
(2013) 12 KAR CK 0274
In the Karnataka High Court
Case No : Criminal Appeal No. 3565 of 2010

Phakeerappa

APPELLANT

Vs

Bhimshi and The State of Karnataka

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Penal Code, 1860 (IPC) — Section 497

Citation : (2013) 12 KAR CK 0274

Hon'ble Judges : Hluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Shivanand V. Pattanshetti, for the Appellant; R.S. Lagali, Advocate for R-1 and Sri S.S. Aspalli, HCGP for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Hluvadi G. Ramesh, J.—This appeal is by the complainant against the order of acquittal passed by the III Addl. Sessions Judge, Bijapur in Criminal Appeal No. 5/2008 acquitting the accused. A private complaint was lodged against the accused for the offence punishable u/s 497 of IPC before the JMFC, I Court, Bijapur in PC No. 88/1997, which was converted into CC No. 393/2001. On recording the sworn statement of the complainant, summons was issued and charge was framed against the accused alleging that complainant- Fakeerappa had married one Suvarna daughter of Nagappa about 22 years back as per Hindu customs. Till 1984, they led happy marital life and out of wedlock, there were three daughters and one son born to them. The accused is the complainants co-brother i.e., husband of elder sister of the wife of complainant. He frequently used to visit the house of the complainant who was married to the sister of wife of the accused. This Suvarna started hating the complainant and started quarrelling with the complainant thereby their family life has been ruined. Thereafter, Suvarna went to the house of accused and started living with them. Despite the complainant requested Suvarna to come back and stay with him, she refused to come back. When the accused was transferred from Basavana

Bagewadi to Ron, Suvarna also went along with him and started living with him. At that time, this Suvarna took her children Geeta and Somanath along with her. Suvarna was accompanying the accused throughout wherever he was transferred and she also filed a petition u/s 125 of Cr.P.C. against the complainant Fakeerappa- her husband. The said application came to be rejected.

2. The trial Court after recording the evidence of the complainant/PW-1 and that of his daughter Kusuma/PW-2, drew an inference that the accused had illicit relationship with the wife of complainant as wherever this accused-Bhimashi has been transferred, Suvarna accompanied him along with two children. It is alleged that daughter of complainant witnessed the alleged incident. As such, this accused was convicted u/s 497 of IPC.

3. It is alleged in the complaint that accused had sexual relation with the wife of complainant on 13.06.1997 during night hours in the Government Guest House at Bijapur without his permission. Accordingly, he has sought convicting the accused.

4. The argument of the learned counsel for the appellant is that the accused and the wife of the complainant are living together as husband and wife and also the evidence of the complainant is sufficient to infer adultery despite he is not a witness. The conduct of the accused and one Suvarna i.e., they are living together and they were moving together wherever the accused has been transferred is sufficient to prove the guilt of the accused for the offence u/s 497 of IPC. The lower appellate Court without taking into consideration the conduct of the accused has acquitted the accused. Accordingly, he has sought for convicting the accused.

5. The complainant himself has been examined as PW-1 and his daughter has been examined as PW-2 who did not appear for subjecting herself to cross-examination. However, the trial Court while not accepting the evidence of PW-2, as she was not subjected to cross-examination, solely relying upon the evidence of the complainant, has convicted the accused. The evidence of the complainant is to the effect that frequently the accused used to visit the house of the complainant and had illicit relation with his wife for which he had not consented. Despite he advised the accused not to have relation with his wife, he took Suvarna to Ron on his transfer and he was staying along with her. However, the trial Court convicted the accused by looking into the nature of the evidence relied on by the complainant.

6. According to the accused, this complainant had married one Vimala and begotten children and also there was neglect on the part of the complainant to take care of Suvarna. As such, she filed a maintenance petition and the so called eyewitness to the incident i.e., PW-2 the daughter of Suvarna never turned up for cross-examination. In the light of the observation made to that effect, the evidence of PW-2 cannot be taken as evidence at all. But however, learned Magistrate proceeded to convict the accused. However, in the appeal filed against

the order of conviction, the lower appellate Court acquitted the accused for the above said offence, against which this appeal by the complainant.

7. Having heard the respective learned counsel for the parties, it is noticed that there is said to be difference of opinion between the complainant and his wife Suvarna. It is submitted that since the complainant neglected his wife-Suvarna, Suvarna started living with the accused and also she also has filed a maintenance petition against the complainant seeking for maintenance. It appears, this complainant neglected his wife Suvarna and married one Vimala and from her also he has begotten children. It appears in the above background, Suvarna might have went and joined the family of accused and the accused is shown to have married the sister of Suvarna. In that situation, she went and started living with him. Though the daughter of complainant has been examined as PW-2, but she was not subjected to cross-examination. In the absence of reliable evidence, rightly, the order of conviction has been set aside by the lower appellate Court. Further, several suggestions have been made to the complainant as to he leading life with one Vimala. According to the version of the complainant and evidence of two witnesses is that his daughters by name Anita and Kusuma when they got up in the midnight around 2 p.m., they saw Suvarna sleeping with the accused and involved in sexual relation. As such, when they came and told to him about the same, he has filed a complaint. But PW-2 never turned up to depose this fact before the Court at any time. In that view of the matter and also having regard to the conduct of the complainant that he was leading life with Vimala, there appears to be difference of opinion between Suvarna and complainant. So Suvarna went and started staying with the accused along with her sister. Even there is no whisper by the wife of the accused against this Suvarna. In the circumstances, rightly, the lower appellate Court acquitted the accused. In that view of the matter, the appeal filed by the complainant has no merit. Accordingly, appeal is dismissed.