

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL REVISION APPLICATION NO. 11 OF 2005

Liyakat Ali Akbar Shaikh
Age: 26; Occ: Business,
R/at : Naikwadpur, Sangamner,
District : Ahmednagar. ... Petitioner

VERSUS

1. Ajajkhan @ Lama Shafikhan Pathan
Age : 28, Occ. Labour,
R/o : Naikwadpura, Tal : Sangamner,
Dist. Ahmednagar.
2. Rajjak Abbas Shaikh
Age : 40, Occ. Labour,
R/o. Kuran, Tal. Sangamner,
Dist. Ahmednagar.
3. Parvejkhan Anwarkhan Pathan
Age: 24 years, Occ. Labour,
R/o; Naikwadpura, Sangamner
Dist: Ahmednagar.
4. State of Maharashtra ... Respondents

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Advocate for Applicant : Mr. G. R. Syed h/f Mr. Javed R. Shaikh
APP for Respondent No.4 : Mr. B. V. Virdhe
Advocate for Respondents : Mr.
.....

CORAM : V. K. JADHAV, J.
DATED : 1st NOVEMBER, 2018

ORAL JUDGMENT:-

1. The petitioner-brother of the victim has filed this criminal revision application against the judgment and order of acquittal passed by the I Adhoc Additional Sessions Judge, Sangamner dated 6.10.2004 in Sessions Case No. 2 of 2003.

2 At the outset, it is to be mentioned here that the learned counsel for the criminal revision applicant, on instructions, seeks leave to withdraw this criminal application. However, this is a criminal revision application preferred against the order of acquittal and by order dated 22.6.2006, this Court has admitted the revision application. Thus Criminal revision application preferred against the judgment and order of acquittal cannot be withdrawn after its admission and the same is required to be decided on its merits. Leave to withdraw criminal revision application stands refused.

3. Brief facts giving rise to the present criminal revision application are as follows:-

a) The respondent accused and the informant and his family members are residing at Naikwadpura, Sangamner, Tq. Sangamner, District Ahmednagar. The respondent accused Ajajkhan was working as driver on the jeep owned by the father of victim. The victim is sister of the informant. The respondent accused Ajajkhan is also in relation with the informant. On 19.8.2003, at about 3.00 p.m. the victim had been to market, however, she did not return to her house. Her search was taken by her family members but she was not found. Accordingly the present informant had lodged a missing report at

Sangamner police station at Sr. No. 21 of 2003. Search of victim was going on. On 5.9.2003 at about 11.30 hours, the respondent accused Ajajkhan had phoned to the father of the victim informing that he had taken revenge by abducting the victim as he has been externed because of the action initiated by the father of the victim. The respondent accused Ajajkhan has further informed that he had performed marriage with the victim by force and further threatened to kill her and also demanded certain amount. On 6.9.2003 at about 11.00 a.m. the victim had made phone call to her house. The victim had narrated the incident dated 19.8.2003 to the informant. She has alleged that she had been forcibly taken by the respondent accused Ajajkhan alongwith other persons towards Akole side and also at various places and she was taken on the point of knife. It is further alleged that the present respondent accused Ajajkhan purchased stamp paper in the name of victim and accordingly performed marriage with her. The said marriage was performed by Kazi at Malegaon. The respondent accused Ajajkhan has performed *Nikah* with the victim without her consent etc.

b) On the basis of this information received from the victim, the complaint came to be lodged by the brother of victim. Meanwhile on 2.9.2003 the respondent accused Ajajkhan brought the victim at village Wari. Both of them stayed there till 12.9.2003. On the basis

of the complaint lodged by the informant Crime No. 57 of 2003 came to be registered in the concerned police station for the offences punishable under sections 364 r.w. 34 of I.P.C. During the course of investigation, the respondent accused Ajajkhan and the victim found in a lodge at Vaijapur early in the morning on 13.9.2003. Medical examination of the victim was conducted and after recording statement of the witnesses including the victim, the investigating officer submitted charge sheet before the Court.

c) The prosecution has examined in all six witnesses to substantiate the charges levelled against the accused persons. The respondent accused have taken the defence that prior to 19.8.2003 there was love affair between the respondent accused Ajajkhan and the victim and she had written letters to the respondent accused Ajajkhan. The victim is handicapped. She has no fingers to her legs since birth. Therefore, she was not getting a life partner as per her choice. Accordingly, she fell in love with the accused Ajajkhan. It is she who compelled Ajajkhan to take her away from her parents, as all of them were worried about her marriage. Thus, she on her own left the home with her free will and their marriage is love marriage. After marriage, they went to various places such as Surat, Delhi, Jaipur, Ajmer, Balsad, Ahmedabad, Aurangabad etc. It is also the defence of the respondent accused Ajajkhan that he had sexual

intercourse with the victim with her free will and consent as she is his wife. He had not committed rape as alleged. It has been denied that he made demand of ransom.

d) The learned I Adhoc Additional Sessions Judge, Sangamner by judgment and order dated 6.10.2004, acquitted the respondents accused persons of the offence punishable under Sections 364-A, 366, 468 of I.P.C. and also acquitted the respondent accused No.1 Ajajkhan of the offence punishable under Section 376 of I.P.C. Hence, this criminal revision application by the brother of the informant.

4. Learned counsel for the petitioner-complainant submits that the victim got remarried and she is cohabiting with her husband after remarriage. As such, the informant and her family members are no more interested in prosecuting this criminal revision application.

5. I have also heard the learned A.P.P. for the respondent State.

6. It is well settled that the interference in the order of acquittal passed by the trial court, is limited only to the following exceptional cases:-

- i) order under revision suffers from glaring illegalities,
- ii) or has caused miscarriage of justice,
- iii) or when it is found that the trial court has no jurisdiction to try the case,
- iv) or where the trial court has illegally shut the evidence which otherwise ought to have been considered,
- v) or Where the material evidence which clinches the issue has been overlooked and
- vi) where the admissible evidence is wrongly brushed aside as inadmissible.

7. In the case of **Vimal Singh vs. Khuman Singh and another**, reported in **AIR 1998 SC 3380**, in para 7 of the judgment while coming to the ambit of power of the High Court under Section 401 of Cr.P.C., the Supreme Court has made the following observations:-

“7. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court

would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304, Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."

8. It is not disputed that the victim was major at the relevant time. The learned Judge of the trial court has considered the evidence of P.W.4-victim and scrutinized her oral evidence carefully. The learned Judge of the trial court has given importance to the letters referred to the victim, which she had admitted during the course of her cross-examination and further observed that those letters played very important role together with other circumstances from 13.8.2003 onwards. The learned Judge of the trial court in para 17 of the judgment has referred the text of one of those letters. On perusal of the same, it appears that the victim all the while expressed

her extreme love to the respondent accused Ajajkhan. On the basis of the contents of the said letter, it appears that love affair between respondent accused Ajajkhan with the victim was going on much prior to the said incident and even the said letter was written by the victim to respondent accused Ajajkhan after he got married with one Najahat. The victim knew that respondent accused Ajajkhan is married and he has already one daughter from his wife. Even in para 19 of the judgment, the learned Judge of the trial court has referred another letter of the victim written to the respondent accused Ajajkhan and observed that after going through the contents of the said letter, it appears that the victim was very much eager to marry with the respondent accused Ajajkhan. She all the while insisted the respondent accused Ajajkhan to run alongwith her. Even the victim was waiting for him at the place near one Paan shop. The victim's engagement was to be settled with a boy to whom she was not preferring and as per the contents as reproduced by the learned Jude in para 19 of the judgment, the victim was in love with the respondent accused Ajajkhan. Further, as per the prosecution story as narrated by the victim, she sat in the jeep which was on the way where there were many shops on both the sides of the road. At about 3.00 p.m. the victim sat in the said jeep. It is thus unbelievable that the victim could not raise any shouts or cries to rescue her from the clutches of the respondent accused Ajajkhan. Thereafter, the

victim went with the respondent accused Ajajkhan to various places. The learned Judge of the trial court has also observed that it is difficult to believe that the victim had no opportunity to rescue her from all such places. Even by referring another letter in para 21 wherein the contents of a letter are reproduced, it appears that the victim has expressed her love in such a fashion and manner that she had informed the respondent accused Ajajkhan that in case if she could not performed marriage with him, she may commit suicide.

9. In view of the above, I do not find any fault in the judgment and order of acquittal passed by the trial court. I do not find that the judgment and order of acquittal suffers from any glaring illegalities. The learned Judge of the trial court has considered the entire evidence and discussed the same elaborately and with the reasoned order acquitted the respondents accused for the charges levelled against them. In view of the same and further, in the light of the ratio laid down by the Supreme court in the case of **Vimal Singh** (supra) and further in terms of the settled position that the interference of this Court in the order of acquittal passed by the trial court is limited only to exceptional cases, as referred to above, I do not find that any interference is required in the impugned judgment and order. Hence, the following order:-

O R D E R

- I. Criminal revision application is hereby dismissed.
- II. Rule discharged.

(V. K. JADHAV, J.)

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