
(2017) 07 BOM CK 0028
In the Bombay High Court
Case No : 449 of 2001

The State of Maharashtra

APPELLANT

Vs

Satishkumar Rameshwardayal Tiwari

RESPONDENT

Date of Decision : 07-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 378](#) - Appeal in case of acquittal
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 498A](#), [Section 494](#)

Citation : (2017) 07 BOM CK 0028

Hon'ble Judges : Vibha Kankanwadi

Bench : SINGLE BENCH

Advocate : P. H. Gaikwad-Patil, Abhaykumar Apte

Final Decision : Dismissed

Judgement

1. The present Appeal has been preferred by the State challenging the acquittal of the Respondent/Accused for the offence punishable under Sections 420, 494, 498A and 506(2) of the Indian Penal Code by the Chief Judicial Magistrate, Pune in RCC No. 481 of 1998 on 04.01.2001.

2. The factual matrix leading to the Appeal are that the informant Sarojini got married with the Accused on 07th July 1974 at Nagpur. It was a registered marriage. After their marriage, the Accused was transferred to Pune. He had not taken the informant to Pune. Initially, he used to visit Nagpur once or twice in the month. Informant felt that the Accused was avoiding to take her to Pune and therefore, all of sudden in December, 1974 she went to the house of the Accused at Pune. She saw a lady by name Manorama in the house of the Accused. She came to know that she is the legally wedded wife of the Accused and she has three daughters and a son from the Accused. It was told to her that the marriage between the Accused and Manorama had taken place in the year 1967. There was a quarrel between the informant and the Accused. It was also further

contended that the Accused used to visit the house of the informant at Nagpur and she has begotten daughter from him. The informant, thereafter, got transferred to Pune in January 1981 and resided with the Accused as well as his first wife till 28th March, 1994. The informant noticed that the Accused was having illicit relations with other ladies. In the month of February, 1994, the Accused had asked informant to sign on blank Stamp Paper because he wanted to get her bungalow transferred in his name and at that time, the accused has given threat to kill her. On that count, the informant left the house of the accused on 28th March, 1994 with her daughter and since then she was residing separately. Thereafter, she lodged first information report (FIR) with the Crime Branch, Pune on 01st July, 1994.

3. After registration of FIR, the investigation has taken place. Statement of witnesses have been recorded and after completion of the investigation a chargesheet has been filed before the Chief Judicial Magistrate, Pune.

4. After the accused appeared, a charge has been framed at Exh.3 for the offence punishable under Sections 420, 494, 498A and 506(2) of the Indian Penal Code. The contents of the charge was read over the Accused in vernacular language. He pleaded not guilty. The trial has been conducted. The prosecution has examined in all 14 witnesses in order to bring home the guilt of the Accused.

5. After considering the evidence on record and the hearing both the sides, the Chief Judicial Magistrate has come to the conclusion that the prosecution has failed to prove the guilt of the Accused. The Accused has been therefore, acquitted of all the offence. This order of acquittal is under challenge in this Appeal.

6. Heard the learned APP for the Appellant State and the learned Counsel appearing for the Respondent/Accused. At the outset, I would like to say that though, the prosecution has examined P.W.1 and two, on the point to bring it on record that the Accused had illicit relations with them, but, it is to be noted that there was no charge against the Accused touching the said point.

7. The main reliance of the prosecution appears to be on the testimony of the informant. However, the careful scrutiny of her testimony would show that she has not given reason as to why she went for the registered marriage. Secondly, she has stated that Accused was staying with her sister in her house, which was in front of her house at Nagpur. She has not explained in what capacity he was residing with her sister. Her testimony is also silent as to what representations were made by the Accused to her before alleged marriage. Unless the deception is since beginning, ingredients of the offence under Section 420 of the Indian Penal Code will not get attracted. The learned Chief Judicial Magistrate has rightly discarded the testimony of P.W. 13 Doiphode, who was then serving as Clerk in the office of the SubRegistrar at Nagpur. First of all, he was not a proper person to depose on the point of certificate of marriage Exhibit 84, though it is a public document. Secondly, from the admission in the cross that the said

certificate does not bear the seal of their office is fatal to the claim made by the informant regarding her legal marriage with the accused.

8. Except the informant, no other witnesses have been examined by the prosecution to prove marriage between the informant and the Accused. It has been rightly observed by the learned Trial Court that the best witnesses to prove the marriage were mother and the brother of the informant. The prosecution has not given reason for not examining them.

9. The accused has produced on record chits/letters written by the informant showing that she had developed intimacy with the accused. The informant has admitted her handwriting on the letters Exhibits 40 to 42, 44 and 45. The contents of the said letters are clearly giving indication that she had knowledge that the Accused was already married and had five children. When these facts have emerged the claim of the informant that she was the legally wedded wife, goes away and therefore, the question of attracting the provisions of Section 498A of the Indian Penal Code will not arise. The fact can also be seen from a different angle. The informant has not given details of the alleged harassment or illtreatment committed by the Accused, the alleged suppression of the marital status of the Accused will not amount the harassment or illtreatment when the evidence on record shows that the informant was very well knowing the said fact. When she has stated that she was residing with accused since 1974 and FIR has been lodged on 01.07.1994, there appears to be less scope, in absence of details for the illtreatment or harassment.

10. Further, the ingredients of the Section 494 of the Indian Penal Code are also not attracted in this case, for the simple reason that the marriage between the Accused and P.W.3, Manorama was performed in the year 1967 that is much prior to alleged date of marriage between the informant and the Accused. Rather the evidence, as accepted by informant shows that inspite of knowledge of first marriage, she had resided with accused as his wife that too when Manorama was also residing in the same house. Section 494 of Indian Penal Code can be invoked for subsequent marriage and not for previous legal marriage.

11. The informant has also stated that she was threatened by the Accused to kill and also threatened to kill her daughter by setting her to fire in the month of February, 1994. The important point to be noted is that somewhere in 1974, she had come to know about the previous marriage of the accused, but then she says that still she resided with the accused, her daughter was begotten from the Accused in 1976. When the alleged threat was given her daughter was studying in 10th standard that means till then there was no complaint or dispute between them. Then, how all of sudden the relations would have gone wild. It is also to be noted that the alleged threat was given in February 1994 but the FIR appears to have been filed on 01st July, 1994. There was no explanation for the delay. Under such circumstances, the ingredients of Section 506(2) of the Indian Penal Code also cannot be said to have been proved.

12. There is no attempt to examine the daughter of the informant, who could also throw light on the facts of the case.

13. The evidence of other witnesses has less significance. However, one fact is required to be considered that in order to prove the signature of the Accused on certificate of registration, the matter was referred to the handwriting expert, Panch witness who has been examined on the point flatly refused that the sample or specimen were taken in his presence. The opinion of the handwriting expert was also not been tendered before the Trial Court. Under such circumstances, the testimony of the Investigation Officer has no evidentiary value.

14. In *Murugesan v. State Through Inspector of Police* reported in (2012) 10 SCC 383, Apex Court had the occasion to consider the broad principles of law governing the power of the High Court under Section 378 of the Code of Criminal Procedure, 1973. The summary of the relevant principles of law set out in para 21 of the judgment may be extracted hereinunder:

"21. A concise statement of the law on the issue that had emerged after over half a century of evolution since *Sheo Swarup Sheo Swarup v. King Emperor*, (1933-34) 61 IA 398 : AIR 1934 PC 227 (2) is to be found in para 42 of the Report in *Chandrappa v. State of Karnataka*(2007) 4 SCC 415. The same may, therefore, be usefully noticed below:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed

and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

15. After relying on the said decision, Apex Court has further observed in Prem Singh Vs. State of Haryana reported in 2013 STPL(Web) 702 SC : that,

"The parameters within which the High Court was required to exercise its powers under Section 378 of the Code while hearing the State's appeal have already been noticed. If a conclusion with regard to the innocence of the accused is reasonably possible on the basis of the evidence and materials on record the High Court ought not to have disturbed the findings recorded by the Trial Court, even if, on a reappraisal of the evidence, it was inclined to take a different view. So long the view taken by the Trial Court was a possible view the exercise of the appellate power of the High Court under Section 378 CrPC would remain circumscribed by the well settled parameters".

16. Therefore, taking into consideration the evidence that was adduced before the Trial Court, in my considered opinion, the view taken by the Trial Court, on appreciation of the said evidence is a probable and plausible view. Merely because, the second view may be possible, this Court in its appellate jurisdiction dealing with the Appeal against acquittal cannot substitute its view and therefore, the view taken by the Trial Court needs to be confirmed.

17. Hence, the Appeal stands dismissed.