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CASE COMMENTARY: MS. REKHA @ VIDHILA FALDESSAI V. STATE (THROUGH PP)

~ Rishav Das

INTRODUCTION

Ms. Rekha @ Vidhila Faldessai v. State (Through PP)[1] served as the Criminal Appeal No. 30 of 2019, at the High Court of Bombay at Goa, constituting the coram of Bharat. P. Deshpande, J., with its judgment being pronounced on 02, February, 2023. The appeal arose out of a conviction recorded by the Children's Court at Goa, Panaji (Special Case No. 132/2015), convicting the appellant (government primary school teacher) under sections 324 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'], further punishable under sections 2(m)(i) and 8(2) of the Goa Children's Act, 2003 [hereinafter referred to as 'the Act'].

This commentary scrutinizes the said judgment, that has been moulded into a subject of considerable debate, following the acquittal of the appellant under the said charges, ascending out of a classroom punitive incident. The first core legal issue dealt with in this case was that whether an act of reprimand or rendering of a moderate punishment to a young student finds it place within the definition of a criminal offence. The question following this was that whether the prosecution had, in fact, proved, on evidentiary record that the two victims were allegedly assaulted with a stick or a ruler. Bharat. P. Deshpande, J. answered both the questions in affirmative to the appellant, relying on material inconsistencies in the evidence adduced by the defendants, coupled with placing the concept of "use of force", peculiar to this case, within the good-faith exception of section 89 of IPC. Hence, this commentary argues that provided the broader observations of this judgment regarding teacher's authority is taken into consideration,

[1] Ms. Rekha @ Vidhila Faldessai v. State (Through PP) [2023] SCC OnLine Bom 271 (High Court of Bombay at Goa)

it sits quite uneasily, considering the contrary ban on corporal punishment under section 4(12) of the Act.

BACKGROUND

The background concerning the said appeal is rooted in the Goa Children's Act, 2003, which was enacted with the sole purpose of providing child rights guarantees, a statutory recognition, rendering immunity to both physical and psychological abuse. It is pertinent to mention that the Act expressly bans corporal punishment across all schools under section 4(12) and for this purpose, has also established specialised Children's Courts to cater to matters concerning offences involving imprisonment, coupled with the creation of a "Competent Authority", namely the Secretary of the Department of Women and child Development for trying offences under sections 3, 4 and 5 of the Act. This proposed bifurcation in the jurisdictional scheme and its intersection with the ordinarily followed criminal process, further catalysed by a police complaint, formed the very premise of the appeal. Also, the fact that the entire prosecution had not been initially routed through the Competent Authority, also became a major jurisdictional lacuna.

FACTS

The case record reveals that the appellant was employed as a teacher at a Government Primary School in Sada, Goa. It was on the fateful day of March 28, 2014, that one child witness (PW2 in the current case), not only finished water from her own bottle, but also drank water from a classmate's bottle. The Appellant allegedly scolded PW2 for this act and the prosecution set the narrative that she was struck by a ruler on her hands, legs and back, following which, she let out a cry. Her elder sister (PW2 in the current case), who was studying at the adjoining class, was sent by her teacher to enquire into the matter. Upon arrival, the Appellant allegedly not only questioned PW2, but also struck her, bearing the same instrument. Both of the children made a complaint to their father upon returning home, following which a police complaint was made. The Children's Court charged the Appellant under section 324 of the IPC for voluntarily causing injury with a dangerous weapon and also under the provisions of the Goa Children's Act, 2003, specifically under section 2(m)(i) read with section 8(2). Due medical examination of the victims was made along with a scene-of-offence panchnama. No stick or ruler was ever recovered during investigation and the medical reports too, did not divulge any wilful injury.[2]

[2] *Id.* at 1, 6, 12-20.

ISSUES RAISED

1) Whether an act of scolding or moderately correcting a student by a teacher for disciplinary purposes amounts to a criminal offence under IPC or the Act?
2) Whether the prosecution succeeded in proving, beyond reasonable doubt, on the evidentiary record that the appellant had, in fact, assaulted the two victims, namely PW1 and PW2 with a ruler or stick, with the motive of causing hurt?
3) Whether the protection under section 89 of the IPC can be extended to the appellant?
4) Whether, provided the specialised set of procedures under section 14 and 15 of the Act, the Children's Court could properly take cognizance of the matter?

ARGUMENTS ADVANCED BY THE PETITIONER AND TE RESPONDENTS

Counsel for the Appellant, Mr. Arun de Sa argued that a teacher receives a delegated parental authority and hence, becomes eligible to exert necessary mediums to discipline a child without incurring criminal liability. Further, it was submitted that the alleged instrument of assault itself was never recovered and that absolutely no specific injury marks were found upon medical examination of PW1 and PW2, thereby liberating the accused from the charges levelled against her. Reliance was placed on a plethora of precedential authorities recognising a teacher's natural privilege of administering moderate corporal correction only for the betterment of the child, namely, Emperor vs. G.B. Ghatge (Original Accused) and Abdul Jaffar Ismail Shaikh (Original Complainant)[3], Ganesh Chandra Saha vs. Jiw Raj Somani[4], K.A. Abdul Vahid vs. State of Kerala[5], Mr. Santosh Sahadev Khajnekar vs. State & Anr.[6], Sunil Kumar Sen vs. State of M.P.[7] and Rajan @ Raju vs. Sub-Inspector of Police and Ors[8].

Counsel for the Respondent, Mr. Pravin Faldessai maintained that physical abuse which is inspired by a personal grudge against a student would fall squarely within section 8(2) of the Act, coupled with section 323 and 324 of the IPC. An arguments concerning reasonableness was advanced and was said to be assessed on the facts of each case. It was argued that both the child witnesses had consistently put forward the contention of an assault and hence, dismissing the said contention on grounds of peripheral inconsistencies would not suffice.

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[3] Emperor vs. G.B. Ghatge (Original Accused) and Abdul Jaffar Ismail Shaikh (Original Complainant) AIR 1949 Bom 226.
[4] Ganesh Chandra Saha vs. Jiw Raj Somani AIR 1965 Cal 32.
[5] K.A. Abdul Vahid vs. State of Kerala 2005 Cri. L. J. 2054.
[6] Mr. Santosh Sahadev Khajnekar vs. State & Anr. CRIA 10/2017.
[7] Sunil Kumar Sen vs. State of M.P. 2018 SCC OnLine MP 378.
[8] Rajan @ Raju vs. Sub-Inspector of Police and Ors 2019 (1) Crimes (HC) 260.

JUDGMENT AND CONCLUSION

To put it in a single phrase, the High Court allowed the appeal and set aside the conviction. Considering the evidentiary question, the Court found material contradictions and improvisations in the witness testimonies. Further, PW1 had admitted that she had not witnessed the assault herself. Also, the weapon of assault was been reiterated as being never found. The testimonies of the teachers also revealed that no stick or ruler was ever used in the school and reliance was also placed on the medical evidence, which revealed no injuries. Employing a normative approach, the Court held that reprimanding a child for a trivial breach of discipline, constitutes a normal school conduct and not at all an offence. Applying section 89 of the IPC, the Court not only presumed, but admitted it as a premise that enrolment of a child in a school implies consent to reasonable disciplinary correction. The Court furthermore observed obiter that such complaints shall be routed through the Competent Authority under section 14 of the Act, citing Lalita Kumari v. Government of Uttar Pradesh[9].

To conclude, it can be said that this case functions primarily as an evidentiary acquittal framed in doctrinal terms, however, the decision becomes feeble upon endorsement of a general disciplinary authority to use "reasonable force" under section 89 of the IPC especially in its intersection with the Goa Children's Act's unqualified prohibition of corporal punishment. The only irony is that in spite of such a conflict being recognised by the court, no attempts of reconciliation have been made. As an ending note, the poignant words of Sue Atkins assume relevance, when he says – "If I saw a child hit another child, I would stop them as they are behaving aggressively. If I saw a man hit another man in a pub, I would call that assault. Yet, why is it that when an adult hits a child, we call it discipline?"[10]

[9] Lalita Kumari v. Government of Uttar Pradesh AIR 2014 SC 187.

[10] Sue Atkins, '*Why is it that when an adult hits a child we call it discipline?' (Sue Atkins, 15 August 2017)* https://sueatkinsparentingcoach.com/2017/08/building-your-childrens-character-without-smacking-them/ accessed 20 June 2026.