

N * **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 12th April, 2017

Decided on: 25th May, 2017

+ CRL.A. 1576/2013

CHETAN KHANNA

..... Appellant

Represented by: Mr. S.B. Dandapani, Adv.

versus

‘C’ & ANR.

..... Respondent

Represented by: None for R-1.

Ms. Rajni Gupta, APP for State/
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offences punishable under Section 376/417 and 495 IPC Chetan Khanna challenges the impugned judgment dated 13th August, 2013 and the order on sentence dated 17th August, 2013 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- for offence punishable under Section 495 IPC, rigorous imprisonment for a period of seven years and to pay a fine of Rs.15,000/- for offence punishable under Section 376 IPC and rigorous imprisonment for a period of one year for the offence punishable under Section 417 IPC.

2. Assailing the conviction, learned counsel for Chetan Khanna submits that there are glaring contradictions in the testimony and complaint of the Prosecutrix. She stated in the complaint that she got to know about the factum of prior marriage of Chetan Khanna through the photocopy of his ration card, however, the ration card Ex.PW1/B finds no mention about his

family. The marriage certificate has not been proved, thus the appellant cannot be convicted for the offences as done by the learned Trial Court. Version of the prosecutrix that the landlord asked for ID proof is not supported by PW-3 the landlord.

3. Though this Court did not have the assistance from the counsel for the prosecutrix, respondent No.1 herein as respondent No.1 did not appear except once after service however learned APP for the State has ably assisted this Court after going through the Trial Court record. Learned APP for the State on the other hand contends that the impugned judgment and order on sentence suffer from no illegality. Appellant has admitted that he was already married when he married the prosecutrix. His defense is that the prosecutrix and her family knew about the earlier marriage. It is immaterial now the prosecutrix came to know about the appellant's first marriage. The offences alleged are proved beyond reasonable doubt on the prosecutrix having proved her marriage to the appellant during the subsistence of the first marriage.

4. Facts leading to filing of the present appeal are that a complaint Ex. PW-1/C dated 16th March, 2009 was filed by the prosecutrix under Section 200 Cr. P.C. before the learned Metropolitan Magistrate wherein it was stated that the prosecutrix was married to Chetan Khanna on 21st July, 2008 at Arya Samaj Mandir, 2164, Jamuna Bazar, Delhi. On the same night, Chetan Khanna took the prosecutrix to a hotel in Karol Bagh where their marriage was duly consummated. The rent of the room in the aforesaid hotel was ₹2,800/- out of which ₹1,000/- was paid by Chetan Khanna and the balance ₹1,800/- was paid by the prosecutrix. On 22nd July, 2008, Chetan Khanna took her to a rented house in Patel Nagar monthly rent whereof was

₹3,000/- per month and they started living there. On 25th July, 2008, he told her that due to work, he would be coming home late so she can go to her parental home and he would pick her up at night, however, he did not come. On 30th July, 2008, again he did not come home and told her that there was closing in the bank. On 2nd August, 2008, he told her that he was going to Shimla on Bank tour and will return on 10th August, 2008. After returning from Shimla on 14th August, 2008, he told her that he was going to his sister's place at Kanpur for Raksha Bandhan. The mother of the prosecutrix told Chetan Khanna to take the prosecutrix along with him, however, he stated that first he will inform his sister about the marriage and then he will take her. Thereafter, he used to come home at night and go back at 5:00 A.M.. The landlady of the tenanted premises asked for the ID proof for preparing the rent agreement but he refused to give his identity proof and asked her to give her ID proof. On 25th August, 2008, he visited the prosecutrix at her office and told her that since he will be doing night duty, so he will meet her next morning at her office only. He also told her to live at her mother's place for 10-15 days. On 10th September, 2008, he came to the house of the prosecutrix's mother. After eating dinner, they went to the room and around 3:00 A.M., he left saying that he had some urgent work. On 11th September, 2008, he visited her office during the day and when she asked him to leave his job so that they can live peacefully, he stated that he will only leave his job if she will bear his expenses. She further stated that whenever they used to have sexual intercourse, he used to force her to take contraceptive pills so that she does not conceive a child. She used to have intercourse with him under the impression that she was his legally wedded wife. From 12th September, 2008 to 18th September, 2008, Chetan Khanna

did not visit her, even at her office. On 19th September, 2008, when he came to her office, she told him that if he does not have time to come home, he should not come to her office also. When she was shifting from the tenanted room to her parental home, she got a photocopy of the ration card of Chetan Khanna and she was shocked to see that he was already married and had an eight year old child. When she confronted him with this fact, he admitted it. He also told her that he can only meet her in the morning but cannot live with her anymore. Thereafter, he started threatening her that if she disclosed it to anyone, he would kill her and her family members. On 20th October, 2008, she made a complaint to SHO PS Patel Nagar, however, no action was taken. Two more complaints were sent, one to the Commissioner of Police and another to DCP (Central), however, the police failed to take any action against him. Hence, she filed the complaint.

5. Upon the receipt of the complaint, learned Metropolitan Magistrate directed the prosecutrix to lead pre-summoning evidence and on the basis of material on record, Chetan Khanna was summoned for offences punishable under Sections 376/420 IPC vide order dated 16th September, 2009. The case was committed to the Court of Sessions for trial. Charge was framed for offences punishable under Sections 376/417/495 IPC against Chetan Khanna whereafter statements of four witnesses were recorded.

6. The prosecutrix was examined as PW-1 in Court wherein she deposed in sync with the averments in the complaint filed by her under Section 200 Cr.P.C. She further stated that she is owner of a boutique situated at Karol Bagh. She had taken a loan from DBS Chola Mandalam and Chetan Khetan used to visit her to collect installments of the aforesaid loan. During those visits, he became friendly with her and her family. He, in fact, offered a good

match for her marriage to her mother, however, she did not like the boy so she refused the proposal. He proposed himself to her mother and she agreed to his proposal and then they got married. During her cross examination, she stated that her marriage with Chetan Khanna was solemnized in the presence of her father and one Purshottam Sharma, however, this fact was not mentioned in her complaint. She further admitted that she had not mentioned in her complaint that Chetan Khanna had assured her and her family members that his parents have passed away and he had only one married sister who lived in Kanpur.

7. PW-2 Purshottam Sharma deposed that on 21st July, 2008, he had attended the marriage of the prosecutrix with Chetan Khanna at Arya Samaj Mandir, Yamuna Bazar, Delhi. Father of the prosecutrix was also present however no one was present from the side of Chetan Khanna. The marriage certificate was also issued after solemnization of marriage. The copy of marriage certificate Ex. PW-2/A bears his signature as a witness.

8. PW-3 Bhuvan Sharma deposed that in July, 2008, Chetan Khanna had approached his mother to take one room in the property bearing No.29/38, 1st Floor, West Patel Nagar, New Delhi on rent. The said premises was let out to him at a monthly rent of ₹3,000/-. Chetan Khanna was living in the said premises with the prosecutrix as husband and wife. They had vacated the premises in the middle of September, 2008. Chetan Khanna did not execute any rent agreement despite repeated requests.

9. PW-4 Deepak Shastri deposed that he was working as a Pandit in Arya Samaj Mandir, 2164, Yamuna Bazar, Delhi for the last six years. He produced the original affidavits of Chetan Khanna and the prosecutrix furnished at the time of their marriage, photocopy of which were exhibited as

Ex.PW-4/A and Ex. PW-4/B. On 21st July, 2008, he had solemnized the marriage of Chetan Khanna with the prosecutrix as per Hindu rites and customs. He had also issued the marriage certificate Ex.PW2/A wherein he signed at point 'A'.

10. From the evidence adduced by the prosecution it has been proved beyond reasonable doubt that Chetan Khanna married the prosecutrix as per Hindu rites and customs on 21st July, 2008. In respect of his earlier subsisting marriage, the prosecution sought to prove the same by the evidence of the prosecutrix who stated that she found one folder containing photocopy of the ration card of the appellant containing details of his family members including his wife and daughter. When this fact was put to the appellant in his statement under Section 313 Cr.P.C, his explanation was that the prosecutrix had taken out photocopy of his ration card from his bag during one of his visits to her office for collecting the installment of loan and that everyone including the prosecutrix had knowledge of his earlier marriage and a daughter born from the said wedlock. Thus, the factum of the earlier subsisting marriage when Chetan Khanna married the prosecutrix on 21st July, 1998 at Arya Samaj Mandir, Yamuna Bazar , Delhi is not denied or disputed. When Chetan Khanna married the prosecutrix, he submitted an affidavit Ex.PW4/A wherein he claimed to be unmarried/bachelor. Photocopy of the ration card has not been exhibited during trial and is a marked document, thus cannot be read in evidence.

11. From the evidence led by the prosecution it has proved beyond reasonable doubt the marriage performed by the appellant with the prosecutrix claiming himself to be a bachelor, thereafter both of them living as husband and wife and thus taking her consent for sexual intercourse on the

claim that he was a lawfully married husband of the prosecutrix though he had an earlier subsisting marriage. There is no illegality in the impugned judgment of conviction convicting the appellant for offence punishable under Sections 376/417 and 495 IPC.

12. I find no merit in the appeal. The judgment of conviction and the order on sentence are upheld. Appeal is dismissed. The appellant will undergo the remaining sentence.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 25, 2017
‘v mittal’