



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S). 1991 OF 2023

**SANTOSH SAHADEV
KHAJNEKAR**

....APPELLANT(S)

VERSUS

THE STATE OF GOA

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. *Vide* judgment and order of sentence dated 6th January, 2017 and 20th January, 2017, the learned President, Children's Court for the State of Goa at Panaji¹, convicted the appellant and sentenced him as below: -

¹ Hereinafter, referred to as the 'trial Court'

Sections	Punishment
323 of the Indian Penal Code, 1860 ²	Simple Imprisonment of 6 months.
352 IPC	Fine of Rs. 500/- and in default simple imprisonment of 2 days
504 IPC	Simple Imprisonment of 10 months
Section 8(2) of the Goa Children's Act, 2003	Rigorous Imprisonment of 1 years and to pay fine of Rs. 1,00,000/-, in default, to undergo simple imprisonment for 6 months.

The substantive sentences were ordered to run concurrently.

3. Being aggrieved, the appellant challenged the said judgment by filing Criminal Appeal No. 10 of 2017 before the High Court of Bombay at Goa³ which came to be decided by the judgment dated 11th November, 2022 whereby the High Court partly

² For Short, IPC

³ Hereinafter, referred to as the 'High Court'

allowed the appeal by reducing the sentences awarded to the appellant for the substantive offences in the following manner: -

Sections	Punishment
323 IPC	Simple Imprisonment of 10 days
352 IPC	Fine of Rs. 500/- and in default simple imprisonment of 2 days
504 IPC	Simple Imprisonment of 10 days
Section 8(2) of the Goa Children's Act, 2003	Simple Imprisonment for a period of 15 days and to pay fine of Rs. 15,000/- and in default, to undergo simple imprisonment for 5 months.

4. Being aggrieved, the appellant is before us in this appeal by special leave.

Submissions on behalf of the appellant: -

5. Learned counsel for the appellant urged that *ex facie*, the offence under Section 8 (2) of the Goa

Children's Act, 2003⁴ is not made out against the appellant for the simple reason that the appellant is alleged to have casually hit the injured child by a school bag belonging to appellant's own son. This was unintentional and is not covered within the definition of "*child abuse*" as defined under Section 2(m) of the Act of 2003. He urged that the very basis for the offences contemplated under the Act of 2003 relate to abuse of a child, and a mere act of assault on a child during a sudden scuffle cannot be covered within the mischief of child abuse as defined under Section 2(m) of the said Act so as to render the appellant liable for the said offence.

6. He submitted that the appellant has already undergone custody for some days and being a labourer by occupation, he would suffer grave hardship if required to undergo the remaining sentence at this stage *i.e.* after nearly 13 years of the incident, as it would deprive his family of their sole breadwinner.

⁴ Hereinafter, Referred to as 'Act of 2003'

7. He further submitted that all the offences for which the appellant stands convicted are punishable with imprisonment of less than 7 years and thus, the mandatory provisions of Probation of Offenders Act, 1958 are applicable and the appellant deserves to be given the benefit thereof.

8. He further submitted that this is the only offence in which the appellant has ever been found involved and, therefore, it is a fit case warranting extension of the benefit of probation to the appellant.

Submissions on behalf of the Respondent- State: -

9. *Per contra*, learned counsel representing the State opposed the submissions advanced by the learned counsel for the appellant. He urged that the offence under the Act of 2003 is one involving moral turpitude, the legislation itself having been enacted with the objective of curbing rampant cases of child abuse in the State of Goa. Since the appellant has been found guilty of the offence punishable under the Act of 2003 by the trial Court and the High Court, both of which have recorded concurrent findings of fact, extending the benefit of probation to the

appellant would send a wrong message to the society. He further contended that the High Court has already taken a liberal approach by substantially reducing the sentences imposed on the appellant, and hence, no further leniency is warranted.

Analysis and Conclusion: -

10. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgments and the material placed on record.

11. On examining the judgment of the trial Court, it becomes apparent that the incident occurred on 1st February, 2013 at about 08:00 a.m. in the premises of St. Ann's School, Tivim, Bardez, Goa, whereas the FIR came to be lodged after a delay of eight days, *i.e.*, on 9th February, 2013 against the appellant for the offences punishable under Sections 323, 352 and 504 of the IPC and under Section 8 of the Act of 2003.

12. Section 8 of the Act of 2003 provides for punishment for committing "*child abuse*" which is defined under Section 2(m) of the said Act. These

provisions are being reproduced hereinbelow for the sake of ready reference: -

2. Definitions. - In this Act, unless the context otherwise requires,-

.....

(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;

8. Child Abuse [and trafficking] –

(1) All children should be assured of a safe environment. A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured.

(2) 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.

(Emphasis Supplied)

13. On a bare perusal of the above provisions, it is evident that the offence of “*child abuse*” as provided under section 8 cannot be attracted to every trivial or isolated incident involving a child, but must necessarily co-relate with acts involving cruelty, exploitation, deliberate ill-treatment, or conduct intended to cause harm. The legislative intent is to protect children against serious forms of abuse and not to criminalise minor, incidental acts emanating during the course of simple quarrels.

14. The only allegation against the appellant as borne out from the statement of PW-3, the injured child is that the appellant hit him with the school bag belonging to his own son. Even if we accept the injured child’s version in entirety, it would still not be sufficient to hold the appellant guilty for the offence

of “*child abuse*” punishable under Section 8 of the Act of 2003.

15. The offence of child abuse necessarily presupposes an intention to cause harm, cruelty, exploitation, or ill-treatment directed towards a child in a manner that exceeds a mere incidental or momentary act during a quarrel. A simple blow with a school bag, without any evidence of deliberate or sustained maltreatment, does not satisfy the essential ingredients of child abuse. To invoke the penal consequences of such a serious offence in the absence of clear intention or conduct indicative of abuse would amount to an unwarranted expansion of the provision.

16. Moreover, it also needs to be noted that Dr. James Jose (PW-2), the Medical Officer who examined the injured child on 9th February, 2013, has admitted in his cross-examination that the possibility of the injuries being caused due to a fall cannot be ruled out.

17. Therefore, in view of the above facts and circumstances, *ex-facie* the conviction of the

appellant for the offences punishable under Section 8 of the Act of 2003 is unsustainable.

18. Furthermore, we are of the view that both the Courts below committed grave error in convicting the appellant for the offence punishable under Section 504 IPC, as the said provision could only be invoked if the abusive or insulting language used by the accused against the injured child was intended to provoke breach of peace. *Ex-facie*, the alleged act of the appellant in abusing the child could not be construed to be such which was intended to provoke breach of peace. Hence, conviction of the appellant for the offence under Section 504 IPC is also unsustainable in facts as well as in law.

19. At this stage, we may note that the offence punishable under Section 323 IPC carries maximum punishment of simple imprisonment for one year whereas offence punishable under Section 352 IPC carries maximum punishment of imprisonment for three months. Thus, the mandatory provision of Section 4 of the Probation of Offenders Act, 1958 would apply and the appellant deserves to be given benefit thereof.

20. Accordingly, we hereby acquit the appellant for the charge of the offence punishable under Section 8(2) of the Act of 2003 and Section 504 of the IPC. The impugned judgments are set aside to this extent.

21. We, however, confirm his conviction for the offences punishable under the Sections 323 and 352 of the IPC. Instead of making him to undergo the sentence immediately, the appellant shall be released on probation upon furnishing bonds before the jurisdictional trial Court, within a period of three months from today to keep peace and good behaviour for a period of one year.

22. The appeal is partly allowed in the aforesaid terms.

23. Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
AUGUST 26, 2025.