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Narshiv Usapkar Vs. the State of Goa

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Court : Mumbai Goa

Decided On : Oct-01-2012

Judge : A.P. Lavande

Appeal No. : Criminal Appeal No.73 of 2010

Appellant : Narshiv Usapkar

Respondent : The State of Goa

Advocate for Pet/Ap. : Mr. R. Menezes, Mr. Menezes

Judgement :

Oral Judgment :

Heard Mr. R. Menezes, learned Counsel for the appellant and Mrs. Pinto, learned Additional Public Prosecutor for the respondent.

2. By this appeal, the appellant takes exception to the judgment and order dated 28/07/2010 passed by the Children's Court in Special Case No.22/2009 convicting and sentencing the appellant/ accused of the offences punishable under Sections 452, 506(ii) and 354 of I.P.C. read with Section 8(2) of the Goa Children's Act, 2003 ('the Act' for short) as follows:

Section	Sentence

452 of IPC	Simple Imprisonment for six months and to pay fine of Rs.1,000/-. In default, Simple Imprisonment for one month.
354 r/w S.8(2) of the Act	Simple Imprisonment for one year and to pay fine of Rs.1 Lakh. In default, Simple Imprisonment for three months.
506(ii) of IPC	Simple Imprisonment for three months.

An amount of Rs.50,000/- from the fine amount, if realised, has been ordered to be paid to the victim girl.

3. Briefly, the facts leading to filing of the present appeal are as under:

PW1- Sumati Aglotkar, the mother of victim girl filed report at Collem Police Station on 01/05/2004 at about 8.45 a.m. alleging that on 30/04/2004 at about 8.30 p.m. while she was busy in the kitchen, she heard shout of her daughter- victim girl aged about 11 years who was sleeping in the room along with other two children namely Anish and Ashwini. She saw the accused who was also residing at Kumbharwada, Sancorda. She noticed that the accused was holding the breasts of her minor daughter while she was in sleeping position. At that time, her husband came running and caught the accused. She further claimed that she rescued her daughter from the accused. The accused pushed the husband and started running outside shouting that he would kill her daughter if they complained to police. She further claimed that since it was late in the night, she could not file report at the police station on the same day. Pursuant to the report lodged on 01/05/2004, the was attached to Collem Police Station. PW5 prepared the scene of offence panchanama (exhibit 14) in respect of which PW4- Sushant Arlotkar was the panch witness. He also recorded the statement of PW2-victim girl and PW3- Dilip Arlotkar, the father of the girl.

4. Upon completion of investigation initially, chargesheet was filed in the Court of Judicial Magistrate, First Class, Sanguem. In Criminal Case No.42/S/2004, learned Magistrate having regard to the age of the victim girl passed an order returning the chargesheet to the officer in charge of Collem Police Station for further necessary action. Pursuant thereto, chargesheet was filed in the Children's Court against the accused.

5. In the Children's Court, charge was framed against the accused for the offences punishable under Sections 452, 506(ii) and 354 of I.P.C. read with Section 8(2) of the Act. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution examined five witnesses and produced birth certificate of the victim exhibit 8, FIR exhibit 9, letter dated 01/05/2004 referring the victim to examination exhibit 16, medical certificate of the victim exhibit 17. The statement of the accused under Section 313 of Cr.P.C., was recorded. The accused did not lead any defence evidence. The trial Court, upon appreciation of the evidence led by the prosecution, held that offences for which the accused was charged, were proved beyond reasonable doubt against the accused and consequently, convicted and sentenced the accused as above.

6. Mr. Menezes, learned Counsel for the appellant / accused invited my attention to the evidence led by the prosecution and submitted that there are inconsistencies in the evidence of PW1, PW2 and PW3 insofar as the main incident is concerned and considering the versions in the testimonies of the three witnesses, the prosecution story becomes doubtful, and consequently, the accused is entitled to benefit of doubt. Learned Counsel further submitted that even insofar as the threats given by the accused are concerned, there is variance between the versions in the testimonies of the three witnesses namely PW1, PW2 and PW3 and, therefore, the conviction of the accused, is unsustainable in law. He further submitted that the prosecution witnesses have admitted that the accused had never troubled the victim girl even when he had gone alone in the house of PW3 when the victim girl was alone and as such, the prosecution story appears to be highly improbable. Learned Counsel further submitted that panch witness examined by the prosecution is related to the first informant. As such, serious doubt is created about the fairness of the investigation carried out by the

prosecution. Learned Counsel submitted that it is highly improbable that the accused would go in the house of the victim at 8.30 p.m. when the victim was sleeping with her brother and sister and her mother was present in the house, and indulge in the act alleged against him. Learned Counsel further submitted that the entire prosecution story appears to be highly improbable and the accused has been falsely implicated on account of strained relationship between them, at the instance of PW1-Sumati, the mother of victim girl. Learned Counsel further submitted that interest of justice would be served if higher compensation is awarded in favour of the victim girl by reducing the substantive sentences imposed on the accused. Lastly, learned Counsel submitted that considering the fact that the accused got married after the alleged incident and he has got two minor children, and further that he is the only earning member of the family, this is a fit case in which benefit of Section 4 of Probation of Offenders Act, 1958 deserves to be given to the accused. Learned Counsel further submitted that the accused has no criminal antecedents and as such, benefit of Probation of Offenders Act, deserves to be extended to the accused.

7. Per contra, Mrs. Pinto, learned Additional Public Prosecutor supported the impugned judgment and order, and submitted that the prosecution story is established by the evidence of PW1, PW2 and PW3. It was further submitted that the so called variations in the testimonies of PW1, PW2 and PW3, are trivial in nature and as such, deserve no credence. It was further submitted that no foundation has been laid in the cross-examination of the prosecution witnesses for making out a case of false implication of the accused and it is highly improbable that the parents of the victim girl would risk the future of their minor daughter by making false allegations of sexual abuse on victim girl by the accused. It was further submitted that learned trial Judge has considered the object of the Goa Children's Act and has correctly awarded sentences on the accused after convicting him. It was further submitted that considering the nature of the offences committed by the accused this is not a fit case in which benefit of the provisions of Probation of Offenders Act deserves to be extended to the accused. Lastly, it was submitted that no interference is warranted with the impugned judgment and order of conviction. In support of her submissions, learned Additional Public Prosecutor placed reliance upon the following judgments:

(i) ChildlineIndia Foundation and another Vs. Allan John Waters and Others; (2011)6 SCC 261.

(ii) State of Uttar Pradesh Vs. Krishna Master and others; (2010)12 SC 324.

(iii) JaswantSingh and Others Vs. State of Punjab; (2009)16 SCC 201.

8. I have carefully considered the rival submissions, perused the record and the judgments relied upon by learned Additional Public Prosecutor.

9. PW1-Sumati Aglotkar deposed in consonance with the report lodged at the Police Station. She deposed that at the time of filing of report, her daughter (the victim girl) was 11 years of age. Her date of birth was 13/11/1992. She produced her birth certificate exhibit 8 which confirms the date of birth. In relation to incident that took place, she deposed that on 30/04/2004 at about 8.30 p.m. when she was preparing food in the kitchen, her children were sleeping in the prayer room which was by the side of the kitchen, and her husband had gone to toilet. She heard loud shout of victim girl from the prayer room and she rushed to room. She saw the accused holding right breast of the victim girl. The accused was from the other ward namely Kumbharwada. He was found in bending position over the body of the victim girl. At that time, her husband also came in the room and she rescued her daughter from the hands of the accused, her husband caught hold the accused. The accused managed to escape from the spot by pushing her husband and at that time, he gave threats that if they were to file complaint against him, he would kill their daughter. She further deposed that since it was late and there was no transport available to go to Police Station, they waited till next morning. On the next day, they went to police and lodged report against the accused. She identified the accused in the Court and also the signature on the First Information Report exhibit 9. She further stated that at the time of lodging report, her husband and the victim girl were also present in the Police Station. Thereafter, the police came to the house wherein the scene of offence was shown to the police upon which the scene of offence panchanama was conducted and, thereafter, they were taken to hospital at Kakoda. In the cross-examination, it was brought on record that house of Ganapat was adjacent to her house and that of the accused at some distance. She stated that the accused used to come to house for drinking water while going

to his property. She denied the suggestion that on the day of incident the accused came at 5.30 p.m., consumed water and left. At the time of incident, her daughter was studying in VIIth standard. PW4-Sushant Arlotkar was her relative and neibour and he used to visit her house. She knew one Suvarna Shetkar who was the pancha member. She further stated that at the time of incident, no neighbour was present in her house and they did not call anybody from the house of Ganpat or Namdeo when the accused gave threats. She denied the suggestion that after the incident, Suvarna Shetkar along with villagers came to house on the night of the incident and instigated them to file complaint. She stated that she did not know whether any case was filed by said Suvarna and others against the accused prior to the incident. She denied the suggestion that no incident as alleged by her, had taken place at about 8.30 p.m. in the house. She denied the suggestion that the complaint was filed only at the instigation of Suvarna Shekar.

10. The evidence of PW2-the Victim Girl is on the similar lines. She stated that at about 8.30 p.m., when she was sleeping along with brother and sister in the prayer room, she sensed something heavy on chest and opened eyes, and noticed that the accused was bending on her and pressing her breasts. She suffered pain and, therefore, she shouted. Thereafter, mother and father came in the room. Mother pulled her towards her and father tried to catch the accused but he pushed him and ran outside, and while going he threatened them not to complain or else he would kill her. Her brother and sister got up due to shouting. She identified the accused as the person who had come and abused her. In cross-examination, she stated that at the time of incident, she was studying in VIIth standard. Upon sketch being shown to her, she stated that the kitchen existed at the left side portion of third room and that her mother was busy in cooking food. She admitted that no such incident had taken place earlier when the accused visited their house or the field. She further stated that the accused had never troubled her while going to school nor he made signs and gestures on seeing her and he did not enter the house whenever she used to remain alone. She further stated that her parents did not call neighbours on receiving threats from the accused. She further deposed that earlier the relations between her parents and mother of the accused were cordial, but after the incident, they were strained. She denied the suggestion that her statement was false. She denied that since relations between her parents and

parents of the accused were not cordial, her mother filed false complaint against the accused. She denied the suggestion that she was not sleeping along with her brother and sister at about 8.30p.m., in the prayer room. She further stated that they slept in the evening without having dinner. She denied the suggestion that she was not ready to go to police station along with mother and she was forced to go to police station by her the mother. She denied the suggestion that no incident had occurred on 30/04/2004 at 8.30 p.m.

11. The evidence of PW3-Dilip Arlotkar, the father of victim girl is also on similar lines. However, in the examination-in-chief he stated that the accused threatened to kill them (us). In cross-examination, he stated that the house of the accused was around three Kilometres from his house and it would take half an hour by walk. At the time of the alleged incident, harvesting of paddy was going on in the field of the said accused. He did not know how many persons were working in the said paddy field. He, however, stated that police did not visit their house after the complaint was filed. He stated that Sushant was not related to him, but he knew him. He further deposed that earlier their relations with family of the accused were normal, but after the incident, they were not normal. He denied the suggestion that due to inimical terms his wife had filed false complaint against the accused to teach lesson to the mother of the accused. He denied the suggestion that at about 5.30p.m. on the date of the alleged incident the accused had come to his house and after having water by sitting in the verandah, he left and did not return back on that date.

12. Insofar as the evidence of PW4-Sushant Arlotkar, panch witness to the scene of offence panchanama is concerned, his evidence is of hardly any importance inasmuch nothing was found and could be found at the scene of offence, having regard to the nature of offence alleged against the accused.

13. From close scrutiny of the evidence of the above three witnesses, I am of the considered opinion that the prosecution has been able to establish that on 30/04/2004 at about 8.30 p.m., the accused entered the house of PW3-Dilip Arlotkar and committed sexual abuse. The so called variations in the testimonies of three witnesses, are on minor aspects and having regard to the nature of the

incident that had occurred, it cannot be expected of three witnesses to depose parrot like. It is well settled by a catena of decisions of the Apex Court that minor variations in the testimonies of the witnesses is hallmark of truth. Applying the said test, I am of the considered opinion that the minor variations as to the manner in which the accused committed sexual abuse on the victim girl or as to whether mother came first or father came first to the prayer room, is hardly of any significance.

14. A specific suggestion was put to PW1-Sumati that she has filed complaint at the instance and instigation of Suvarna Shetkar. To PW2- the victim girl a specific suggestion was put by the accused that she was deposing falsely at the instance of her mother to falsely implicate the accused. To PW3-Dilip, it was suggested that he was deposing falsely on account of inimical terms with the accused and false complaint was filed against the accused to teach lesson to the mother of the accused.

15. I find it difficult to accept the defence taken by the accused that false report was filed by PW1 against the accused in order to teach lesson to the mother of the accused. It is difficult to accept that the parents would jeopardise the marital prospects of their minor daughter by lodging report at the police station of sexual abuse by the accused against their minor daughter aged 11 years. I find it extremely difficult to believe that all the three witnesses namely PW1-Sumati, PW2- victim girl and PW3- Dilip Arlotkar who have deposed consistently, have lodged report against the accused only with a view to falsely implicate the accused in order to teach lesson to his mother. No doubt, the prosecution witnesses themselves have fairly admitted that on the earlier occasion the accused did not misbehave with the victim girl even at the time when she was alone. But this fact by itself is difficult to conclude that the act alleged against the accused is fabricated by PW1 and her family members.

16. In my view, the version of PW2, the victim girl on the main aspect of sexual abuse by the accused on her, is corroborated on material aspects by PW1 and PW3. No doubt PW1 has denied the relation with PW4-Sushant which fact has been admitted by PW3-Dilip. This fact by itself is not sufficient to discredit the

version of these two witnesses on the main aspect of the matter. In my view, the view taken by learned trial Judge is the correct view and the trial Court was justified in holding that it was difficult to believe that the parents of victim girl would concoct the case of molestation of their minor daughter by the accused to settle score with the mother of the accused. Therefore, in my view, learned trial Judge was justified in holding that the offences punishable under Sections 452, 354 of IPC read with Section 8(2) of the Act and Section 506(ii) of I.P.C., are proved beyond reasonable doubt against the accused.

17. Insofar as the submission made by Mr. Menezes, learned Counsel for the appellant that benefit of Section 4 of Probation of Offenders Act be extended to the accused is concerned, I find no merit therein. Such an approach would defeat the very purpose of bringing into force in Goa the Goa Children's Act. The Act has been brought into force with a view to protect the minor children from sexual abuse. In my view, learned trial Judge was justified in placing reliance upon the judgment of this Court in Criminal Appeal No.67/2009 and Criminal No.53/2009 (Mohammad Rafiq Vs. State) and also the Apex Court in the case of State of M.P. Vs. Saleem; 2005 Cri. L.J. 3435 and State of M.P. Vs. Munna Choubey and another; 2005 Cri.L.J. 913. whileimposing sentences on the accused. Therefore, in my view, though the accused had no criminal antecedents prior to commission of the alleged offences and although the accused is married and having two children, these facts themselves would not entitle the accused to get benefit of Section 4 of Probation of Offenders Act. While awarding the sentence, balance has to be struck between the interest of the accused and that of the society; otherwise the very purpose of sentencing the accused in a crime, would be defeated.

18. Having regard to the sentences imposed on the accused for the above mentioned three offences, I am of the view that the same cannot be said to be harsh warranting interference in appeal. Hence, no interference is also warranted with the sentences imposed on the accused.

19. I do not deem it necessary to refer threadbare to the judgments relied upon by learned Additional Public Prosecutor but I have taken into consideration the ratio of the said judgments.

20. In the result, therefore, I do not find any merit in the present appeal. Consequently, the appeal stands dismissed.

21. I would like to place on record a word of appreciation for valuable assistance rendered by Advocate R. Menezes, who has been appointed under Legal Aid Scheme to appear on behalf of the appellant/ accused.

22. At this stage, Mr. Menezes, upon instructions from the accused who is present in the Court seeks time of four weeks for the accused to surrender before the trial Court to undergo sentences imposed on him. Time of four weeks is granted to the accused to surrender before learned trial Judge. The bail bond of the accused shall stand discharged only upon surrender. In case the accused does not surrender before the trial Court within four weeks, the trial Court shall take appropriate steps to take the accused in custody to serve the sentences imposed on him. The trial Court shall file compliance report in this Court, within a period of six weeks.

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