
(2011) 11 PAT CK 0050

In the Patna High Court

Case No : Criminal Appeal (U/S) No. 10 of 1999

Mohammad Rabban Khan

APPELLANT

Vs

The State of Bihar and mad Saraj Sah

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0050

Final Decision : Dismissed

Judgement

Gopal Prasad, J.—Heard learned counsel for the petitioner and learned counsel for the State.

2. This appeal arises out of the order of acquittal recorded by Shri S. K. Singh, 10th Additional Sessions Judge, Sasaram, passed in Cr. Appeal No. 122 of 1998.

3. The case arises out of the complaint petition filed by Mohammad Rabban Khan, complainant alleging that he had married with Razia Khatoon, daughter of Yabuddin and was residing with his wife at Village- Kotah and the accused person Md. Saraj Sah used to come to the house of the complainant and has enticed away wife of the complainant knowingly full well that she is wife of the complainant with intention that he may have commit intercourse. On the complaint petition, the complainant was examined on oath. Cognizance taken and consequently summons were ordered to be issued.

4. During trial four witnesses were examined on behalf of the prosecution to support the prosecution case. However, defense has also adduced oral evidence and Razia Khatoon has herself adduced evidence as D.W.1.

5. The case of the defense as per evidence of Razia Khatoon that she was married with Md. Saraj about five years back and she also blessed with a child and has also denied to have ever married with Md. Rabban, the complainant.

6. However the trial court taking into consideration the evidence of witnesses that prosecution witnesses have supported the prosecution case that the victim

residing with Md. Rabban and assertion that marriage of Md. Rabban with Razia Khatoon was solemnized in year 1987 and Razia was leaving with him as a wife and she flee away along accused Md. Saraj along with Rs. 6000/- and other articles, convicted the accused for offence u/s 380 and 497 I.P.C. The trial court however, disbelieves the evidence of the victim and has tried to conceal the fact.

7. The order of conviction recorded by the trial court was challenged in appeal. The Appellate Court held that trial court taken the view that having regard to the case of the complainant and defense set up, the question of utmost importance for the question of marriage is the issue. The fact of marriage is requires to be strictly proved and has place reliance upon decision reported in ILR (V) Cal 566 and observed that for offence u/s 497 as well as 498 I.P.C. the prove of marriage is strictly required and the complainant is required to prove the marriage to record the conviction and conviction can only be recorded if the relationship of husband and wife is established and this view has also been accepted in decision reported in Kanwal Ram and Others Vs. The Himachal Pradesh Admn., and hence held that that having regard to the fact and circumstance of the case that since the marriage alleged to have been performed by Mohammedan law, but the parties has neither proved the marriage right nor has proved any documentary evidence regarding marriage and hence taken the view that complainant has not adduced any cogent and reliable evidence to establish the marriage of Md. Rabban with Razia. Hence the order of conviction and sentence recorded by the trial court is not sustainable.

8. Learned counsel for the appellant however contends that P.W. 2 as an Advocate who was present at the time of marriage of Md. Rabban and Razia Khatoon. However, there was no assertion that what role he played as an Advocate nor he has mentioned about any ritual of the marriage nor has proved any documentary evidence.

9. Learned Appellate Court has considered the voter list and acquitted the appellant. Hence I do not find any merit to interfere with the finding recorded by the Appellate Court with regard to the voter list and the order of acquittal recorded by the Appellate Court as the Appellate Court has given very cogent reason for recording the order of acquittal. Hence I agreed with the order of acquittal recorded by Appellate Court and hence in consequence the appeal is dismissed.