

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEALS NO. 25/2018, 26/2018, 27/2018 &
57/2019

CRIMINAL APPEAL NO. 25/2018

George Thomas Kuruvilla
s/o. Thomas Kuruvilla,
aged 76 years, House No.61,
Barroswado,
Sangolda, Bardez, Goa. Appellant.

Versus

1. State of Goa through Calangute
Police Station,
Calangute, Bardez, Goa.

2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji, Goa. Respondents.

Mr. G. Teles, Advocate for the Appellant.

Mr. S. R. Rivankar, Senior Advocate/Special P.P with Mr. Gaurish
Nagvekar, Additional Public Prosecutor for the Respondents.

CRIMINAL APPEAL NO. 26/2018

Shyam George,
s/o. George Kuruvilla,
aged 21 years, Occupation
Service (Labour Contractor),
r/o. House No.61, Barroswado,
Sangolda, Bardez, Goa. Appellant.

Versus

State of Goa (through Public Prosecutor,

High Court, Goa Bench, at
Panaji, Goa.

..... Respondent.

Mr. Menino Teles, Advocate for the Appellant.

Mr. S. R. Rivankar, Senior Advocate/Special P.P with Mr. Gaurish
Nagvekar, Additional Public Prosecutor for the Respondent.

CRIMINAL APPEAL NO. 27/2018

Suraj George,
s/o. George Kuruvilla,
aged 36 years, House No.61,
Barroswado,
Sangolda, Bardez, Goa.

..... Appellant.

Versus

1. State of Goa through Calangute
Police Station,
Calangute, Bardez, Goa.

2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji, Goa.

..... Respondents.

Mr. Amol G. Naik, Advocate for the Appellant.

Mr. S. R. Rivankar, Senior Advocate/Special P.P with Mr. Gaurish
Nagvekar, Additional Public Prosecutor for the Respondents.

CRIMINAL APPEAL NO. 57/2019

State of Goa,
through P.I. Calangute Police
Station, Calangute

.... Appellant.

Versus

1. George Thomas Kuruvilla

s/o. Thomas Kuruvilla,
aged 65 years, Occupation
Service, (Labour Contractor),
r/o. House No.61, Barroswado,
Sangolda, Bardez, Goa.

2. Shyam George,
s/o. George Kuruvilla,
aged 21 years, Occupation
Service (Labour Contractor),
r/o. House No.61, Barroswado,
Sangolda, Bardez, Goa.

3. Suraj George,
s/o. George Kuruvilla,
aged 36 years, House No.61,
Barroswado,
Sangolda, Bardez, Goa.

4. Mrs. Lexata Mascarenhas (Deceased)
w/o George Kuruvilla
aged 53 years, Occupation:
Service, (Labour Contractor),
r/o. House No.61, Barroswado,
Sangolda, Bardez, Goa.

..... Respondents.

Mr. G. Teles, Advocate for Respondent No.1.

Mr. Menino Teles, Advocate for Respondent No.2.

Mr. Amol Naik, Advocate for Respondent No.3.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Reserved on : 2nd September, 2020.

Pronounced on : 11th September, 2020.

JUDGMENT: (Per M.S. Sonak, J.)

1. Heard the learned Counsel for the appellants/accused, as well as the learned Public Prosecutor for the State, who, all agree that all these appeals should be disposed of by a common Judgment and Order.
2. The challenge in these appeals is to the Judgment and Order dated 30th January, 2018, made by the learned Children's Court for the State of Goa in Special Case No. 55/2009, acquitting the accused persons for the offences punishable under Section 305, read with Section 34 of the Indian Penal Code (IPC), Sections 7(5)(c), 8(2) (First Part) and 8(2) (Second Part) of the Goa Children's Act, 2003 (said Act), but convicting the accused persons for the offences under Section 8(9) of the said Act and sentencing them to undergo rigorous imprisonment for one year each and fine of Rs.1.00 lakh each and in default sentence of imprisonment of six months each.
3. Criminal Appeals No. 25, 26 and 27 of 2018 have been instituted by A.1, A.2 and A.3 respectively, questioning their conviction and sentencing under Section 8(9) of the said Act.
4. Criminal Appeal No.57/2019 has been instituted by the State, questioning acquittal of the accused persons under various sections of the IPC and the said Act, as aforesaid.

5. At this stage, it is necessary to record that the Prosecution had also been launched against the wife of A.1 and the mother of A.2 and A.3 in this very case. She was styled as A.4. However, before the conclusion of the trial, she expired and, therefore, the proceedings against her, naturally, stood abated.

6. Mr. Rivonkar, the learned Senior Advocate and Public Prosecutor, opened the arguments in Criminal Appeal No.57/209, by submitting that there are compelling reasons and strong grounds to reverse the acquittal. He submits that the learned Children's Court has gone by certain lapses in the investigation, but not focused sufficiently upon clear and cogent evidence on record, which was more than sufficient to convict the accused persons for the offences for which they were charged. He submits that the lapses, if any in the investigation, can never be the good ground to acquit the accused persons without adverting to the evidence on record. Mr. Rivonkar relies on *Karnel Singh vs. State of M.P.*¹; *Union of India vs. Prakash Hinduja and anr.*² and *C. Muniappan and ors. vs. State of Tamilnadu*³ in support of his contentions.

7. Mr. Rivonkar submits that there is ample evidence on record which establishes that the accused persons had kept the minor

¹ (1995) 5 SCC 518

² (2003) 6 SCC 195

³ (2010) 9 SCC 567

victim girl in breach of the provisions of Section 8(9) of the said Act and further created circumstances abetting suicide by the minor victim girl. He points out that the evidence of the teacher and classmates of the minor victim girl, clearly establish the nature of harassment meted out by the accused persons to the minor victim girl who was, ultimately, forced to commit the suicide by consuming rat poison. For all these reasons, Mr. Rivonkar submits that the State's appeal is liable to be allowed and the appeals instituted by the accused persons, dismissed.

8. Mr. G. Teles, Mr. M. Teles and Mr. Amol Naik, in unison, submitted that the scope of an appeal against acquittal is quite narrow and therefore, no interference whatsoever is warranted in the State's appeal against acquittal. They point out that in this case, the accused persons had themselves filed cross complaint against PW.1 who according to them, was responsible for the suicide of the victim girl. However, such complaint was never investigated at all.

9. The learned Counsel for the accused persons submitted that the evidence of the teacher and the classmates, is purely in the nature of hearsay. They point out that even the medical evidence nowhere establishes any marks of harassment *i.e.* burning by **cigarette butts** or other injuries, as alleged by the classmates. They point out to the deposition of Sister Cleta (PW.2), who stated that the victim was frightened of PW.1 and had run away from PW.1. For all these

reasons, they submit that the State's appeal deserves to be dismissed.

10. Mr. G. Teles, Mr. M. Teles and Mr. Amol Naik submit they there was no case made out by the Prosecution to sustain the conviction of the accused persons under Section 8(9) of the said Act, as well. They point out to the deposition of PW.2, who claimed to have granted the custody of the minor victim girl almost 10 years earlier, to A.4, since deceased. They point out that in the year 1996, when the custody was in fact granted, the said Act was not even in force. They submit that the said Act can never be given any retrospective effect, taking into consideration the provisions of Article 20(1) of the Constitution of India. They, therefore, urged for acquittal of the accused persons for the offence under Section 8(9) of the said Act, as well.

11. In the alternate, Mr. G. Teles and Mr. Amol Naik, the learned Counsel for the accused persons submit that this is a case of some minor technical violation and, therefore, the sentence of one year is quite harsh. Mr. G. Teles, points out that A.1, whom he represents, is already 74 years old. Mr. Amol Naik points out that A.3 whom he represents, is a young person whose life has been substantially ruined on account of the present prosecution. They submit that all these circumstances be taken into consideration and no sentence of imprisonment be imposed upon A.1 and A.3.

12. Mr. M. Teles, the learned Counsel for A.2, however, submits that there is absolutely no material on record to sustain the conviction of A.2 under Section 8(3) of the said Act. He points out that from the time the said Act has come into force, A.2 has not even resided in the same house in which the minor victim girl was alleged to be residing, because A.2 was away from the residence on account of education and his employment. He submits that the evidence to this effect has been produced and even accepted by the learned Children's Court. He, therefore, submits that A.2 is entitled to be acquitted of the charges leveled against him. He, therefore, submits that Criminal Appeal No.26/2018, instituted by A.2 is liable to be allowed in its entirety and even, the conviction under Section 8(9) of the said Act is liable to be set aside.

13. The learned Counsel for the parties placed reliance upon certain decisions which shall be considered in the course of this Judgment and Order.

14. In so far as the State's appeal is concerned, reference is necessary at the very outset to the scope of appeals against acquittals.

16. In *Sampat Babso Kale and anr. vs. State of Maharashtra*⁴ the Hon'ble Apex Court has relied upon its earlier decision in *Chandrappa vs. State of Karnataka*, (2007) 4 SCC 415 and made the following observations at paragraph 8 :

⁴ (2019) 4 SCC 739

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded

by the trial court.”

17. The State's appeal will, therefore, have to be examined keeping in mind the aforesaid principles.

18. Now, in the present case, there is ample evidence on record which establishes that the minor victim girl, in the present case, was a '*child*' for the purposes of the said Act. In fact, at the time of her unfortunate demise by consuming rat poison, she was about 14-15 years of age. Further, there is ample medical evidence on record that the minor victim girl died on account of consumption of rat poison. The medical evidence on record bears out this position, which was not even seriously challenged by the defence.

19. Reference is necessary to the provisions under which prosecution was launched in this matter.

20. Section 305 of the IPC, reads as follows :

“305. Abetment of suicide of child or insane person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.”

21. Section 7(5) of the said Act deals with '*Child Labour and trafficking*'. Section 7(5)(c) of the said Act provides for a fine of

Rs.50,000/- where a child is employed as domestic child labour. The accused persons were charged for this offence, but have been acquitted by the learned Children's Court.

22. Section 8 of the said Act deals with '*child abuse and trafficking*'. Section 8(2) of the said Act reads as under :

“Whosoever commits any child abuse or sexual assault as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of Rs. 1,00,000/-. Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2,00,000/- [Statement of the child victim shall be treated on par with the statement of a child rape victim] under Section 375 of the IPC, as laid down by the Supreme Court of India.”

23. The expressions '*child abuse*' and '*sexual offences*' have been defined under Section 2(m) and 2(y) of the said Act and the same read as follows :

“ Section 2(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;

(y) - Sexual offences' for the purposes of awarding appropriate punitive action means and includes,—

(i) 'Grave Sexual Assault' which covers different types of intercourse; vaginal or oral or anal, use of objects with children, forcing minors to have sex with each other, deliberately causing injury to the sexual organs of children, making children pose for pornographic photos or films, and also includes rape;]

(ii) Sexual Assault which covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using vulgar and obscene language;

(iii) Incest which is the commission of a sexual offence by an adult on a child who is a relative or is related by ties of adoption.”

24. Therefore, the main issue is whether the evidence on record establishes beyond reasonable doubt the commission of the aforesaid offences by the accused persons and whether there is any perversity in the view taken by the learned Children's Court in acquitting the accused persons of the aforesaid offences.

25. The Prosecution relies mainly on the evidence of Sister Jancy (PW.1) —complainant; Mahalaxmi Bhobe (PW.3) - a Social Worker; Deepti Narvekar (PW.4) —a School Teacher; Alisha Deuskar (PW.5) and Bindiya Purkhe (PW.11) —classmates and Violet

Fernandes (PW.6) —a neighbour/relative, to make out a case that the minor victim girl was indeed being harassed by the accused persons physically, emotionally and even sexually which what is led her to commit suicide. On the basis of this evidence, the Prosecution urges that the offences for which the accused persons were charges, have been proved beyond reasonable doubt in this matter.

26. In this case, after the Prosecution closed its evidence and the statements of the accused persons under Sections 313 of the Cr.P.C. came to be recorded, defence evidence was also led on behalf of the accused persons. This defence evidence was mostly to bring on record the fact that even the accused persons had filed a counter complaint against the Sister Jancy (PW.1) and that the same was never even investigated by the Investigating Agencies. Nevertheless, both, the Prosecution as well as the defence evidence, will have to be taken into consideration for deciding these appeals.

27. Before we analyse the testimony of the aforesaid witnesses, it is necessary to refer to the sequence of events and the testimony of the doctor, who first examined the minor victim girl *i.e.* PW.14.

28. From the evidence of PW.14, it is clear that on 12.12.2006, the minor victim girl was brought and admitted at the Goa Medical College (GMC) with a complaint that she had attempted to commit suicide by consuming poison. Since, this was a

case of suicide, the record reveals that a medico-legal case was registered and necessary intimation by wireless was given to the Calangute Police Station, about which there can be no dispute. In fact, this position is confirmed from the deposition of PW.24, one of the Investigating Officers, in this matter.

29. PW.14, who attended the victim on the said date, has deposed that on 12.12.2006 itself was received a letter from the Calangute Police Station, by which the P.I. of the Calangute Police Station had sought her permission to record a statement of the victim girl. PW.14 has then deposed that upon assessment of the condition of the minor victim girl, she stated that the minor victim girl was fit to give her statement. The documentary evidence has also been produced on record by the Prosecution itself which contains the necessary endorsement to the effect that the minor victim girl was fit to give the statement to the police.

30. However, the record unfortunately indicates that the P.I. of Calangute Police Station did not record the statement of the minor victim girl on 12.12.2006, or for that matter, on any day thereafter until the minor victim girl succumbed and expired on 14.12.2006. The only explanation given by the P.I. Narayan Chimulkar (PW.24) in his deposition is as follows :

“On inquiry, I came to know that on 12.12.2006, a wireless message was received at Calangute PS and HC Suryakant

Shetye visited GNMC, Bambolim, to record the statement of the victim girl. However, victim girl refused to give statement and HC Shetye recorded the statement of accused No.1 George Kuruvilla.

The statement of the victim could not be recorded subsequently as she expired.”

31. The Head Constable Suryakant Shetye, who alleged to have visited the GMC to record the statement of the minor victim girl, has not even been examined by the Prosecution. No contemporaneous records have been produced by the Prosecution in support of the deposition of PW.24 that the H.C. Suryakant Shetye had indeed visit the GMC and had inquired with the minor victim girl as to whether she was willing to give the statement or not. There is no explanation as to why any Magistrate, whether Executive or Judicial, was not involved in the process of ascertaining whether the minor victim girl was willing to give a statement and, if so, for record of such a vital statement. There is absolutely no explanation forthcoming from the Prosecution for such a vital lapse in the investigations.

32. The statement of the minor victim girl was crucial either way for the purposes of giving a proper direction to the investigation. The statement might have referred to the Prosecution version about harassment and consequently, abetment, or, the statement might have also exonerated the accused persons, or pointed out to the

involvement of some other persons. The record of such a statement was, therefore absolutely vital. PW.14 had clearly opined that the minor victim girl was fit to give such a statement. As noted earlier, there is absolutely no explanation as to why such a statement was not recorded.

33. The deposition of the complainant PW.1, does indicate that the victim girl was not being very properly treated by the accused persons. However, even the deposition of PW.1 is more from what was told to her or allegedly told to her by the minor victim girl than what she might have actually seen. Besides, the accused persons have filed a complaint against PW.1 alleging that it is on account of PW.1 that the minor victim girl was scared, became depressed and ultimately suicidal. Though, on record there is no much evidence to support such an allegation, nevertheless, the fact remains that the investigating agencies, despite receipt of such a complaint from the accused persons, have failed to investigate into such a complaint or take such a complaint to its logical conclusion.

34. The accused persons, in the course of their defence evidence, have established that such a complaint was indeed made and received at the Calangute Police Station. The Police officials, who were examined as defence witnesses, have admitted that such a complaint was not traceable at the Police Station or, in any case, such a case was never investigated or taken to its logical conclusion.

Besides, PW.2, Sister Cleta has deposed that the minor child was not happy to go with PW.1 and when she had accompanied PW.1 on two occasions to meet the child, she had seen the child running away from PW.1 as the child was frightened. For all these reasons, it will really not be safe to rely upon the testimony of PW.1 which testimony, in any case, is not sufficient to reverse the acquittal recorded by the learned Children's Court in this matter.

35. The evidence of the School Teacher (PW.4) or the classmates PW.5 and PW.11, is again the evidence about what the child is alleged to have told them at the School. They have also deposed that the child was not very hygienic and would not wear clean clothes or have her hair properly combed. But, this evidence again is not sufficient to conclude harassment by the accused persons, leading to suicide by the child. The learned Children's Court has held that this is hearsay evidence and the view taken by the learned Children's Court cannot be said to be a perverse view or a view which can not even be regarded as plausible view.

36. The evidence of Mahalaxmi Bhobe (PW.3) - a Social Worker is also not sufficient by itself or even if read in conjunction with the evidence of other witnesses to make out a case of abatement to suicide or commission of acts of child abuse or grave sexual assault. In the absence of the statement of the child, which, the Prosecution could have easily recorded, it will not be very safe to rely upon the

evidence of PW.3 or, for that matter, the other witnesses to reverse the acquittal in favour of the accused persons. Besides, there is some merit in the contention of Mr. G. Teles, that though admitted handwriting and drawings made by the child were seized by the police, no comparisons were made with the disputed drawings produced by PW3.

37. The testimony of Violet Fernandes (PW.6) is also by no means sufficient to reverse the acquittal in this matter. PW.6 admitted to having visited the house of the accused persons only on one occasion. She also admitted that her relationship with the family of the accused persons was strained and that was reason why for several years she had not visited the house of the accused persons. The testimony of PW.6 also is in no sense, clinching. Such testimony can, therefore, hardly be the basis for reversing the acquittal recorded by the learned Children's Court.

38. The teachers and classmates referred to the child informing them that she was being beaten at home by the accused persons. PW1 speaks about the child informing her that she was burnt with cigarette butts. However, the medical evidence on record does not support this version. The doctors clearly deposed that no burn injuries or marks were noted on the child's body. No doubt, the medical evidence refers to hymen tear, but that by itself is not sufficient to reverse the acquittal recorded by the Children's Court.

39. Thus, applying the principles laid down by the Hon'ble Apex Court in the matters of appeals from acquittal, it will be difficult for us to interfere with the acquittal recorded by the learned Children's Court. The fact that we might have been persuaded to take a different view in the matter, is not sufficient to interfere with the acquittal recorded, particularly where the view taken by the Children Court is a plausible view. For all these reasons, the Criminal Appeal No.57/2019, instituted by the State is required to be dismissed.

40. Now, we come to the Appeals instituted by the accused persons, challenging their conviction under Section 8(9) of the said Act.

41. Section 8(4) of the said Act provides that no person shall reside or keep with him, either wholly or partly, one or more children who are not related to him by blood, unless prior permission has been obtained by him from the Director after furnishing due information to the Director in the prescribed form. It shall be the responsibility of such person, desirous to reside with or keep child or children not related to him by blood, to inform the Director and to obtain prior written permission from the Director for doing so. The said Act came into force in July, 2003. Therefore, taking into consideration the position of persons who may have permitted or

kept the minor and unrelated children in their houses, Section 8(5) of the said Act provides that a period of 3 month from commencement of this Act, will be allowed to inform the Director the fact about such children's residence.

42. Section 8(9) of the said Act even provides that whoever resides with or keeps with him one or more children not related to him by blood without the prior written permission of the Director or whoever prevents officers from discharging their duties under subsection (6) shall be punishable with imprisonment for a term which may extend to three years and to a fine which may extend to Rs. 1,00,000/-. Upon conjoint reading of the aforesaid provisions of law, it is quite clear that there is no retrospective effect as such being given to the provisions of the said Act, so as to attract the bar of Article 20(1) of the Constitution of India.

43. The said Act came into force in July, 2003. Therefore, a period of 3 months was given to report to the Director the factum of residence or keeping of one or more children by any person where such children were not related to such persons by blood. Based upon such information, the Director was required to decide whether any permission could be granted to such person or not. If permissions were to be refused, such person could take further steps as provided under the said Act, or other Acts, relating to protection of children. However, if such permissions were to be granted, then, obviously it

cannot be said that such a person has committed any offence as contemplated by Sections 8(4), 8(5) and 8(9) of the said Act. Therefore, the contention based upon retrospectivity deserves no acceptance in the present case.

44. In this case, there is virtually an admission that the child was residing with or had been kept by the accused persons in their house, not only on the date when the said Act entered into force, but for a period of almost 3 years thereafter, when she unfortunately committed suicide in December, 2006.

45. The accused persons had not raised any defence that they had informed the Director within 3 months of the said Act entering into force about the residence, or keeping the child in their house, even though it was an admitted fact that the child was not related to the accused persons by blood. As if this was not sufficient, the Prosecution has examined the officials from the Directorate of Social Welfare and even produced documentary evidence to the effect that there was no permission available on record which may have been granted to the accused persons for regularising the residence of the child with them.

46. The contention of the learned Counsel for the accused persons that the custody of the child, way back in the year 1996, had been granted to the deceased A.4 and, therefore, the accused persons

were in no manner responsible for such custody, deserves no acceptance. The evidence on record indicates that from the year 1996, the child was residing in the house of A.1 and A.4, along with A.3. Therefore, the accused persons cannot now seek to pass the blame to A.4, who was the wife of A.1 and the mother of A.2 and A.3, merely because during the pendency of the trial A.4 has expired. The learned Children's Court has correctly marshaled the evidence on record, when it comes to commission of the offence under Section 8(9) of the said Act by A.1 and A.3 and, therefore, the conviction recorded against A.1 and A.3 and, therefore, the conviction recorded against A.1 and A.3 warrants no interference.

47. However, in so far as A.2 is concerned, his position will have to be assessed separately. In his 313 Cr.P.C. Statement, A.2 has stated that after he passed his S.S.C. in the year 2001, he went to Vidhyadhiraj Polytechnic at Kumta, in Karnataka to study the course of Diploma in Mechanical Engineering from June 2001 to November, 2005. He stated that he was staying in Kumta during the said period. He has, thereafter, stated that in the year 2005, he got a job in Maharashtra and was working in Mumbai from September, 2005 to July 2006. He has then stated that he studied Aeronautical Engineering from August, 2006 to January, 2007 at the National Institute of Aeronautical Engineering & Information Technology, in Pune and, during this period, he was residing at Pune. Along with his statement, he has also produced on record documents in support

of his education and his employment.

48. Though, it cannot be said that the documentary evidence has been proved by A.2 strictly in accordance with law, in this case, the learned Children's Court has accepted the defence of A.2. This is evident from the discussion in paragraphs 273 to 279 of the impugned Judgment and Order. In fact, in paragraph 276, the learned Children's Court has held that the documents produced by A.2, support the case of A.2 that he was studying Aeronautical Engineering from August, 2006 to January, 2007. The record bears out that the child expired on 14.12.2006 *i.e.* within this period. Since the learned Children's Court has recorded such findings, as a corollary, A.2 did not deserve to be convicted, even for the offence under Section 8(9) of the said Act. Accordingly, the conviction, sentence and the fine imposed on A.2 is liable to be set aside.

49. In so far as the issue of sentence is concerned, Section 8(9) of the said Act provides that the punishment of imprisonment may extend to a term of three years and to a fine of Rs.1,00,000/-. In this case, there is absolutely no necessity to interfere with the fine which has been imposed upon A.1 and A.3. In fact, the learned Counsel for A.1 and A.3 did not even urge for any reduction in the fine amount which, they stated has already been deposited by them in this Court at the stage when their appeals were admitted and they were enlarged on bail. The learned Counsel, however, pleaded for leniency when it

comes to sentence.

50. A1 is reportedly 74 years of age. A3 was reportedly 28 years old on 14.07.2010 when the charge was framed against him, which means that by today, he will be about 38 years old. Since the main charge of abetment to commit suicide or the charge of sexual assault against the child has not been proved, such charges can obviously, play no role in sentencing the accused persons. This is also a case where the child was brought in the house of the accused persons about 6 to 7 years prior to coming into force of the said Act. No doubt, after the Act came into force, the accused persons were duty bound to report such incident to the Director and secure permission. This was not done by the accused persons. There is also evidence that the accused persons used to send the child to school. Upon cumulative consideration of all these circumstances, we feel that the interest of justice will be served if A.1 and A.3 are sentenced to undergo simple imprisonment of three months in substitution of sentence of rigorous imprisonment of one year awarded to them by the learned Children's Court. There is however, no case made out to vary the fine amounts, which are maintained. The fine amounts deposited by A.1 and A.3 in this Court, are directed to be deposited in the National Children's Fund (NCF) as directed by the impugned judgment and order.

51. However, the conviction and sentence as against the A.2 is

hereby set aside. The fine amount, if deposited by A2 in this Court will therefore, have to be refunded to A2, unless A2, wishes to voluntarily donate this amount to any orphanage of his choice.

52. Before we part with these appeals, we feel that we will be failing in our duty, if we take no cognizance of the shoddy and insensitive investigation carried out in this unfortunate case. We feel that the Director General of Police (DGP) must order/hold an enquiry into this matter because of late, we are coming across the cases of shoddy and insensitive investigations particularly, in matters involving sexual offences against women and children. As a result, it becomes increasingly difficult for the Courts to convict or sustain the conviction of perpetrators of such crimes.

53. Of late, we noticed that there is a certain element of casualness, insensitivity and at times, even apathy in such investigations, when in fact, utmost vigilance and sensitivity is the need of the hour if, we are to protect our children's future. If lapses in investigation, as have taken place in this matter are left unprobed, there is real danger of repetition of such lapses. There is real danger of investigating agencies gaining an impression that this is tolerable or that this is the new normal.

54. We therefore feel that if the DGP, as the Head of Police in the State of Goa is quite serious about the protection of children,

which the law requires and expects him to be, then, there should be serious enquiry into the lapses in this matter and ultimately, if any of the police officials involved are found to have misconducted themselves, then some suitable action is taken against them in accordance with law.

55. We are constrained to direct holding of such inquiries because we find that the investigations in this matter have been quite shoddy and even insensitive. No doubt, Mr. Rivankar did urge that defective investigations cannot be a ground for awarding unmerited acquittals. However, this principle will apply, when, there is evidence on record sufficient for recording a conviction, despite some lapses in investigation. If, the lapses in investigation result in non collection or non production of relevant and vital evidence, it becomes difficult to either record or sustain conviction in such matters.

56. In this case, firstly we found no explanation for failure to record the statement of the child between 12.12.2006 and 14.12.2006 on which date she unfortunately expired at the hospital. As noted earlier, PW14 -doctor had clearly opined that the child was fit to give statement on 12.12.2006 itself.

57. Secondly, we find that though the child died on 14.12.2006 in tragic circumstances by consumption of rat poison, the charge-sheet was filed on 26.11.2009 *i.e.* after about three years. Taking into

account the state of investigation, this delay, which is *prima facie* inordinate requires to be probed into. In *Dilawar v/s. State of Haryana & anr.*⁵, the Hon'ble Supreme Court, having regard to the provisions of Article 21 of the Constitution of India, emphasized on the need to complete investigations expeditiously and to induce accountability in investigating officers/agencies.

58. Thirdly, some police officials who were examined as defence witnesses have admitted that the accused persons had filed counter complaint into the same incident. However, these officials deposed that this complaint was '*not traceable*'. Now *prima facie* this is a lapse because it was pointed out by the learned counsel for the accused persons that the Hon'ble Apex Court has held that in such cases, the complaint as well as the counter complaint must be investigated together and taken to their logical conclusion. Failure to investigate into the complaint made by the accused persons, provided the accused persons a ground to attack the Prosecution in this case.

59. Fourthly, at least *prima facie* the deposition of PI Narayan Chimulkar (PW24) is sufficient to give a insight into casualness and insensitivity of the investigations into a serious matter of this nature where suicide was committed by a 14 years old girl by consuming rat poison.

⁵ (2018) 16 SCC 521

60. PW.24, as noted earlier, has offered no satisfactory explanation for failure to record the child's statement at Goa Medical College. There is no explanation as to why Magistrates were not contacted for record of such a vital statement. There is no evidence brought on record that H.C. Suryakant Shetye was indeed deputed and had gone to GMC to record the statement of the child. In any case, there ought to have been less of such casualness and more sensitivity in the matter of record of statement of a minor girl who was admitted in hospital for consumption of rat poison.

61. PW.24 offered no explanation as to why the inquest panchanama in this case was not held before the Executive Magistrate despite the provisions of Section 167 of Cr. P.C.

62. PW.24 offered no explanation as to why there was no comparison between the admitted drawings from the drawing books of the child seized from the house of the accused persons and the drawings of the child before the Child Psychologist.

63. PW.24 deposed that he made inquiries with the neighbours who admitted that there is nothing on record to establish that such inquiries were indeed made or that the neighbours refused to depose in this matter.

64. PW.24 admitted having not recorded the statement of H. C. Suryakant Shetye or the statement of the medical officer and

offered no explanation for non recording of such statements.

65. At one stage, PW24 denied having received any complaint from the deceased A4 against PW1 on 31.12.2006 in respect of the same incident. However, when confronted with a copy and the acknowledgment, PW24 merely explained that since such copy was not marked to him by the incharge of the Calangute Police Station, he made no investigation into such complaint.

66. The aforesaid, are only some of the *prima facie* lapses. In addition, the learned Children's Court, has taken into consideration several other lapses for the purposes of acquitting the accused persons of the most serious charges which came to be levelled against them. When such lapses are pointed out, the Courts have to even examine other evidence on record with greatest care and circumspection. The credibility of the entire prosecution case can some times be rendered questionable.

67. Therefore, we direct the DGP to order/hold an enquiry into this matter and to proceed against the police officials who may be found to be involved departmentally so that some confidence is instilled that the investigating agencies are serious when it comes to offences against the minor children. Such enquiry must be held and concluded as expeditiously as possible and in any case within a period of six months from today. We have deliberately granted additional

time to the DGP to complete such enquiry taking into consideration the current pandemic situation. On conclusion of such an inquiry, the compliance report will have to be filed in this Court on or before 31.03.2021.

68. We however clarify that though, we have issued directions to the DGP, such inquiries, may have to be ultimately held by the respective disciplinary authorities in accordance with the Discipline and Control Rules. Further, we also clarify that the observations made by us are only *prima facie* and in justification of issuing the directions for ordering the inquiries. However, our observations, are not intended to prejudice the defence of the police officials. Therefore, disciplinary authority/enquiry officer will have to independently examine all such issues without being influenced by any of our observations.

69. The compliance report however will have to be filed by the DGP, who according to us must now take emergent steps to see that proper investigations are carried out in cases involving assaults, whether sexual or otherwise, on children. The DGP will also have to take steps to see that the prosecutions, against the perpetrators of crimes against the minor children do not fail on account of shoddy and insensitive investigation. The DGP, should take cognizance of the provisions of Goa Children's Act, 2003, including the provisions in Section 8(20) of the said Act which provides that the State shall carry out child sensitisation programmes for police officers at all levels

which shall include an orientation course on child rights laws. This section provides that child rights laws and methods of handling child abuse related cases shall also be specifically included in the Police Training School curriculum. In the compliance report, which the DGP should file by 31.03.2021, the DGP, should report the status of the implementation of the provisions in Section 8(20) of the said Act.

70. For all the aforesaid reasons, we dispose of these appeals by making the following order :

(a) Criminal Appeal No.57/2019, instituted by the State of Goa is, hereby dismissed;

(b) Criminal Appeals No.25/2018 and 27/2018, instituted by A.1 and A.3, are partly allowed. The conviction under Section 8(9) of the said Act is maintained. However, the sentence of imprisonment is reduced from rigorous imprisonment of one year to simple imprisonment of three months. A.1 and A.3 will, therefore, have to surrender before the Prison Authorities within a period of 2 months from today to serve out this sentence. At the end of 2 months from today, the bail bonds shall stand cancelled. A.1 and A.3 shall be entitled to the benefit of Section 428 of Cr. P. C., if applicable;

(c) Criminal Appeal No.26/2018, instituted by A.2 is, hereby allowed and the conviction and sentence imposed upon A.2 is, hereby, set aside. The fine amount, if deposited by A.2 in this Court

shall be refunded to him unless the A2 voluntarily wishes to donate this amount to any orphanage of his choice. The Bail Bonds furnished by A.2 are, hereby, discharged.

(d) The Director General of Police (DGP) is directed to hold/order inquiries as indicated in this judgment and order against the concerned police officials. The DGP is also directed to ensure compliance with the provisions of Section 8(20) of the said Act. The DGP to file compliance report in the registry on or before 31.03.2021.

(e) The observations, if any, made against the Police Officials in this judgment and order, are only *prima facie* and are not intended to prejudice the defence of the Police Officials in departmental proceedings. The departmental proceedings will have to be decided on their own merits and in accordance with law by affording the concerned Police Officials reasonable opportunity for their defence.

(f) There shall be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.