

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1208-1210 OF 2008

Childline India Foundation & Anr. Appellant(s)

Versus

Allan John Waters & Ors. Respondent(s)

WITH

CRIMINAL APPEAL NOS. 1205-1207 OF 2008

J U D G M E N T

P. Sathasivam, J.

1) These appeals are filed against the common final judgment and order dated 23.07.2008 passed by the Division Bench of the High Court of Bombay in Criminal Appeal Nos. 476, 603 and 681 of 2006 whereby the High Court allowed the appeals and reversed the judgment dated 18.03.2006 passed by the Additional Sessions Judge for Greater Bombay in Sessions Case Nos. 87 of 2002, 886 of 2004 and 795 of 2005 convicting

all the accused under various Sections of the Indian Penal Code (in short 'the IPC'), the Code of Criminal Procedure, 1973 (in short 'the Code') and the Juvenile Justice Act, 2000 (in short 'the JJ Act').

2) **Brief Facts:**

(a) In the year 1986, a petition was brought before the High Court of Bombay complaining about the plight of children at various children homes in Maharashtra. In the same petition, the High Court appointed a Committee, namely, the Maharashtra State Monitoring Committee on Juvenile Justice (in short "the Committee") headed by Justice Hosbet Suresh, a retired Judge of the High Court of Bombay. This Committee received some complaints from the Child Rights Organizations like Saathi Online, Childline and CRY about the mismanagement of Anchorage Shelters, and on that basis, the Committee sought permission of the High Court to visit various Anchorage Shelters. After visiting various Anchorage Shelters including the one at Colaba and Cuffe Parade, a report was submitted before the High Court.

(b) On the basis of the said report, specifically expressing unconfirmed report of sexual exploitation of children, on 17.10.2001, one Ms. Meher Pestonji telephoned Advocate Ms. Maharukh Adenwala and informed her that some children residing in Shelter Homes were sexually exploited by those who were running these Homes. On receiving this information, Ms. Maharukh Adenwala met those boys, who were allegedly sexually assaulted, at the residence of Ms. Meher Pestonji to ascertain the truth. After confirming the said fact, Ms. Maharukh Adenwala thought it proper to inform it to the Members of the Committee. After consulting the Committee, Ms. Maharukh Adenwala moved a *suo motu* Criminal Writ Petition No 585 of 1985 before the High Court. On 19.10.2001, the High Court passed an order for the protection of the children at Anchorage Shelter Homes. On 21.10.2001, one Shridhar Naik telephonically contacted Ms Maharukh Adenwala and informed her that the order of the High Court giving protection to the children was being misinterpreted by the police and, therefore, certain

clarifications were sought from the High Court and by order dated 22.10.2001, the High Court clarified the same.

(c) With regard to the sexual and physical abuse at the Anchorage Shelters, on 24.10.2001, Childline India Foundation filed a complaint with the Cuffe Parade Police Station and while lodging the said complaint, Ms. Maharukh Adenwala was also present there. In spite of the fact that a complaint had been lodged, the police did not take cognizance of the offence under the pretext that the matter was *sub judice* and was pending before the High Court. Since the matter was not being looked into by the police, Ms. Maharukh Adenwala recorded statements of some of the victims and informed the said fact to the Members of the Committee. On 28.10.2001, Dr. (Mrs.) Kalindi Muzumdar and Dr. (Mrs.) Asha Bajpai met those victims at the office of India Centre for Human Rights and Law and endorsed that the statements previously recorded by Ms. Maharukh Adenwala were correctly recorded. After ascertaining the correctness of the statements by the Members of the Committee, the said facts were placed before the High Court and it was also submitted that the police

authorities at Cuffe Parade Police Station were not seriously pursuing the complaint. The High Court, by order dated 07.11.2001, directed the police authorities of the State of Maharashtra to take action on the basis of the complaint lodged by the Childline India Foundation.

(d) Based on this specific direction, Sr. Inspector of Police, Colaba Police Station was directed to investigate in detail the complaint lodged by Childline and to take such action as is required to be taken in law. On 12.11.2001, Colaba Police Station recorded the statement of one Sonu Raju Thakur and the statement of one Sunil Kadam (PW-1) was recorded by Murud police station on 13.11.2001. On 15.11.2001, police ultimately registered an offence at Colaba police station by treating the statement of Sonu Raju Thakur as formal First Information Report (in short 'the FIR') being C.R. No. 312/2001 and started investigation.

(e) Though the offence was mainly registered against three accused barring William D'Souza (A1), the remaining two accused, namely, Allan John Waters (A2) and Duncan Alexander Grant (A3) had already left the country and

therefore, on 05.04.2002, an Interpol Red Corner Notice was issued against A2 and A3. In pursuance of Red Corner Notice, A2 was arrested in USA and sometimes thereafter A3 also surrendered before the Court in India. The Metropolitan Magistrate committed the case to the Court of Session and after committal, it was initially assigned to the First Track Court at Sewree. All the three accused pleaded not guilty and, therefore, claimed to be tried.

(f) The Sessions Judge, by judgment dated 18.03.2006, convicted William D'Souza (A1) for the offence punishable under Section 377 read with Section 109 IPC, Sections 120B and 323 IPC and under Section 23 of the JJ Act. Allan John Waters (A2) was convicted under Section 377 IPC, Section 120B read with Section 377 IPC and Section 373 IPC. Duncan Aleander Grant (A3) was convicted under Section 377 IPC, Section 373 read with 109 IPC, Section 372 IPC and Section 23 of JJ Act.

(g) Aggrieved by the said order, A1 filed Criminal Appeal No. 681 of 2006, A2 and A3 filed Criminal Appeal No. 476 of 2006 before the High Court of Bombay. State Government also

preferred Criminal Appeal No. 603 of 2006 before the High Court for enhancement of the sentence of the accused persons. The High Court, vide its common judgment dated 23.07.2008, set aside the order of conviction passed by the Sessions Judge and allowed the criminal appeals filed by A1, A2 and A3 and acquitted all of them from the charges leveled against them and dismissed the appeal filed by the State Government.

(h) Aggrieved by the order of the High Court, Childline India Foundation and Ms. Maharukh Adenwala filed Criminal Appeal Nos. 1208-1210 of 2008 and State of Maharashtra has filed Criminal Appeal No. 1205-1207 of 2008 before this Court by way of special leave petitions.

3) Heard Mr. K.V. Vishwanathan, learned senior counsel for the appellants in Criminal Appeal Nos. 1208-1210 of 2008, Mr. Sanjay V. Kharde, learned counsel for the appellants in Criminal Appeal Nos. 1205-1207 of 2008, Mr. Shekhar Naphade, learned senior counsel for Respondent Nos. 1 & 2 in Crl. A. Nos. 1208 and 1210 of 2008 and Respondent Nos. 2 & 3 in Crl. A. No. 1206 of 2008 and Respondent No. 3 in Crl. A.

No. 1210 of 2008 and Mr. Rameshwar Prasad Goyal, learned counsel for Respondent No. 1 in CrI.A. Nos. 1209, 1210, 1206 and sole Respondent in CrI. A.No. 1207 of 2008.

4) The only point for consideration in these appeals is whether the High Court is justified in acquitting all the accused by interfering with the order of conviction and sentence passed by the trial Court?

5) Childline India Foundation is a project of the Ministry of Social Justice & Empowerment, Government of India and runs a 24 hrs. emergency phone helpline for children in distress. It was at their behest that investigation into the sexual and physical abuse of children at the Anchorage Shelters was initiated and F.I.R. No. 312 of 2001 was registered. When initially the police refused to record the statements of the victims, it was the Childline along with Ms. Maharukh Adenwala and others talked to the victims and recorded their statements and also produced them before the Committee. The Childline India Foundation intervened in support of the prosecution before the trial Court.

6) Ms. Maharukh Adenwala has been a practicing advocate since 1985 litigating matters concerning social issues, including child rights. She has been appointed as Amicus Curiae in several child related cases by the Bombay High Court including *suo motu* Criminal Writ Petition No. 585 of 1985 about the plight of street children in Mumbai. She was involved in the present case since its inception and she brought the activities going-on at Anchorage Shelters to the notice of the Bombay High Court in the above said *suo motu* writ petition and obtained several orders and directions for the protection of the boys. She was examined before the trial Court as PW-2, especially to depose about the background of the case, how the complaint came to be filed and the various orders passed by the Bombay High Court in the abovesaid *suo motu* writ petition. Childline India Foundation and Ms. Maharukh Adenwala have been closely associated with the present case right from its inception. Childline India Foundation as a *de facto* complainant and intervenor and Ms. Maharukh Adenwala as PW-2.

7) In October, 2001, when it was brought to the notice of Ms. Maharukh Adenwala that some children living at the Anchorage Shelters had complained about sexual abuse, she immediately brought this to the notice of the High Court of Bombay and obtained necessary orders. She along with the representatives of Childline lodged a complaint at Cuffe Parade Police Station about the unlawful activities at Anchorage Shelters. Since the police officers of Cuffe Parade Police Station refused to investigate the said complaint under the pretext that the matter is *sub judice* and pending before the High Court, she recorded the statements of some of the victims and placed it before the High Court seeking direction for the police to investigate into the complaint filed by the Childline. By order dated 07.11.2001 passed by the High Court in *suo motu* Criminal W.P. No. 585 of 1985, the representatives of the Childline were permitted to visit the Anchorage Shelters to interview the boys and to submit a report before the High Court and seek police assistance, if any. Their representatives have since been regularly visiting the

Anchorage Shelters and providing necessary assistance to the boys residing there.

8) The other facts relating to these criminal appeals are that Duncan Alexander Grant (A3), a British national, in and around 1995 opened three Shelters called the Anchorage Shelters for the welfare of street children in Mumbai and its vicinity, namely, at Colaba, Cuffe Parade and Murud. Allan John Waters (A2), who was also a British national and a friend of Duncan Alexander Grant (A3) used to visit the said Shelters regularly. Both of them were formerly working with the British Navy. Another accused William D'Souza (A-1) was the Manager of the Anchorage Shelters.

9) In January, 2001, Dr. (Mrs.) Kalindi Muzumdar, a Member of the Committee received complaints from organizations working in the field of child rights such as Childline, Saathi, CRY about the sexual exploitation of children residing in Anchorage Shelters and other children's institutions in Mumbai. She has been examined as PW-3. By letter dated 22.01.2001, she sought permission from the High Court to visit Anchorage Shelters and other institutions in

respect of which she had received complaints and permission was subsequently granted by the Division Bench of the High Court by its order dated 28.02.2001 in *Suo Moto* Criminal W.P. No. 585 of 1985. Accordingly, on 18.08.2001, the Members of the Committee including Justice H. Suresh who headed the said Committee, visited the Anchorage Shelters and submitted their reports to the High Court. These reports show that the atmosphere in the Shelters was uncondusive for growing children, there was no education and health facilities, the management of the Shelters was unprofessional, the children were scared to go to the Murud Shelter, there were allegations of repeated beatings of the boys, the Shelters were not licensed and did not maintain children's records, nor proper accounts were maintained etc. Moreover, the said Report stated that, "There are unconfirmed reports of sexual abuse in the Shelters especially at Murud", and that "the Shelters, especially, the Murud Shelter should be investigated thoroughly for possibility of sexual abuse".

10) There is no doubt that when Cuffe Parade Police Station refused to investigate the matter, it was Ms. Maharukh

Adenwala and Ms. Meher Pestonjee who recorded the statements and supplementary statements of the minor boys, namely, Rasul Mohd. Sheikh, Sonu Thakur and Gopal Shrivastav, on 25th, 26th and 27th October, 2001. In their respective statements, the boys have spoken of the sexual abuse at the hands of (A2) and (A3) and physical abuse at the hands of (A1). The said statements also show that the boys had told (A1) about the sexual abuse, but he did not take any appropriate action to protect them. The complaint of the Childline is the basis of the FIR in this case. The written complaint dated 24.10.2001 submitted by the Childline to the Cuffe Parade Police Station and the boys' statements were brought to the notice of the High Court. On 07.11.2001, the High Court directed the police authorities of the State of Maharashtra to take immediate action on the complaint of Childline. Thereafter, the matter was investigated by Colaba Police Station and an offence was registered on 15.11.2001 being FIR No. C.R.No. 312 of 2001. In the course of the investigation, the police recorded the statements of five boys, who had suffered sexual abuse at the hands of (A2) and (A3)

and physical abuse at the hands of (A1). All the three accused were arrested at different times. The Colaba Police Station filed three separate charge sheets but the matters, viz., Sessions Case Nos. 87 of 2002, 886 of 2004 and 795 of 2005 were heard together by the trial Court and the accused persons were charged under Sections 377, 373, 372 and 323 IPC read with Sections 120-B and 109 IPC and Section 120-B IPC and Section 23 of the JJ Act.

11) The prosecution examined six witnesses, namely, two victim boys – Sunil Suresh Kadam as PW-1 & Kranti Abraham Londhe as PW-4, Ms. Maharukh Adenwala as PW-2, Ms. Kalindi Muzumdar as PW-3 and two Investigation Officers as PWs 5 & 6. The defence examined two witnesses, namely, Kiran Waman Salve as DW-1 and Rasul Mohd. Sheikh as DW-2, both being boys who resided in the Anchorage Shelters at Mumbai. DW-2 had been cited as a prosecution witness. Thereafter the prosecution examined Veersingh P. Taware – the Additional Chief Metropolitan Magistrate as PW-7, who had recorded the statement of Rasul Mohd. Sheikh under

Section 164 of the Code, wherein he had spoken about the sexual abuse.

12) The two victim boys, namely, Sunil Suresh Kadam (PW-1) and Kranti Abraham Londhe (PW-4) deposed in detail about the activities going-on at the Anchorage Shelters and their depositions reflect that there was a criminal conspiracy amongst the accused to obtain possession of minor vulnerable boys residing on the streets and subject them to sexual abuse. The trial Court, by order dated 18.03.2006, accepted the evidence of PWs 1 & 4 who have been victimised in the Shelter Homes and social activists PWs 2 & 3 and after considering various aspects convicted all the three accused and sentenced them as mentioned hereunder:

Accused	U/s	Sentence
A-1 William D'Souza	377 r/w 149 IPC 120B IPC 323 IPC 23 JJ Act	3 Yrs RI+Rs. 5000/- ID 1 yr RI No separate sentence. 3m RI+Rs. 5000/- ID 15 days RI 1m RI+Rs. 500/- ID 1 week RI.
A-2 Allan John Waters	377 IPC 377 r/w 120B IPC 373 IPC	6 yrs. RI no fine No separate sentence 3 yrs. RI. No fine Compensation of 20000 UK pounds ID 1 yr RI.
A-3 Duncan Alexander Grant	377 IPC 377 r/w 120B IPC 373 r/w 109 IPC 372 IPC 323 IPC	6 yrs. RI. No fine. 6 yrs. RI. No fine. 3 yrs. RI. No fine. 3 yrs. RI. No fine. 3 months RI. No fine. Compensation of 20000 UK pounds ID 1 yr RI.

13) The Division Bench of the High Court, by the impugned order, doubted the veracity of the statements of PWs 1 & 4. According to the High Court, their statements are suspicious, unreliable, not proved beyond shadow of doubt and not credit worthy. The High Court has also eschewed the evidence of PWs 2 & 3 as not admissible and ultimately doubting the prosecution case, set aside the order of conviction and sentence passed by the trial Court and acquitted all the three accused from the charges leveled against them.

14) We have already highlighted the plight of street children at the Shelter Homes in Mumbai. At the foremost, let us consider the testimony of PWs 1 and 4. On the date of deposing before the Court, PW-1 was about 20 years old. However, from the age of 12 to 13 he was wandering in the streets and earning by doing any sort of work for maintaining himself. He had stated that there was no shelter for him at that time and he was sleeping on footpath. His father was earning a little amount by shoe shining and he was addicted to liquor and he used to quarrel with the family everyday. He used to stay on the pavements near Dhanraj Mahal which is

situated near Gateway of India. While deposing before the Court and in the dock, he identified A2 and A3. According to him, he came to know that A3 has opened one Shelter Home and he was asked to stay in the Shelter Home along with other boys. The Shelter Home is situated at Colaba. He admitted that he knows A2 because he was a friend of A-3 and he met him at the Shelter Home. He also informed that about 40-50 boys were staying in the said Shelter Home and the boys staying there were between the age of 8 to 20 years. There is one more Shelter Home situated at Murud at Alibag District and one at Cuffee Parade. He stayed in the Shelter Home up to 2001. He highlighted how Duncan Alexander Grant (A3) and Allen Water (A2) had sex with him and also explained how he was beaten by William (A1). PW-1 has stated before the trial Court as under:

“Duncan had sex with me on many occasions. He used to tell me to hold his penis and also he used to hold my penis. This must have taken place at least on 20 to 25 occasions. This happened at Murud (Janjira) shelter home as well as Colaba shelter home. Allan Waters also had sat with me on many occasions. He also used to tell me to hold his penis and he also used to hold my penis. Allan waters also had sex with me at Colaba shelter home and also at Murud (Janjira) shelter home. Allan must have had sex with me on 10 to 15 occasions.

Duncan Grant and Allan Waters also had a similar relationship with other boys. Accused Duncan and Allan Waters used to ask for fellatio with the other boys and not the other way round. I have seen this happened with my own eyes. I have seen this with respect to other boys named Babu, Kiran, Sai and Dhanraj. I know Sonu Thakur, Rasul Sheikh, Gopal Srivastava, Kranti Londhe. With the abovementioned boys also the same thing had happened and I had witnessed it. The abovementioned boys used to stay in the shelter home during the relevant period. When this happened for the first time with me I was aged about 14/15 years. Prior to that I had no knowledge about sex. When I had it for the first time I did not like it. Even though I did not like it, I stayed in the shelter home because it was my compulsion. I made a complaint to William about the conduct of Duncan Grant and Allan Water”

“Accused No.1 William used to beat us on flimsy grounds. He used to do canning. However, he never had sex with either me or with other boys. When I made a complaint to William (about Allan and Duncan), he told me not to divulge the said fact to anybody failing which he would beat me.”

“On the day I was interrogated I had an injury on my right hand as William had bitten me. I had taken medical treatment with respect to the said injury.”

In the cross-examination, PW-1 asserted that during his stay in the shelter home, nearly for a period of five years, these instances were happening regularly. He also stated that “Accused Duncan Grant and Allan Waters used to have sex with me independently and they did not do it together with me”. About William, in cross-examination PW-1 has stated

that “it is a fact that whenever we used to commit mistake, William used to beat us”. When a question was put to him whether he had said so before police, he answered that “I did state that fact to the police at the time of recording my statement that Allan Waters also had sex with me at Colaba shelter home and also at Murud (Janjira) shelter home. Allen must have had sex with me on 10-15 occasions. I cannot assign any reason as to why the said statement in exact sequence is missing in the police report. I did state the said fact to the police at the time of recording my statement that, “Accused Duncan and Allan Waters used to ask for fellatio with the other boys. Duncan Grant and Allan Waters used to do fellatio with the other boys and not the other way round. I have seen this happened with my own eyes. I have seen this with respect to other boys named Babu, Kiran, Sai and Dhanraj. I know Sonu Thakur, Rasul Sheikh, Gopal Srivastava, Krani Londhe. With the abovementioned boys also the same thing had happened and I had witnessed it.”

15) Before analyzing the evidence of PW-1 further, it is also useful to refer the statement of PW-4 before the Court. He deposed that he lost his father when he was a child and his entire family was residing on a footpath near Gateway of India. Though his house was at Jogeswari, according to him, he along with his mother used to stay on the pavements near Gateway of India. His elder brother Madhu Londhe was a Rickshaw puller. He has not studied in any school. He used to work as guide and earn his livelihood. According to him, for many days, he used to stay on the pavements near Gateway of India. PW-4 has identified each accused correctly when they were in the dock. About William (A1), he deposed that:

“I know accused William since my childhood. I know William because he used to come at Gateway of India to work. William used to work as a pimp. William is also known as Natwar.”

About Duncan (A3), he stated that:

“I know accused Duncan since I used to stay near Gateway of India along with my mother. I know accused Duncan because he used to come near Gateway of India and used to collect the boys there and used to talk to the boys. Duncan used to come near Gateway of India sometimes on bicycle and sometimes on foot. I had a conversation with Duncan at that point of time and he used to offer me to stay at Anchorage. The said Anchorage of Duncan is situated at Colaba. I do not know as to why he was offering me to come

and stay at Anchorage. When I was offered to stay at Anchorage after I lost my mother, I am unable to state approximately when I went to stay at Anchorage. Today, I stay near Gateway of India on the pavements. I am unable to state as to how long I stayed at Anchorage. When I started residing at Anchorage, I met William (accused No. 1) as he was working as a Manager at Anchorage. I do not know the name of the building in which the said anchorage is situated. I also do not know the name of the road on which the said building is situated. The said Anchorage is situated on the 3rd floor. 30 to 40 boys used to stay in the Anchorage when I was staying there. All the boys were from the age group of 10 to 12 years.

Thereafter, he went to stay at Anchorage and met Allan Water (A2). The Anchorage is consisting of one big room with attached bathroom and a terrace. All of them were provided food at Anchorage Shelters. Duncan also used to distribute pocket money on every Sunday amongst the boys staying at Anchorage Shelters. He also explained the reason for his stay at Anchorage was that on many days, he had no earnings and he was starving. After staying at Anchorage, he used to work in a garage and getting Rs. 10/- or Rs. 20/- a day. He also informed the Court that William used to beat them by a cane when they were staying at Anchorage for no reason.

About Duncan, PW-4 has also deposed:

“Duncan used to beat me when I used to stay at Anchorage. Duncan used to remove all the clothes and

by making me naked he used to beat me. Duncan used to hold my head between his thighs and then used to ask the monitor to beat me by a stick either 6 times at a time or 12 times at a time. In spite of my telling them not to beat me, they used to beat me. The same was the treatment given to the other boys residing in the Anchorage by Duncan.”

About Allan Waters (A2), he deposed that

“Allan Waters used to have sex with the boys. Allan used to have fellatio with me and the other boys. Allan used to take my penis in his mouth. He might have done this act with me on 30 to 40 occasions. When I was staying in Anchorage Duncan also did the same thing with me. Duncan did this act with me on many occasions. When this was done for the first time with me I felt bad. I then told the said fact to William with respect to the act done by Duncan and Allan. Thereafter William beat me. I was beaten because I told William about the acts done by Duncan and Allan.”

He further stated that:

“Allan and Duncan used to have sex with me sometimes in the bathroom and sometimes on the cot. When these persons used to have this act with me on the cot the other boys used to remain in the same room but asleep.”

In the cross-examination, about recording of his statement by

Police, it was stated:

“When my statements were recorded for the first time the other boys from Anchorage were also present in the police station with whom similar instances had taken place. It is true that the other boys also stated the same thing to the police about the incident. It is true that those boys also stated it in my presence about the incident. The questions were asked to me in Hindi and I answered the questions in Hindi to the police.”

He also asserted that similar statements were made by him before the Police and according to him, it is not clear why the same were not recorded fully.

16) The analysis of the evidence of PW-1 and PW-4, victims, at the hands of these accused in the shelter homes clearly shows that both Duncan Alexander Grant (A3) and Allan Waters (A2) had sex with them on many occasions. They also had similar sex with other boys who stayed in the shelter homes. Both these accused used to have fellatio with them and also with other boys. They also asserted that the accused used to direct them and other boys to hold their penis and they also used to hold penis of them. It is also seen that many a times they directed them to take their penis in their mouth. Though many other boys had similar experience, out of fear, except PWs 1 and 4 nobody narrated the incident to the police and to the Court. As a matter of fact, they did not attribute any sexual activities to William except alleging that he used to beat them on flimsy grounds and used to do canning. Both PWs 1 and 4 asserted that William never had sex with them or other boys. As rightly observed by the trial Judge, the above

information by PWs 1 and 4 shows that they were staying in the shelter homes at the relevant time. After analyzing the evidence of PWs 1 and 4, we are of the view that more confidence can be reposed on their evidence and the omissions as pointed out by the High Court are not fatal to the prosecution case. In case, there may be some omissions because the Public Prosecutor has put questions to these witnesses which the I.O. has not, we are, however, satisfied that there is no variance between the examination-in-chief and cross-examination of PWs 1 and 4 with regard to the material particulars of sexual abuse. No statement of these boys during cross-examination has been negated before the examination-in-chief. Considering the background of PWs 1 and 4, the delay in divulging the facts of beating and also of sexual abuse to any other person does not mean that there is no sexual exploitation or abuse or that they were deterred or that they were deposed falsely as per the design of some other person. We hold that the trial Judge has correctly appreciated the evidence of PWs 1 and 4 and arrived at a proper conclusion, on the other hand, the High Court committed an

error in holding that their statements are suspicious and not reliable and not proved beyond shadow of doubt. We are fully satisfied that there is no such basis for arriving at the above conclusion.

17) Coming to the evidence of Maharukh Adenwala (PW-2), as stated in the earlier paragraphs she is a practising advocate, however, evincing more interest on the welfare of uncared street children. It was brought to our notice that all alone she worked and even now working sincerely and selflessly to protect the street children for no personal gain. As an activist, her intention was to protect the children. The High Court of Bombay had reposed faith in her and appointed her as an *amicus curiae* in child related cases. From the initial stage, she brought all the events that have taken place at Anchorage Shelters to the notice of the Committee and to the Bombay High Court. Even in cross-examination, the statement of PW-2 has not been shattered and there is no reason to doubt her integrity. It is true that whatever she did cannot be the basis for convicting the accused. However, she did not stop enquiring the children and submitting a report to

the Committee and to the High Court but she also participated as a prosecution witness, namely PW-2 and highlighted the grievance of the neglected children at shelter homes and sexual abuse undergone by them. On going through the activities of PW-2 prior to the launching of prosecution against the accused, her report to the High Court and to the Committee, her evidence before the Court and her activities aimed for the welfare of the neglected children, particularly, in shelter homes, we are unable to agree with the conclusion arrived at by the High Court in rejecting her evidence in *toto*. We have already noted that conviction cannot be based on her evidence alone. However, while appreciating the evidence of victims PWs 1 and 4, the work done by PW-2 cannot be ignored.

18) Coming to the evidence of PW-3 Dr (Mrs.) Kalindi Muzumdar, her academic credentials show that she retired as Vice Principal of Nirmala Niketan and she is also a Member of the Committee appointed by the High Court. PW-3 in association with Dr. Asha Bajpai and PW-2, personally and independently interacted with the children in the shelter

homes and as in the case of the evidence of PW-2, the evidence of PW-3 also solely relied on for convicting the accused. However, as rightly observed by the trial Court for a limited purpose, namely, to corroborate the evidence of Ms. Maharukh Adenwala, the role played by Ms. Maharukh Adenwala (PW-2) and Mrs. Kalindi Mazmudar (PW-3) undoubtedly supported this case for taking the cause of vulnerable street children and they played their role in a responsible manner. Undoubtedly PW-3, like PW-2, had no enmity with the accused nor can any ulterior motive be attributed to them.

19) The analysis of the evidence and the role played by PWs 2 and 3 show that they supported the boys in bringing to the notice of the relevant authorities that what was happening in the Anchorage Shelters. As rightly observed by the trial Court, both of them, particularly, PW-2 played her role in a responsible manner. It is further seen that PW-3 along with Dr. Asha Bajpai, Members of the Committee verified the witnesses and endorsed their statements made to PW-2. It is further seen that PW-3 forwarded statement of victims to the Registrar of the High Court on many occasions.

20) As stated earlier, based on the statement of PWs 2 and 3, undoubtedly the accused persons cannot be convicted. But as observed earlier and taking into account their initiation, work done, interview with the children at the shelter homes laid the foundation for the investigation. To that extent, the trial Court has rightly considered their statements and actions. Unfortunately, the High Court ignored their statements as unacceptable.

21) Learned senior counsel appearing for the accused submitted that except the testimony of PWs 1 and 4, there is no corroborative statement by any of the other boys who stayed with them in the shelter homes. First of all, there is no need to examine more victims of similar nature. It is not in dispute that most of the children before reaching the shelter homes were on streets, particularly, near Gateway of India to eke out their livelihood and used the same place as shelter during night. Since the boys in the shelter homes were provided with stay, clothes and food and these persons were not taken care of by their families, most of them lost their parents and relatives, out of fear and in order to continue the

life in the same shelter, they did not make a complaint to anyone. Only when the matter was taken up to the High Court by persons like PWs 2 and 3 and on the orders of the High Court they enquired and submitted a report which was the basis for investigation by the Police. Regarding the requirement of corroboration about the testimony of PWs 1 and 4, with regard to sexual abuse, it is useful to refer the decision of this Court in **State of Kerala vs. Kurissum Moottil Antony**, (2007) 1 SCC (Cr1) 403. In that case, the respondent was found guilty of offences punishable under Section 451 and 377 IPC. The trial Court had convicted the respondent and imposed sentence of six months and one year's rigorous imprisonment respectively with a fine of Rs.2,000/- in each case. The factual background shows that on 10.11.1986 the accused trespassed into the house of the victim girl who was nearly about 10 years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house, the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. The victim PW-1 told

about the incident to her friend PW-2 who narrated the same to the parents of the victim and accordingly on 13.11.1986, an FIR was lodged. On consideration of the entire prosecution version, the trial Court found the accused guilty and convicted and sentenced as aforesaid. An appeal before the Sessions Judge did not bring any relief to the accused and revision was filed before the High Court which set aside the order of conviction and sentence. The primary ground on which the High Court directed acquittal was the absence of corroboration and alleged suppression of a report purported to have been given before the FIR in question was lodged. In support of the appeal, the State submitted that the High Court's approach is clearly erroneous and it was pointed out that corroboration is not necessary for a case of this nature. The following observations and conclusion are relevant:

“7. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in *Rafiq v. State of U.P.* with some anguish. The same was echoed again in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*. It was observed in the said case that in the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the

tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or dignity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in *Rameshwar v. State of Rajasthan* were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, ...”

8. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in “the case of an accomplice to a crime”. (See *State of Maharashtra v. Chandraprakash Kewalchand Jain.*) Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.

9. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if courts deal strictly with those who violate the social norms.

10. The above position was highlighted by this Court in *Bhupinder Sharma v. State of H.P.*

11. The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to Section 377 IPC.”

We are in agreement with the said conclusion and in a case of this nature, the Court is not justified in asking further corroboration apart from the testimony of PWs 1 and 4. Accordingly, we reject the contention raised by the learned senior counsel for the accused.

22) A serious argument was projected by learned senior counsel for the accused stating that even if the allegations/statements of prosecution witnesses are acceptable, the same would not constitute an offence under Section 377 IPC. Section 377 reads thus:

“377. Unnatural offences.- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

23) To attract the above offence, the following ingredients are required: 1) Carnal intercourse and 2) against the order of nature. Though the High Court has adverted to various dictionary meanings and decisions to hold that the offence has not been made out, we have extracted the exact statements of

the victims - PWs 1 and 4. PW-1 has stated before the trial Court as under:

- i “Duncan had sex with me on many occasions. He used to tell me to hold his penis and also he used to hold my penis.”
- ii “Allan Waters also had sex with me on many occasions. He also used to tell me to hold his penis and he also used to hold my penis.”
- iii “Duncan Grant and Allan Waters also had a similar relationship with other boys. Accused Duncan and Allan Waters used to ask for fellatio with the other boys Duncan Grant and Allan Waters used to do fellatio with the other boys and not the other way round. I have seen this happened with my own eyes”
- iv “Accused No.1 William used to beat us on flimsy grounds. He used to do canning. However, he never had sex with me or with other boys. When I made a complaint to William (about Allan and Duncan), he told me not to divulge the said fact to anybody failing which he would beat me.”

(PW4) has stated before the trial Court as under:

- i. “Allan Waters used to have sex with the boys. Allan used to have fellatio with me and the other boys. Allan used to take my penis in his mouth”
- ii. “When I was staying in Anchorage Duncan also did the same thing with me.”
- iii. “When this was done for the first time with me, I felt bad. I then told the said fact to William with respect to the act done by Duncan and Allan. Thereafter William beat me. I was beaten because I told William about the acts done by Duncan and Allan.”
- iv. “William used to tell me to speak before the Court that Allan and Duncan are good people.”

Those statements show how these accused, particularly, A1 and A2, sexually abused the children at the shelter homes.

The way in which the children at all the three places i.e.

Colaba, Murud (Janjira) and Cuffe Parade were being used for sexual exploitation, it cannot be claimed that the ingredients of Section 377 have not been proved. The street children having no roof on the top, no proper food and no proper clothing used to accept the invitation to come to the shelter homes and became the prey of the sexual lust of the paedophilia. By reading all the entire testimony of PWs 1 and 4 coupled with the other materials even prior to the occurrence, it cannot be claimed that the prosecution has not established all the charges leveled against them. On the other hand, the analysis of the entire material clearly support the prosecution case and we agree with the conclusion arrived at by the trial Judge.

Constitutional provisions relating to children

24) Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy

childhood for children which is free from abuse and exploitation. **Article 15(3)** of the Constitution has provided the State with the power to make special provisions for women and children. **Article 21A** of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years. The word “life” in the context of article 21 of the Constitution has been found to include “education” and accordingly this Court has implied that “right to education” is in fact a fundamental right.

25) **Article 23** of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited because of their poverty. They are deprived of education, made to do all sorts of work injurious to their health and personality. **Article 24** expressly provides that no child below the age of 14 years shall be employed to work in

any factory or mine or engaged in any hazardous employment.

This Court has issued elaborate guidelines on this issue.

26) The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self-imposing direction towards securing the health and strength of workers, particularly, to see that the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength.

27) **Article 45** has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upto the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. Virtually, Article 45 recognizes the importance of dignity and

personality of the child and directs the State to provide free and compulsory education for the children upto the age of 14 years.

28) The Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. This is being ensured by establishing observation homes, juvenile houses, juvenile homes or neglected juveniles and special homes for delinquent or neglected juveniles.

29) Even in the case of **Vishal Jeet vs. Union of India**, (1990) 3 SCC 318 this Court issued several directions to the State and Central Government for eradicating the child prostitution and for providing adequate and rehabilitative homes well manned by well qualified trained senior workers, psychiatrists and doctors.

30) The above analysis shows our Constitution provides several measures to protect our children. It obligates both Central, State & Union territories to protect them from the evils, provide free and good education and make them good

citizens of this country. Several legislations and directions of this Court are there to safeguard their intent. But these are to be properly implemented and monitored. We hope and trust that all the authorities concerned through various responsible NGOs implement the same for better future of these children.

31) Under these circumstances, the impugned judgment of the High Court acquitting all the accused in respect of charges leveled against them is set aside and we restore the conviction and sentence passed by the trial Judge. It is brought to our notice that A1 has undergone imprisonment for 3 years and 1 month and A2 was in custody for about 5 years and A3 was in custody for about 3 years and 2 months. Inasmuch as the trial Court has imposed maximum sentence of 3 years for William D'Souza (A1) and he had already undergone 3 years and 1 month while confirming his conviction imposed by the trial Court, we clarify that there is no need for him to undergo further imprisonment. On the other hand, inasmuch as Allan John Waters (A2) and Duncan Alexander Grant (A3) were awarded 6 years imprisonment under Section 377 IPC while confirming their conviction, we direct them to serve the

remaining period of sentence. The trial Judge is directed to take appropriate steps to serve the remaining sentence and for payment of compensation amount, if not already paid. For the disbursement and other modalities, the directions of the trial Court shall be implemented. The appeals are allowed on the above terms.

.....J.
(P. SATHASIVAM)

.....J.
(DR. B.S. CHAUHAN)

NEW DELHI;
MARCH 18, 2011.

JUDGMENT