

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 138 OF 2017

STATE OF GOA, THR. PERNEM POLICE
STATION, PERNEM.,

... Applicant

Versus

VICHALA KHARBE.,

... Respondent

Mr. S. R. Rivankar, Public Prosecutor for the applicant.
Mr. Shivadatta Prakash Munj, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 20th June, 2017

P.C.

This is an application for leave to appeal against acquittal.

2. The prosecution case is that on 14.12.2013 at 19:30 hours at Askawada, Mandrem Pernem, the respondent/accused voluntarily caused hurt to the minor victim boy, aged 10 years and 5 months by assaulting him by means of "an instrument like waist belt". According to the prosecution, the instrument which was allegedly used, if used as a weapon of offence, is likely to cause death. On the basis of the complaint lodged by PW-1, who is the father of the victim, an offence punishable under Section 324 of I.P.C. read with Section 2(m)(i) punishable under Section 8(2) of the Goa Children's Act, 2003 came to be registered and the respondent was put to trial before the learned Children's Court in Special Case no. 10 of 2014.

3. The defence of the respondent was that, there was a longstanding enmity between him and the family of the victim and the parents of the victim and some others were facing prosecution on the basis of a complaint lodged by him. It was thus contended that the complaint was false and an outcome of the enmity between the parties.

4. At the trial, the prosecution examined, in all, 8 witnesses including PW-1 who is the complainant and the PW-3 who is the mother of the victim. The victim was examined as PW-2 alongwith his grandfather, PW-4, the Medical Officer as PW-5. PW-6 was examined as an eye-witness. However, he did not support the prosecution. The Investigating Officer was examined as PW-7 and one of the panch witness as PW-8.

5. The Children's Court, after appreciation of the evidence, came to the conclusion that there was possibility of the complaint being the outcome of the enmity between the parties and there were no eye-witnesses examined. The learned Children's Court, thus, found that the respondent was entitled to benefit of doubt.

6. I have heard Shri R. Rivankar, the learned Public Prosecutor and the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the

Impugned Judgment.

7. It is submitted by Shri R. Rivankar, the learned Public Prosecutor that the Medical Certificate and the evidence of PW-5 supports the case of the prosecution, in as much as, the Medical Officer had found an abrasion caused by a blunt weapon on the left hand wrist of the victim. The Medical Officer had deposed that the injury was caused between three hours of examination of the victim. It is submitted that, thus, the medical evidence supported the case of the prosecution and the learned Children's Court was in error in acquitting the respondent.

8. On the contrary, it is submitted by the learned Counsel for the respondent that all the material witnesses are closely related and have rightly been found to be interested witnesses. It is submitted that there was longstanding enmity between the parties and the learned Children's Court was justified in giving the benefit of doubt to the respondent.

9. I have carefully considered the circumstances and the submissions made and I find that no case for grant of leave is made out. It has amply come on record that the family of the victim and the respondent were having longstanding enmity between them. The parents of the victim, i.e. PW-1 and PW-3 alongwith some others were facing prosecution on the basis of a

complaint lodged by the respondent. The incident is alleged to have happened in the courtyard of the house where the grandfather (PW-4) of the victim was residing. However, PW-4 has failed to support the prosecution. Similarly, the other eyewitness, namely, PW-6 has also not supported the prosecution. In my considered view, the Children's Court is right in holding that the prosecution evidence in this case consists of close relatives of the victim coupled with the fact that there was some history of enmity between them and the respondent. Although there is no rule of law or of practice that the evidence of an interested or a related witness has to be discarded, the fact remains that such evidence has to be appreciated with caution and circumspection. As noticed earlier, the material witnesses PW-4 and PW-6 have not supported the prosecution. The Inquiry Officer has not recovered the belt which was allegedly used for assaulting the victim. Merely because the medical evidence supports the case of some simple injury on the left hand wrist of the victim would not be sufficient to establish that the respondent is the author of the inquiry.

10. On carefully going through the Impugned Judgment, I find that the view taken by the learned Children's Court is a plausible view. It is now well settled that in a challenge to judgment of acquittal, unless and until the view taken by the trial Court is either perverse or an impossible view, no case for interference is

made out. The view taken by the learned Trial Court is a plausible view. In the result, the Criminal Application is hereby dismissed.

C. V. BHADANG, J.

msr