

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 19.07.2018
Orders Pronounced on: 23-10-2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Appeal No.216 of 2009

Valarmathi

... Appellant

Versus

1.Rangasamy
2.Baby @ Mohanambal
3.Valliammal
4.Subbathal
5.Marappan
6.Chinnasamy
7.Balamani

... Respondents

Appeal filed under Section 378 of the Criminal Procedure Code, to set aside the order dated 07.08.2008 in C.C.No. 15/2005 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

For Appellant : Mr.S.Ashok kumar

For Respondent 1 : Mr.A.K.Kumarasamy,
Senior counsel

RR2 to 7 : No Appearance

JUDGMENT

The unsuccessful private complainant is the appellant herein. The appellant is the wife of the first accused / first respondent herein. The second accused is the second wife of the first accused as has been alleged in the complaint and the third accused is the mother-in-law of the appellant/private complainant. The fourth accused is the sister of the first accused and sixth accused is the father of the second accused and seventh accused is the mother of the second accused.

2. The appellant herein has preferred a private complaint for the alleged offence punishable under section 494 read with Section 109 of IPC and under Section 17 of the Hindu Marriage

Act against the accused. According to the appellant, the marriage between her and the first accused was solemnized on 10.04.1989 and out of the wedlock, one Son and one Daughter have born. During the subsistence of the said legal wed lock, the son born to the de-facto complainant and the first accused died due to medical complications at the age of 13. After the death of the son, the matrimonial relationship between the private complainant/appellant and first accused/first respondent got strained. Taking advantage of the same, the accused 2 to 6 subjected the appellant to matrimonial cruelty in various forms and the appellant. Notwithstanding the same, the appellant, taking into consideration the interest of the surviving daughter, did not question any of the acts of the accused. While so, during the subsistence of the marriage between the appellant and the first accused, the first accused married the second accused and such marriage was solemnised at the instance of the accused 3 to 7 and hence, the private complaint was filed by the appellant herein.

3. To substantiate the averments made in the complaint, the appellant examined herself as PW1 apart from herself, three other witnesses as PW2 to 4 and Exs. P1 to P4 were marked. On the side of the accused, neither a witness was examined nor any document marked.

4. On behalf of the appellant, PW2, Priest was examined, who according to the appellant had performed the marriage between the first and second accused on 01.09.2004 as per the Hindu rites and customs. PW3 - Jagadeesan was a resident of Marudur. According to PW3, on 01.09.2004, he went to the Pidaari Amman Temple and witnessed the marriage solemnised between the first and second accused. PW4 was the Sub-Inspector of Police, All Women Police Station who registered a case in Crime No. 3 of 2005 on the basis of the complaint given by the appellant herein. As per the complaint, the appellant was driven out of the matrimonial home by the first accused and his mother and later, she came to know that the first accused was given in marriage to the second accused. Therefore, she has given the complaint to PW4 requesting to take action against the accused for having contracted the marriage between the first and second accused during the subsistence of her marriage with the first accused.

5. On consideration of both oral and documentary evidence adduced before the District Munsif cum Judicial Magistrate, Perundurai, by an order dated 07.08.2008, the trial court disbelieved the evidence of the prosecution witnesses, including that of the appellant and thereby acquitted the accused. Hence,

the appeal is filed by the appellant herein.

6. The learned counsel appearing for the private complainant / appellant would contend that the Trial Court ought to have convicted the respondents since the evidence of PW2, who is the Poojari, who conducted the marriage clearly proves the ingredients of the offence punishable under Section 494 of IPC. According to the learned counsel, the trial court erred in acquitting the respondents, since, the ingredients of offence under Section 494 r/w 109 of IPC is made out against the respondents and the judgment is against criminal law and jurisprudence. The trial court failed to notice that PW2 was the Priest, who performed the marriage between the first and second accused. PW3 was a resident of same Village where the temple is located in which the first and second accused got married to each other by tying thali and by exchanging garland. The deposition of PW3, an independent witness, is natural and trustworthy and the trial court ought not to have believed the version of PW3.

7. Mr.A.K .Kumarasamy, learned Senior Counsel appearing for the first respondent would contend that the trial Court, on the basis of the evidence adduced, has come to a definite conclusion that the alleged marriage solemnised between the first and second accused is not in accordance with Section 7 of The Hindu Marriage Act. The trial court also pointed out the inconsistencies in the deposition of PW2 and 3. Therefore, the trial court has come to a conclusion that the appellant has failed to prove that there was a marriage solemnised between the first and second accused on 01.09.2004 as per the Hindu rites and customs. The learned Senior counsel for the appellant therefore prayed for dismissal of the appeal.

8. Points for determination:

1. Whether PW1 has proved the charge under Section 494 of IPC beyond reasonable doubt.
2. Whether the order of the Trial Magistrate calls for any interference.

9. The appellant, being the private complainant, examined herself as PW1 and the Priest, who said to have performed the marriage between the first and second accused was examined as PW2. PW3 was a resident of the Village where the first and second accused married in a Temple to prove the second marriage.

10. PW1 is the legally wedded wife of the first accused. The relationship between the first accused and PW1 and the date of solemnisation of their marriage and the fact that they were blessed with two children out of their marriage are not in dispute. PW1 deposed that her Son died due to medical complication and thereafter, misunderstanding arose between PW1 and A1. According to PW1, after the death of her son, the accused 1 and 3 have sought her consent for a second marriage of the first accused and in this regard, the appellant was subjected to matrimonial cruelty and harassment. The appellant was also driven out of the matrimonial home. According to the appellant, after she was sent out of the matrimonial home, A3 to A7 colluded with each other and solemnised the marriage of the first accused with the second accused at Pidaari Ammal Kovil. According to the appellant, when she came to visit the Temple along with her daughter, she witnessed both A1 and A2 left in a car and when she inquired with the Priest, PW2, she came to know about the marriage of the A1 and A2. Immediately, the appellant gave EX.P2 complaint, which was registered by PW4, Sub-Inspector of Police. It appears that the appellant herself had chosen to withdraw the complaint given to PW4 and therefore, a closure report, Ex.P4 dated 24.05.2005 was filed before the learned Judicial Magistrate, Perundurai. The appellant also made an endorsement before PW3 that she will proceed against the accused by filing a private complaint and also made an endorsement to that effect. Accordingly, it appears that Ex.P4 closure report was filed by the Sub-Inspector of Police.

11. In order to prove the ingredients of the offence under Section 494 of IPC, the appellant examined PW2, Priest. who deposed that he conducted the marriage since it was represented by the first accused the his earlier marriage with the appellant was dissolved by a competent Court one year before the date of the solemnisation of marriage. according to PW2, A1 and A2 have exchanged garlands and A1 tied Thali in the neck of the A2 and performing rituals. However, during the cross-examination, he could not identify any one who participated in the so-called marriage. He could not also disclose the date or month on which he solemnised the marriage between A-1 and A-2.

12. PW3 is a resident of the Village where the temple in which the accused 1 and 2 married. PW3 said to have witnessed the marriage solemnized in said Pidaari Amman Temple between A-1 and A-2. PW3 in his cross-examination that one Anandan, a Priest had solemnised the marriage between A-1 and A-2 and he witnessed their marriage when he came to the temple to worship the deity.

13. It remains to be stated that in the Chief examination and Cross examination of the appellant, she had deposed that on 18.11.2004 when she went to Pidari Amman Temple, she saw the accused 1 and 2 came out of the temple and boarded the jeep owned by the first accused. When the appellant caused enquiries with one Anandan, Priest, she was informed that the marriage between accused 1 and 2 was solemnised by the PW2. However, the appellant did not examine Anandan, with whom she said to have caused enquiries

14. Further, in the deposition of PW2, it was alleged that he solemnised the marriage between A-1 and A-2, however, in his cross-examination, he could not say on which date and month such marriage was performed. He further deposed in the cross-examination that he cannot identify as to who are the persons who participated in the marriage, particularly, the presence of A-3 to A-7. Further, PW3 in his deposition has stated that on the date when he went to the temple to offer worship, one Mr. Anandan was in the temple as the priest. This deposition of PW3 runs contrary to PW2. Furthermore, no marriage receipt or any receipt has been produced by the private complainant from the Temple authorities to show that there was a marriage solemnised in the temple between A-1 and A-2.

15. The suggestive case of the defence is that after the death of the son born to the appellant and A-1, there was dispute between PW1 and her husband, A-1 and a Panchayat was also held in which the first accused was asked to pay some amount to the appellant towards her livelihood, but it was not paid. Further, the brother of the appellant was entrusted with certain business venture of the first accused and there was a loss caused to such business purportedly due to the inaction of the brother of the first accused. When this was questioned, the complainant has given the private complaint with ulterior motive.

16. On consideration of the evidence PW1, 2 and PW3 and also taking note of Chief cross examination and Cross examination on the appellant, it is seen that the factum of the marriage said to have been solemnised between the A1 and A2 has not been proved. The non-examination of Anandan, with whom the appellant said to have caused enquiries with respect to the marriage is also fatal to her case. Further, PW2 is not the regular priest of the said Temple. The appellant has also not produced any document or receipt from the Temple Authorities to show that there was a marriage between A1 and A2. The Trial Court had correctly come to the conclusion that the private

complainant has not proved the allegation beyond reasonable doubt and finding of the Trial Court Judicial Magistrate has to be sustained. Further, there is no irregularity and illegality warranting interference on this Court at this appellate stage and taking into consideration, the scope of the appeal under Section 378 of Cr.P.C against the acquittal when two views are possible, the one which is most favourable to the accused has to be considered. Having regard to the above, this Court is of the view that the order of the trial court, acquitting the accused need not be interfered with. Hence, the Criminal Appeal is dismissed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

klt

To

1. The District Munsif cum Judicial Magistrate
Perundurai.
2. The Sub Inspector of Police
All Women Police Station
Gobichettipalayam.
3. The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.S. Ashok Kumar, Advocate sr 72271.

सत्यमेव जयते

Crl.A.No.216 of 2009

NRI (CO)
SP(01/11/2018)

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