

SPEECH OF HONOURABLE MR. JUSTICE V.M. KANADE.

My Lord Justice T. S. Thakur, Senior Judge of the Supreme Court, my esteemed colleagues Justice Reis, Justice Bhadang, Justice Wadane, retired Judges of this Court, Senior Advocates, Mr. Nadkarni, Advocate General of Goa, Vice President of the High Court Bar Association, Shri Sudin Usgaonkar, ladies and gentlemen.

I must congratulate first of all the Goa State Legal Services Authority for organizing one day seminar on a very important topic, a burning issue regarding the rights of the victims and accused for the offences which are committed on juveniles. Two incidents happened in 2012 which showed the consciences of the people. One was an incident in New Delhi a young woman was raped past at night and thereafter she died. Some of the accused were juvenile. Another incident took place in Bombay where a young woman was raped again by two juveniles and there was furor, uproar for the first time. For the first time, the people came on the streets in New Delhi and the Parliament was shocked and thereafter there was debate on the rights of victims who are juveniles, the accused who are juveniles. The POCSO Act was passed. Various amendments have been made in the Indian Penal Code and, therefore, I believe that the today's seminar concentrates on a different aspect of the Rights of Children and the third topic for today's discussion is Lawyering skills, of

course this is with regard to skills of legal aid Lawyers who are appointed for the purpose of assisting the accused or sometimes the victims. I must narrate some of my experiences as a junior Lawyer before I deal with actual topic of Lawyering skills.

When we joined the Bar, at that time we had three year's Course, five year's Course was not introduced and most of us did not have benefits of appearing in the Moot Courts. We find that most of the students now who take admission in Five Years' Course have the benefits of appearing in the Moot Court from day one, from the first day itself. But we learnt in the Court. We have learned what we had learnt in the Law College. I remember my very first day at the Bar. My Senior asked me to mention three matters before an eminent Judge Justice M.N. Chandurkar and he gave me three precipes and asked me to go and mention the matter for taking it urgently on the next day. Normally the practice in Bombay was to go before the Court and to mention in a particular manner. We had to mention, May I with My Lord's kind permission mention a matter for urgent circulation, on so and so date and the normal practice was, Courts used to grant. In those days, the admission matters used to get over by 12.30. Final hearing matters used to start at 12.30. So as a matter of course, circulation was granted. Justice Chandurkar immediately realised that here is a Junior Lawyer who has only the precipes in his hand does

not have the brief. So when I mentioned, he immediately asked me, yes what is the urgency. I was not prepared for the question. My Lord I really do not know the matter. My Senior did not tell me. Then he said where are your appeals. My Lord my Senior did not give me appeals. So, then he took me right, left and center and told me, never to come in the the Court without a brief, without preparation, without knowing what is the law and finally he told me , what is your name. I told him I am Kanade. I told him that I have just joined two days back. He told me, look Mr. Kanade, you are not a Postman of your Senior. So, those were the Judges who were very hard tasks masters. We learnt while appearing in the Courts and we learnt over a period of time, literally after being hammered day in and day out. Again I had a matter, after about two weeks time, in a revision application and my Senior told me to go and argue that matter for admission. This time I prepared thoroughly. I prepared the case on the facts. I checked the law. I checked up the legal position and I made copious notes about what is the case, what is the lower Court's order, findings of the lower Court and all. By the time my turn came, when I got up I completely forgot. I did not know what has been my case. I was completely blank. So I promptly picked up my papers and I started reading. Justice Pratap, again an eminent Judge who then became the Chief Justice of Andhra Pradesh High Court told me, yes

Mr. Kanade what are you doing. I am arguing My Lord. Justice Pratap said no Mr. Kanade you are reading your papers. Keep aside those papers and tell me in your own way what are facts. So, slowly I had a courage and narrated and he allowed me to argue for half an hour and that was a time when butterflies in the stomach managed. I gained some kind of confidence thereafter slowly. So those were the days where we learnt by being hammered in the Court and the Courts developed the Junior Members in the Bar and my Senior would tell me that you learn the law in the University, you learn advocacy while sitting in the Court. Instead of cheat chatting and drinking a cup of tea with your friends, in the Bar, whenever you have spare time, sit in the Court and learn how efficacious lawyers treat each other and address the Court. But I must say that a grid of those old Seniors is fast vanishing and I have seen eminent lawyers, great cross examiners. Unfortunately, the art of cross examination is dying and the Lawyers now put more emphasis on making a witness hostile, rather than discrediting him in cross examination. So Senior Lawyers, in those days of course one can say that those were the days when the Courts wished to have time to give patient hearing on various topics. Now we find that the boards are very heavy. We have about 100 matters on board every day. We find it difficult to hear final hearing matters. But still, while sitting in the Court you can learn so

many aspects of law and the first important thing as Mr. Nadkarni has said is to know the Judge and whenever in our junior days we got a matter say an application for anticipatory bail or an application for bail, we would go and sit in the court and observe the Court for 2 or 3 days before getting the matter circulated. So that we would know what is the view of the Court. What is his temperament. What does he like and what he doesn't consider most important and then you can accordingly pitch your case, may be knowing his ideology or knowing what he would like. But, most I find that, in the junior days, the Judges themselves used to find out the point and ensure that.

So advocacy is not elocution. It is not taking part in elocution. Advocacy is different from a debate. Though you may have to argue on behalf of one side, the opponent argues on the other. Still it is not just a debate. I feel it is not just a rhetoric. It is a kind of persuasion at the highest level, which may be diplomacy or statesmanship and an appeal to the higher conscience of the Judge to find out which defence would best suit your client, so that you could then plead his case and get best kind of result to the court.

I remember in the earlier days lawyers used to be very courteous. Senior Lawyers, I have seen when initially three years I have appeared in the Trial Courts. The Trial Court Judges, some of them are appointed in the early age of 23, 24, 25, obviously had no

experience at the Bar. Senior Lawyers would give them so much respect because ultimately you can't forget that the Judge is going to give an order in your favour or he is going to pass an order and you cannot afford to be discourteous. That is unfortunate. I find that this particular thing younger members of the Bar are not following. This is worship I may call it.

I had a Junior who has put in one year with me and I had a writ petition, in which, as Mr. Nadkarni said, there was absolutely nothing. So I told him that he gets an opportunity to address the Court. So I sent him to the Constitution Bench/ Division Bench in the High Court. He went there. He argued. He had prepared and the case was dismissed. He came down. As I said, he was a Junior, put in just one year. He said "the Judges did not know ABC of the Constitutional law", one year's old ! The Judges who have put in their life time learning the law, interpreting law. This is a kind of attitude which is fast growing. I believe it is not a correct thing. We hear what has happened in Tamilnadu, where the Lawyers boycotted, got out against the Chief Justice of that Court. What happens when a demand for a Bench is not accepted by the High Court. When there are already three/four Benches, th Chief Justice says no. Immediately they burn his effigy. Chief Justice's effigy is burnt. Recently our Chief Justice did not grant demand made by Kolhapur. Promptly they went

on strike, damaged the few vehicles, took his effigy and burnt. So this growing tendency I believe is not a good thing. One other reason I believe is that when we started to join the Bar, we worked with a Senior for couple of years, learned the tricks of the trade. Now a days, the Junior lawyers immediately after joining the Bar within a year or two, start appearing in the cases, without consulting a Senior, without appointing a Senior Lawyer and they are under the wrong impression that they know the law. They know the facts and they can argue in whatever manner they like. One other thing which I have noticed is that, the high traditions of the Bar are fast vanishing and I believe that the Senior Members should try to inculcate these high values. It is true that at times the Lawyers need to stand up, rise to the occasion and tell the Court in a very polite way please, that justice is not being done. But, by and large, the Lawyers and Judges being two sides of the same coin should inculcate that both should co-operate with each other as justice is to be done. It is a long drawn process. It is something which you learn over a period of years and develop this skill. It is not only an art, but it is now perfected into a science. The profession of law is a noble profession and it has been very aptly said by an eminent Jurist Sir Fredrick Pollock. I would like to quote that. He says about the legal profession. He says, "a profession above all the learned professions is not an affair of

bargaining and bread winning, but an undertaking of high duty to mankind to regard law, not merely as regulated stress or a complex machine for securing an administered property. But it is the greatest most interesting and in one word, most humane on the political sciences”.

Lastly, I would like to say that the people criticize lawyers. People say that legal profession is something of making white into black and black into white and so many things are said. Very often people are fond of quoting Shakespeare. The first thing we will do let us kill all Lawyers. Those who know Shakespeare, little better though that line is occurred by dick the butcher to his fellow rebels who are conspiring against the lawful Government and contemplating quashing the people's liberty. We must not forget that our constitution has established a society, based on the rule of law. The liberty of the individual and equal access to justice to each of which an independent legal profession is essential. A world without Lawyers, is a world without law, liberty and justice.

Thank you.
