

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

CRIMINAL APPEAL NO.544 OF 2015

Smt. Indubai Appa @ Sambhu Godse
Age 48 years, Occ. Labourer,
R/o Chaupala, Taluka and
District Nandurbar

... APPELLANT
(Original Complainant)

VERSUS

1. Smt. Arunabai @ Bhuribai w/o Sambhu
@ Appa Godse --
Arunabai d/o Sitaram Sonawane
Age 48 years, Occ. Household,
R/o Padalda, Tq. Shahada,
District Nandurbar.
2. The State of Maharashtra
(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENTS
(No.1 Original Accused No.2)

.....
Shri R.S. Shinde, Advocate for appellant
Shri D.D. Choudhari, Advocate holding for
Shri J.R. Shah, Advocate for respondent No.1
Shri S.M. Ganachari, A.P.P. for respondent No.2/ State

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CORAM: A.I.S. CHEEMA, J.

DATED: 15th April, 2016.

ORAL ORDER :

1. The appellant - original complainant has filed this

appeal against acquittal of respondent No.1 Arunabai @ Bhuribai. The respondent No.1 was accused No.2 in R.C.C. No.99/1996 before the Judicial Magistrate, First Class. She was prosecuted along with accused No.1 Appa for offence under Section 494 of the Indian Penal Code and was convicted by the trial Court, but came to be acquitted in Criminal Appeal No.24/2012 by the Sessions Judge on the reasoning that it was not the case of the complainant that the respondent Arunabai got married with Appa in spite of knowing that said Appa was already married. On such basis, the Sessions Court acquitted Arunabai although it maintained the conviction of Appa.

2. Heard learned counsel for the appellant - original complainant, counsel for respondent No.1 Arunabai and learned A.P.P. for respondent No.2/ State. Learned counsel for the complainant has drawn my attention to the observations of the trial Court in para 33 of the judgment that the accused No.2 Arunabai had not taken any specific defence and that she had not stated in her examination under Section 313 of the Code of Criminal Procedure that she did not marry with accused No.1. The trial Court observed that, she chose to keep mum on the issue and had not specifically stated that she was not knowing

the fact that accused No.1 was already married. The learned counsel for the appellant - complainant then pointed out the statement of Arunabai, referring to question No.19 that the evidence was pointed out to her that marriage of complainant Indubai has been performed with Appa in 1982 and she admitted the same to be true. The learned counsel submitted that, it shows that she was knowing about the marriage of the complainant with Appa. Learned counsel submitted that, there is sufficient evidence available to interfere in the acquittal recorded by the Sessions Court.

3. Question is :--

Whether or not the accused No.2 was knowing that Appa was already married and in spite of such knowledge, she entered into the marriage with Appa ?

4. Today of course it is known and is matter of prosecution that Appa was already married. To commit an offence, animus has to be shown and without bringing on record such knowledge, it cannot be said that there was intention to commit the offence. The view taken by the Sessions Court is possible view and there is no specific evidence pointing out that

before entering into marriage with Appa, respondent No.1 Arunabai was knowing that he was already married. As such, it will not be appropriate to disturb the finding.

5. For such reasons, I do not find that case is made out to interfere with the judgment of acquittal. Admission of the appeal is declined and same is dismissed.

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