious function. After the function was over, the Complainant opened the main door, which is opposite to the flat of the Petitioner/Accused and at that time, the Petitioner/Accused came to attack the granddaughter of the Complainant, aged 2½ years who was in his wife's lap. The wife of the Complainant tried

to prevent such an attack, but the Petitioner/Accused tore the clothes and injured his wife with nails and started shouting. On scrutiny of the said FIR, the Division Bench observed that no case was made out to attract Section 8(2) of the Goa Children's Act.

25. The above case of **Smita Khaunte** (supra) turned on its own facts and cannot be made applicable to the matter in hand for the simple reason that the observations therein were only on the basis of contents of the FIR wherein it was found that there was no child abuse attracted in the said matter.

26. In the case of **Rohan Dhungat** (supra), the Division Bench of this Court discussed in detail about the child abuse from paragraph 45 onwards. It is observed by the Division Bench that the jurisdiction of the Children's Court is quite wide and the Children's Court shall have jurisdiction to try all offences against children, irrespective of whether such offences are specified in the Children's Act or not. It further observed that sub-clause (iii) of sub-section 2(m) of the Children's Act states that unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. This means

that the definition contemplates that even though, the child may have ultimately died, an offence of child abuse is made out. Child abuse refers to maltreatment, whether habitual or not of a child. Any physical harm or pain caused to the victim child is included in the definition of child abuse. The Act nowhere prohibits or restrains the solitary act since the definition is wide enough to include even a singular incident of physical harm. These observations of the Division Bench in the case of **Rohan Dhungat** (supra) are squarely applicable to the facts of the present matter wherein it is alleged that the Accused abused the victim and his minor friends, threatened him and then assaulted the victim with a wooden stick causing him grievous injuries. The victim was admittedly a minor at the relevant time. Thus, the provisions of the Goa Children's Act and more specifically, Section 8(2) read with Section 2(m) stand attracted. The contentions raised by the learned Senior Counsel Mr. Lotlikar in this regard need to be rejected.

27. Point No. (II): The victim child stepped into the witness box as PW-4 and claimed that on 03.10.2013 he along with his other friends went near Monginis at Mapusa and after waiting for some time, they went to the 5th floor of the said building by lift. He disclosed the name of the building as Saldanha, which is admittedly the building wherein the Accused resides. PW-4 then

deposed that they were sitting on a staircase after coming out of the lift and were talking with each other. At that time, one uncle shouted at them and abused them with bad words. Accordingly, they got up from the staircase, however, at that time, the victim was hit on his head with some hard object due to which, he fell down and became unconscious. He was treated in the hospital for a head injury. There is no dispute with regard to the identification of the Accused even during cross examination. A suggestion was given to the victim that while running from the staircase, he fell down and sustained injuries, which he denied.

28. PW-2, Dr. Rudresh Kurtikar examined the victim at GMC on 03.10.2013 and he noted a head injury with contusion of the left helix with abrasion measuring 1 x 1 cm. with inactive nasal bleed. He then deposed that the history of the deceased was disclosed as being hit with a wooden object at Mapusa at around 5:30 p.m. on the same day. The Doctor has categorically deposed during cross examination that such injury is not possible in case of a fall from the staircase.

29. PW-9 Dr. Shailesh Hede deposed that he was attached to Asilo Hospital as Senior Surgeon in October 2013. He deposed that on 04.10.2013, he examined the victim with an alleged history of assault with a stick and on examination he found swelling in the

left ear pinna and left lateral rectus palsy (paralysis) i.e. the inability of the patient to move his left eye outwards.

30. PW-5, Omkar and PW-6, Rahul are the eye witnesses. Both these witnesses were present along with the victim when the incident occurred. They identified the Accused very clearly and claimed that the Accused hit the victim with a wooden baseball bat on his head due to which the victim fell down and sustained injuries. Both these witnesses were cross examined. However, their testimony has not been dented with respect to the alleged incident of assault.

31. While answering the questions put to the Accused under Section 313 of Cr.P.C. and more specifically, the last question, the Accused claimed that he is residing on the 5th floor of Saldanha building and there were only two offices functioning on the 4th floor. He then stated that three boys were causing a disturbance outside the entrance of the lobby and hence, he questioned them about their intention to be there, to which, there was no answer. He then told them to leave immediately, on which, two of them left, however, one was stubborn and while running down the staircase, he slipped and fell on the iron pipe railing causing

injuries. He, therefore, claimed that a false FIR and chargesheet were filed against him.

32. The learned Children's Court has considered these aspects and found that the presence of the Accused as well as the victim and his friends at the spot is not at all disputed. The victim suffered injuries which the Expert/Doctor has ruled out due to a fall. The victim and his two friends disclosed that such injury was caused due to assault by the Accused with a wooden stick.

33. The Accused admitted while answering the last question put to him under Section 313 of Cr.P.C. that the victim and his friends were causing a nuisance/disturbance. It is no doubt true that the victim and his friends went to the 5th floor of the building where there are no shops/offices and they were not supposed to be present at that place. However, the reaction of the Accused who is an elderly person cannot be justified by abusing the victim and his friends and then assaulting the victim with a wooden stick. The material on record has been properly assessed to arrive at a conclusion to prove the Accused guilty and hence, no interference is warranted with such findings. Accordingly, Point No. (I) is answered in the Affirmative and Point No. (II) is answered in the negative.

34. Having considered the above observations, the Appeal fails and stands dismissed.

35. The Appellant to surrender before the Children's Court for undergoing the sentence, within a period of four weeks from today.

36. The Criminal Appeal stands disposed of.

BHARAT P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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