

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-1400-MA of 2015 (O&M)  
Date of Decision: October 05, 2015

State of Haryana

.....Petitioner

Versus

Vishnu Bir Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Shri Vivek Saini, AAG, Haryana, for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported?

**Hemant Gupta, J.**

The present petition seeking leave to appeal is directed against an order passed by the learned Additional Sessions Judge on 13.4.2014, whereby the accused (respondent herein) was acquitted of the charges for the offences under Sections 376, 506, 494 IPC.

The prosecutrix aged 25 years lodged a complaint that she was working as an Executive-cum-Assistant in M/s Komo Toys Pvt. Limited, Udyog Vihar Phase-IV, Gurgaon, whereas the accused was working as a Production Manager. He pressurized her to make relations with her when they were working in the same establishment otherwise he threatened her to shunt out of the job. The accused claimed to be unmarried and promised to marry the prosecutrix. The accused had taken the prosecutrix to Sheetla Mata Mandir and after taking several vows, accused had assured to marry her. He had taken her to the hotel where he made illicit relations with her and also

shown her a blue film. She was brought to Courts at Gurgaon, where under the pretext of marriage, her signatures were obtained on several papers without allowing her to read the same. He also fixed the marriage at Arya Samaj Temple but did not call any member of his family. On the basis of such statement, the prosecution was launched against the accused. The statement of the prosecutrix was recorded under Section 164 Cr.P.C. The accused was arrested on 30.05.2014.

After completion of investigation, a report under Section 173 Cr.P.C. was filed before the competent Court. The accused pleaded not guilty and claimed trial. Consequently, the prosecution was called upon to lead its evidence. The prosecution examined prosecutrix as PW1, her father Kant Pal Singh as PW-8 and also examined Dr. Rishipal Shastri as PW7, the priest who is said to have solemnized the marriage of the prosecutrix with the accused. The prosecution also led other evidence of formal and informal nature including Dr. Kamaldeep Singh as PW6, who proved medico legal report of the accused.

After considering the evidence led by the prosecution, the Court found that the complaint for the offence under Section 494 IPC is not maintainable at the instance of the second wife. It was also found that it is not possible to believe that the prosecutrix did not come to know that the accused was already a married man but she has developed physical relations with the accused. She cannot make a grievance for an offence under Section 376 IPC.

The trial Court record was requisitioned on 15.10.2015 and has been perused.

A perusal of the statement of the prosecutrix in examination-in-chief shows that she had stated that the accused

promised to marry her and taken her to Sheetala Mata Mandir. She further stated that the accused had taken her to a hotel on the pretext of going to hospital where he made physical relations with her against her will. He made physical relations in the room of his friends as well and also started visiting her room and made physical relations against her wishes. She further stated that in December, 2013, accused brought her to the Courts at Gurgaon under the pretext of marriage and her signatures were obtained on some papers without permitting her to read those papers. He had taken her to Aligarh, where she was introduced to some other family members and not his own family members. On 3.2.2014, accused called her parents for performing marriage, which was performed at Arya Samaj Temple, Delhi, but none from the accused's family joined the marriage ceremony. Thereafter, they started living at Rajiv Nagar. It was on 5.5.2014 accused left her room for going to Chandigarh where, he told her that he had got a job. But when she made a telephonic call to him, the accused did not answer the same. In the evening she received a call from Anita, said to be wife of the respondent-accused. It was on 8.5.2014, the accused came to her room and disclosed that he was married and wrongly told her that she was his sister-in-law. On 11.5.2014, Anita wife of the accused came to her room and asked her to hand over the jewellery. It was on 14.5.2014, the relations of the accused came to her room and asked her to hand over the marriage photographs and all belongings to the accused otherwise, her photographs would be uploaded on the internet. It is, thereafter, she informed her father and moved a complaint Exhibit PA on the basis of which the present FIR was registered.

In her cross-examination, she admitted hat she was living in a rented house in village Sarhol in 2011 and that she came to

know about accused in October, 2011, who made physical relations with her for the first time in January, 2012. Accused proposed to marry her prior to establishing the physical relations somewhere in December, 2011. Accused used to call her at Phool Chand's house at village Sarhol in the year 2012, who is friend of the accused. She admitted that when she was living village Sarhol, the accused was also living in the said village and the house of the accused was at a walking distance of 10/15 minutes from her house in village Sarhol. She had visited the house of the accused in village Sarhol in the year 2013. In that house, the accused was living along with his younger brother and his sister-in-law was living in another room. It was only on 11.5.2014, accused's sister-in-law came to her room in order to fight with her.

In further cross-examination she admitted that she had gone to Aligarh with accused twice 4-5 months prior to the registration of the present case and that she had not made complaint to the police or to her family or to the family of the accused for a period of three years. She explained that her family was facing hardship and that the accused was threatening her that he would shunt her out of the job. She never complained to the owner of the Company. After the marriage, the accused was visiting her in that room for one day or two days but had never continuously stayed with her. It was on 8.5.2014, she came to know that the accused was already having a wife. She stated that before her marriage, neither she nor her parents verified the antecedents of the accused. He got performed the marriage in a haste. She denied that she voluntarily made physical relations with the accused despite knowing the fact that he was a married man or that his wife was working at Gurgaon or that his children were studying at School in Gurgaon.

PW8- Kant Pal Singh, father of the prosecutrix, in his examination-in-Chief, inter-alia, deposed that his daughter told him that the accused was resident of and belongs to Tomar Thakur caste and that both of them were in love affairs. The accused started conversation with them on telephone. Subsequently, accused told him that he has married the prosecutrix in Court. Thereafter, he and his wife came to meet their daughter in Gurgaon and met the accused in a park. He asked about accused's caste, who disclosed himself to be of a Tomar Thakur caste. The marriage was fixed for 3.2.2014 at Mandir. He along with his relatives at Gurgaon, went to Delhi to attend the marriage, but none of the relatives of the accused was present. He gifted a gold chain and one gold ring to accused and one Mangalsutra and one gold ring to his daughter and thereafter, they went to their village. It was in March, 2014, accused made a telephone call and demanded a sum of Rs.1.00 lac. He gave Rs.65,000/- to his daughter. In cross-examination he denied the suggestion that his daughter voluntarily made physical relations with accused knowing the fact that he was married or that his wife was working in Gurgaon or that his children were studying at Gurgaon. He denied the suggestion that the marriage certificate of Arya Samaj Mandir was obtained fraudulently without performance of any marriage ceremony and that his daughter had falsely implicated the accused.

PW7- Dr. Rishipal Shastri, the priest who is said to have solemnized the marriage, deposed that on 3.1.2014, application PH was moved by the accused and Exhibit PJ by the prosecutrix and that they had given one month's time to re-think about the steps proposed to be taken by them. It was on 3.2.2014, the accused and the prosecutrix came with the relatives for marriage. He deposed that

the marriage was solemnized in the presence of Kantpal and Muni and after marriage certificate, Exhibit PK, was issued by him.

In his statement under Section 313 Cr.P.C, the accused stated to the following effect:-

“I am innocent. I have been falsely implicated in the present case. In fact prosecutrix has borrowed Rs.50,000/- and had taken my wife’s jewellery from me as she used to blackmail me since we had maintained consensual physical relations while working together in a company. She always knew that I was married having children. She forced me to get the marriage certificate from Arya Samaj Mandir, Delhi and had fraudulently obtained the certificate without performance of any marriage ceremony. She had also visited my house and had met with my wife and children many times. In fact, when I demanded money and jewellery back, she falsely lodged this case to pressurize me.”

It is not disputed that the accused had physical relations with the prosecutrix. The question is whether the accused made false promise to marry the prosecutrix or that the prosecutrix was having consensual physical relations with the accused.

The evidence of prosecutrix and her father are materially different. The prosecutrix has not deposed about the gift of any jewellery to her at the time of marriage or that the accused made a demand of Rs.1.00 lac in March, 2014. This part of the evidence shows that he has deposed in respect of the facts, which were not even stated by the prosecutrix. Said part of the statement does not inspire confidence.

On the other hand, PW7- Dr. Rishipal Shastri, who is said to have solemnized the marriage was satisfied only to depose that the marriage was solemnized but what was the ceremony undertaken

during the performance of the marriage, has not been disclosed. In the absence of proof of Saptpadi, it cannot be said to be a valid marriage. The issue as to whether marriage can be said to be solemnised without essential ceremonies have come up for consideration before the Supreme Court. It has been held that the essential ceremonies according to personal laws of the parties are required to be proved for a valid marriage. Reference may be made to the judgment of the Hon'ble Supreme Court in Kanwal Ram v. Himachal Pradesh Admn., (1966) 1 SCR 539; Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864 and P. Satyanarayana v. P. Mallaiah, (1996) 6 SCC 122.

In Kanwal Ram's case (supra), the Hon'ble Supreme Court held that a marriage cannot be said to have been proved unless the essential ceremonies required for its solemnization are performed. The Court said to the following effect:-

“6. It was contended for the appellants that this evidence was not enough to show that the marriage of Kubja and Kanwal Ram can be said to have been performed. We think this contention is justified. In *Bhaurao Shankar Lokhande v. State of Maharashtra*, (1965)2 SCR 837 this Court held that a marriage is not proved unless the essential ceremonies required for its solemnisation are proved to have been performed. The evidence of the witness called to prove the marriage ceremonies, showed that the essential ceremonies had not been performed. So that evidence cannot justify the conviction. The trial court also took the same view. The learned Judicial Commissioner does not seem to have taken a different view.

In Priya Bala Ghosh's case (supra), while quoting approvingly Kanwal Ram (supra), and also referring to Mulla's Hindu Law, 12<sup>th</sup> Edn., the Hon'ble Supreme Court held that the prosecution has to prove that the marriage was duly performed in accordance with

the essential religious rites and the form of the marriage as is applicable to the parties and that the said marriage must be a valid one according to law applicable to the parties. The Court held to the following effect:-

“17. In the said decision this Court further considered the question whether it has been established that with respect to the alleged second marriage the essential ceremonies for a valid marriage have been performed. After referring to the passage in *Mulla's Hindu Law*, 12th Edn. at p. 615 dealing with the essential ceremonies which have to be performed for a valid marriage, this Court on the evidence held that the prosecution had neither established that the essential ceremonies had been performed nor that the performance of the essential ceremonies had been abrogated by the custom governing the community to which the parties belonged. In this view it was held that the prosecution in that case had failed to establish that the alleged second marriage had been performed in accordance with the requirement of Section 7 of the Act. The effect of the decision, in our opinion, is that the prosecution has to prove that the alleged second marriage held been duly performed in accordance with the essential religious rites applicable to the form of the marriage gone through by the parties and that the said marriage must be a valid one according to law applicable to the parties.”

In P. Satyanarayana's case (supra), the Supreme Court reiterated the aforesaid view. It was further held that even where a person contracting second marriage makes an admission to this effect, that does not by itself absolve the prosecution to otherwise prove its case that the marriage was performed in a regular way so as to visit him with penal consequences.

“2. The wife-respondent filed a written complaint before the police under Section 494 of the Indian Penal Code which after investigation was put in Court for trial of the appellant as well as his alleged second wife, the second

appellant. Charge was laid against him. In entering upon a plea against the charge, the husband-appellant stated:

“True. I have not committed any crime. I have married after ten years of (sic) my wife deserted and went away.”

His plea was sought to be read as if he had admitted having married a second time. The learned trial Magistrate recorded the prosecution evidence and came to the conclusion that there was no legal evidence to prove the factum of marriage on the basis of the tests laid down by this Court in *Bhaurao Shankar Lokhande v. State of Maharashtra*, (1965)2 SCR 837, *Kanwal Ram v. H.P. Admn.* and *Priya Bala Ghosh v. Suresh Chandra Ghosh*. He thus acquitted the appellant. The High Court on a private revision by the wife-respondent, upset the order of acquittal mainly on the ground that there was an admission of the first appellant in response to the charge laid against him. The High Court therefore ordered a retrial.

3. In our view, the High Court was in error in upsetting the well-considered order of the trial Magistrate requiring due ceremonies of the alleged second marriage being proved so as to satisfy the tests laid down by this Court in the afore-referred cases. The plea of guilt afore-referred to could at best be understood to mean that the first appellant had taken a wife, but that admission did not necessarily mean that he had taken the second wife after solemnising a Hindu marriage with her after performing due ceremonies for the marriage. Such plea, which he need not have even entered upon, and which was ignorable by the Court, did not absolve the prosecution to otherwise prove its case, that the marriage in question was performed in a regular way so as to visit him with penal consequences. We therefore are of the view that a futile exercise has been enjoined upon the Magistrate by the High Court in ordering a retrial when the evidence, as it was, had been discussed and rejected threadbare. For these reasons, we think that the orders of the High Court would need upsetting, which we hereby do.”

The prosecutrix while appearing as PW1 admitted that the accused was living in village Sarhol, whereas she was also living in the said village at a distance of 10/15 minutes walk. She admitted that the accused used to stay in the house along with his younger brother and his sister-in-law. If the prosecutrix was living at a short distance from a place where the accused was living, it is impossible to imagine that the prosecutrix was not aware of the status of the accused. Admittedly, the prosecutrix or her parents had never verified the antecedents of the accused. Both were working in the same Company and living in the same locality. The physical relations were established by them. The status of the accused that he is married cannot be said to be unknown to her. Apart from the fact that the accused made a promise to marry, there is no attending circumstance to support such assertions. Since the parties were working in the same factory, the prosecutrix could examine some evidence of the promise of marriage made by him to her. As per the prosecutrix, she was living alone, but the accused was also living in another house. Living of the accused separately even though the accused and the prosecutrix developed physical relations leads to an inference that the accused was living with his family.

There is no evidence of any marriage in the Sheetla Mata Mandir or in the Gurgaon Courts. The only evidence of marriage is at Arya Samaj Temple, Delhi, where again no marriage ceremony was performed, but marriage certificate was issued. Therefore, we have no hesitation to affirm the findings recorded by the learned trial Court that it was a case of consensual physical relationship of the prosecutrix with the accused.

The Single Bench of this Court in Ashwani Bhatia v. State of Haryana, 2010(4) RCR (Criminal) 253 has held that a complaint of

the second wife is not maintainable as she cannot be said to be the wife as second marriage is void. Though in terms of the Hon'ble Supreme Court's judgment reported A. Subash Babu v. State of Andhra Pradesh and another, (2011)7 Supreme Court Cases 616, the complaint would be maintainable by the second wife for the offence under section 494 IPC, yet the prosecutrix cannot be said to be second wife as there was no valid marriage. Therefore, the offence under Section 494 IPC cannot be said to be made out. It was two adults, who decided to have physical relationship and the same does not disclose any offence under Sections 376, 506 or 494 IPC.

In view of the above, we do not find any merit in the petition seeking leave to appeal. Hence, the same is dismissed.

**(Hemant Gupta)**  
**Judge**

**(Hari Pal Verma)**  
**Judge**

October 05, 2015  
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