

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION (MAIN) NO.285 OF 2019

State of Goa, Thr.
Police Sub-Inspector,
Dinesh Gadekar,
attached to Fatorda
Police Station.

.....Appellant.

V/s

Savlo Chodankar and 2 Ors.

..... Respondents.

Mr. Mahesh Amonkar for the Appellant.
Mr. Shivan Desai for Respondent No.1.
Mr. Ashwin Bhobe for Respondent No.2.
Mr. Kaif Noorani U/LAS for Respondent No.3.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 16, 2021
(THROUGH VC)

P.C.:-

1] This consolidated application is taken out by the State for grant of leave to appeal alongwith Memo of Appeal wherein the acquittal of Respondents/Accused for the offence punishable under Section 8 sub-section (2) of the Goa, Children's Act, 2003 is questioned.

2] P.W.1, father of P.W.2 a minor son, who was taking education in school of which Accused No.1 was a Principal, Accused No.2 was a

Maths teacher and Accused No.3 is a non-teaching staff. It is the case of the prosecution that all the three Accused were not treating P.W.2, a minor student, properly and were harsh at times, so also Accused No.1 shouted at him by attributing wrong words on the count that P.W.1 was writing rubbish letters. It is further claimed that Accused No.1 was verbally abusive. Accused No.2 claimed to be a math teacher also illtreated P.W.2 so did Accused No.3, a non-teaching staff.

3] After accused persons were chargsheeted, prosecution has examined in all seven witnesses, whereas the Accused in their defence have examined six witnesses. Accused came to be acquitted on 9th May, 2019.

4] Mr. Amonkar, learned APP for the Appellant would urge that the Court below has failed to appreciate the evidence of P.W.1 - father of P.W.2-victim child, P.W.2-victim child and P.W.5 - mother of the victim child so as to infer the case of child abuse in favour of the Appellant. So as to substantiate his contentions, he has invited my attention to the testimony of P.W.1 at Exhibit No.C-47, testimony of P.W.2 at Exhibit No. C-77 and testimony of P.W. 5 at Exhibit No.C-85. He would also rely on sub-clause (m) of Section 2 of the Goa,

Children's Act, 2003 so as to fit his case into requirement of child abuse.

5] The respective learned Counsel for the Respondents/Accused would submit that the view expressed by the Trial Court is a possible view. According to them, Trial Court has appreciated entire evidence in analytical manner and has recorded well reasoned finding of acquittal which is a possible view. In view thereof, it is claimed that leave is liable to be refused.

6] Considered rival submissions.

7] As far as assault by Accused No.3 a Maths Teacher to P.W. 2 -victim is concerned, there is no corroborating evidence. Apart from above, there is no medical evidence brought on record to substantiate the said claim though it is a case of Prosecution that P.W.2 was injured in such assault.

8] Similar appears to be the case as regards allegations as against Accused No.3. It is the case of the prosecution that Accused No.3, a non-teaching staff in the absence of teaching staff used to enter the

class room and illtreat P.W.2. Neither any independent evidence of any student or parents to that effect is brought on record.

9] Apart from above, it can be noticed that there is inordinate delay in reporting the matter of alleged illtreatment to P.W.2. Steps, if any, taken by Accused No.1 and Accused No.2 in the matter of implementation of discipline in academic institution cannot be viewed as an offence, particularly when criminal intention to commit such offence is absent, as could be inferred from the record of the present case.

10] Apart from above, there are substantial contradictions in the testimony of P.W.1 and P.W.2 so as to infer the charge of child abuse as against accused persons. Any bonafide mistake on the part of teachers like Accused No.2 while teaching cannot be viewed as an intention to commit any offence against P.W. 2-victim. Though it is claimed by P.W.1 that illtreatment was meted out to P.W.2, so also there was criticism of P.W.1 in the presence of other parents, prosecution has failed to examine any independent witness other than family members of P.W.1 so as to infer an act of child abuse. It cannot be inferred from the available evidence, that P.W. 2- child was

illtreated, maltreated, neglected, treated cruelly and was psychologically and physically abused. No such concrete evidence could be inferred from the available material which would establish the case of the prosecution beyond reasonable doubt, particularly from evidence of P.W.1, P.W.2 and P.W.5. Apart from above, independent witnesses have not supported the case of the prosecution so as to infer the alleged act of child abuse on the part of Respondents/Accused persons.

11] The learned Special Judge in a well reasoned order in analytical manner appreciated the evidence and taken a possible view of acquittal of the Respondents/Accused. No material infirmity in appreciation of evidence or any illegality or material irregularity could be noticed.

12] In that view of the matter leave stands refused. As a consequence, appeal stands dismissed.

(NITIN W. SAMBRE, J.)