

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.20/2019

WITH

LD-VC-CRI-70-2020

Santosh Gore,
son of Bhairo Gore,
aged 31 years, r/o. House
No.68, Cuinamol, Kalay,
Sanguem, Goa and presently
undergoing sentence at
Colvale Jail, Bardez, Goa.

..... Appellant.

Versus

1. State,
through P.P., High Court of Bombay
at Panaji, Goa.

2. The Police Inspector,
Curchorem Police Station,
Curchorem, Goa.

..... Respondents.

Mr. Vibhav A. Amonkar, Advocate for the Appellant.

Mr. Sagar Dhargalkar, Additional Public Prosecutor for the
Respondents.

Coram: M.S. Sonak, J.

Date: 5th November 2020.

ORAL JUDGMENT:

Heard Mr. Vibhav Amonkar for the Appellant and Mr.
Sagar Dhargalkar, learned Additional Public Prosecutor for the State.

2. This Appeal challenges the Judgment and Order dated 6th September 2018, made by the Children's Court for the State of Goa in Special Case No.36/2017, convicting the Appellant-Accused for offence under Sections 375, punishable under Section 376(2)(i) and (n) of the IPC, under Section 2(y)(i), punishable under Section 8(2) of the Goa Children's Act, 2003 and the offence under Section 5(I), punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentencing him to undergo rigorous imprisonment for a term of 10 years and a fine of Rs.2,00,000/-, and in default, to undergo simple imprisonment for two years.

3. The case of the Prosecution is that about 3 – 4 months before 31/3/2017, at Cuinamol, Kaly, Sanguem, Goa in the kitchen of his rented premises, the Accused committed rape/grave sexual assault/ aggravated penetrative sexual assault on the minor victim girl, aged around 13 years, more than once.

4. The Children's Court framed necessary charges against the Accused, which charge the Accused denied. The Prosecution examined 5 witnesses, including the minor victim girl in support of its case. Statement of the Accused under Section 313 of Cr.P.C. was then recorded. Despite the opportunity, the accused neither examined himself nor led any defense evidence in the matter. By the impugned Judgment and Order, the Accused has been convicted and sentenced as aforesaid. Hence, the present Appeal.

5. Mr. Amonkar, the learned Counsel for the Accused, at the outset, submitted that there was no legal evidence on record to establish that the victim girl was a minor on the dates of the alleged incidents. He pointed out to Exhibit C-51 produced by PW.5 to submit that there was overwriting/insertion, which was not even backed by any initials of any party. He submits that it is based on such overwriting/insertion that the Prosecution seeks to connect the birth report with the victim girl. He submits that the birth report is fabricated and, in any case, an extremely doubtful document. In absence of any documentary evidence, it cannot be said that the Prosecution has established the age of the victim girl. He points out that in absence of clear evidence as to the age of the victim, the entire trial and the conviction recorded therein is rendered vulnerable.

6. Mr. Amonkar points out that there is no evidence that the victim had an alias name, as was sought to be projected by the Prosecution. He points out that no ossification test was conducted and there is no medical evidence as to the age of the victim. He once again submits that in the absence of clear evidence as to the age of the victim, no trial was competent before the Children's Court and the conviction under most of the sections is liable to be set aside.

7. Mr. Amonkar, without prejudice to the aforesaid, submits that there is no clear evidence of any rape or sexual assault in this

matter. He points out to the deposition of the victim girl – PW.1 to submit that there is no clear statement by the victim about any rape or sexual assault. He also points out to the statement of the victim under Section 164 Cr.P.C. before the NGO to submit that there is variance in all such statements. He, therefore, submits that this is not a fit case where the statements or the testimony of the victim could be relied upon. Mr. Amonkar submits that in any case, in such facts, the testimony of the victim could not be relied upon in the absence of any corroboration from any independent and credible witnesses.

8. Mr. Amonkar submits that in this case, the DNA profile report had not at all been proved by the Prosecution. He submits that mere admission of such a document by resort to Section 293 of the Cr.P.C. does not absolve the Prosecution of the necessity to examine its author. He, therefore, submits that this DNA report could not have been relied upon by the Children's Court in this matter.

9. Mr. Amonkar submits that in the present case, there is no evidence as to how the samples were collected from the Accused and the victim. He submits that the purity of the collection process is vital if any credence is to be given to the DNA report. He relies on *Jitendra S/o Suresh Gabhane vs. The State of Maharashtra*¹ in support of his contention.

¹ 2017 SCC OnLine Bom 8600

10. Mr. Amonkar submits that the DNA report is only an opinion and, therefore, can never be conclusive, particularly in the absence of examination of its author. He submits that even such a report can be fallible and, therefore, no reliance can be placed upon the same. He relies on *Pattu Rajan vs. State of Tamil Nadu*² in support of this contention.

11. Mr. Amonkar points out that the Children's Court has relied upon the DNA report as being an incriminatory circumstance against the Accused. However, this circumstance was never put to the Accused during the record of 313 Cr.P.C. statement. He submits that the prejudice is writ large in this matter because the Accused was deprived of the opportunity of giving his say on this so-called incriminatory evidence. Mr. Amonkar submits that if this DNA report is excluded from consideration, then, there is no legal evidence on record to establish the charge against the Accused. He relies on *Nar Singh vs. State of Haryana*³ and *State of Punjab vs. Hari Singh and ors.*⁴ in support of his contentions.

12. For all the aforesaid reasons, Mr. Amonkar submits that this appeal be allowed and the impugned Judgment and Order be quashed and set aside and the accused be set at liberty.

13. Mr. Dhargalkar, the learned Additional Public Prosecutor

² (2019) 4 SCC 771

³ (2015) 1 SCC 496

⁴ (2009) 4 SCC 200

defends the impugned Judgment and Order based on the reasoning reflected therein. He points out that there was virtually no challenge to the testimony of the victim girl. He points out that in particular, no questions were posed about her alias name or for that matter, about her minority. He points out that from the cross-examination, it is evident that the accused admitted to being on friendly terms with the victim girl and that the victim girl used to go to his room, often.

14. Mr. Dhargalkar points out that the attention of the Accused was drawn to the DNA report which was filed along with the charge-sheet in this matter. In any case, he points out that there is no requirement of inviting the attention of the accused to all details in the report which is inculpatory. He submits that there was not only compliance with the requirements of Section 313 of Cr.P.C., but that in any case, no prejudice whatsoever has been established by the Accused. He submits that even in the absence of the DNA report, there is overwhelming evidence in the form of the deposition of the victim girl, sufficient to establish the conviction of the Accused.

15. Mr. Dhargalkar points out that in the present case, the victim girl, who was hardly 13 years of age, became pregnant and had to suffer the trauma of abortion. He relies on *State (Delhi Administration) vs. Dharampal*⁵ and *Alister Anthony Pereira vs. State of Maharashtra*⁶ in support of his contentions.

⁵ (2001) 10 SCC 372

⁶ (2012) 2 SCC 648

16. In this case, the Accused had filed a criminal miscellaneous application, claiming that while he was out on parole, he contacted the victim girl and her parents and some semblance of the ceremony was performed, according to which, the Accused and the victim girl had agreed to be married once the victim attained majority. This application was supported by an affidavit of the Accused. This application was supported by the affidavits of the mother of the victim girl and the maternal grandfather of the victim girl, who was also the complainant in this matter.

17. The Prosecution was directed to furnish say to this application. Directions were also issued that the IO, along with a representative from an NGO, actually visits the victim girl to find out whether the averments in the application were correct.

18. Accordingly, the IO has filed a response to the criminal misc. the application being LD-VC-CRI-70-2020 on 3/11/2020.

19. The rival contentions now fall for our determination.

20. On the aspect of the age of the victim girl, at the outset, reference is required to be made to the deposition of the victim girl, who was examined as PW.1 by the Prosecution. She has deposed to her alias name and that her date of birth was 24/3/2004. She also produced a birth certificate on record (Exhibit C-11). From the

deposition of PW.1, as also the birth certificate which is produced on record, it is apparent that the victim girl was hardly 13 years on the date of the two incidents which are alleged to constitute the offense in this matter.

21. Now, if there was any doubt about the alias name of the victim girl or the date of birth stated by her, which date of birth was backed by a birth certificate, minimum that was expected was some challenge to this aspect in the cross-examination.

22. In the cross-examination, there is neither any suggestion that the victim girl had no alias name nor that the date of birth stated by her was incorrect. The victim girl had deposed that the Accused was the son of her aunt's sister. This position was not even denied by the Accused at any stage. This means that the Accused was no stranger to the victim, nor was the victim any stranger to the Accused. Even in the suggestions put to the victim, the Accused suggested that he had friendly relations with the victim and that he was supposed to get married to the victim. If, therefore, there was any doubt on the issue of an alias or the issue of date of birth deposed to by the victim girl, then, it is only natural that there would be some challenge to this aspect in the course of cross-examination on behalf of the Accused. The evidence of the victim girl, which is backed by a birth certificate from the competent authority, inspires confidence and there is no reason not to rely upon the same.

23. The birth certificate at Exhibit-11, which is in a printed form, clearly refers to the alias name of the victim. The birth certificate indicates the date of birth as 24/3/2004. The printed form certifies that the information indicated in the certificate has been taken from the original record of birth which is in the Register for (local area/local body) Village Panchayat, Neturlim of tahsil/block Sanguem of District South Goa of State of Goa. The Prosecution, so that there is no ambiguity about the age of the victim girl, examined as PW.5, Babuso Tilve, Secretary of the Village Panchayat Neturlim (as in the year 2004).

24. PW.5 has deposed that in the year 2004, he was attached to the Village Panchayat Neturlim, as Secretary and Registrar of Births and Deaths. He has deposed, in some details, to the birth report which he produced on record as Exhibit C-51. He was cross-examined and there is no dent to his testimony despite such cross-examination.

25. PW.5 has deposed that as per his knowledge, the information was furnished by the father of the victim girl. He has deposed that where there are two names of the child, such name is mentioned by inserting the second name between the first name and the name of the father with words '*alias*' added to it. He has candidly accepted that he did not ask the father of the victim girl to put his

thumb impression at the place where such insertion was made since the insertion was made in his presence by the person who had accompanied the father of the victim girl. He has denied that the document at Exhibit C-51 was fabricated. He denied that the registration of birth was not following Section 8 of the Registration of Births and Deaths Act, 1969. He denied that the victim girl was not born in the local area or that the date mentioned in the Register was not correct.

26. Now, again, the evidence of PW.5 inspires confidence and there is no reason not to accept such testimony which is both, clear as well as cogent. Merely because in the course of cross-examination some suggestions were put about fabrication, there is no question of discarding the clear and cogent testimony of PW.5. Similarly, only because the Accused in the course of his 313 Cr.P.C. statement simply asserted that the victim girl was major, this, by no means sufficient to reject both, oral as well as documentary evidence produced by PW.5 on the aspect of the age of the victim girl. The Prosecution, in this case, has established beyond a reasonable doubt that the victim girl was hardly 13 years of age at the time of the two incidents which are alleged to be the offenses committed by the Accused in this matter. Therefore, it is not possible to accept Mr. Amonkar's first contention on the aspect of the age of the victim in this matter.

27. Although the contents of the criminal misc. application

now filed by the Accused are not required to be read as evidence, it is necessary to observe that this misc. application is supported by an affidavit made by the Accused. Even in this application, the Accused admits that the victim girl is yet to attain a majority. However, it is made clear that this aspect is not at all the basis for upholding the clear and cogent findings recorded by the Children's Court on the aspect of the age of the minor victim girl (PW.1).

28. Once it is established that the minor victim girl was hardly 13 years of age on the date on which she is alleged to have been sexually assaulted, the plea of consent or friendly relations becomes irrelevant. The law is quite clear on this aspect and there is no reason to dilate any further on this issue.

29. Mr. Amonkar, however, contends that there are ambiguities in the prosecution evidence in so far as the incidents of sexual intercourse or sexual assaults are concerned. Now, if the testimony of PW.1 before the Court is perused, then, it is quite clear that she has deposed about the Accused touching her breasts and private part. As if this were not sufficient, PW.1 has clearly and categorically deposed that the Accused had sexual intercourse with her in the kitchen of his house, twice. PW.1 has also deposed to how she was tested and found to be pregnant, soon thereafter. In the course of cross-examination, except for suggestions, nothing further has been brought out to disbelieve the clear and cogent statements made by PW.1 in her

deposition. In fact, in the cross-examination suggestions were put that PW.1 used to often visit the house of the Accused to serve him food and that she had friendly relations with the Accused and that she and the Accused were supposed to get married. Despite these suggestions, the Accused, in the course of his 313 Cr.P.C. statement, chose to deny practically everything.

30. It is true that PW.1, in her statement under Section 164 of Cr.P.C. or her statement before the NGO, had given a more graphical description of the sexual assault upon her. The circumstance that such graphical description is not repeated in the testimony before the Court or that lurid details are not deposed to, is not at all a good reason to doubt the clear and cogent testimony of the victim girl. There is no inconsistency or variance as such between the statements given by the minor victim girl in the Court under Section 164 of Cr.P.C. and before the NGO. The grain in all such statements is the same, though it is possible to say that some additional details about the actual intercourse may have been stated by the victim girl before the Magistrate or before the NGO. The courts cannot afford to be insensitive to issues of modesty particularly when evaluating the testimony of a minor victim of a sex offense. This is a case where the minor victim, on account of the offence, had to suffer the trauma of an abortion at a tender age.

31. Since the deposition of PW.1 inspires full confidence and

such deposition has not been dented in any manner, there is no need to even look to any corroboration. It is not a law that the evidence of prosecutrix can never be relied upon unless it is corroborated. The evidence of the prosecutrix is not to be viewed as evidence of some accomplice. Therefore, based upon the testimony of PW.1 itself, the conviction against the accused is liable to be sustained.

32. In any case, there is corroboration in the form of the defense of the Accused that he was on friendly terms with the victim girl and that he was also to get married to the victim girl. The Accused put suggestions that the victim girl used to go to his room allegedly to give him food, often. All this offers corroboration from the Accused himself. True, all this, by itself, does not establish that the accused admitted to having any sexual intercourse with PW.1. However, for that, there is clear and cogent evidence of PW.1.

33. There is medical evidence, in the sense that there is documentary evidence on record which establishes how the victim girl was referred for testing and was found to be pregnant. There is evidence about the abortion of the fetus. All this evidence offers sufficient corroboration, assuming that such corroboration was required in the facts of the present case.

34. The DNA report was admitted in evidence by resort to Section 293 of Cr.P.C. This document was admitted in evidence since

it was not even objected to by and on behalf of the Accused.

35. Section 293 of Cr.P.C. provides that any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceedings under this Code. Sub-section (4) of Section 293 refers to the Government Scientific experts to whom this Section applies.

36. In this case, the DNA report has been prepared by Technical Examiner, Laboratory of DNA Fingerprinting Services Centre for DNA Fingerprinting and Diagnostics (DBT, Ministry of Science & Technology, Govt. of India). Section 293(4) speaks about any Chemical Examiner or Assistant Chemical Examiner to Government. It also speaks about the officer of a State Forensic Laboratory. No questions were posed to the IO about the credentials of the officer who furnished the DNA report. Instead, the production of such a report was not even objected to on behalf of the Accused. Accordingly, this report was quite correctly admitted in evidence and read in evidence.

37. Section 294 of Cr.P.C. provides that where any document is filed before any Court by the prosecution or the accused, the

particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document. Section 294(3) of Cr.P.C. provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial, or other proceedings under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved. Similarly, Section 293(2) of Cr.P.C. also empowers the Court, if it thinks fit, to summon and examine any such expert as to the subject- matter of his report.

38. In the present case, looking to the testimony of PW.1, there was no necessity for the examination of the author of the DNA profiling report. Therefore, the Children's Court cannot be faulted for not exercising its discretion and calling upon the author of such a report to depose in the matter. This report establishes that DNA profiling of the Accused and the DNA profiling of the fetus aborted from the victim matches.

39. It is true, as held by the Hon'ble Apex Court in *Pattu Rajan* (supra), that DNA profiling evidence is neither conclusive nor infallible. Such evidence is only an opinion of the experts. However, that does not mean that the evidence in the form of such a DNA

profiling report is always fallible or cannot be relied upon at all. The decision in *Pattu Rajan* (supra) only means that it is open to any party to point out the defects in such opinion or otherwise establish that such opinion ought not to be acted upon. In the present case, the Accused has done nothing of this sort. Therefore, simply to urge that the report may be fallible, is not sufficient to raise some kind of doubt on the prosecution version. In any case, as pointed out earlier, even if the DNA profiling report is excluded from consideration, there is ample evidence on record to sustain the conviction of the Accused in this matter.

40. In terms of the decisions in *Nar Singh* (supra) and *Hari Singh and ors.* (supra), the questioning under Section 313 of Cr.P.C. is held not to be some empty formality. Section 313 Cr.P.C. embodies the principles of natural justice. However, in the present case, the attention of the Accused was invited to the DNA report. Therefore, it is not a case where there was total non-compliance, as was sought to be projected by Mr. Amonkar, the learned Counsel for the Appellant.

41. In *Dharampal* (supra) relied upon by Mr. Dhargalkar, the Hon'ble Apex Court has held that there was no breach of the provisions of Section 313 Cr.P.C. when a copy of the certificate of the Director, Central Food Laboratory had been supplied to the accused and thus, the Accused were aware of the contents of the certificate. During the examination of such accused under Section 313 Cr.P.C.,

the questions pertaining to the certificate were put to the accused. Explanation of the accused in respect of the certificate had been called for. The Apex Court held that in such cases, it is enough if the attention of the accused is brought to the report or the certificate, as the case may be. The contents of the report do not need to be also put to the accused.

42. In any case, even the rulings relied upon by Mr. Amonkar, as well as the ruling of the Hon'ble Apex Court in *Alister Anthony Pereira* (supra), explain the legal position in such matters. The legal position is that the accused must be apprised of incriminating evidence and material brought in by the prosecution against him to enable him to explain and respond to such evidence and material. Failure in not drawing the attention of the accused to the incriminating evidence and inculpatory material brought in by the prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law; firstly, if having regard to all the questions put to him, he was allowed to explain what he wanted to say in respect of the prosecution case against him and secondly, such omission has not caused prejudice to him failing justice. The burden is on the accused to establish that by not apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him, prejudice has been caused resulting in miscarriage of justice.

43. Accordingly, Mr. Amonkar was called upon to respond to the DNA report. However, he submits that he has no instructions to offer any explanation. As noted earlier, this question was posed to Mr. Amonkar only as a measure of fairness to the Accused. Otherwise, the material on record establishes no breach of Section 313 of Cr.P.C., in the facts of the present case. Besides, as noted earlier, even if the DNA profile report is excluded from consideration, there is evidence on record in terms of which the Prosecution has proved beyond a reasonable doubt, the complicity of the Accused in the offense for which he came to be charged.

44. Mr. Amonkar, at a later stage did try to urge that if such a question was posed to the Accused, he could have stated that his sample was not properly collected, or given such other answer. According to me, based upon such a hypothesis, it is not possible to presume or establish any prejudice. Similarly, in this case, there is absolutely no good ground to doubt the process of collection of samples for DNA profiling. Merely raising such contention at the appellate stage, without any foundation whatsoever in the evidence on record, is not sufficient to claim a benefit of the doubt. Doubt, if any, must arise from the evidence on record. Further, the doubt must be a reasonable one, not some fanciful doubt since, as held by the Hon'ble Apex Court, it is quite simple to raise such fanciful doubts, particularly at the appellate stage.

45. The law on the aspect of benefit of doubt has been explained by the Hon'ble Apex Court in *HP Administration vs. Om Prakash*⁷. The Hon'ble Apex Court, has explained the concept of proof beyond reasonable doubt and the circumstances in which a benefit of doubt can be extended to the accused persons. The Hon'ble Apex Court has held that it is not beyond the ken of experienced, able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during the trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence before a court is generally due to the nature and quality of that evidence. It may be the witnesses as are lying or where they are honest and truthful; they are not certain. It is, therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the Prosecution of offenders which in other words means that the Prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt – the doubt which rational thinking men will reasonably, honestly and conscientiously

⁷ (1972) 1 SCC 249

entertain and not the doubt of a timid mind which fights shy – though unwittingly it may be – or is afraid of the logical consequences if that benefit was not given. Or as one great Judge said it is “*not the doubt of a vacillating mind that has no moral courage to decide but shelters itself in a vain and idle scepticism*”. It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwart it altogether. It is for this reason the phrase has been criticized. Lord Goddard, C.J., in *Rox v. Kritz* – [1950] 1 KB 82 said that when in explaining to the juries what the Prosecution has to establish a Judge begins to use the words “*reasonable doubt*” and try to explain what is reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language. ‘*It is the duty of the prosecution to satisfy you of the prisoner’s guilt*’. What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the Prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt. This then is the approach.

46. Similarly, in *Shivaji Sahabrao Bobade v. State of Maharashtra*⁸, the Hon'ble Supreme Court has cautioned against the dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittal is always good regardless of justice to the victim and the community. The Apex Court has held that the judicial instrument has public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go, but one innocent martyr shall not suffer a false dilemma. Only reasonable doubts belong to the accused. Otherwise, any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this, in turn, leads to public demand for harsher legal presumptions against indicted '*persons*' and more severe punishment to those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "*a miscarriage of justice may*

⁸ (1973) 2 SCC 793

arise from the acquittal of the guilty no less than from the conviction of the innocent....” In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.

47. In *Harijana Thirupala v. Public Prosecutor*⁹ the Hon’ble Apex Court has held that in our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the Prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further, if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the Court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the Court must not reject the evidence of the Prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the Prosecution must be judged as a whole, having regard to the totality of the evidence. In appreciating the evidence, the approach of the Court must be integrated not truncated or isolated. In other words,

⁹ (2002) 6 SCC 470;

the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to a conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the Court has to appreciate, analyze and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally, the decision in every case depends upon the facts of each case.

48. Applying the aforesaid principles to the present matter, it will not be appropriate to extend the benefit of doubt to the Accused, particularly since no such reasonable doubt arises from the evidence on record.

49. Criminal Misc. Application LD-VC-CRI-70-2020, taken out by the Accused is required to be dismissed with exemplary costs. This is because, in pursuance of the orders made, the IO and the representative of the NGO visited the victim girl and her relatives in order to ascertain the veracity of the photographs produced along with the application and the averments made in the application. The IO, as well as the representative of the NGO, have exposed falsity in the claim of the Accused.

50. In the aforesaid regard, it is necessary to refer to the contents of paragraphs 8 to 12 of the Report/Say of the I.O., which

read as under :

“8. It is submitted that the residential houses of the noted appellant/accused and the victim are located in same village and within the distance of 100 meters.

9. It is submitted that on receipt of the present application, by order of the Honourable Court I.O. in the case along with the NGO, Auda Viegas of Bailancho Ekvott had visited at the place of victim at Kuinamol Dudhal Kalay Sanguem and on after contacting the mother of victim Lady Smt. Mali Zore and grandfather of victim Mr. Janu Jangli conducted necessary enquiry.

10. With respect to para No.5 and 7 of the present application, it is submitted that the I.O. in the case recorded the statements of victim, mother of victim Lady Smt. Mali Zore and grandfather of victim Mr. Janu Jangli wherein they stated that once in the month of October 2020 the above appellant/accused Santosh Gore along with one Smt. Sagi Jangle, Mr. Surya and Mr. Sogo and others from their relation had come at the place of the victim and the said appellant/accused Santosh Gore had clicked their family photographs without giving any reason on a mobile phone camera and thereafter once in the same month the said appellant/accused Santosh Gore had taken the complainant in the above case Mr. Janu s/o Pado Jangli and the mother of victim namely Smt. Mali Jangli in the Office of a Lawyer at Ponda Goa and thereafter one Lady Lawyer present in the office had taken their thumb on the separate papers. However, neither the said Lawyer nor Appellant/accused Santosh Gore had briefed them the reason behind obtaining their thumbs on the papers. However, they later realized that the said Appellant/accused Santosh Gore who was sentenced in the said case has urged before the Honourable Court for his release giving the reasons that he shall get married with above victim when she grow of

marriageable age. They further denied of conducting any religious marriage rituals at the time when the family photographs was clicked at the place of complainant. (Xerox copy of statements enclosed).

11. With respect to Para No. 6 of the present application, it is submitted that the statement of the victim was recorded in presence NGO, Ms. Auda Viegas of Bailancho Ekvott and her statement is corroborated with the statement of complainant Mr. Janu s/o Pado Jangli and her Mother Smt. Mali Zore. She also stated that no religious Marriage ritual was performed on the day when the photo was taken and appellant/accused Santosh Gore hasn't approached to her in person or with his/her family with a proposal to marry with him and about her marriage she will decide only after she become marriageable age of 18yrs.

12. It is submitted that the enquiry conducted on behalf of I.O. and the NGO, Ms. Auda Viegas, of Balancho Ekvott revealed that the process which the appellant/accused has made as above is only for getting him relief and curtailing the sentence which has been imposed as above against him and it appears that in case his request was admitted/accepted at this stage he shall definitely carry on misdeeds like contacting the victim who is still minor of age as and when required and seduce her keeping relation with the victim and repeating of his illicit acts cannot be ruled out."

51. At least, *prima facie*, it is apparent that the Accused has abused the parole/furlough extended to him by the Prison Authorities. Therefore, the Prison Authorities, hereafter should keep this aspect in mind when considering applications made by the Accused for parole/furlough. In any case, strict conditions have to be

imposed to ensure that the Accused does not interfere with the victim girl or her family members.

52. For all the aforesaid reasons, this Appeal and Criminal Misc. Application LD-VC-CRI-70 of 2020 are dismissed. The Appellant will have to pay costs of Rs.10,000/-, within a period of 4 weeks from today. Upon deposit of such costs with the Registry of this Court, the Registry, through the Members Secretary, Goa State Legal Services Authority, to ensure that the same are paid to the minor victim girl.

53. The Registry of this Court, as well as the Children's Court, shall ensure that the name of the minor victim girl is properly masked, though the record of her identity is clearly maintained.

M.S. Sonak, J.