

(2017) 01 DEL CK 0250

In the Delhi High Court

Case No : 1187 of 2013

RAJ KUMAR

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 156(3) - Power to examine the accused - Police officers power to Investigate cognizable case
Indian Penal Code, 1860<

Citation : (2017) 01 DEL CK 0250

Hon'ble Judges : Mukta Gupta

Bench : SINGLE BENCH

Advocate : Mukesh Vatsa, Anuj Chaturvedi, Hiren Sharma, Devender?Kumar

Judgement

1. Convicted for offences punishable under Sections 420/468/376 IPC Raj Kumar challenges the impugned judgment dated July 17, 2013 and the order on sentence of even date directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.50,000/- for offence punishable under Section 376 IPC and rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/- each for offences punishable under Sections 420 IPC and 468 IPC.

2. Assailing the conviction, learned counsel for Raj Kumar contends that from the evidence on record, it can be inferred that the prosecutrix knew about the previous marriage of the appellant, thus, there was no deception. There are inconsistencies in the testimony of the prosecutrix. The appellant is an illiterate person and did not know English. The affidavit was in English and his signatures were obtained under the influence of some stupefying substance. The prosecutrix admitted in her testimony that she was neighbour of the appellant and the deceased husband of the prosecutrix was friend of the appellant, thus, it cannot be said that the prosecutrix did not know about the previous marriage of the appellant. In the complaints, there were allegations only with respect to

outraging her modesty and the allegation of rape was afterthought and a material improvement. Lastly, DW-1 sister-in-law of the prosecutrix, stated that the prosecutrix was fully aware that the appellant was a married man and she even attended his wedding.

3. Per contra learned APP for the State contends that the factum of marriage stands proved from the testimony of the prosecutrix and PW-5 Pandit Deepak Shastri, who is an independent witness to the marriage and deposed that he performed the marriage of the appellant and the prosecutrix as per Hindu rites and customs and also brought the record to fortify the same. Since the appellant married the prosecutrix during subsistence of his first marriage and established relationship with the prosecutrix, he is guilty of offence punishable under Sections 420, 468 and 376 IPC.

4. The prosecution case is that a complaint was filed before the Metropolitan Magistrate with an application under Section 156(3) Cr.P.C. by the prosecutrix on the basis of which FIR No. 151/2010 under Sections 193/376/420/468/471/506 IPC was registered at PS Uttam Nagar. After the charge-sheet was filed, the prosecutrix, who was examined as PW-1, deposed in Court that earlier she was married to Madan Lal who died in the year 2000 and from that wedlock three children were born who were living separately after their marriages and she was living alone. In the year 2006, she met Raj Kumar, the appellant herein, in a religious procession after which he started visiting her at her house. Raj Kumar told her that he was unmarried and expressed his desire to marry her and to support her. Raj Kumar kept on visiting her for about one year whereafter, the prosecutrix agreed to marry him. The prosecutrix was living at Uttam Nagar in a rented house. Thereafter, she shifted to Mangolpuri and after around one month of her shifting, Raj Kumar married her on July 22, 2008 in Arya Samaj Mandir. The marriage was solemnized in the presence of two witnesses namely Sunil Kumar PW-6 and Kusum Lata who had also signed the certificate of marriage Ex. PW-1/A. Raj Kumar lived with the prosecutrix as her husband in the rented house at Mangolpuri for about a month and they had sexual relationship also during that period. After one month, they shifted to Uttam Nagar where also they lived for about three months and had sexual relationship as husband and wife. After three months, Raj Kumar left from there saying that he was going to submit some papers for his job as he was working in Delhi Jal Board at Ashok Vihar. However, Raj Kumar did not return home for about two months. One day in the evening, he came to the house followed by his wife, Madhu and her brother. Madhu, claiming herself to be appellant's legally wedded wife, started quarreling with the prosecutrix, snatched the money and gold ring given to the prosecutrix by the appellant and went away. The appellant left the next day and did not return thereafter. The prosecutrix stated that she had no knowledge that the appellant was married and had two children. The appellant played fraud upon her and developed sexual relationship on the basis of fraud. During her cross examination, she stated that the appellant had given an affidavit Ex. PW-1/C that he was a bachelor as on July 22, 2008. She had filed a petition under Section 9

of Hindu Marriage Act. She denied the suggestion that Raj Kumar was married to Madhu in the year 1988 when she and her family members attended the marriage or that she had given "muh dikhai" to Madhu, PW-7 on the next day of marriage.

5. PW-5, Pandit Deepak Shastri, Arya Samaj Mandir stated that he had issued the certificate of marriage Ex. PW-1/A after performing the marriage of Raj Kumar with the prosecutrix as per Hindu rites and ceremonies. He also stated that as per their record, one advocate Kusum Lata had brought them. Raj Kumar had given an affidavit that he was unmarried at that time. The prosecutrix had also given an affidavit to the effect that she was a widow and had handed over the death certificate of her husband.

6. PW-6, Sunil Kumar who was the son-in-law of the elder sister of the prosecutrix was a witness to the marriage of Raj Kumar with the prosecutrix. He corroborated the testimony of the prosecutrix and PW-5, Deepak Shastri. However, since he was not cross-examined, his testimony cannot be looked into.

7. PW-7, Madhu, wife of Raj Kumar, stated that she was married to Raj Kumar about 24 years ago and two children were born from the wedlock. The prosecutrix had attended their marriage. After the marriage, they used to reside at Ranjit Nagar near Shadipur Depot and the prosecutrix used to reside in their neighbourhood.

8. PW-13, Ms. Deepa Verma, Asst. Director (Documents) FSL prepared the FSL report Ex. PW-13/A and opined that: "the person who wrote the red enclosed signatures stamped and marked S1 to S61 also wrote the red enclosed signatures similarly stamped and marked Q1 to Q3"

9. Thus from the evidence on record adduced by the prosecutrix it is proved that Raj Kumar performed marriage with the prosecutrix during the subsistence of his earlier marriage and executed a false affidavit that he was a bachelor when he performed the marriage with the prosecutrix. Though from the aforesaid discussion the ingredients of offence punishable under Section 494 IPC are established, as Raj Kumar married the prosecutrix during the subsistence of his marriage with Madhu, thus committed offence punishable under Section 494 IPC, however, since he has not been charged with Section 494 IPC, thus this Court need not delve into it.

10. However, the issue remains whether the prosecutrix had knowledge of the marriage of Raj Kumar with Madhu or not. As regards, offences punishable under Sections 420/376 IPC the claim of the prosecutrix is that she was unaware of the marriage of Raj Kumar with Madhu and thus by deception Raj Kumar solemnized marriage with her and established sexual relationship with her.

11. The prosecution itself has examined Madhu wife of Raj Kumar as PW-7 who deposed that after her marriage with Raj Kumar she used to reside at Ranjit Nagar near Shadipur Depot and the prosecutrix used to reside in their

neighbourhood. She further deposed that prosecutrix and her husband were on visiting terms with them and the prosecutrix attended her marriage with Raj Kumar. Further Ms. Sharda sister-in-law i.e. sister of the deceased husband of the prosecutrix was examined as DW-1. She deposed that Raj Kumar and the deceased husband of the prosecutrix were friends and on visiting terms. She further deposed that even she was on visiting terms with Raj Kumar and his family and the prosecutrix was fully aware that Raj Kumar was a married man and had even attended his wedding with her family and gave gifts to Madhu, wife of Raj Kumar. In cross-examination by the learned Additional Public Prosecutor nothing could be elicited. Further though in his statement under Section 313 Cr.P.C. Raj Kumar denied performing any marriage with the prosecutrix and stated that he was being falsely implicated, he entered the witness box as DW-2. He deposed that initially he was on friendly terms with the husband of the prosecutrix and her family, however thereafter he shifted from New Ranjit Nagar to Jahangir Puri. After the death of Madan Lal, he helped the prosecutrix financially. He further deposed that one day the prosecutrix, her son Mukesh and son-in-law Sunil made him consume a lot of liquor and sign some documents and also took some photographs. Thereafter the above-noted false case of rape was foisted on him.

12. In her cross-examination though the prosecutrix denied that she was living at New Ranjit Nagar till 1999 but admitted that her residential address at New Ranjit Nagar was B-261 and that Raj Kumar was also living in New Ranjit Nagar though she did not know the correct address. She also admitted that the distance between her house and house of Raj Kumar was 100 meters. Thus, from this admission of the prosecutrix that she knew the appellant and his family who was residing in his neighbourhood which fact is duly supported by the testimony of DW-1 the sister of the deceased husband of the prosecutrix, the prosecution has not been able to prove that the prosecutrix did not know about the factum of marriage of Raj Kumar with Madhu when she performed marriage with Raj Kumar and he committed sexual intercourse with her on the false pretext of a legal wedding. Thus Raj Kumar is entitled to be acquitted in respect of offences punishable under Sections 420/376 IPC.

13. Section 468 IPC provides for a punishment when forgery is committed with intention that the documents so forged would be used for the purpose of cheating. In the present case, though from the deposition of the expert PW-13 Deepa Verma it has been proved that the affidavit was duly signed by the appellant wherein he disclosed himself to be a bachelor thereby proving forgery, however, since the element of cheating was missing for the reason the prosecutrix was aware of the marital status of Raj Kumar, ingredients of Section 468 IPC are not fulfilled. Thus Raj Kumar is entitled to be acquitted for offence punishable under Section 468 IPC but liable to be convicted for offence punishable under Section 465 IPC which is a minor offence of Section 468 IPC and punishable with imprisonment upto two years.

14. Consequently, acquitting Raj Kumar for offence punishable under Sections 420/468/376 IPC he is convicted for offence punishable under Section 465 IPC. Raj Kumar has already undergone more than four years of imprisonment, which is more than the sentence prescribed for an offence punishable under Section 465 IPC. The Superintendent, Tihar Jail is thus directed to release Raj Kumar forthwith, if not required in any other case.

15. Appeal is disposed of.

16. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

17. TCR be returned.