

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.559 OF 2001

Ramesh s/o Pandharinath Katole
Age 52 years, Occ. Service,
R/o Shirsoli, Bornar
Taluka and District Jalgaon

... APPELLANT

VERSUS

1. Shravan s/o Shankar Tade
Age 35 years, Occ. Contractor,
R/o Shirsoli,
Taluka and District Jalgaon.
2. Dilip s/o Nathu Eakhar
Age 36 years, Occ. Service
R/o Shirsoli,
Taluka and District Jalgaon.
3. Jayram s/o Chindhu Bari
Age 48 years, Occ. Agri.
R/o Shirsoli,
Taluka and District Jalgaon.
4. Sau. Sakhubai Jayram Bari,
Age 45 years, Occ. Agri.
R/o Shirsoli,
Taluka and District Jalgaon.
5. Shashikala Gopal Bari,
Age 35 years, Occ. Service.
R/o Shirsoli,
Taluka and District Jalgaon.

6. Umakant s/o Harishchandra Bhunte
Age 33 years, Occ. Business,
R/o Shirsoli,
Taluka and District Jalgaon.
7. Dnyaneshwar s/o Jayram Bari
Age 25 years, Occ. Service,
R/o Shirsoli,
Taluka and District Jalgaon.
8. Prabhakar Shamrao Bari,
Age 50 years, Occ. Business,
R/o Shendurni, Tq. Jamner,
District Jalgaon.
9. Suresh s/o Kishan Bari,
Age 36 years, Occ. Service,
R/o Telephone Nagar, Plot No.3,
Zilla Peth, Jalgaon,
Taluka and District Jalgaon. ... RESPONDENTS

.....
Ms Seema T. Pawar, Advocate holding for
Shri A.G. Talhar, Advocate for appellant
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CORAM: A.I.S. CHEEMA, J.

DATED: 16th June, 2016.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant - original complainant. The appellant Nos.1 and 2 were acquitted by the trial Court of Chief Judicial Magistrate, Jalgaon for offence under Section 5 while the appellants - original accused Nos.3, 4, 5, 6, 8

and 9 were acquitted of the offence under Section 6 and appellant - original accused No.7 was acquitted of the charge under Section 4 of the Child Marriage Restraint Act.

2. Against the acquittal, this appeal was filed and it was admitted.

3. The learned counsel for the appellant stated that, the girl Vidya Gopal Bari, daughter of respondent accused Shashikala was minor at the time of her marriage. She stated that, she was born on 12.8.1981 and she had not completed age of 18 years on 25.4.1999 when she was got married of. The appellant claimed that the said Vidya was married to Dnyaneshwar - respondent No.7. Respondent Nos.3 and 4 are parents of respondent No.7 and respondent No.5 is mother of said Vidya and respondent No.6 is maternal uncle, who arranged the marriage and participated in the marriage. Respondent Nos.8 and 9 are close relatives of respondent No.7. There was a mass marriage arranged and in such function, the marriage took place.

4. It is argued that, the offence under Child Marriage Restraint Act had occurred and thus, the acquittal of the accused

persons was not justified.

5. This matter was on earlier date been argued partially. Today the learned counsel for the appellant has been further heard. Learned counsel for the respondents - accused is not present.

6. Going through the material available, what appears is that the appellant filed private complaint making allegations as above. Earlier, one witness Mohan Waman Tayade was called, who produced photo copies from register of births for the years 1975 and 1981. In the said register, photo copies of which were filed, there were entries regarding birth of one Dnyaneshwar and Asha. After the process was issued, the complainant gave his evidence. The earlier witness, however, was not recalled and accused were not given opportunity to cross-examine the witness. The complainant brought on record evidence of 8 witnesses including himself.

7. I have gone through the evidence of the witnesses and the record. The witness who was called to prove Exhibits 7 and 8 was not later on recalled. It appears that, in the trial

Court, effort was made to say that the entry in Exhibit 8 relating to one Asha was actually relating to Vidya, the alleged minor girl, who is stated to have been got married. Trial Court considered this evidence and observed that, not only the name differed but also there was overwriting in the name of the parents and thus, the trial Court discussed the evidence to hold that minority of said Vidya was not established. After perusing the evidence, I do not find that the observations of the trial Court on this count could be faulted with. There was overwriting in name of father, and name of mother also differs.

8. The trial Court discussed the evidence of further witnesses who are examined regarding the actual marriage ceremony. Trial Court observed that, the complainant had not deposed regarding the actual ceremony performed with reference to the marriage of Vidya. Complainant claimed to have attended the Mass Marriage Ceremony where 15 marriages were performed. Trial Court observed that, the complainant did not remember as to who was the priest performing the ceremony. The evidence of P.W.3 also was found to be identical. The video recording was found not to have been duly proved. The trial Court did not find that P.W.4 Rajendra was the witness who did

recording as the recording was done by one Vinayak. Similarly, the trial Court found fault with the evidence of P.W.5 relating to the registration of marriage as trial Court observed that it was mechanically registered without confirming performance of the ceremony of the marriage. Trial Court found the evidence of P.Ws.6 and 7 contradicted regarding Saptapadi when read with evidence of the priest. P.W.8 deposed only regarding chanting of Mangalashtak. Trial Court further discussed the evidence of the witnesses and found that P.W.8 Mukesh could not have remembered about observation of the ceremony regarding marriage which was performed.

9. Learned counsel for the appellant has not made any submissions to show as to how the observations of the trial Court criticising the evidence of the witnesses to hold that the evidence was not sufficient to conclusively hold that duly marriage was performed, could be faulted with.

10. Reading the evidence of the witnesses and going through the observations of the trial Court regarding the oral evidence, it is a possible view. The present appeal is against acquittal. When the appeal is against acquittal, unless it is

shown that the findings recorded by the trial Court are not based on the evidence or that the view taken is not at all a possible view of the evidence or that there is perversity in the reasons recorded, it will not be permissible to interfere in the acquittal.

11. Even if looking to the oral evidence it was to be said that the performance of the marriage was established, still the most important ingredients would remain that minority of the said girl Vidya was not established. There is absolutely no document to show that Vidya at the concerned time was minor.

12. There is no substance in this appeal against acquittal. The appeal is dismissed. Bail bonds of the accused persons stand cancelled.

(A.I.S. CHEEMA, J.)