

(2011) 01 KAR CK 0180
In the Karnataka High Court
Case No : Criminal A. No. 1410 of 2004

Mr. Sundara Gowda

APPELLANT

Vs

B. Purushothama

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 497, 498

Citation : (2011) 01 KAR CK 0180

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : R.B. Deshpande and P.P. Hegde, for the Appellant; Chandrakanth Ariga, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Pinto, J.—This appeal has been filed by the complainant challenging the judgment dated 29.6.2004 passed by the Civil Judge (Jr. Dn.) & JMFC, Sullia, Dakshina Kannada, in C.C. No. 1163/93 acquitting the Respondent/ accused for the offence punishable under Sections 497 and 498 of IPC.

2. It is the case of the complainant that the complainant got married 2nd accused. After marriage complainant and 2nd accused lived as husband and wife and out of the wedlock they got two male and two female children On 16.10.1994, when he came to the house in the afternoon, he found that accused No. 2 (his wife) was in a compromising position with the 1st accused. Therefore, there was quarrel between them. It is his case that on the next day i.e 17.10.1994, 1st accused came to the house and took 2nd accused and kept her in a rented house as his wife. Therefore, it is the case of the complainant that the accused has committed offences under Sections 497 and 498 IPC. The complaint before Trial Court came to be filed on 23.9.1995 against 1st accused and 2nd accused M.S. Sathyavathi alleging the above facts. The accused was summoned before the Court and thereafter evidence before charge was recorded by the Trial Court by examining C Ws.1 to 5. Thereafter, accused No. 2 sought for

discharge and accordingly by order dated 11.04.2000, Trial Court discharged accused No. 2, since no ingredients of offences under Sections 497 and 498 was made out against her. Thereafter, complainant got examined P Ws.1 to 3 and produced documents Exs.P1 to P11 to prove his case against accused No. 1. The defence of accused was one of the total denial and he has examined DW1 Sathyavathi on his behalf. After hearing the complainant and accused, the learned Magistrate was pleased to acquit the accused holding that the complainant has not made out any case against the accused beyond reasonable doubt. Hence, the complainant has filed this appeal.

3. Heard Sri Maltesh, learned Counsel for Appellant and Sri. Chandranath Ariga, learned Counsel for Respondent.

4. Learned Counsel for Appellant submits that the evidence of P Ws.1 to 3 clearly establishes that the accused was carrying on his life with the discharged accused - Sathyavathi and they were living together as husband and wife. The evidence of P Ws. 1 to 3 further indicates that the complainant and discharged accused No. 2 are husband and wife. He submits that Ex.P4 is the wedding invitation between the complainant and the said Sathyavathi. He further submits that Ex.P5 is the letter written to Damayanthi by 2nd accused Sathyavathi addressed to Mavanje Panjikallu, Mandekolu. Ex.P6 is the extract of voters list wherein one Sathya was shown as wife of Purushotham. He further states that Ex.P7 is the certificate issued by Head Mistress of St, Paul's School which indicates that Vikhyath. P is the son of Purashotham. Ex.P8 is the LIC Policy under which M.S. Sathya is shown as the nominee of Sri. M.N. Sundra and the said M.S. Sathya has been shown as wife of M.N. Sundara. He further submits that Ex.P9 is the letter written by LIC addressed to M.S. Sathya W/o Sundara Ex.P10 is the share certificate, which also indicates that Sathya Sundra W/o Sundara Gowda, is residing at Meenagadde house, Mandekolu village kind post, Sullia Taluk.

5. Ex.P11 is the ration card, in which Sathya is shown as W/o M.N. Sundra. He further submitted that evidence of PW3 who is none other than daughter of complainant and Sathyavathi, further proves that complainant and Sathyavathi are husband and wife. Therefore, he submits that complainant has proved that the accused has enticed and married Sathyavathi wife of the complainant. Therefore, he has committed offences under Sections 497 and 498 of IPC and he further submitted that appeal may be allowed and accused may be convicted.

6. Learned Counsel for Respondent on the other hand submits that the evidence of DW1 - Sathya clearly indicates that she was living with complainant as wife. But they have not married each other. There is no marriage between each other as per the Hindu customs and procedure. She has further stated that complainant had already married to one person by name Lalitha. Thereafter, he had left Lalitha and is living with one Neelamma. He submits that there was no valid marriage between DW and complainant. Therefore, the question of committing offences under Sections 497 and 498 does not arise. DW1 is not a legally wedded wife of the complainant. Therefore, learned Magistrate has held

that the accused had not proved the case beyond reasonable doubt.

7. PW1 has stated before the Court that he has married 2nd accused on 31.5.1978 and he had got two male and two female children from the wedlock. His elder daughter was 18 years by name Vinutha, younger daughter was 19 years, and the son was 17 years. His 2nd and 3rd children are studying. Himself and 2nd accused were residing together till 16.10.1994 and on that day when he came to the house in afternoon, when he peeped through the window, 1st accused was having illicit intercourse with 2nd accused. Thereafter, on observing him, 1st accused ran away from house. On the next day, when he woke up, he observed that his wife was not in the house. 1st accused has taken his wife and made a rented house in Sullia and she was staying with him. In spite of knowing that he has already married, she had married the 1st accused. In the cross examination, he has stated that, the name of his wife is entered in the ration card and there is a marriage invitation printed at the time of marriage. He has stated that his marriage has taken place in the house of his wife and they have resided together for about 17 years.

8. It is suggested to him that there was no illicit relationship between his wife and accused No. 1 and accused No. 1 was not aware that he had married wife of complainant. In the further chief-examination by counsel for complainant, Exs.P1 to P11 are marked and about which a reference has been made in the judgment above. In the further cross-examination by the counsel, it is admitted by PW1 that there was no priest for celebration of marriage of PW1 with Sathyavathi. He was not aware as to who has given Sathyavathi to PW1 in marriage.

9. PW2 - Chandrashekar has stated that the complainant is his elder brother, 2nd accused is sister-in-law. He came to know about the illicit intimacy of accused Nos. 1 and 2, on 16.10.1994 and 17.10.1994 his sister-in-law has left the house and she was staying with 1st accused and they are staying in a room. Thereafter, they are living together in Karkak Taluk as husband and wife.

10. PW3 - Vinutha is the daughter of PW1. She has stated that accused No. 2 - Sathyavathi is her mother and that the accused No. 1 was coming to their house when her father was in hospital. She has stated that both her mother and accused No. 1 were sleeping together in the room. Accused were threatening her not to disclose the fact to her father. On 17.10.1994, 1st accused took her mother to his house and kept her in a room and thereafter is took her to Karkala. She has stated that there is illicit intimacy between her mother and accused.

11. In the cross-examination, she has stated that she is not aware as to how many years after the marriage of her mother, she got children. She is also not aware as to where the marriage took place to her father and mother.

12. DW1 in her statement before the Court has stated that she is the wife of accused No. 1. But no marriage has taken place between herself and accused No. 1.

13. PW1 was always drinking and coming to home and was beating her. In the year 1994, the complainant pushed her out of the house and thereafter he has created false news that she was in contact with accused. She has stated before the Court that she does not know the accused, only after appearing before the Court she came to know about the accused.

14. The Complainant had married one Lalitha before living with DW1. Thereafter, complainant had left Lalitha and learned one Neelamma and presently complainant is living with Neelamma as husband and wife. There is no illicit relationship between her and accused No. 1. In the cross-examination she has stated that complainant had kept her, but not married her legally or factually.

15. It is from the evidence of these witnesses, learned Magistrate has found that the complainant has not proved the case against the accused beyond reasonable doubt and he has acquitted the accused.

16. I have gone through the materials on record and also the judgment of the Trial Court. It is seen that for an offence under Sections 497 and 498, the complainant has to prove that the accused is living with a woman who is married to another person knowingly that the said woman is married to another person and that he has enticed her to marry him and that he has enticed her to marry him. The complainant has not proved the marriage between PW1 and DW1 according to the customs of the community to which they belong. In the absence of any proof regarding their marriage and in view of the fact that DW1 herself has stated that she has been kept by the PW1, I am of the opinion, that the ingredients of the offences under Sections 497 and 498 IPC are not made out. I have gone through the judgment of Trial Court and the reasoning given by the Trial Court is just and proper and there is no error or illegality in the judgment of acquittal passed by the Trial Court.

Therefore, I hold that this appeal is devoid of merits and the same is dismissed.