

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 152 OF 2000

APPELLANT :- The State of Maharashtra
(Ori. Complainant)

...VERSUS...

RESPONDENTS :- (1) Pandurang Maruti Parakhi,
aged 35 years,
r/o Manded, Tal. Mulshi,
District Pune.

(2) Prakash Kondiba Parakhi,
aged about 51 years, Occ.: Agri
r/at above.

(3) Pandharinath Dattu Shendage
aged about 23 years,
r/at above.

(4) Sakhubai Maruti Parakhi
aged about 53 years, Occ.: Agri
r/at above.

Mrs. G.P. Mulekar, APP, for the appellant/State.
None for the respondents.

CORAM : S.B. Shukre, J.

DATED : 25th June, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 31.8.1999 delivered in Regular Criminal Case No. 197 of 1996 by J.M.F.C., Court No. 7, Pune, thereby acquitting respondents 1 to 4 of the offences punishable under Sections 498-A and 494 read with Section 34 of Indian Penal Code.

2. Briefly stated, facts of the case are as under :

(i) Respondent no. 1 Pandurang is the husband of complainant Parvatibai. Their marriage was solemnized on 2.4.1986 at village Chinchwad, Pune. At that time, respondent no. 1 was doing a service at printing press at Mumbai and, therefore, after the marriage, Parvatibai came to Mumbai for residing with her husband. Respondent no. 4, mother-in-law of Parvatibai, was then residing at village Manded, but she along with her husband used to intermittently visit Mumbai and stay with Parvatibai and respondent no. 1. Since Parvatibai did not conceive any child after the marriage, respondent no. 4 used to taunt her by saying that she was a barren woman. Soon after, respondent no. 1 as well as respondents 2 and 3 started accusing Parvatibai as an infertile woman. Parvatibai was also examined at the hospital of one Dr.Damle and at that time she was told by Dr.Damle that there was no fault with her. Since the year 1995, Parvatibai and respondent

no. 1 started residing at Kothrud where respondent no. 1 had constructed one house, although he continued with his service at Mumbai. Respondent no. 1 used to attend to his job in Mumbai by commuting between Pune and Mumbai every day. While Parvatibai was residing at Kothrud along with respondent no. 1, it is alleged, he started giving her ill-treatment by charging her as an issueless woman. One day, respondents 1 to 3 pressurised and ill-treated Parvatibai for the whole night so as to compel her to put her signatures on some blank papers. It was alleged that respondent no. 1 then had planned to perform a second marriage. The incident was told by the complainant to her father when her father intervened and advised respondent no. 1 to not to indulge in any illegal act and that if at all he wanted to perform second marriage he would have to do it in a legal manner by making provision for maintenance and separate residence for his daughter Parvatibai.

(ii) But, respondent no. 1 did not pay any heed to the advice given to him by his father-in-law. On 3.6.1996, he performed second marriage. The complainant learnt about the same on 4.6.1996 and she fell ill. She was admitted to a hospital and after her discharge from the hospital, her father took her to his house at village Chinchwad, where she continued to stay till filing of the complaint. After some time, on 25.6.1996, the complainant filed a report against the respondents with police station Paud. After registering the offence punishable under Sections 498-A and

494 of Indian Penal Code, police investigated the case. After completion of investigation, a charge-sheet was filed and the respondents were prosecuted for the said offences by the Court of J.M.F.C., Court No. 7, Pune.

(iii) On merits of the case, the learned Magistrate found that the offences punishable under Sections 498-A and 494 read with Section 34 of Indian Penal Code, for which the respondents were charged, were not proved beyond reasonable doubt and, therefore, by his impugned judgment and order passed on 31.8.1999, the learned Magistrate acquitted the respondents of the said offences. Not being satisfied with the same, the State is before this Court in the present appeal.

3. I have heard learned APP for the appellant/State. Nobody has appeared on behalf of the respondents. I have carefully gone through the record of the case and also the impugned judgment and order.

4. Learned APP has submitted that the impugned judgment and order are not sustainable in law and the finding of innocence recorded by the learned Magistrate cannot be said to be logically appearing from the facts established on record by the prosecution. She submits that the learned Magistrate has committed a serious error of law and facts while appreciating the evidence of the prosecution.

5. On going through the impugned judgment and order as well as prosecution evidence available on record, I am of the view that the argument of learned APP for the State cannot be accepted.

6. In this case, the prosecution has examined only four witnesses, out of which evidence of P.W.1 Parvatibai and her father P.W. 3 Shreepat is material. Evidence of P.W.2 Sunita, sister of prosecutrix, does not throw any light on the allegations of ill-treatment of Parvatibai at the hands of the respondents and so also the evidence of the Investigating Officer P.W.4 Ramchandra does not help the prosecution case, it being formal in nature. Therefore, it is not necessary to consider the evidence of P.W.2 Sunita and P.W.4 Ramchandra. Now, let us examine the evidence of P.W.1 Parvatibai and P.W.3. Shreepat.

7. It is seen from the evidence of P.W.1 Parvatibai that for a period of about 9 years, since her marriage was performed, it was performed on 2.4.1986, she was not subjected to any cruelty or ill-treatment by the respondents. For this period of time, her evidence shows, she was not ill-treated by the respondents. She has not stated that till the year 1995 she was treated cruelly by her husband or the respondents. She speaks of her being ill-treated by the respondents only after 1995. According to her, in the year 1995 one operation, which appears to be a part of her infertility treatment, was performed upon her at Damle Hospital, Karvenagar,

Pune, and thereafter the respondents started ill-treating her by saying that she was a barren woman and that she should give her consent for performance of second marriage by respondent no.1. She has also stated that respondents 1 to 3 obtained her signature on a blank stamp paper without her consent and under coercion by threatening to kill her continuously during one night. She has also stated that two days later on, her father came to her house at Kothrud and then she narrated the whole incident to her father and then her father tried to instill wisdom in her husband by advising him that the second marriage should be performed by him in a legal manner by making provision for maintenance and residence of his daughter. Even then, according to P.W. 1 Parvatibai, the second marriage was performed by respondent no. 1 with one Malti at village Alandi.

8. Now, if we take a look at the evidence of P.W.3 Shripat, father of P.W.1 Parvatibai, we would find that he does not speak anything about cruelty or ill-treatment meted out to his daughter by the respondents after the year 1995. He speaks of ill-treatment of his daughter before 1995 when he says that his daughter was treated well by respondent no. 1 initially for a period of 2-3 years and thereafter respondent no. 1 started ill-treating her. He says that operation of Parvatibai was performed in the year 1995 and six months thereafter Parvatibai started visiting her husband at Mumbai intermittently. According to him, Parvatibai

used to stay at Mumbai for 15 days and used to reside at Pune for another 15 days and this went on for a period of about 5-6 months with her intermittently staying at Mumbai and at village Chinchwad. During this period of time, he does not say anything about his being told by Parvatibai about the ill-treatment given to her by the respondents. He only says that sometime after lapse of about 5-6 months of intermittent stay of Parvatibai at Mumbai and Chinchwad, he was told by Parvatibai of performance of second marriage by respondent no. 1. He also does not say anything about his being told by Parvatibai that Parvatibai was put under stress and coercion by the respondents for whole of one night so as to compel her to sign any blank stamp paper. He also does not speak of anything about cruelty allegedly given to Parvatibai by respondent no. 1 or remaining respondents in order to obtain her signature on a blank stamp paper. Thus, his evidence is inconsistent with the evidence of his daughter P.W.1 Parvatibai.

9. The above discussion of material prosecution witnesses would only indicate that whatever evidence is there, it is discrepant and inconsistent, and, as such, does not inspire any confidence. Although, levelling of allegation of a woman being a barren or infertile itself is a cruelty and is of a serious nature, it must be proved by the prosecution by leading consistent, cogent and reliable evidence. Similarly, the performance of second marriage by her husband during the subsistence of his marriage

would also amount to cruelty, as contemplated under Section 498-A of Indian Penal Code, provided factum of second marriage and leading to causing of injury to the woman are proved beyond reasonable doubt by the prosecution. In the instant case, neither the cruelty meted out to Parvatibai on account of her being a barren woman nor the factum of performance of second marriage by respondent no. 1 has been proved by the prosecution by bringing on record a cogent and reliable evidence. The evidence discussed above, as stated earlier, does not lead us anywhere in proving either cruelty under Section 498-A or bigamy, as required under Section 494 of Indian Penal Code. The learned Magistrate, therefore, has rightly held that prosecution has failed to establish beyond reasonable doubt both the offences of cruelty and bigamy, alleged against respondents 1 to 4 and respondent no. 1 respectively. If the offence of bigamy has not been proved against respondent no. 1, there would be no question of proving of the offence of abatement of bigamy as per Section 109 of Indian Penal Code or common intention under Section 34 of Indian Penal Code. Thus, I am of the view that no case has been made out for making interference with the impugned judgment and order and the appeal deserves to be dismissed.

10. The appeal stands dismissed.

JUDGE

/TA/

