

Md. Sharif Vs. State of Orissa

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Court : Supreme Court of India

Decided On : Jan-06-1995

Reported in : 1995Supp(3)SCC663

Judge : A.M. Ahmadi, C.J.,; M.K. Mukharji and; S.C. Sen, JJ.

Acts : [Code Of Criminal Procedure \(Cr.P.C\), 1973](#) - Section 401

Appeal No. : Criminal Appeal No. ... of 1995

Appellant : Md. Sharif

Respondent : State of Orissa

Disposition : Appeal Allowed

Prior history : Arising out of SLP (Crl.) No. 2950 of 1993

Judgement :

A.M. Ahmadi, C.J.,; M.K. Mukharji and; S.C. Sen, JJ.

1. Special leave granted.

2. Heard counsel on both sides. The main grievance made by the learned counsel for the appellant is that the High Court refused to look into the evidence on a very technical ground, namely, that there was no specific averment in that behalf in the revision petition and thereby deprived the appellant from showing that the finding

recorded by the courts below was not borne out by evidence. We find merit in this contention for the reason that the learned counsel for the appellant had raised two contentions. The first was rejected on the ground that the evidence of PW 1 could not be acted upon. The second contention urged was that according to the appellate court, the victim girl was taken to the Nursing Home of PW 1 by the appellant introducing himself as the husband of the girl. He had requested the Doctor PW 1 to cause abortion and on his instructions PW 1 had carried it out. Counsel wanted to show from the evidence of some of the witnesses that the aforesaid finding was wholly without basis but the learned Judge hearing the revision application refused to peruse the evidence on the ground that no such specific contention was raised in the memo of the revision petition. We think that the High Court took a very technical view of the pleadings. The High Court ought not to have deprived the appellant-accused of the opportunity to show that the conviction was based on no evidence. We are, therefore, of the opinion that the order of the Judge in revision cannot be allowed to stand. We set aside that order and remit the matter back to the High Court for fresh consideration of the entire matter in revision including defending on the first part. The appeal will stand allowed accordingly. Having regard to the passage of time, we would request the High Court to give this matter priority. The appellant will continue to remain on bail as directed by this Court.

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