



Suzana

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.17 OF 2016

Shri Sabino Cotta
S/o. Jose Cotta,
Aged 52 years,
Occupation:Teacher,
Resident of House No.409, Razwado,
Varca, Salcette- Goa

.... APPELLANT
(Original Accused)

Versus.

STATE
Through PP.
High Court of Bombay at Goa.

... RESPONDENT

Mr. Arun De Sa, Advocate with Mr Kyle D'Souza and Mr Mark Valadares, Advocates for the Appellant.

Mr Pravin N. Faldessai, Additional Public Prosecutor for Respondent.

CORAM : BHARATI DANGRE, J.

DATED : 8th AUGUST, 2025.

JUDGMENT:

1. Being aggrieved by the judgment of the Children's Court for the State of Goa at Panaji in Special Case No.47/2010, when the accused being tried for offence under Section 2(y)(ii) punishable under Section 8(2) of the Goa Children's Act, 2003 is sentenced to suffer imprisonment for one year and also levied with a fine of Rs.1 lakh, the Appellant raise a challenge to the said judgment.

I have heard learned Counsel Mr De Sa for the Appellant and the learned Additional Public Prosecutor for the State.

2. The Appellant/accused faced the charge that on 08.03.2009 at around 12:30PM at Comba, Margao, he sexually touched the victim girl aged 14 years and thereby committed an offence punishable under 8(2) read with Section 2(y)(ii) of the Goa Children's Act, 2003.

On being charged, on 08.11.2010, since he pleaded not guilty, he was subjected to trial before the Special Court.

3. The Prosecution examined 7 witnesses in support of its case and the evidence brought on record through the prosecution witnesses was specifically put to the accused while the statement was recorded under Section 313.

Based on the evidence that is brought on record before the Court, including the evidence of the victim girl being examined as PW3, her younger sister PW6 and her cousin brother PW4, who were students studying in a school and attending tuition classes, where the alleged incident had taken place, the trial Judge on appreciating the evidence arrived at a conclusion that the accused had not come up with any specific defence except stating that he had distributed chocolates to all students and had not asked any students to wait back and recorded that there is no enmity attributed, which would have falsely implicate the accused, and hence there is no reason why the victim or her sister and cousin should falsely implicate him.

On appreciating the evidence, a befitting sentence was handed over, by considering the gravity of the situation and the act of which the accused was found guilty.

4. With the able assistance of the respective Counsel, I have perused the impugned judgment as well as the material placed before the learned Judge, which resulted into rendering the finding of conviction and sentence being imposed.

The victim girl who stepped into the witness box had specifically narrated the incident by stating that she, along with her sister and cousin had joined a tutorial and was attending the tutorials since December 2008. By specifically setting out that on a Sunday in the year 2009 when she had gone to attend the tutorials in normal course, at 12:30PM the students of Standard X left the class and her sister and cousin brother were sent to the other class and the accused asked her to accompany to his office. Thereafter, he committed the act which she has specifically set out in her deposition in the following words:

“In the office he gave me dictation. Then he took me to the Xerox room and he put my pant zip down. He then took me in the office and he put his hand inside my T-shirt and pressed my breast. I then came out of the office. He gave me two chocolates.

Then I went with my cousin brother and sister home. I was nervous and I did not tell them anything. The office room is by the side of classroom and the Xerox room is inside the office room. Sabino had given chocolates even to my sister and cousin brother.”

5. In no uncertain terms the victim deposed that she went home and narrated the incident to her mother after a while as she could not do it immediately as she was nervous and she told her mother that she will not be attending the tutorials and her mother lodged the complaint and thereafter she was referred for medical examination and the Police recorded her statement in presence of her mother.

She identified the accused on following the prescribed procedure and on perusal of the cross-examination, it can be seen that she remained firm on her stand and her testimony inspire confidence and her credibility is not shaken.

6. Corroborating the victim girl, the cousin brother of the victim entered into the witness box and in sync, he stated that when all the students had left on that particular date, Sir had made him and the other cousin sit in the other class and he called the victim to his office and after some time he called all of them and distributed some chocolates. By stating that he noticed that the victim was upset and worried and all of them went home, he also deposed that the victim told about the incident to her mother but he was not actually aware what was the incident. However, as far as the version of the victim that she was separately taken into the office is corroborated by the said witness.

On similar lines the sister of the victim has deposed that she was examined as PW6 and she corroborate her cousin brother, PW4 and the victim.

7. PW5 is the mother of the victim, who also corroborate her daughter by stating that her daughter was sent to attend tutorials at Margao and there used to be extra classes on Sunday. She identified the accused by deposing that he used to teach the children and her nephew in the tutorials. Referring to the date of the incident, she stated that all the children went for the tuitions and returned back but the victim was sitting quietly after coming home and when she inquired, she was told by her that she will not attend the tutorial classes and she specifically referred to the incident that took place and in no uncertain terms she gave the

description of the act committed by the accused which prompted her to lodge a complaint resulting into registration of an FIR. Further, the Prosecution has also relied upon the Investigating Officer being examined as PW7.

8. In the wake of the aforesaid evidence being brought on record, the learned Judge arrived at a conclusion that the statement of the victim find corroborated by the other witnesses and since the credibility of the said witness who at the relevant time were aged 13-14 years, is not at all impacted, the Prosecution has discharged the burden of proving the offence under Section 8(2) read with 2(y)(ii) of the Goa Children's Act, a sexual offence as covered within the definition of Section 2(y) covering any act of sexually touching with the use of any body part or an object as contemplated under Section (ii) and has imposed the appropriate punishment, with the discretion available under sub-section (2) of Section 8 as the said offence is punishable with imprisonment for either a term that may extend to 3 years and shall also be liable to fine of Rs.1 lakh.

9. In the wake of the aforesaid, I do not find any reason to interfere with the impugned judgment which, according to me, has appropriately appreciated the evidence brought on record and hence on finding no merit and substance, the Appeal is dismissed by upholding the judgment dated 22.02.2016 in Special Case No.47/2010.

10. At this stage, the learned Counsel Mr De Sa, appearing for the Appellant plead before the Court that the Appellant is suffering from paralysis and some leniency may be shown to him.

On due consideration of the said request, I do not think that any leeway can be granted in favour of the Appellant, once the judgment impugned is upheld and since I have already expressed that there is no perversity in the impugned judgment and the conviction of the Appellant is sustained, he must undergo the sentence imposed as there is no discretion left with me to show any leniency.

Upon this view being expressed, Mr De Sa seek four weeks' time on behalf of the Appellant so that the Appellant can surrender, which I am inclined to grant and direct the Appellant to surrender before the Magistrate at Margao on or before 08.09.2025.

In case he fails to surrender, the Police Inspector from the Margao Police Station shall arrest and confine him to prison to undergo the sentence imposed on him.

The Criminal Appeal is dismissed.

BHARATI DANGRE, J.