

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO.29 OF 2015.

Premila @ Prema @ Sheetal Parab,
Wife of Ramchandra Parab, Aged
62 years, r/o. H. No. 93,
Gaonkarwaddo, Bicholim-Goa. Appellant.

Vs.

State
(Through Bicholim Police
Station) Respondent.

Coram:- PRITHVIRAJ K. CHAVAN,J.

Reserved on:-14th November, 2017

Pronounced on:-28th November, 2017.

Shri V. D. Pangam, Advocate for the appellant under Legal Aid Scheme.

Shri S. R. Rivankar, Public Prosecutor for the respondent.

JUDGMENT:-

The appellant has been convicted and sentenced by the President of Children's Court Goa to undergo simple imprisonment till rising of the Court for the offence punishable under Section 506(ii) of Indian Penal Code ("IPC" for short) and further under Section 2(m)(i) punishable under Section 8(2) of the Goa Children's Act 2003 to undergo imprisonment till rising of the Court and fine of ₹1,00,000/- and in default to undergo simple imprisonment for 10 days. The

appellant has, therefore, preferred this appeal.

2. The facts, in brief, can be summarised as follows:-

On 1.4.2013 between 9.45 hours to 10.50 hours at Gaonkarwado Bicholim, the appellant is said to have criminally intimidated minor daughter of the complainant by threatening her in Konkani language "Tuka Jitte Marunk Jay Gunyani" which amounts to child abuse. Sakharam Parab, the complainant and the father of the child,(who is admittedly around 12 years of age at the time of incident), lodged a complaint with the Police Station Bicholim on the same date alleging that on 31.3.2013 neighbours namely Madhavi Amit Parab, Dimple Parab, Amit Parab and Pandu Parab had brutally assaulted his wife Sanjivani Parab in front of his minor daughter. His wife has been admitted in the hospital because of the injuries suffered by her in the assault.

3. On the date of the incident at about 11.00 a.m., when the child was returning from the shop of one Santosh Parab where she had gone to buy biscuits and chocolates, Madhavi Parab, appellant Prema Prab, Dimple Parab and Amit Parab and a girl known as Tamma were standing in the gallery of their house. When the child passed by, the aforesaid persons threatened the child by pointing towards her "Tuka Jitte Marunk Jay Gunyani" due to which the child got scared

and came home running. She narrated the whole incident to the wife of the complainant on phone.

4. On the basis of the said complaint, Crime No.54 of 2013 under Section 506(ii) of IPC read with Section 8(2) of the Goa Children's Act, 2003 came to be registered against the appellant. PW6 Razadshad Shaikh was attached to Bicholim Police Station as PSI. After registration of the complaint he held investigation. He recorded scene of offence panchanama and also recorded the statement of the witnesses. He collected birth certificate of the child. The President, Children's Court framed a charge against the appellant under Section 506(ii) IPC and Section 8(2) of the Goa Children's Act, 2003 on 7.1.2015. The appellant pleaded not guilty and claimed to be tried. Her defence, as envisaged from the line of cross examination and from her statement under Section 313 of Cr.P.C. is that she has been falsely implicated by the complainant. She had not committed any offence, as alleged. It is stated that relations between the complainant and her family are strained and, therefore, in order to harass her, a false complaint came to be lodged. No defence evidence is adduced.

5. The learned trial Court, after recording the evidence of the prosecution witnesses and hearing the respective sides, by the impugned judgment, convicted and sentenced the appellant.

According to the trial Court, words as alleged have been uttered by the appellant amounts to a psychological abuse, which is one of the ingredients of "Child abuse" as defined under Section 2(m)(i) of the Goa Children's Act, 2003. The learned trial Court believed and accepted the fact of enmity between the parties.

6. I heard Shri V. Pangam, learned Counsel for the appellant who, in his elaborate arguments, took me through the evidence of the prosecution witnesses and emphasized that there is no evidence, much less medical evidence to show that the alleged utterances have resulted into some impact on the mind of the victim child. The learned Counsel submits that all the witnesses are interested and in view of the fact of strained relations between them and in the absence of any independent evidence, it would be unsafe to believe the sole testimony of the victim child coupled with one more witness. It is also argued that the prosecution has not assigned any reason as to why it had not examined Santosh Parab. There is no evidence of any Psychiatrist to show that the victim child suffered psychological abuse. It is also submitted that tutoring of the child cannot be totally ruled out in the light of the fact of enmity between the parties. The learned Counsel, therefore, prays for setting aside the impugned judgment of conviction.

7. Shri S. R. Rivankar, learned Public Prosecutor, in all fairness, admits that though it is a serious offence, however, there is no evidence to show that due to the alleged utterances of said words there was any impact on the victim child. Therefore, according to the learned Public Prosecutor, evidence is not sufficient to prove the child abuse.

8. PW1 Sakaharam Parab is the father of the victim child, who deposed that on the day of incident he had gone to work as usual. He is a rickshaw driver. The victim child had gone to the shop of one Santosh Parab to buy biscuits between 10.30 a.m. to 11.00 a.m. While returning back, the family of the appellant was standing in the gallery of their house. When the victim child was passing by, the appellant pointed out to her and said "Heka Gune Marun Chechun Marunk Jai" which means the victim child should be killed by hitting her with a stone. According to this witness, the child had informed this fact to her mother on telephone who was admitted in the hospital and thereafter his wife informed about the same to this witness. In the complaint, the complainant had stated that the appellant and the other family members namely Madhavi Parab, appellant Prema Prab, Dimpel Parab and Amit Parab had uttered those words, however, in his evidence he only points out towards the appellant and none

others. His evidence, in fact, is of hearsay nature. However, it is an undisputed fact that the two families are not on good terms and, therefore, the evidence, in such cases, needs to be scrutinized meticulously for the reason that enmity is a doubled edged weapon which can provide motive to commit an offence as well as false implication.

9. The important witness, therefore, would be the child who was admittedly aged about 12 years at the time of incident. According to her, she was born on 14.01.2001. Her evidence indicates that she returned from school at about 9.00 a.m. on 1.4.2013 as there was a programme in the school. Since she was hungry, she went to the shop to buy biscuits. While returning from the shop, the appellant and her family members, were seen in their compound. The appellant pointed towards her and said "Heka Gunani Jete maruk Jai". The complaint lodged by her father reveals that the appellant and all other relatives of the appellant said that "Tuka Jete Maruk Jai Gunani". If threats were extended by other family members of the appellant then, it would be difficult to infer that only the appellant would have uttered the said words. There is some variance in the evidence of PW1 Sakaharam Parab who says "heka gune marun chechun marunk Jai" whereas PW2 the child says "Maka Jitea Marujk Jai". However that is insignificant. The question is whether, in fact, such words were

uttered by the appellant alone or were uttered by all the family members has not been specifically proved by the prosecution. During her cross- examination, the victim child admits that the appellant had not taken her name but pointed towards her.

10. The evidence of this witness finds some supports from the evidence of PW3 Harshali Parab who is an Aunt of victim child. She testified that on 1.4.2013 at around 9.30 a.m. victim child returned from the school early and, therefore, she went to the shop to buy biscuits as she was hungry. At that time, PW3 Harshali Parab was standing outside the house from where the shop was visible. When the victim child was returning, the witness noticed the appellant standing in the compound of her house and by pointing her finger towards victim said "Tuka Jitte Maruk jai". Though, this witness has not reproduced the exact words as deposed to by the victim child and her father yet, in substance, she means to say that the appellant had threatened the victim child of dire consequences.

11. It is difficult to place implicit reliance on this witness, who is also a relative of the complainant and who admits that she was not in good terms with the family of the appellant and that they were not in taking terms. Secondly, it is difficult to understand as to how PW3 Harshali Parab came to know that the victim child was hungry

as it is not the case of the prosecution that the victim child had informed this witness that she is going to buy biscuits as she was hungry. If the victim had been to the shop of one Santosh Parab for buying biscuits, he would have been the best witness to corroborate the testimony of child witness. No reason whatsoever has been given by the prosecution for withholding the evidence of Santosh Parab which leads to draw an adverse inference against the prosecution. PW4 Sanjivani Parab, the mother of the victim child, also spoke in tune with her husband, however, she had not witnessed the incident as she was admitted in the District Hospital Mapusa. Her statement was recorded by the Investigating Officer on 18.6.2013 i.e more than one and half months of incident for which there is no explanation. Interestingly, in her cross-examination this witness denied the suggestion that they are not in good terms with the family of the appellant which is exactly contrary to what the prosecution case is as other prosecution witnesses have deposed about the enmity between the family of the appellant and the complainant. However, in her further cross-examination she admits that whenever they used to go to the well, the family of the appellant used to create problem.

12. The learned Counsel for the appellant has, therefore, placed reliance on a judgment of the Hon'ble Supreme Court in case of ***State of Himachal Pradesh Vs. Dhani Ram, 1996 DGLS(SC)***

1498. In the said case it was a 9 years old girl who deposed about the circumstances as regards last seen in the company of the accused. It is observed that there was possibility of the child being tutored wherein admittedly mother of the said witness was inimical towards the accused and she had filed a criminal complaint against the wife of the appellant only a month before the occurrence in question.

13. In the case at hand, just a day before the incident in question admittedly there was a quarrel between the appellant and the wife of the complainant and, therefore, there is every reason to believe that a false complainant had been filed. There was an opportunity for the complainant to influence the child. Sans material corroboration to the evidence of the victim child, it would be unsafe to place complete reliance on it. The ratio is, therefore applicable to the present set of facts.

14. In the case of ***Radhey Shyam Vs State of Rajasthan 2014 AIR(SC) (supp) 773***, while dealing with an appeal under Section 302 IPC and while discussing the aspect of evidence of a child witness, the Hon'ble Supreme Court considered its observation in a case of ***Ratansinh Dalsukhbhai Nayak Vs State of Gujarat[(2004) 1 SCC 64]*** and has observed at paragraphs 8 and 9 thus:-

8. In *Ratansinh Dalsukhbhai Nayak*, this Court considered the evidentiary value of the testimony of a child witness and observed as under:

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.”

9. *Panchhi*, after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. This Court further observed that the courts have held that the

evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation. We will scrutinize PW-2 Banwari's evidence in light of the above principles."

15. Thus, it is clear from the aforesaid ruling that since a child witness is amenable to tutoring, it would be dangerous to place complete reliance as child can be influenced easily, shaken and moulded. However, there is no obligation in accepting the evidence of child witness, if it is found to be reliable and inspires confidence.

16. The Hon'ble Supreme Court has also made it very clear that the evidence of a child witness can be relied upon, if the Court finds that the child has sufficient intelligence and understanding of

the obligation of an oath. The Hon'ble Supreme Court also emphasized on adequate corroboration to the evidence of child witness.

17. As can be seen from the evidence of this case that there is no corroboration by an independent witness to the testimony of the victim child especially in view of the fact that family of the complainant and the appellant were on cross terms and, therefore, the evidence cannot be fully accepted. The ratio is applicable to the present set of facts. It is, therefore, unsafe to fully rely upon the testimony of the victim child.

18. One important aspect is as to whether the alleged utterances by the appellant would tantamount to child abuse, as contemplated in Section 2(m)(i) of the Goa Children's Act, 2003? Section 2(m)(i) reads thus:-

“Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment.”

19. It is apparent from the definition that the child abuse refers to maltreatment whether habitual of the child or not which includes psychological and physical abuse. The alleged threats “Tuka jite maruk jai gunani” appearing in the evidence of PW1 Sakaharam Parab and “Hake Gunani Jite Maruk Jai” in the testimony of the victim

child may not constitute a psychological abuse in the light of the fact that there is no evidence either medical or otherwise to substantiate the fact that those words had caused or created impact on the mind of victim child. Psychological abuse is to be construed in the context of habitual or otherwise maltreatment of a child which is in consonance with the object of enacting Goa Children's Act, 2003. Stray utterances, in my view, would not constitute such an abuse, as provided in Section 2(m)(i) of the Goa Children's Act, 2003.

20. The learned trial Court has failed to appreciate the evidence in its correct perspective and arrived at an erroneous conclusion that the prosecution has proved its case beyond doubt. As such, the impugned judgment needs an interference in the appeal, as the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. The appellant, therefore, needs to be given a benefit of doubt.

21. In the circumstances, the appeal is allowed. The impugned judgment and order dated 7.5.2015 of conviction and sentence is set aside. The appellant is acquitted of the offence punishable under Section 506(ii) of IPC and Section 8(m)(i) punishable under Section 8(2) of the Goa Children's Act, 2003. Her bail bond stands cancelled.

22. Appeal stands disposed of accordingly.

PRITHVIRAJ K. CHAVAN, J.

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