

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6638 OF 2014

The State of Maharashtra,
Through Police Sub Inspector,
Chawani Police Station,
Aurangabad, Dist-Aurangabad.

...APPLICANT
(Orig. Complainant)

VERSUS

Shaikh Firoz Shaikh Nijam,
Age-20 years, Occu:Business,
R/o-Laghu Wetan Colony,
Mukundwadi, Aurangabad.

...RESPONDENT
(Orig. Accused)

...
Mr. B.L. Dhas, A.P.P. for Applicant.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 11TH FEBRUARY, 2015

ORAL ORDER :

1. Heard learned A.P.P. for State. Perused
record.

2. The learned A.P.P. submitted that Respondent - accused kidnapped the victim Shahin, who was minor and abetted her to commit suicide along with him from Daulatabad (Devgiri) fort, as the investigation showed that they knew that they will not be able to get married and in the process Shahin expired. Thus, according to him there was case of attempt to commit suicide by the accused also. Thus the prosecution was filed. He stated that there was evidence of neighbouring witness that the accused had taken along the victim on motorcycle and later on it was revealed that they had jumped from Devgiri fort. Learned A.P.P. submitted that two workers at the fort, deposed regarding the accused with Shahin jumping from the fort and trying to commit suicide. The learned A.P.P. submitted that the trial Court wrongly acquitted the accused.

3. The age of the Respondent - accused

showed in the trial Court was of 20 years. The learned A.P.P. claims that the victim Shahin was 17 years old. The record does not show that father of Shahin, namely, Mohammad Taher filed missing report. As per record, the Head Constable Ghorpade filed the complaint. It appears that the incident occurred on 9th December 2008 when the alleged suicide and attempt to commit suicide took place, but none of the relatives came forward to lodge complaint and thus the Head Constable filed complaint on 17th December 2008. Although evidence of nearby resident PW-4 Rakesh Chinwad was brought to say that he had seen Shahin leaving on motorcycle with the accused, the trial Court discussed the evidence to find that the witness had seen what was happening from distance of 4-5 houses away and he did not know the accused since before and thus the Court found that it was doubtful if he had seen that the person with whom Shahin left, was the accused. Even regarding the workers who are said to have seen the incident at

fort, trial Court discussed the evidence to find that they had got attracted only after there was shouting regarding the fall. The evidence is not sufficient to conclude that they had jumped or they had fallen. The trial Court found that evidence of father of victim that Shahin has left on 8th December 2008 with accused for which he claimed to have filed missing complaint on that day, was not acceptable as there was no such document on record. In view of such reasonings, for the given evidence, the trial Court found that the offence under Section 363, 306, 309 and 109 of I.P.C. as brought against the accused was not established.

4. The learned A.P.P. is unable to demonstrate that the reasonings as recorded by the trial Court are not based on the evidence brought by prosecution. View of the Trial Court is possible view. There is no reason to interfere in the acquittal recorded by the trial Court. No case

is made out.

5. The Criminal Application is rejected.

[A.I.S.CHEEMA, J.]

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