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**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL APPEAL NO. 49 OF 2016**

1. Ms Anita Naik,
   d/o Yashwant Naik,
   aged 24 years, R/o H. No.
   16, Kalimati, Bhoma,
   Ponda, Goa.

2. Ms Kunda Naik,
   d/o Yashwant Naik,
   25 years of age, R/o H. No.
   16, Kalimati, Bhoma, .....Appellants.
   Ponda, Goa.

Versus

1. STATE
   Through P.P.
   High Court of Bombay at
   Panaji, Goa. ......Respondent.

Mr Abhijit P. Gosavi, Advocate under Legal Aid Scheme for the Appellants along with Ms Shweta S. Shetgaonkar, Advocate.

Mr Pravin Faldessai, Addl. Public Prosecutor for the Respondent.

**CORAM: - SHREERAM V. SHIRSAT. J.**

**DATED: - 3rd February 2026.**

**JUDGMENT**

**1.** The present appeal has been filed against the impugned Judgement and Order dated 30.06.2016 passed by the Children's Court for the State of Goa, at Panaji in Special Case No. 55/2011, by which both the Appellants are convicted for the offence punishable under Section 504 and 324 read with Section 34 of Indian Penal Code, 1860 (IPC) and Section 8(2) of the Goa Children's Act 2003 and have been sentenced to pay fine of Rs. 500/- each for the offence punishable under Section 504 r/w Section 34 of IPC along with simple imprisonment for one year and fine of Rs. 1,000/- each for the offence punishable under Section 324 r/w Section 34 of IPC as well as to undergo simple imprisonment for one year and to pay fine of Rs. 1,00,000/- each for the offence punishable under Section 8(2) of the Goa Children's Act.

**2.** The case of the prosecution which has surfaced through its witnesses would reveal that on 04.06.2011 when the minor victim was washing his face near the tap of his residence, Accused Nos. 1

and 2 abused him with filthy words and thereafter Accused No. 2 caught hold of him while Accused No. 1 assaulted him with an iron rod on his head leading to bleeding injuries on the minor victim's head. It is the case of the prosecution that the neighbour, Rupali Naik, informed the same to the mother of the victim upon which, the mother rushed to the spot and found the victim awaiting an ambulance with his bleeding head injury. As per the prosecution, the victim was then taken to Goa Medical College, Bambolim where he received treatment for his injury and further, he narrated the said incident to his mother who then lodged a complaint at Ponda Police Station against the two Accused persons. Consequently, F.I.R. No. 123/2011 was registered on 04.06.2011 against Accused Nos. 1 and 2 who were subsequently arrested on the same day and thereafter were released on bail on 05.06.2011.

**3.** Upon culmination of the investigation, chargesheet came to be filed on 13.12.2011 which arraigned the present Appellants as Accused Nos. 1 and 2 respectively. The Children's Court at Panaji framed the charge against Accused Nos. 1 and 2 for the offence

punishable under Section 504 and 324 r/w Section 34 of IPC and Section 8(2) of the Goa Children's Act in Special Case No. 55/2011, to which the Appellants/Accused persons pleaded not guilty and claimed for trial.

**4.** To bring home the guilt of the Accused/Appellants, the prosecution has examined 8 witnesses as follows:-

| | | |
|---|---|---|
| PW1 | : | Complainant the mother of the victim. |
| PW2 | : | Younger sister of the victim. |
| PW3 Dr. Jaya Karmali | : | Examined the victim. |
| PW4 | : | Victim. |
| PW5 Rupali Naik | : | Neighbour who informed PW1 of the incident. |
| PW6 | : | Eye witness and younger brother of the victim. |
| PW7 Manoj Naik. | : | Staff of GMC |
| PW8 Deepak Pednekar | : | Investigating Officer. |

The Appellants examined **DW1**: Vera M. De P Gonsalves, as the defence witness.

**5.** Thereafter, the statements of Accused Nos. 1 and 2 were recorded under Section 313 of Cr.P.C. The Accused persons denied all the allegations levelled against them. It is their defence that they are falsely implicated in the present case due to property dispute and a false chargesheet has been filed against them.

**6.** The Learned Children's Court, after considering the evidence on record, was pleased to convict the Accused Nos. 1 and 2 under Section 504 and 324 read with Section 34 of IPC and Section 8(2) of the Goa Children's Act for the respective sentences which have been enumerated above.

**7.** Aggrieved by the order of the Children's Court, the present appeal has been filed on various grounds. The State has contested the appeal.

**8.** The point that arises for determination in the Appeal is whether on re-appreciation of the evidence before the Children's

Court, the Judgment recording conviction of the Appellants/Accused persons of offences under Section 504 and 324 r/w 34 of IPC and Section 8(2) of the Goa Children's Act is maintainable.

**9.** I have heard Mr. A. Gosavi, learned Counsel for the Appellants and Mr. P. Faldessai, learned Addl. Public Prosecutor for the State/Respondents. With the assistance of the learned Counsel, I have perused the evidence and material on record.

**10.** The learned Counsel for the Appellants has assailed the order of the Children's Court by arguing the impugned conviction is bad in law. It is submitted by the Ld. Counsel for the Appellants that the Appellants have been falsely implicated and there is no cogent material to support the case of the prosecution. It is submitted by the Ld. Counsel for the Appellants that because there are property related issues, the Appellants have been framed in the present case. It is submitted that the victim had fallen of his own act and had sustained injuries and merely to falsely implicate the Appellant, the story has been fabricated to gain advantage in the civil dispute. The

Ld. Counsel has further submitted the incident has never happened considering the timings which have been brought on record and it is only the victim who says that the incident has happened at 10 am, whereas all other witnesses have deposed that the incident took place at 10:30 a.m. He has further submitted that the doctor examined the victim at 10:45 a.m. as per the deposition, however, it is impossible to reach the Goa Medical College from the alleged place of offence i.e., from Bhoma at Ponda in such a short span. He has further submitted that the iron rod allegedly recovered has also not been sent to FSL and there is discrepancy about the ownership of iron rod as well. He has further submitted that the story created is nothing but a figment of imagination. It is further submitted that there is discrepancy as regards the ownership of the iron rod and there were no fingerprints on the iron rod. He has also submitted that ingredients of Section 504 are not made out and even the offence under Section 8(2) of the Children's Act cannot be said to be made out.

**11.** The learned Counsel for the Appellants, Mr. Gosavi, in

support of his submissions relied upon the following judgments:-

i. **Santosh Sahadev Khajnekar v. State of Goa**[1]

ii. **Dinesh Gawas v. State**[2]

**12.** The learned Addl. Public Prosecutor, Mr. Faldessai, appearing on behalf of the prosecution, *per contra*, has vehemently argued that this is certainly not a case of clear acquittal. He submitted that the evidence of the injured eye witness is sufficient and has been proved beyond reasonable doubt. He has further submitted that other witnesses have also corroborated each other on material points. He has further submitted that conviction deserves to be confirmed and no leniency be shown as the Appellants have assaulted a minor who has sustained bleeding injuries which has been corroborated by evidence of all the witnesses who have deposed and has therefore contended that the Appellants have been rightly convicted.

**13.** In wake of the submissions and considering the material on record, it will be therefore necessary to analyse the evidence that has

[1] 2025 SCC Online SC 1828

[2] Criminal Appeal No. 5 of 2019 dated 11.11.2025 decided by this Court.

come on record to come to a conclusion whether the Appellants have been rightly convicted or the material that has surfaced is such that no conviction was warranted.

**14.** PW1 the Complainant who is the mother of the Victim. She has deposed that she knows Accused Nos. 1 and 2 as they are her sister-in-laws. She has deposed that she had lodged a complaint against both the Appellants as they had assaulted her elder son (Victim). She had deposed that she received a phone call from Rupali, who is her neighbour (PW5), who informed her that Accused Nos. 1 and 2, i.e. Appellant Nos. 1 and 2, had assaulted the victim because of which he was bleeding. She has further deposed that she immediately rushed home and found that the victim was waiting on the road with the neighbours and other children for the ambulance and that he was bleeding from the head. She has further deposed that after the ambulance arrived, the victim was taken to GMC, Bambolim where his wound was sutured. She has also deposed that upon enquiries with the victim, she came to know that

the victim was assaulted by the Appellants with iron rod while he was washing his face near the water tap.

**15.** PW2 is the younger sister of the victim and she has deposed that on 04.06.2011 at around 10:30 a.m., her elder brother, that is the victim, had gone to the water tap and at that time the Appellants assaulted him with iron rod and he sustained bleeding head injury. She has further deposed that she was informed by her younger brother (PW6) about the incident and she called the ambulance. She has further deposed that when she came to the spot, she had seen the victim bleeding from head near the water tap and some people were also present who gave the victim medicines. She has further deposed that she asked her neighbour Rupali (PW5) to inform her mother about the incident.

**16.** PW3 is Dr. Jaya Karmali who has deposed that in the year 2011, she was attached to Goa Medical College, Bambolim as assistant lecturer in casualty. She has deposed that she examined the victim on 04.06.2011 at 10:45 a.m. and the victim gave history of assault that took place at 10:30 a.m. on the said date with iron rods.

She has further deposed that he gave history of injury on head and shoulder. She has further deposed about the injuries and has mentioned that there was laceration measuring around 5×1×0.5 cm on parietal region extending up to Occiput caused by blunt weapon in less than 24 hours. She has further deposed that there was another laceration measuring around 4×1×0.5 cm on right parietal region caused by blunt object in less than 24 hours and an abrasion of 2×1 cm on right shoulder caused by blunt object. She has further deposed that all injuries were simple in nature and has produced on record the hurt certificate. This witness was shown the iron rod and she has deposed that this type of object can cause injuries as mentioned in the hurt certificate. In the cross-examination, suggestion was put to the witness that such injuries could be caused due to fall on hard surface to which she had replied that it is possible, but considering the history given by the patient that he was assaulted with hard object, she said that the injury could possibly be caused by the weapon i.e. iron rod.

**17.** PW4, the victim, has deposed that on 04.06.2011 at around 10 a.m., he was washing his face near the tap which was touching his house, and at that time, Appellant No. 2 came and started abusing him in filthy language such as 'Chedyechya aavaik zhavnya, raanlachya tuka amche ghar jay'. He has further deposed that Appellant No. 1 thereafter came to the spot with an iron rod and then Appellant No. 2 caught hold of him and Appellant No. 1 hit the iron rod on his head, right shoulder, and right leg as a result of which he sustained bleeding injury and became unconscious. He has further deposed that on hearing the noise, his younger brother, Gaurav (PW6) came to the spot and went and informed his sister Lalan (PW2), who also came to the spot and the neighbours gathered. He has further deposed that someone had called ambulance and he was shifted to GMC, Bambolim for treatment. He has further deposed that in the meantime, his mother also came to the spot as somebody informed her about the incident. In the cross-examination, the motive, that on 03.06.2011, his father was doing repair work of the house and at that time, Appellant No. 1 had

arguments with his father and the victim had intervened, and at that time, Appellant No. 1 had threatened him of dire consequences, has come by way of omission. The other suggestion which was given and which has been denied was that Appellant No. 2 had gone to the toilet, and while she was returning, he caught hold of her private part and while she was defending herself, he fell down on a hard surface and sustained injuries.

**18.** PW5 Rupali Naik is the neighbour. She has deposed that she knows both the accused who are present in the Court and she also knows the complainant. She has deposed that on 04.06.2011 at about 10:30 a.m., she was present in her house and heard some loud noise towards the house of the complainant and therefore, ran towards the house of the complainant. She has deposed that she saw the victim as he was bleeding profusely from his head. She has further deposed that victim was sitting near the house of one of the neighbours by name, Siddha and many people had gathered there. She has further deposed that when she asked the victim who had assaulted him, he informed her that he had been assaulted by both

the Appellants. She has further deposed that she does not remember if the victim had told her with what weapon he was assaulted. She has further deposed that she informed the complainant telephonically and she came at the spot. This witness was cross examined and except suggestions there is no substantial cross examination.

**19.** PW6 is the younger brother of the victim. He has deposed that on the day of incident he was at home, alone. He heard some abuses being given and therefore, came out and saw both the Appellants abusing the victim. He has deposed that both the Appellants caught hold of the hair of victim and threw him on the ground and then Appellant No. 2 caught hold of the victim and Appellant No. 1 hit the victim with rod on his head. He further deposed that as he got scared, he ran to inform his sister who was at that moment in the house of the neighbour. He further deposed that the victim was bleeding from the head, and the neighbours had gathered and given him first aid and water to drink. He has further deposed that in the meantime, they called his mother. In the cross-examination, it was

tried to be brought on record that before coming to the court, he was explained about the facts. He has however, deposed that he was not tutored before coming to the court. In the re-examination by the Ld. APP the witness has deposed the incident as witnessed by him, and that he was not tutored to depose in the matter.

**20.** PW7 Manoj Naik, who was working in the GMC, has deposed that at about 10:30 – 11.00 a.m., he received a phone call from his brother Shekhar Naik (husband of PW5), informing that the victim has been assaulted by his neighbours and that he is bleeding and has been sent to GMC in 108 ambulance. He further deposed that his brother requested him to help the victim at GMC. He has further deposed that he acted as a panch witness to the scene of offence. He has deposed that victim had shown the scene of offence and the victim was present at that time who also showed the rod which was fallen at a distance of 3 meters away from the spot of assault and the spot of the assault was near the house. He has further deposed that victim informed that he was assaulted with the said rod which was attached by the police. He has deposed that the sketch was drawn in

his presence. He has also deposed about identifying the photographs. The panchanama was exhibited along with the Certificate under Section 65 of Indian Evidence Act and the photographs. There is no serious dent caused in the cross examination of this witness.

**21.** PW8 is the investigating officer who was attached to Ponda Police Station as PSI has deposed that he received a complaint of PW1 and registered the same. He has further deposed that he conducted the panchanama at the scene of offence on 04.06.2011 in presence of PW7 and one, Ankush naik. He has further deposed that he procured the hurt certificate and the birth certificate of the victim and recorded the statements per se, and after completing the investigation has filed the Chargesheet.

**22.** The Appellants examined DW1 Vera M. De P Gonsalves, as the defence witness. This witness was examined to discredit testimony of PW7 specifically to show that PW7 was not working in GMC from 2011 till date. However, in the cross examination the DW1 was not

able to substantiate her testimony that PW7 was not working in the GMC.

**23.** Upon analysis of evidence, it can be seen that PW1, PW2, PW3, PW4, PW5, PW6, PW7, have all corroborated each other on material points. PW4, the victim has categorically deposed that on 04.06.2011 at 10 a.m. when he was washing his face near the tap at that time, Appellant No. 2 came and started abusing him in filthy language such as ' Chedyechya aavaik zhavnya, raanlachya tuka amche ghar jay', and thereafter, the Appellant No. 1 came to the spot with iron rod. It is further deposed that Appellant No. 2 caught hold of him and Appellant No. 1 hit the iron rod on his head, right shoulder, and right leg, and he sustained bleeding injury and became unconscious. PW3 has corroborated the version of PW1 as far as injuries are concerned. PW3 has deposed that the PW4 victim gave history of assault at GMC at 10:45 a.m. on the said date with iron rod and he has also given history of the injury to head and shoulder. PW3 has also given description of the injuries and has produced the hurt certificate. Further as far as injuries are

concerned, even PW1 and PW2 have deposed about the injuries. PW1, who is the mother of the victim has deposed that she was informed by Rupali that Appellant Nos. 1 and 2 had assaulted the victim and he was bleeding. She has further deposed that when she immediately rushed home, she found the victim was waiting on the road with the neighbours and other children for the ambulance as he was bleeding from the head. She has further deposed and corroborated the version of the victim and stated that upon enquiries with the victim, she came to know that he was assaulted by Appellant Nos. 1 and 2 with iron rod while he was washing his face near the tap. PW2, though not an eye witness, has deposed that she was informed by her younger brother that on 04.06.2011 at 10:30 a.m., the victim had gone to the water tap, and at that time, Appellant Nos. 1 and 2 assaulted him with iron rod and he sustained a bleeding head injury. PW5 is yet another witness, the neighbour who has corroborated the version of PW4. She has deposed that on 04.06.2011 at about 10:30 a.m. she was present in her house and she heard some loud noise towards the house of the complainant,

and when she ran towards the house of the complainant, she saw the victim who was bleeding profusely from his head, and when she asked the victim who had assaulted him, he informed her that he had been assaulted by both the accused (Appellant Nos. 1 and 2). She has also confirmed the fact that she had informed the mother of the victim, that is PW1, and she came on the spot. PW6, the brother of victim has also corroborated the version as given by the other witnesses. From the analysis of these witnesses, more particularly the injured witness, PW4 (victim), it is proved beyond reasonable doubt that the victim was assaulted by the Appellants and all the witnesses referred herein above have seen the victim having sustained bleeding injury on his head. Even the hurt certificate is placed on record which further corroborates the testimony of all the witnesses.

**24.** A profitable reference can be made to the judgement of the Apex Court in ***Abdul Sayeed v. State of M.P.***[3]. The relevant paragraphs are reproduced herein below:

[3] *(2010) 10 SCC 259*

> ***"Injured witness***
> ***28.*** *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."*
>
> ***30.*** *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.*

**25.** Although there is some discrepancy as regards, the time of incident is concerned, wherein PW2 and PW5 have stated the time of incident to be 10:30 a.m. and PW4 has stated the time to be 10 a.m. Even assuming that there is some difference as regards to the timing of the incident, the discrepancy is not such, so as to disregard the other cogent testimony that has come on record as far as the assault is concerned. There are bound to be some minor

discrepancies which also goes to show that these witnesses are not tutored witnesses but natural witnesses.

**26.** At this stage it will be apposite to refer the judgement of ***Balu Sudam Khalde & Anr. v. State of Maharashtra***[4]**.**

> ***"25. APPRECIATION OF ORAL EVIDENCE.***
>
> *II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.*
>
> *26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:*
> *(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
> *(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
> *(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
> *(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*
> *(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not*

[4] *2024 ALL MR (Cri) 743 (S.C.)*

*the whole evidence.*

*(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.*

*44. During the course of cross-examination with a view to discredit the witness or to establish the defence on preponderance of probabilities suggestions are hurled on the witness but if such suggestions, the answer to those incriminate the accused in any manner then the same would definitely be binding and could be taken into consideration along with other evidence on record in support of the same."*

**27.** The Hon'ble Supreme Court in the case of ***Bhahan Singh v. State of Haryana***[5] has held that the evidence of injured eyewitness is very reliable. In paragraph 36, their Lordships have held as under: -

*"36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy*

[5] *(2011) 7 S.C.C. 421*

*and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh M (2010) 10 SCC 259; Kailas and Ors. v. State of Maharashtra (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh (2011) 2 SCC 676; and State of U.P. v. Naresh and Ors. (2011) 4 SCC 324.*

**28.** Further, although the motive of the incident has come by way of improvement and omission in the deposition of the witnesses,

however that by itself will not be sufficient to disregard the testimony of the injured witness. The suggestion which was tried to be put to the victim that the injuries are possible by fall has also been discounted by the evidence of the Dr. Jaya Karmali (PW3). PW3 has specifically stated that it is possible that injuries could be caused due to fall on hard surface, however, she has further deposed that considering the history given by the patient that he was assaulted with hard object the injuries could possibly be caused by the weapon MO1 (which is the iron rod). Therefore, the suggestion tried to be put that the injury is possible by fall pales into insignificance. The defence of the Appellants that the victim tried to molest and at that time he had a fall also does not hold water in wake of the categorical admission.

**29.** The defence tried to assail the deposition of PW7 by making an attempt to bring on record that he has falsely identified the photograph of the victim, however, nothing substantial has been brought out in the cross examination to discredit the testimony of this witness. Even attempt was made to bring on record that PW7

was not working in GMC by examining DW1, however, DW1 was not in a position to establish the same by way of any documentary evidence and therefore this witness also does not help the Appellants to prove any aspect in their favour.

**30.** The testimony of the witnesses who have deposed in the favour of the victim cannot be doubted even though they are relatives as the evidence which has come on record is so convincing, cogent and natural that there is hardly any scope to disbelieve them. A relative is not *per se* an interested witness.

**31.** The Children's Court has rightly relied upon the judgment of ***Ashok Kumar Chaudhary v. State of Bihar***[6] wherein it is observed as under:

> "*In our opinion, even otherwise it will be erroneous to lay down as a rule of universal application that non examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise credit-worthy, cannot be relied upon unless corroborated by public witnesses. Insofar as the*

[6] *2008 All Mr (Cri) 2013 (SC)*

*question of credit-worthiness of the evidence of relatives of the victim is concerned, it is well settled that though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.*

**32.** A reference can also be made to the judgment of ***Sadayappan @ Ganesan v. State, Represented by Inspector of Police***[7]***:***

*"11.Criminal law jurisprudence makes a clear distinctionbetween a related and interested witness. A witnesscannot be said to be an*

[7] *Criminal Appeal No. 1990 of 2012*

*"interested" witness merely byvirtue of being a relative of the Victim. The witness maybe called "interested" only when he or she derives somebenefit from the result of a litigation in the decree in acivil case, or in seeing an accused person punished. [See:Sudhak ar v. State, (2018) 5 SCC 435]"*

**33.** The defence tried to argue that there were no blood stains on the iron rod and therefore the theory of the prosecution that the victim was assaulted by a rod is not believable. In the first place the deposition of victim about assault by the rod is very clear and believable and the victim has also identified the rod which was lying at the spot. PW7 has also deposed about taking charge of the rod in his presence. PW8, the I.O., in his deposition has stated that the iron rod was lying in the open space and at the relevant time it was raining and therefore there was a possibility of the blood stains from the iron rod getting washed off. The explanation given does not seem to be unreasonable so as to doubt the evidentiary value.

**34.** It will therefore have to be seen whether all the ingredients of the offences charged against the Appellants have been duly proved.

**35.** ***Section 324. Voluntarily causing hurt by dangerous weapons or means.—***

> *Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**36.** Considering the evidence on record, the prosecution has successfully proved that the Appellants, with common intention, have voluntarily caused hurt to the victim by means of a weapon, i.e. by iron rod, and have thereby committed offence punishable under 324 r/w 34 of the IPC. I am of the opinion that the trial Court has

correctly appreciated the evidence on record and has rightly convicted the Appellants under Section 324 r/w 34 of the Indian Penal Code for having voluntarily caused hurt to PW4.

**37.** ***"504. Intentional insult with intent to provoke breach of the peace.—***

> *Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

**38.** Section 504 of IPC provides punishment for insulting someone intentionally to provoke them, with the knowledge that the provocation caused by their insult can induce the person to commit an offence or act in a way that can breach the peace of the public. In the opinion of this court, the offence of 504 IPC has not been made out. The accused must have specific intent to provoke, or knowledge that their actions will cause a breach of peace. Although there is

material on record to prove that the Appellant No. 2 started abusing PW4 victim in filthy language by using the words such as 'Chedyechya aavaik zhavnya, raanlachya tuka amche ghar jay', there is no evidence on record to suggest that the Accused had any specific intent to provoke or knowledge that their actions will cause breach of peace. The use of the abusive words was a precursor to their immediate action of assault as the intention of the Appellants was to assault the victim, which offence has been successfully proved by the prosecution through the evidence of witnesses. The trial court therefore has wrongly convicted the Appellants under Section 504 r/w 34 of IPC and therefore to that extent the conviction under Section 504 r/w 34 of IPC is set aside.

**39.** The Appellants have also been convicted by the Ld. Trial Court for the offence under Section 2(m)(i), punishable under Section 8(2) of the Goa Children's Act, 2003. It will be therefore necessary to see from the evidence on record, whether the Appellants can be convicted under the said Section 8(2) of the Goa Children's Act, 2003.

**40. Section 8 of The Goa Children's Act 2003** defines what is Child Abuse.

> ***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.*
>
> *[(1A) Child Trafficking shall be an offence punishable under this Act. Any person who commits or aids or abets in the child trafficking shall be punishable with imprisonment for a term which may extend to seven years and a fine which may extend to Rs. 1,00,000/;]. (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 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 4[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.*

***Section 2(m) defines Child Abuse***

*"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"*

**41.** This Court, in the case of ***Dinesh Gawas v. State*** (supra) has observed in para 37, 38, 39, 40 as under :-

*"37. The Hon'ble Apex Court in the latest judgment of* ***Santosh Sahadev Khajnekar V/s The State of Goa,*** *reported in* ***Criminal Appeal No.(s) 1991 of 2023*** *has been pleased to observe as under:-*

***"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."*

*38. From the above judgment it can gathered that the Hon'ble Supreme Court has observed that offence of "child abuse" as provided under Section 8(2) and 2(m) of the Goa Children's Act, 2003, 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 and 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. 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 sudden reaction in the heat of the moment, without any evidence of deliberate or sustained maltreatment, does not satisfy the essential ingredients of child abuse.*

*39. In the present case, the allegation against the appellant is that, upon bad words being hurled at the daughter of the Appellant, the Appellant assaulted the PW1. This is an isolated incident. Merely because the victim is a child, by itself, cannot be sufficient to constitute an offence under Section 8. Even if the version of the PW1 is accepted in the entirety, it would still not be sufficient to hold the Appellant guilty for the offence of "Child Abuse" punishable under Section 8 of The Goa Children's Act, 2003. No doubt that the provisions of the Goa Children's Act was enacted with a laudable object of ensuring that the children in Goa are assured of a safe environment in which the child will not be abused in any way and the development will be nurtured. However, considering the facts of the present case, which is a solitary incident, does not satisfy the essential ingredients of "child abuse".*

*40. Therefore, in my opinion, taking into consideration the facts of*

*the present case, the trial Court has erred in convicting the Appellant under Section 8(2) of The Goa Children's Act, 2003 and therefore deserves to be acquitted for the said offence."*

**42.** Considering the evidence on record, I am of the opinion that the present case in hand being a solitary incident does not satisfy the essential ingredient of "Child Abuse". It 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 and its 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. 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 sudden reaction in the heat of the moment, without any evidence of deliberate or sustained maltreatment, does not satisfy the essential

ingredients of child abuse.

**43.** Therefore, in my opinion, taking into consideration the facts of the present case, the Children's Court has erred in convicting the Appellants under Section 8(2) of The Goa Children's Act, 2003 and therefore deserve to be acquitted for the said offence.

**44.** Another aspect which cannot be lost sight of is that the offence punishable under Section 324 of IPC carries a maximum punishment of three years and therefore, considering the facts of the case, whether the benefit of Section 4 of the Probation of Offenders Act, 1958 can be extended to the present Appellants?

**45.** The Hon'ble Apex Court in ***Chellammal and Another v. State Represented by the Inspector of Police***[8]**,** has been pleased to observe as under:

> *"23. At the dawn of this century, this Court in* ***Commandant, 20th Battalion, ITB Police v. Sanjay Binjola*** *dwelled on the object of the Probation Act and what was held has been echoed, fairly recently, in* ***Lakhvir Singh v. State of Punjab****. After noticing the Statement of Objects and Reasons22 of the Probation Act, the coordinate Bench in the latter decision observed that the SoR explains the rationale for the enactment and its amendments: to give the benefit of release of offenders*

[8] *Criminal Appeal No. 2065 of 2025*

*on probation of good conduct instead of sentencing them to imprisonment. Thus, the increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society."*

*24.The decision in* ***Hari Singh v. Sukhbir Singh*** *provides the guiding light as to how first-time offenders are to be dealt. It was observed therein that:*

*"8. ... Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the court encourages their own sense of responsibility for their future and protects them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not shown to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to first offenders cannot be said to be inappropriate."*

*26. On consideration of the precedents and based on a comparative study of Section 360, Cr. P.C. and sub-section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-section gives overriding effect to sub-section (1) of Section 4 over any other law*

*for the time being in force. Also, it is noteworthy that Section 361, Cr. P.C. itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.*

*27. What logically follows from a conjoint reading of sub-section (1) of Section 4 of the Probation Act and Section 361, Cr. P.C. is that if Section 360, Cr. P.C. were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.*

*28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.*

*29. For the foregoing reasons and in the light of the factual matrix, we are unhesitatingly of the opinion that the Sessions Judge and the High Court by omitting to*

> *consider whether the appellants were entitled to the benefit of probation, occasioned a failure of justice. Consequently, there was no worthy consideration as to whether the appellants could be extended the benefit of probation".*

**46.** In ***Santosh Sahadev Khajnekar v. The State of Goa*** (supra), the Apex Court has been pleased to observe as under**:**

> *"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."*
>
> *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."*

**47.** In the facts of the present case, considering the fact that the offence punishable under Section 324 of IPC carries a maximum punishment for three years, the mandatory provision of Section 4 of the Probation of Offenders Act, 1985 would apply and the

Appellants deserve to be given the benefit thereof.

**48.** The Appellants have been convicted for the offence under Section 324 r/w 34 of the IPC for a period of one year of simple imprisonment which has been confirmed by this Court. This Court has come to a conclusion that the Appellants deserve to be acquitted under Section 504 IPC. The Appellants are also acquitted for the charge of the offence punishable under Section 8(2) of The Children's Act, 2003. The impugned judgment is set aside to that extent whilst maintaining conviction under Section 324 r/w 34 of the IPC for a period of one year of simple imprisonment with fine amount as awarded by the trial court.

**49.** The conviction for the offence punishable under Section 324 r/w 34 of the Indian Penal Code is confirmed. While maintaining the conviction under Section 324 of the IPC, but considering the facts and circumstances of the case, for instance the offence is of the year 2011, the Appellants and the victim are relatives and nothing adverse has been brought to the notice of this Court by the

prosecution, during the hearing of the Appeal about any reoccurrence of such incidents, etc., the matter is remanded to the Children's Court for limited consideration on the question of grant of probation to the Appellants upon obtaining a report of the relevant Probation Officer keeping in mind the pronouncement of the Apex Court in the case of ***Chellammal and Another v. State Represented by the Inspector of Police*** (supra). The Children's Court, considering the report of the Probation Officer can fix the period of probation.

**50.** Hence, I pass the following:-

**ORDER**

i. The Appeal is partly allowed.

ii. The conviction and sentence of the Appellants passed by the Children's Court for the State of Goa, at Panaji in Special Case No. 55/2011 vide Judgment and Order dated 30.06.2016 under Section 504 r/w 34 of IPC is set

aside and the Appellants are acquitted of the charges under Section 504 r/w 34 of IPC.

iii. The Appellants are also acquitted under Section 8(2) of the Goa Children's Act.

iv. The conviction and sentence of the Appellants under Section 324 r/w 34 of IPC is hereby confirmed.

v. As the conviction under Section 324 r/w 34 of the IPC is confirmed, the matter is remanded to the Children's Court for limited consideration on the question of grant of probation to the Appellants upon obtaining a report of the relevant Probation Officer and for fixing the period of probation.

vi. As the Appellants are acquitted for the charge of the offence punishable under Section 8(2) of The Goa Children's Act, 2003, the fine amount if paid by the Appellants, be refunded to the Appellants within a period of eight weeks from today.

vii. Appeal is disposed of and pending applications, if any, are disposed of.

**SHREERAM SHIRSAT, J.**