

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.672 OF 2016
WITH
CRIMINAL APPLICATION NO.197 OF 2018

Vidyasagar Irappa Mane,
Age 43 years, Occupation- Driver,
R/o. Indiranagar,
Near Bagade Co. Turbhe, MIDC,
Navi Mumbai.
Presently in Nashik Road Central Prison,
NashikAppellant.

vs.

The State of Maharashtra,
At the instance of Turbhe Police Station.
....Respondent.

Mrs. Farhana Shah for the Appellant.
Mr. A.R.Kapadnis, APP. for the State.

CORAM: A.S.GADKARI, J.
DATE :13TH APRIL, 2018.

ORAL JUDGMENT:

1. The Appellant is convicted for the offence punishable under Section 417 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for one year and for the offence punishable under Section 494 of the Indian Penal Code and is sentenced to suffer rigorous

imprisonment for six years and to pay a total fine of Rs.1000/- by the learned District Judge -9 and Additional Sessions Judge, Thane in Sessions Case No.37 of 2015 by its Judgment and Order dated 11.12.2015. The said Judgment and Order dated 11.12.2015 is impugned herein.

2. The record indicates that in the present appeal, the appellant was granted bail by this Court by an Order dated 4.10.2016 on certain conditions. As the applicant was unable to furnish surety in the sum of Rs.20,000/- he preferred Criminal Application No.197 of 2018 through Jail, for reduction of the bail amount and for releasing him on bail by furnishing PR bond. As the Advocate for the appellant did not remain present on earlier occasion, this Court by an order dated 23.2.2018 appointed Mrs. Farhana Shah, the learned Advocate from the panel of High Court Legal Services Committee to represent the applicant and to espouse his cause.

The said Application No.197/2018 was thereafter adjourned and directed to be heard along with the present appeal.

3. Heard Mrs. Farhana Shah, learned Advocate appointed to represent the applicant and the learned APP for the State. Perused the record.

4. It is the prosecution case in brief that, the appellant was married with Mrs. Sangeeta and is blessed with two children i.e. one son and one daughter. As the said Mrs. Sangeeta had left the applicant and was not traceable for about two years, the family members and particularly the elder sister of the appellant Smt. Ujwala Suryawanshi (D.W.1) decided to perform the second marriage of the appellant and accordingly the alleged second marriage of the appellant with Smt. Shyamal @ Sangeeta Mane was performed on 1.4.2012 at Buddha Vihar, Near Mumbai Pune Highway At Pune. After the marriage Mrs. Shyamal started cohabiting with the appellant near Bagade Company, Turbhe, Navi Mumbai. It was informed to Smt. Shyamal by the appellant that, his first wife Smt. Sangeeta had died. It was also informed by the appellant to Smt. Shyamal that, from his earlier wedlock he has one son and one daughter and they are residing with his sister at

Turbhe Naka. That, his children used to reside with the appellant and Mrs. Shyamal intermittently. After two years of marriage, somewhere in the month of April, 2014 Shyamal realized that first wife of the appellant Mrs. Snageeta is also residing at Turbhe and accordingly she informed the said fact to her father namely Pandit Kamble (PW.1). That, on 19.4.2014 Mrs. Shyamal informed the fact to her father (PW.1) that the appellant had kept his children in the house of his first wife Mrs. Sangeeta at Turbhe Naka and has given wrong information that he had sent his children to Pune for studies. When Mrs. Shyamal saw the children at Turbhe Naka she went to bring the children and at that time Mrs. Sangeeta abused deceased Shyamal. Mrs. Shyamal had telephoned the appellant about the same whereupon, he threatened Mrs. Shyamal that if she tells the said fact to her parents he will kill her and her father and cut her into pieces. Mrs. Shyamal informed this fact to her father (PW.1). The first informant told Mrs. Shyamal that he will come to meet her on 20.4.2014 at her house.

On 20.4.2014 Ms. Poonam (PW.2) i.e. sister of deceased Mrs. Shyamal informed the first informant on telephone that between 8.00 to 8.30 a.m. Mrs. Shyamal had committed suicide by hanging with the help of a rope to ceiling of the house. The first information report (Exhibit-21) was accordingly registered at the instance of Shri. Pandit Kamble (PW.1) the father of the deceased Mrs. Shyamal with Turbhe Police Station.

Dr. Bhushan Jain(PW.7) conducted autopsy on the dead body of Mr. Shyamal and reported the final cause of death as 'Asphyxia due to hanging". He accordingly prepared post mortem report (Exh.18).

5. After completion of investigation the investigating agency submitted charge sheet in the Court of Judicial Magistrate First Class, Vashi. As the offence punishable under Section 306 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate committed the said case to the Court of Sessions as contemplated under Section 209 of the Cr.P.C. The learned Additional Sessions Judge, at Thane framed charge below

Exhibit-3 for the offence punishable under Section 306, 323, 420, 494 and 506 of the Indian Penal Code. The said charge was read over and explained to the appellant to which he denied, pleaded not guilty and claimed to be tried. That, by an Order dated 7.11.2015 passed below Exhibit-32 the charge under Section 420 of the Indian Penal Code was modified and charge under Section 417 of the Indian Penal Code came to be framed. The said charge was also read over and explained to the appellant to which he denied and claimed to be tried.

It is the defence of the appellant that he had informed to Mrs. Shyamal that his first wife left him and was not traceable for about two years and therefore it was construed that she died. The family members of the appellant therefore arranged his present marriage with the mediation of his sister namely Ujwala Suryawanshi (D.W.1).

6. The prosecution in support of its case and with a view to bring home the guilt of the appellant examined in all eight witnesses. The learned Trial Court after recording the

evidence and after hearing the parties to the said case was pleased to acquit the appellant from all other charges and convicted the appellant for the offences punishable under Section 417 and 494 of the Indian Penal Code by the impugned Judgment and Order dated 11.12.2015 as aforestated.

7. The evidence of Pandit Kamble (P.W.1), Ms. Poonam Kamble (P.W.2) sister of deceased Shyamal, Smt. Nandabai P. Kamble (P.W.3) the mother of the deceased Shyamal, Mrs. Asha G. Mane (P.W.4) sister-in-law of the appellant and Ms. Ujwala Suryawanshi (D.W.1) clearly establishes the fact that despite the first wife of the appellant i.e. Mrs. Sangeeta was alive, he mis-represented to Mrs. Shyamal and her family members that, she has left him and induced them to perform his marriage with Mrs. Shyamal. Section-417 of the Indian Penal Code therefore, clearly applies to the present case and the conviction and sentence imposed upon the appellant under Section-417 of the Indian Penal Code by the Trial Court is proper and fully justified.

8. As far as conviction and sentenced of the appellant

under Section- 494 of the Indian Penal Code is concerned, there is no evidence on record to establish the fact that, the second marriage of appellant with Mrs. Shyamal was solemnized that means he celebrated the marriage with proper ceremonies and in due form. The Supreme Court in the case of *Baburao Shankar Lokhande and another vs. The State of Maharashtra and another* reported in AIR 1965 S.C. 1564 has held that, for application of Section 494, marriage must come within 'solemnized marriage'. 'Solemnize' means to celebrate the marriage with proper ceremonies and in due form. Mere going through certain ceremonies with intention to marriage will not make the ceremonies prescribed by law or approved by customs. It is further held that, it is essential for the purpose of Section 17 of the Hindu Marriage Act, the marriage applies on account of the Act, should have been celebrated with proper ceremonies and in due form. It is further held that merely going through certain ceremonies with the intention that the parties be taken to be married will not make the

ceremonies prescribed by law or approved by any established custom. In the present case to prove the second marriage of the appellant the prosecution has relied upon the admissions given by the Mr. Pandit Kamble (P.W.1) father of the deceased Shyamal and Smt. Ujwala Suryawanshi (D.W.2) sister of the appellant. The Supreme Court in the case of *Kanwal Ram and others vs. The Himachal Pradesh Administration* reported in 1966 SC 614 while relying on the ratio laid down by the Supreme Court in the case of *Bhaurao Shankar Lokhande* (supra) has further held that, in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved. Admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case. As noted herein above, there is no evidence on record to establish the fact beyond reasonable doubt that the appellant in fact had solemnized marriage with Mrs. Shyamal on 1.4.2012, the view expressed by the Supreme Court in the case of *Baburao Shankar Lokhande*

(supra) is followed by it in the case of Kanwal Ram *(supra)*, in Smt. Priya Bala Ghosh vs. Suresh Chandra Ghosh reported in 1971 (1) SCC 864 and in Laxmi Devi (Smt.) Satya Narayan and ors. reported in (1994) 5 SCC 545.

9. There is no evidence on record to establish that, the appellant performed second marriage by following necessary and essential ceremonies as per the mandate of law. It is therefore, clear from the evidence on record that the marriage between the appellant and the deceased Mrs. Shyamal was not established beyond reasonable doubt by the prosecution and consequently does not come within the purview of Section 494 of the Indian Penal Code even though the first wife of the appellant Mrs. Sangeeta was alive when he married with Mrs. Shyamal in April, 2012.

10. In view thereof and as a result, the conviction of appellant under Section 494 of the Indian Penal Code cannot be sustained. Appeal is therefore, partly allowed by setting aside the conviction of the appellant under Section 494 of the Indian Penal Code.

Hence, the following order.

- a) The conviction and sentence of the appellant under Section 417 of the Indian Penal Code is sustained and maintained.
- b) The conviction and sentence of the appellant under Section 494 of the Indian Penal Code by the impugned Judgment and Order, is hereby quashed and set aside and the appellant is acquitted from the offences punishable under the said section.
- c) Appeal is partly allowed in the aforesaid terms.
- d) In view of the above, Criminal Application No.197 of 2018 does not survive and is accordingly disposed off.

11) Before parting with the Judgment, this Court places on record the efforts put in by Mrs. Farhana Shah, learned Advocate appointed to represent the appellant in ably assisting this Court for espousing the cause of the appellant. The professional fees of Smt. Shah is quantified at Rs.5000/-.The said fees be paid by the High Court Legal Aid Services Committee within four weeks from the date of receipt of the present Judgment and Order.

12) It is submitted that the appellant is presently lodged in Nashik Road Central Prison, Nashik. The Registry is hereby directed to communicate the present Judgment and Order to the appellant accordingly expeditiously.

The learned APP. is also directed to communicate this Judgment and Order to the concerned expeditiously by all possible modes.

(A.S. GADKARI, J.)