

(1984) 09 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 258 of 1980

Godawari

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 24-09-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1985) MhLj 395

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Judgement

1. The is an appeal by the complainant wife against the acquittal of the accused by the learned Sessions Judge. The complainant wife claims that she was the first wife of the accused No. 1 (respondent No. 3 in this appeal), legally wedded to him about 8 years back before the date of the complaint. However, she was not living with her husband at Amdapur, Tahsil Mehekar, District Buldana. According to her, the accused No. 1 had married the accused No. 8 (the respondent No. 8 in this appeal) on 1-6-1974 as per the customary rights of the Hindus. The two witnesses viz. Trimbak S/o Ramchandra P.W. No. 2 and Sakharam S/o Tukaram Tupekar P.W. No. 3 had attended the said marriage. It is not in dispute that the complainant has no personal knowledge of the second marriage. However, she learnt about the same through P.W. No. 3 Sakharam Tupekar. Since the second marriage was conducted during the subsistence of the first marriage with her she filed a complaint charging the accused Nos. 1 and 8 of having committed an offence punishable u/s 494 of the Penal Code.

2. She also charged the other accused for the offence of abetment punishable u/s 494 read with Section 109 of the Penal Code. Besides her own evidence she examined the two witnesses on her behalf referred to above. On behalf of the accused also two witnesses were examined. One of them was the Police Patil D.W. No. 1 of the village Amdapur and the other was one Fakira S/o Govinda D.W. No. 2 who is the resident of the same village in which the accused No. 1 is

living. The statement of the accused was recorded u/s 313 of the Criminal P.C.

3. The learned Magistrate on the basis of the evidence before him held that the first marriage of the accused No. 1 with the complainant was established since the accused No. 1 in his statement recorded u/s 313 of the Criminal P.C. himself admitted the said marriage. He, therefore, held that the first marriage was subsisting when the alleged second marriage was solemnised by the accused No. 1 with the accused No. 8. As regards the second marriage of the accused No. 1 with the accused No. 8 he held on the basis of the evidence of the witnesses examined on behalf of the complainant that the accused No. 1 married the accused No. 8 according to the ceremonies and customary rites of the caste to which they belonged as deposed to by these witnesses. He, therefore, held that the second marriage was validly solemnised between the accused Nos. 1 and 8. Having thus held that the second marriage was validly performed between the accused Nos. 1 and 8 during the subsistence of the first marriage he held the accused No. 1 guilty of an offence punishable u/s 494 of the Penal Code. He, therefore, sentenced him to suffer three months' rigorous imprisonment and to pay a fine of Rs. 300/- and in default of payment of fine to undergo further three months' rigorous imprisonment. As regards the accused No. 8 and also the other accused 3, 4, 5, 6, 7, 13 and 15 he held them guilty of the charge of abetment punishable u/s 494 read with Section 109 of the Penal Code. Each of the above accused was sentenced by him to suffer sentence till the rising of the Court and to pay a fine of Rs. 50/- or in default to undergo 15 days' rigorous imprisonment. He acquitted the accused Nos. 2, 10 and 12 of an offence punishable u/s 494 read with Section 109 of the Penal Code.

4. Being aggrieved, the accused preferred an appeal to the Sessions Court. The Sessions Judge held that the first marriage between the complainant and the accused No. 1 cannot be held to be proved merely by the admission of the accused No. 1 in his statement u/s 313 of the Criminal P.C. He held that to establish that there was a first valid marriage between the complainant and the accused No. 1, the complainant should have led requisite evidence of the solemnisation of the said marriage. No such evidence in regard to the first marriage of the accused No. 1 with the complainant was led on behalf of the complainant. Hence he held that the complainant failed to prove that there was a valid marriage performed between her and the accused No. 1 which was subsisting during the alleged second marriage contracted by the accused No. 1 with the accused No. 8. As regards the alleged second marriage of the accused No. 1 with the accused No. 8 he held that the evidence of the two witnesses examined on behalf of the complainant was not worthy of credence because in the first place they were related to the complainant and were, therefore, interested witnesses and secondly because of their conduct in not reporting the matter either to the police or to the complainant immediately after they witnessed the solemnisation of the alleged illegal second marriage, according to them, of the accused No. 1 with the accused No. 8. The learned Sessions Judge, therefore, acquitted all the accused by allowing the appeal. Being aggrieved the

complainant has preferred this appeal against the acquittal of the accused.

5. The first question that arises for consideration in this case is whether by the admission of the accused No. 1 in the statement under S. 313 of the Criminal P.C., his first marriage between him and the complainant can be held to be proved. The Supreme Court has held in the case of Kanwal Ram and Others Vs. The Himachal Pradesh Admn., that in a case of bigamy the second marriage as a fact, that is to say the essential ceremonies by which it is solemnised, must be proved. According to the said decision, the admission of marriage by the accused is no evidence for the purpose of proving marriage in a case of adultery or bigamy. (Vide Para 7 of the report). The above view was reiterated and was followed by the Supreme Court in the case of Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh, vide paras 17, 18 and 20 of the said judgment). It is true that this case also related to the question of validity of the second marriage. However, it is clear from these two decisions that mere admission of the accused is not sufficient to prove the marriage in the case of bigamy. According to the said decision the said marriage must be proved as a fact in the sense that the essentials required of legal and valid marriage must be proved by the complainant.

6. It is, however, urged that the ratio of the said decisions applies to a second marriage. In this context it is necessary to bear in mind the requirements of Section 494 of the Penal Code. It is not in dispute that for an offence u/s 494 both the marriages must be legal and valid. Unless these ingredients of Section 494 are satisfied, the accused cannot be punished for an offence of bigamy under the same. If the said section requires a strict proof of the validity of the second marriage, it is not understandable why such a strict proof is not required for the first marriage also. It would, therefore, follow that if for the proof of the second marriage, it is necessary for the complainant to prove all the essential requirements of a legal and valid marriage, then by the same standard and by the same reasoning it is necessary for him to prove as a fact all the essential requirements to show that the first marriage was also performed validly. The learned counsel for the complainant has relied upon the observations of the Supreme Court in para 7 of the decision in the case of Gopal Lal Vs. State of Rajasthan, . In the said decision the question about the validity of the first marriage was not raised before the Supreme Court. The question raised was with reference to the second marriage. The observation relied upon by him do not lay down any norm as such on the requisites to be proved in the case of the first marriage. In my view, the observations relied upon by the learned counsel for the complainant from the above decision of the Supreme Court are of no assistance to him particularly in view of the two direct decisions of the Supreme Court on the question of the value of the admissions of the accused in regard to the question of proof of the marriage. The ratio of the Supreme Court in the above decisions cannot be restricted to the second marriage. If this is so, since the essentials required for proving the first marriage are not deposited to by any of the witnesses, the learned Sessions Judge rightly held that the first marriage

is not proved by the complainant. In this view of the matter the other question, whether the second marriage was validly performed or not really does not survive for consideration and the accused cannot be held guilty of the offence u/s 494 of the Penal Code since the complainant has failed to prove that her marriage with the accused No. 1 was legal and valid.

7. As regards the question of the proof of the second marriage, the learned Sessions Judge has directed himself to the credibility of two witnesses examined on behalf of the complainant. In appeal against an acquittal unless it is shown that the view taken by the Sessions Judge is not possible or that his finding is perverse, it would not be open to me to disturb his finding that the second marriage of the accused Nos. 1 and 8 was not properly proved. The learned Sessions Judge has laid stress upon the conduct of these two witnesses in not reporting the matter to the complainant or to the police immediately after the incident of the performance of the second marriage, which according to them, they witnessed. So far as P.W. No. 2 Trimbak is concerned, he does not appear to be related to any of the parties. He deposed that at the instance of one Ramkrishna Satale he was present at the marriage. Neither he nor any of the witnesses show the relationship of Ramkrishna Satale to the parties to the second marriage, so as to show his authority for giving invitation to Trimbak C.W. 2 of the second marriage. The said witness does not report the matter to the complainant or to the police or police patil. In these state of facts, the learned Sessions Judge rightly challenged the credibility of this witness.

8. So far as the second witness C.W. 3 Sakharam is concerned, apart from his alleged relationship to the parties to the second marriage, it is sought to be shown in the cross-examination that his sister, who was the wife of one Tapaji Kadam was divorced and the daughter of accused No. 2 Vithal was married to the said Tapaji Kadam. The said witness also did not inform the complainant or the police about the performance of the second marriage. He only gave the information to the father of the complainant on or about 9-6-1974. Although he has stated that the father of the complainant Laxman Gawande is his distant relative, he is not in a position to tell the exact relation. He has also deposed that there is no relation between him and Ramkrishna Satale. In the absence of the proof of any relationship between the said Laxman, the father of the complainant and this witness, it is difficult to understand why this witness had gone to inform him the said incident on 9-6-1974.

9. In the state of the above evidence on record it cannot be said that the view taken by the learned Sessions Judge is not a possible view about the credibility of these witnesses. If the view taken by the learned Sessions Judge is a possible view, it is not open to me to disturb the same in appeal against acquittal. The finding arrived at by the learned Sessions Judge in regard to the second marriage, namely that the complainant has failed to prove the second marriage is not open to interference by me.

10. In the result, the appeal fails and is dismissed.

11. Appeal dismissed