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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 268 OF 1998

Alaka Dattatraya Ghare,	]	
age 35 years, Occn. Nil	]	
r/o Marani Chindu Thakare,	]	.. <u>Appellant</u>
r/o Varatee Node	]	Ori. Complainant.
Post Tivare, Tal. Karjat.	]	
District : Raigad.	]	

V/s.

1. Shri. Dattatraya Amruta Ghare,	]	
age: 42 years.	]	
	]	
2. Shri. Amruta Ghare,	]	
age: 40 years.	]	
	]	
3. Shri. Vasudeva Amruta Ghare,	]	
age: 35 years.	]	
	]	
4. Smt. Madura Amruta Ghare,	]	
age: 63 years,	]	
	]	
5. Sou. Sunanda Baban Mhase,	]	
@ Sunanda Dattatraya Ghare,	]	.. <u>Respondents</u>
age: adult.	]	Respondent
	]	Nos 1 to 11
6. Shri. Narayan Bhau Padhare,	]	original
age 40 year.	]	accused
	]	
7. Sushila Narayan Padhare,	]	
	]	
8. Sakham Dehu Mhase,	]	
age: 50 years.	]	
	]	
9. Laxmi Sakham Mhase,	]	

age: 45 years,.	]
	]
10. Baban Dehu Mhase,	]
age: 65 years,	]
	]
11. Nirmala Baban Mhase,	]
age: about 50 years	]
	]
Respondent Nos 1 to 5 r/o Sagvi,	]
Post. Khandape, Tal. Karjat, Dist.Raigad.	]
	]
Respondent Nos. 6 and 7 r/o Panvel,	]
Tal. Panvel, District: Raigad	]
	]
Respondent Nos 8 to 11 r/o Muka	]
Post Khandape, Tal. Karjat.	]
Dist. Raigad.	]
	]
12. State of Maharashtra	]

Mr. R. P. Lote, for the appellant .
Mr. Shrikant Yadav, APP for the Respondent-State.
None for respondent No.1

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th APRIL, 2016.

ORAL JUDGMENT :

1. This appeal is preferred by the original complainant challenging the acquittal of respondents-accused, for the offence punishable under Section 494 read with Section 109 of the Indian Penal Code, as recorded by the Judicial Magistrate First Class, Karjat, vide his judgment and order dated 28.2.1997, in R.C.C.No.122 of 1991.

2. The brief facts of the appeal can be stated as follows :-

The marriage of appellant with respondent No.1 had taken place as per rites of Hindu Religion about 16 years prior to the incident. Though since about 6 years prior to the lodging of the complaint, she was residing separately from respondent No.1, the marital tie was in subsistence and it was not dissolved. She had filed application for maintenance against respondent No.1 and the proceedings thereof were pending in the Court.

3. Meanwhile on 18.7.1991, the appellant came to know that respondent No.1 has performed second marriage with respondent No.5 in Ashtavinayak Hall, Jambali Naka, Thane. She received the said information from her real brother P.W.2 Krishna Thakare and neighbour P.W.3 Kundalika Malusare. She confirmed the said fact from the father of respondent No.5 namely Baban Mhase, who has given an affidavit to that effect. Hence after approaching the police, who refused to take cognizance, she was constrained to file this Criminal Case before the trial Court against the respondents.

4. In support of her case, appellant examined herself as P.W.1, P.W. 2 her brother Krishna and neighbour P.W.3 Kundalika. She also produced on record the affidavit executed by respondent No.10 Baban Mhase, who is the father of second wife-respondent No.5.

5. On appreciation of their evidence, trial Court was, pleased to acquit all the respondents holding that the appellant has failed to prove her case against them beyond reasonable doubt. Being aggrieved by this judgment and order, appellant has preferred this appeal.

6. At this stage it may be stated that the appeal is admitted against respondent No.1 (original accused No.1) only and it was specifically observed that no interference is required with the order of the trial Court in so far as respondent Nos 2 to 11 and hence their acquittal was upheld.

7. While challenging the impugned judgment and order of the trial Court, the submission of learned counsel for appellant is that there is more than sufficient evidence on record of two eye witnesses viz. P.W.2 Krishna and P.W.3 Kundalika, who have deposed about the religious ceremonies of "*Homa*" and "*Saptapadi*", which were performed in the marriage of respondent Nos.1 and 5. It is urged that respondent No.1 has not disputed the factum of his marriage with the appellant and the evidence of P.W.2 Krishna and P.W.3 Kundalika proves the factum of second marriage of respondent no.1 with respondent No.5. It is urged that there is also evidence in the form of affidavit executed by respondent No.10, the father of respondent No.5, confirming the marriage of his daughter respondent No.5 performed with respondent No.1; by following

Hindu Religious rites and customs. Thus, according to learned counsel for appellant there is ample evidence on record to prove the guilt of respondent No.1. Hence the impugned judgment and order of the trial Court acquitting respondent No.1 of the offence charged against him is required to be quashed and set aside.

8. Neither respondent No.1 nor his counsel are present before the Court when the appeal is called out for hearing. Hence this Court, with the assistance of learned counsel for appellant, has gone through the entire record and proceeding and meticulously perused the evidence of witnesses on record and on the basis thereof, this Court is of the opinion that the impugned judgment and order of the trial Court does not call for the interference.

9. Needless to state that the scope of the appellate court in deciding the appeal against acquittal is limited to the extent that unless some perversity in the judgment and reasoning of the trial Court is brought on record, the appellate Court is expected to be slow in interfering with the same and to set aside the same.

10. In the instant case, appellant herself is not an eye witness to the alleged second marriage of respondent No.1 and respondent No.5. Her entire reliance is on the evidence of her brother P.W. 2 Krishna and neighbour P.W. 3 Kundalika. It may be true that both of them have

deposed about being present at the time of second marriage of respondent Nos. 1 and 5 and having seen religious ceremonies of "*Homa*" and "*Saptapadi*" going on. However, it is pertinent to note that their names are not appearing as eye witnesses in the witness list cited by the appellant at the time of filing complaint in the trial Court. Moreover, he was also present with her at the time of drafting complaint, as admitted by her. In such situation it becomes rather difficult to accept that P.W.2 Krishna and P.W.3 Kundalika were present at the time of second marriage. It is also worth to note that the appellant has failed to assign any reason as to why she has not mentioned their names in the compliant. According to evidence of appellant, she came to know about the second marriage from one Balu Bhoir resident of Mukate; except him no one told her about this second marriage. However, he is not examined as a witness.

11. Moreover, according to her, she came to know about the second marriage of respondent No.1 on the same day at night, she has not lodged complaint about the same immediately. There is inordinate delay of three months in filing complaint before the Trial Court. This delay is also not explained by the appellant. There is also one more aspect of the case, according to P.W.2 Krishna, he came to know about the proposed marriage of respondent No.1 with respondent No.5, a day

before, despite that he has neither informed his sister on the same day nor taken any steps to stop the said marriage, either by approaching the police or by approaching the Court to get relief of injunction. According to him, he approached police after performance of the marriage, but not before it.

12. It may also be noted that according to both these witnesses viz P.W.2 Krishna and P.W.3 Kundalika, they were present in the hall for about 30 to 45 minutes and the persons who had gathered there for the marriage even saw them. If it was so, it does not appear probable that they could not make any effort to stop the marriage nor the persons who had gathered in the marriage, especially respondents themselves, had obstructed to their presence. If according to appellant, respondent wanted to perform the marriage clandestinely, then it does not appeal to reason that respondents will tolerate the presence of P.W.2 Krishna and P.W.3 Kundalika in the wedding hall for about 30 to 45 minutes.

13. As regards the evidence relating to affidavit, it is alleged to be executed by respondent No.10, the father of respondent No.5, who himself is accused in the case. The said affidavit is also not exhibited. It is merely given an Article Number. Moreover it being an affidavit of the co-accused, much probative value cannot be given to such affidavit.

14. Thus, except for oral evidence of P.W.2 Krishna and P.W.3

Kundalika whose presence at the time of second marriage does not appear to be probable from the facts and evidence on record and that of the affidavit of the co-accused, there is absolutely no other iota of evidence on record to prove the second marriage of respondent No.1 with respondent No.5. The appellant has not produced any evidence from the Ashtavinayak hall, Jambali Naka, Thane, to prove the alleged second marriage.

15. In such situation, it has to be held that the trial Court has rightly held that the appellant has failed to prove the offence punishable under Section 494 as charged against respondent No.1 beyond reasonable doubt. The appeal, therefore, holds no merits. Hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]