

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 9 OF 2015

Shri Shaikh Imtiyaz, s/o Shaikh
Gafur, Aged 30 years, Married,
Business, R/o Vassudev Arcade,
Block B, Flat No.52, Bicholim, Goa. Appellant

V/s

STATE (through)

1. Public Prosecutor, High Court
of Bombay at Goa, Altinho,
Panjim, Goa.
2. Police Inspector, Bicholim
Police Station, Bicholim, Goa. Respondents

Shri Rohan Desai, Advocate for the Appellant.

Shri Mahesh Amonkar, Additional Public Prosecutor for the
Respondents.

CORAM : M. S. JAWALKAR, J.

RESERVED DATE : 23rd SEPTEMBER 2021

PRONOUNCED ON : 30th SEPTEMBER 2021

JUDGMENT:

The present Appeal is filed against the judgment and
order of conviction dated 19.03.2015 passed by the Additional
Sessions Judge, Mapusa in Sessions Case No.33/2008 [Criminal
Case No. 67/S/2008/A (old)] .

2. The case of the prosecution in nutshell is that, the accused on 12.09.2007 at Naik Nagar, Bicholim, Goa, committed house trespass by entering in the house of the complainant, Smt. Rameshwari Ramdas Haldankar with preparations to hurt her daughter Ms. Poonam Haldankar with deadly and sharp weapon. Further, the accused assaulted the victim with deadly and sharp weapon on her face, head and hands with the intention or knowledge that if by that act, he had caused death of the victim, he would have been guilty of murder.

3. Based upon the complaint filed by the complainant (mother of the victim) on 12.09.2007, FIR was registered under No. 159/07 and chargesheet came to be filed before the learned JMFC, Bicholim, which was committed to the Additional Sessions Court, Mapusa. On 29.01.2009, charges came to be framed against the accused under Sections 452 and 307 of IPC. The prosecution examined 20 witnesses to prove its case.

4. The learned Additional Sessions Judge, Mapusa vide judgment dated 19.03.2015 convicted the accused for the offences punishable under Sections 452 and 326 of IPC. For

the offence under Section 452 of IPC, the accused was sentenced to undergo rigorous imprisonment for two years and to pay fine of ₹10,000/- or in default to undergo rigorous imprisonment for six months and for the offence under Section 326 of IPC, the accused was sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹10,000/-, failing which to undergo rigorous imprisonment for six months. If the fine amount is realized, ₹10,000/- be given to the victim girl as compensation. Both the sentences were directed to run concurrently. Being aggrieved by the same, the present Appeal is preferred by the accused (appellant herein).

5. I have heard Shri Rohan Desai, the learned Counsel for the appellant and Shri Mahesh Amonkar, the learned Additional Public Prosecutor for the respondents.

6. It is submitted by Shri Rohan Desai, the learned Counsel for the appellant that the accused and the victim were friendly and were in love with each from their school days. It is submitted that the accused and the victim got married. It is submitted that they have two minor daughters and are leaving happily together. It is submitted that this fact is also stated on

affidavit by the accused as well as the victim. In support of his submissions, the learned Counsel for the appellant has placed on record the marriage certificate of the accused and the victim. He has also placed on record the birth certificates of both the daughters of the accused and the victim. The voters ID of the accused and the Aadhar card of the victim is also placed on record. In addition to the above documents, the accused has placed on record LIC policy receipts in respect of his daughters, which are taken out by the accused as savings in the name of his daughters.

7. Mr. Amonkar, the learned Additional Public Prosecutor for the respondents, in all fairness, submitted that there is no dispute as to the fact that the accused and the victim are married and living together. However, he submitted that the offence is non-compoundable. It is submitted that necessary orders as deem fit may be passed.

8. I have perused the record and more specifically, the statement of the victim, Poonam. She did not stand by the prosecution. She was cross examined by prosecution as she was not supporting the prosecution and there were variations.

In cross also, the victim denied that her statement is recorded as per her say. The complainant is the mother of the victim. However, the victim herself was not supporting the prosecution case. I find that there is substance in the submissions made by the learned Counsel for the appellant. The Hon'ble Apex Court in **Gian Singh Vs. State of Punjab & Another, (2012) 10 SCC 303** has held that:

“Quashing of criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. Where the High Court quashed a criminal proceeding having regard to the fact that the dispute between the offender and victim has been settled, although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

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The High Court may within the framework of its inherent power, may quash the criminal proceeding or the criminal complaint or FIR if it is satisfied that on the face of such

settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice can be casualty and ends of justice shall be defeated."

9. The accused and the victim, who are present in person submitted that they are married and out of the said wedlock are having two daughters. Certificate issued by Civil Registrar, Bicholim is placed on record. The affidavit to that effect in support of his contention that they are residing together since last ten years is also placed on record. The appellant has also placed on record the birth certificates of their daughters and aadhar card of the victim. He also placed on record LIC policies in the name of their daughters. As such, the appellant as well as the victim are taking care and looking to the need of the children. In my considered opinion, they are also taking care of their future prospects. In such circumstances, it would be appropriate to allow the Appeal and acquit the appellant, instead of adding difficulties in the way of appellant and the victim, who are happily residing together. Accordingly, I proceed to pass the following order:

ORDER

(a) The Criminal Appeal is allowed.

- (b) The order dated 19.03.2015 passed by the Additional Sessions Judge, Mapusa in Sessions Case No.33/2008 [Criminal Case No. 67/S/2008/A (old)], is quashed and set aside.
- (c) The appellant is acquitted for the offences punishable under Sections 452 and Section 326 of IPC.
- (d) Bail bonds, if any, stand discharged.
- (e) M.O., if any, to be destroyed.
- (f) The Appeal stands disposed of accordingly.

M. S. JAWALKAR, J.

VAIGANKAR
ESHA SAINATH

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