

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 8 OF 2019

Mr. Janak Bishu Karma,
Son of Ban @ Man Bahadur Bishu Karma,
Aged 39 Years, Occupation – Security Guard,
r/o behind cottage Hospital,
Chicalim Vasco Goa.
N/o Rajhena, Ward No.04,
Zilla-Bane, Anchal, Behri,
Nepal. ... Appellant

Versus

State of Goa,
Through the Public Prosecutor,
Panaji Goa. ... Respondent

Mr. Vivek Rodrigues, Advocate for the Appellant under Legal Aid Scheme.

Mr. Gaurish Nagvenkar, Additional Public Prosecutor for the Respondent.

Coram:- M.S. SONAK, J

Reserved on:- 17th September, 2020

Pronounced on: 24th September, 2020

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

Heard Mr. V. Rodrigues, learned counsel for the Appellant under Legal Aid Scheme.

2. Heard Mr. G. Nagvenkar, learned Additional Public Prosecutor for the State.

3. This appeal is directed against the judgment and order dated 14th March, 2017 made by the learned Children's Court for the State of Goa in Special Case No.130/2015 convicting the Appellant (accused) for offences punishable under Sections 354, 354-A and 354-B, 323, 324, 506(ii) and Section 375, punishable under Section 376(2)(i) and (n) of IPC, under Section 3, punishable under Section 4, under Section 5(l), (m) and (n), punishable under Section 6 and under Section 7, punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and under Section 2(y)(i), (ii) and (iii), punishable under Section 8(2) of the Goa Children's Act, 2003 and sentencing the accused as follows :-

(i) Rigorous imprisonment for a term of 3 years and pay fine of ₹1,00,000/- and in default to undergo simple imprisonment for a term of one year for the offence punishable under Sections 354, 354-A and 354-B of IPC, under Section 2(y)(ii), punishable under Section 8(2) of the Goa Children's Act, 2003 and under Section 7, punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012;

(ii) Rigorous imprisonment for a term of 10 years and pay a fine of ₹2,00,000/- and in default to undergo simple imprisonment for

two years for the offence under Section 375, punishable under Section 376(2)(i) and (n) of IPC, under Section 2(y)(i) and (iii), punishable under Section 8(2) of the Goa Children's Act, 2003 and under Section 3, punishable under Section 4 and under Section 5(l), (m) and (n), punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012;

(iii) Rigorous imprisonment for a term of one year and pay a fine of ₹1000/- and in default to undergo simple imprisonment for a term of one month for the offence punishable under Sections 323 and 324 of IPC;

(iv) Rigorous imprisonment for a term of two years and pay a fine of ₹2000/- and in default to undergo simple imprisonment for a term of two months, for offence punishable under Section 506(ii) of IPC.

4. In this case, there is no serious dispute that the victims were minor i.e. below 16 years of age and therefore, the learned Children's Court took cognizance of the matter and framed the following charge :

“

CHARGE

I, Ms. Vandana Tendulkar, President, Children's Court for the State of Goa, at Panaji, hereby frame charge against you, Janak Bishu Karma, s/o. Ban @ Man Bahadur Bishu Karma, aged 39 years, occupation:

Security Guard, r/o Behind Cottage, Hospital, Chicalim, Vasco-Goa, N/o Rajhena, Ward No.04, Zilla-Banke, Aanchal, Behri, Nepal, as under:

That prior to 02.07.2015, behind Government Hospital, Chicalim, Vasco - Goa, at different times, you have assaulted or have used criminal force to two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years, intending to outrage or knowing it to be likely that you will thereby outrage their modesty. Thereby you have committed an offence punishable under Section 354 of I.P.C.

That during the same period, at the same place and at different times, you have made physical contacts and advances involving unwelcome and explicit sexual overtures to two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years. Thereby you have committed an offence punishable under Section 354-A of I.P.C.

That during the same period, at the same place and at different times, you have assaulted and have used criminal force to two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years, with intention of disrobing or compelling them to be naked. Thereby you have committed an offence punishable under Section 354-B of I.P.C.

That during the same period, at the same place and at different times, you have voluntarily caused hurt, except in the case provided for by Section 334 of I.P.C., to the two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years, and the victim boy, aged 13 to 14 years. Thereby you have committed an offence punishable under Section 323 of I.P.C.

That during the same period, at the same place

and at different times, you have voluntarily caused hurt, except in the case provided for by Section 334 of I.P.C., by means of a knife, which is an instrument used for stabbing or cutting, to the minor victim girl, aged 11 to 12 years. Thereby you have committed an offence punishable under Section 324 of I.P.C.

That during the same period, at the same place and at different times, you have committed 'criminal intimidation', by threatening the two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years, and the victim boy, aged 13 to 14 years, and also the complainant, with dire consequences. Thereby you have committed an offence punishable under Section 506(ii) of I.P.C.

That during the same period, at the same place and at different times, you have committed 'rape'/'penetrative sexual assault'/'grave sexual assault'/incest and also 'aggravated penetrative sexual assault' on the two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years. Thereby you have committed an offence under Section 375, punishable under Section 376(2) (i) and (n) of I.P.C., under Section 3, punishable under Section 4 and under Section 5(1), (m) and (n), punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and under Section 2(y) (i) and (iii), punishable under Section 8(2) of the Goa Children's Act, 2003.

That during the same period, at the same place and at different times, you have committed 'penetrative sexual assault'/'grave sexual assault' and also 'aggravated penetrative sexual assault' on the minor victim boy, aged 13 to 14 years. Thereby you have committed an offence under Section 3, punishable under Section 4 and under Section 5(l) and (n), punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and under

Section 2(y) (i) and (iii), punishable under Section 8(2) of the Goa Children's Act, 2003.

That during the same period, at the same place and at different times, you have committed 'sexual assault' on the two minor victim girls, aged 7 ½ to 8 ½ years and aged 11 to 12 years and on the minor victim boy, aged 13 to 14 years, by touching their vagina, penis, anus or breast with 'sexual intent' and by sexually touching their body parts. Thereby you have committed an offence under Section 7, punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012, and under Section 2(y)(ii), punishable under Section 8(2) of the Goa Children's Act, 2003.

And I hereby direct that you be tried by this Court on the said charges.”

5. Since the accused pleaded “*not guilty*” the trial ensued in which the prosecution examined 17 witnesses. Thereafter, the statement of the accused under Section 313 of Cr. P.C., was recorded. The accused denied the charge and claimed that he was falsely implicated by his wife (PW9) in this matter because he had caught her having an affair. The accused did not lead any defence evidence.

6. By the impugned judgment and order, the learned Children's Court has convicted and sentenced the accused as aforesaid. Hence, this appeal.

7. Mr. Rodrigues, learned counsel for the accused submitted

that the charge in this case was quite specific and related to certain alleged incident “*behind the Government hospital at Chicalim*”. He therefore submits that the learned Children's Court could not have convicted the accused for alleged offence at Birla Zuvarinagar, Vasco or Kinnor, (H.P.) or Chandigarh, for which the accused had no proper opportunity for defence. He relies on *Main Pal vs State of Haryana*¹ in support of this contention.

8. Mr. Rodrigues submits that there are material inconsistencies between the depositions of PW6, PW7 and PW8, three children whom the accused to have alleged sexually abused. He states that there are inconsistencies between the deposition of PW5 (counsellor) and the deposition of these witnesses. He submits that the testimony of mother of the victims and the second wife of the accused is also riddled with contradictions and she was not at all creditworthy witness. For all these reasons, he submits that no reliance could have been placed upon the deposition of the child witnesses particularly in the absence of any corroboration. He relies on *Dattu Ramrao Sakhare and Ors vs State of Maharashtra*² and *Suryanarayana vs State of Karnataka*³ in support of his contentions.

9. Mr. Rodrigues submits that in this case, the prosecution has alleged that the accused committed grave sexual assault upon the minor

1 2010(10) SCC 130

2 1997(5) SCC 341

3 2001(9) SCC 129

children between the ages 8 to 12. However, the medical evidence rules out completely the commission of such acts. This vital evidence has been ignored by the learned Children's Court. He submits that this is a serious infirmity on account of which the impugned judgment and order deserves to be set aside.

10. Mr. Rodrigues submits that as regards the incident at Birla Vasco, the prosecution witnesses admit in clear terms that there were neither any houses nor neighbours near to the place where such incident is alleged to have taken place. Yet PW9 has deposed to some neighbours witnessing at least a portion of alleged incident. Such neighbours have not even examined by the prosecution. This establishes that PW9 was not at all creditworthy witness.

11. Mr. Rodrigues submits that taking into consideration the specific defence raised by the accused as also the evidence of landlord of Chicalim that one person was visiting the wife of the accused (PW9) in the absence of the accused, the learned Children's Court should have discarded the testimony of PW9 and upheld the defence of the accused. He submits that the landlord had stated that PW9 had claimed that this person was her brother. In fact, there is absolutely no evidence on record that PW9 had any brother in Goa.

12. Mr. Rodrigues submits that in this case, there is ample

evidence on record that PW9 wanted to get rid of the accused so that she could continue her affairs. There is evidence on record which suggests that the child witnesses were tutored by PW9 to depose against the accused and implicate the accused in the offence which he has not committed. He submits that in such circumstances, the evidence of child witnesses should have been discarded and at least the benefit of doubt should have been extended to the accused.

13. Mr. Rodrigues submits that it is settled principle of law that the accused only has to probabalise his defence and not to prove his defence beyond reasonable doubt. He submits that in the present case, the material on record probabalies the defence raised by the accused and such defence, has been unduly rejected by the learned Children's Court.

14. For all the aforesaid reasons, Mr. Rodrigues submits that the impugned judgment and order may be set aside and the accused who is reported to have jumped on parole be not persuaded any further.

15. Mr. Nagvenkar, learned Additional Public Prosecutor defends the impugned judgment and order on the basis of the reasonings reflected therein. He states that the child witnesses were competent witnesses and their depositions have ring of truth and inspire confidence. He points out that even the biological daughter of the accused and not merely the step children of the accused have deposed

against him. He submits that the medical evidence does not positively rule out the sexual assault by the accused. He submits that the medical evidence also points out the injuries on the private part of the accused. He points out that the accused has not established his defence even by test of preponderance of probabilities. He points out that there was no defect in framing of charge and in any case no prejudice whatsoever is demonstrated by the accused.

16. For all these reasons, he submits that this appeal be dismissed. He relies on *Osban Fernandes Vs State of Goa* (Criminal Appeal No.52/2019 decided on 7th August, 2020) and *Mohammad Siddaqui Vs State* (Criminal Appeal No.6/2019 decided on 4th September, 2020), in support of his contentions.

17. The rival contentions now fall for my determination.

18. The first issue in this case is whether the learned Children's Court has travelled beyond the charge which was framed against the accused and thereby caused prejudice to the accused in the matter of his defence. From the perusal of the charge and the impugned judgment and order, it cannot be said that this contention is made good in the present case. No doubt, the charge refers to sexual assault behind the Government hospital at Chicalim where the accused and his family members which includes three minor victims children were staying for

some time. However, the charge also speaks of sexual assault by the accused over a period of time. This is how the accused clearly understood the charge and this is how the accused has defended himself. The circumstance that the accused clearly understood the charge and also defended himself effectively is borne out by the cross examination of the prosecution witnesses on behalf of the accused. At no stage in the course of the trial or for that time at any stage before the learned Children's Court was any issue raised with regard to the defective framing of charge or about any omission in the charge. At no stage, there was any protest lodged that the evidence which travelled beyond the charge was leading by the learned Children's Court. Accordingly, it is not possible to accept the first contention of Mr. Rodrigues in relation to framing of charge and consequent prejudice to the accused.

19. From the perusal of evidence on record, there is absolutely no case made out to suggest that the accused did not understand the charge framed against him or that he was in any manner prejudiced in the matter of his defence. At the highest, something could be said about the evidence relating to instances at Kinnor (HP) and Chandigarh. However, from the perusal of the impugned judgment and order, it is not as if the learned Children's Court has convicted the accused for the instances at Kinnor (HP) and Chandigarh. The instances at Birla, Vasco are in close proximity to the instances at Chicalim, Vasco, both in terms of distance as well as time. Therefore, there is no warrant to

rigidly construe the charge, particularly in the absence of any prejudice whatsoever being demonstrated by the accused.

20. In *Main Pal* (supra), the Hon'ble Supreme Court has held that the object of framing a charge is to enable an accused to have a clear idea or reasonably sufficient notice of the matter with which he is charged. Further, even if there is some error or omission in the framing of charge, it is not as if the accused is entitled to an acquittal without the accused demonstrating any prejudice. There will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, i.e. if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge. The Hon'ble Supreme Court added that in judging a question of prejudice, the Courts must act with a broad vision and look to the substance and not to the technicalities and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

21. Applying the aforesaid principles to the facts of the present case, there is no case made out to interfere with the impugned judgment and order on the ground that there was any error or omission in framing

of charge in this manner.

22. The next contention relates to evaluation of evidence of the child victims who have deposed in this matter as PW6, PW7 and PW8. Normally, if the child victims are shown to be competent to depose and there is no evidence of tutoring, then, the conviction can be based or sustained upon the testimonies of such witnesses, even in the absence of any corroboration. However, the rule of prudence requires the Court to look to some corroboration in such matters. From the other dependable evidence on record, particularly, when there is hint of tutoring.

23. In *Dattu Sakhare* (supra), the Hon'ble Apex Court has held that the child witness if found competent to depose to the facts and reliable one, such evidence could be basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the evidence Act provided that such witness is able to understand the question and able to give rational answers thereof.

24. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must reliable one and his/her demeanour must be like any other competent witness and there

is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record.

25. Similarly, in *Suryanarayana* (supra), the Hon'ble Apex Court has held that the evidence of child witness cannot be rejected *per se*, but the Court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The fact that the victim being a child witness would require the Court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence.

26. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely

to imagine to have seen. While appreciating the evidence of the child witness, the Courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the Courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. In this case, the Court, believed the testimony of a four year old child who was only witness to the crime.

27. The testimonies of PW6, PW7 and PW8 in this case, will have to be evaluated keeping in mind the aforesaid principles as laid down by the Hon'ble Apex Court. Two decisions relied upon by Mr. Rodrigues hold that the child witness is a competent witness even though no oath may have been administered to the child. These decisions also hold that there is no rule that the testimony of child witness requires corroboration but as a matter of prudence, the Court will always look to corroboration from other dependable evidence on record. The Hon'ble Apex Court has also held that some discrepancies in the statement of the child witness cannot be made basis for discarding the testimony of child witness. Rather, the discrepancies, which are not material would lend credence to the testimony of a child witness and militated against the charge of tutoring. In any case, while evaluating the evidence of the child witness, the Court is required to rule out possibility of child being tutored.

28. PW6 is the step son of the accused who was 14 years old at the time when his evidence was recorded and the sister, who was about 13 years old at the time of incident. PW6 has deposed to the incident of sexual assault on him by the accused at Kinnor (HP) and Chandigarh. As noted earlier, the accused, cannot be convicted for this incident taking into account the wordings of the charge framed. However, the charge speaks about the series of facts of the accused relating to sexual assault on his children. To that extent, therefore, the testimony of PW6 is quite important to evaluating whether the accused had a proclivity to sexually abuse his children. PW6 has also deposed to the incident of sexual assault on him by the accused at Birla, Vasco. PW6 also deposed to seeing his step sister lying naked on the mat covered with a towel. This witness has also deposed that he saw the accused prompting his sister from behind not to speak about what had happened. This witness has also spoken about seeing the accused once early morning having forcible anal intercourse with PW7. This witness has also deposed to seeing the accused assaulting his mother on several occasions by whatever things he used to get in his hands. No dent has been made to the testimony of PW6 in the course of cross examination.

29. PW7 is the biological daughter and not the step daughter of the accused. She was 12 years at the time of her deposition which means that she was about 11 years at the time of incident for which the accused is charged. She has deposed to certain acts between the accused and her

step sister (PW6) and another sister Sarita at Chandigarh. She has deposed to an incident at Birla, Vasco, when the accused sexually assaulted her by inserting his private part in her private part and also in her anus. This witness has referred to all such acts as “*gandha kam*” and has deposed that the accused did such acts on several times at Birla and Chicalim. PW7 has categorically deposed apart from denial, there is no other cross examination to this part that the accused used to tell her to hold his private part in her mouth. She has also deposed that the accused told her not to disclose his acts to anyone otherwise he will kill her (marke fek dungha). PW7 deposed that the accused used to always physically assault her and once he assaulted her with knife on shoulder from back. She has deposed that accused used to assault her step mother on many times and he used to say that if she tell anything about the acts he was doing with the children and if he is sent to jail, he will kill them all.

30. PW8 was eight years at the time of her deposition and therefore, about seven years at the time of the incident. The learned Children's Court posed questions to determine her competency and thereafter certified that she was competent witness. Even this witness speaks about “*gandhi chiz*” which the accused used to do with her and her brother and sister. This witness also refers to the accused assaulting her mother (PW9) on many occasions with wooden stick. Again no dent has been made to her evidence in the course of the cross

examination.

31. Now all the victim children PW6, PW7 and PW8 speak of an incident when their mother (PW9) jokingly stated that she would return to Nepal leaving the children to stay with the accused. These witnesses have deposed that at that time all of them cried and pleaded not to leave them with the accused and they told the mother about dirty acts which the accused does with them. Even the mother (PW9) has independently deposed to this incident.

32. Now the evidence of PW6, PW7, PW8 has ring of truth and inspires confidence. There is really no evidence on record to suggest any tutoring of these witnesses. There is no explanation as to why these children, including in particular PW7 who is biological daughter of the accused should depose in this manner against their own father. There are no discrepancies as such in the depositions of these three witnesses. The core of their testimony remains the same. Their manner of expression may not have been the same. However, all these witnesses deposed to the acts of physical and sexual assault on them and their mother by the accused. Therefore, it is futile to contend that the evidence of these witnesses should be discarded on the grounds of any discrepancies *inter se*. There are discrepancies as such and in any case the discrepancies, if any, are trivial to invite the rejection of their depositions. Ultimately, it must be remembered that these were minor children deposing to the

incident of sexual assault by their father/step father. In such circumstances, completely identical deposition may have even suggested some tutoring. On the one hand, Mr. Rodrigues alleges tutoring of these witnesses and on the other hand, he points out the discrepancies. According to me, there are no discrepancies when it comes to core of the matter or grain of the matter. Therefore, upon separating the chaff from the grain, I am quite satisfied that there are no discrepancies or inconsistencies *inter se* between the depositions of PW6, PW7 and PW8 in so far as the core issue is concerned.

33. Since the rule of prudence requires the corroboration, I have evaluated the evidence of PW5 (Counsellor) and PW9 the mother and from the evidence of these two witnesses, there is sufficient corroboration to be found to the depositions of PW6, PW7 and PW8. The contention of Mr. Rodrigues that there are discrepancies what the child witnesses claimed to have stated to the Counsellor (PW5) and what the Counsellor (PW5) has deposed in the Court has to be substantiated. Again the core of deposition is quite consistent. PW9 has also deposed to the incident of sexual assault reported to her by the children. Mr. Rodrigues however contended that PW9 was having an affair with one Chitra Bahadur and it is because the accused caught her red handed, she has fabricated this matter against the accused and even tutored the children to depose against the accused. There is no evidence on record to substantiate this defence even by the test of preponderance

of probabilities. Only a suggestion to this effect was put to PW9, which was denied. Mr. Rodrigues, then referred to the evidence of landlady (PW14) who spoke about a person visiting the house of the accused and PW9. She has deposed that PW9 informed her that such person was her brother. Now, there is no evidence on record that PW9 had no brother who might be visiting her. Significantly, no questions were posed to PW9 in the course of her detailed cross examination on this aspect. Therefore, based only upon some denials and suggestions as well as the evidence of PW14, it cannot be said that the accused has established the defence raised by him even by the test of preponderance of Probabilities.

34. Much was sought to be made of the circumstance that there is no medical evidence on record to suggest any penetrative sexual assault upon children. The medical evidence indeed speaks about the hymen being intact and the absence of injuries on anus. However, the medical evidence speaks about the injuries on penis of the accused which were never explained by the accused either in his statement under Section 313 of Cr.P.C., or by leading any defence evidence. There was no cross examination of the doctor on this significant aspect.

35. *State of Madhya Pradesh vs Dharkole*⁴, the Hon'ble Supreme Court has held that it would be erroneous to accord primacy to the hypothetical answers of medical witnesses and exclude on account of the eye-witnesses. Besides, in this case, PW7 the biological daughter

4 2005 Cr.LJ (SC) 108

of the accused has deposed to the accused telling her to hold his private part in her mouth. Taking into consideration the clear and categorical depositions of the children as well as the ruling of the Hon'ble Apex Court in *Dharkole* (supra), it cannot be said that this is a case of total absence of medical evidence or that the medical evidence militates against the clear and cogent ocular evidence on record.

36. Now Section 2(y) of the Children's Act, 2003 is quite wide in its import when it comes to defining sexual offence for the purposes of the said Act. Section 2(y) of the said Act reads as follows :-

“2(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 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.”

37. From the aforesaid definition, it is apparent that the sexual offences means and include “grave sexual assault”, “sexual assault” and

“incest”. Grave sexual assault covers different types of intercourse i.e. vaginal, oral or anal. Sexual assault covers sexual touching with the use of any body part or object. Incest is the commission of sexual offence by an adult on a child who is a relative or is related by ties of adoption.

38. In this case, the evidence on record clearly makes out a case that the accused has committed sexual offences in relation to PW6, PW7 and PW8. The evidence on record establishes that PW7 was the biological daughter of the accused and PW6 and PW8 were step children of the accused. All these witnesses have clearly and cogently deposed to sexual offences committed by the accused against them. The acts of the accused constitute grave sexual assault as well as incest. In such circumstances, there is no case made out to interfere with the conviction recorded by the learned Children's Court in this matter.

39. In this case, there is no dispute that the custody of the children was with the accused and his second wife PW9. In these circumstances, the provisions of Section 32(l) can also said to be attracted. This provision states that whenever any offence alleged to have been committed against a child, the burden of proving that such offence has not been committed by the accused shall lie on the accused if the child was in his custody at the time of his arrest or at the time of committal of offence or at the time of rescue or removal of the child victim, as the case may be. However, it is necessary to clarify that in this

case, the prosecution evidence has been evaluated on the basis that the burden was entirely on the prosecution to establish the guilt of the accused beyond reasonable doubt. If, the provisions of Section 32(l) were to apply, then, it is obvious that the accused in this case has not at all discharged the burden which this legal provision has cast upon him.

40. For all the aforesaid reasons, no case is made out to interfere with the impugned judgment and order. Accordingly, this appeal is liable to be dismissed and is hereby dismissed.

41. In the facts and circumstances of the present case, there shall however be no order as to costs.

42. The concerned authorities will have to take necessary steps to re-apprehend the accused so that he is made to serve the remaining sentence as awarded by the learned Children's Court in the impugned judgment and order.

43. The efforts put in by Advocate Vivek Rodrigues in this matter are to be appreciated. He argued this matter with considerable ability and quite thorough preparation for which this Court is grateful to him.

M. S. Sonak,J

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