

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.1361 OF 2002

Ganesh Nayappa Hulgabali)
Age-54 years, Occ. Service, residing at)
410 Rasta Peth, Pune)....Appellant
V/s.

- 1) Mrs.Kamal Ganesh Hulgabali)
Age-45 years, Occ. Sercice, residing)
at Rajmudra Society, C-1/5,)
Dhankawadi, Pune)
2) The State of Maharashtra)....Respondents

Ms.Mayuri V.Berde i/by Mr.Sanjeev A.Sawant for appellant.
Ms.Anamika Malhotra APP for respondent no.2.
None for respondent no.1.

CORAM : K.R.SHRIRAM,J
DATE : 25.11.2019

ORAL JUDGMENT :-

1. In the original complaint there were 8 accused. The trial Court, i.e., JMFC Court no.1, Pune had acquitted accused nos.1 to 7 and convicted accused no.8, who is respondent no.1 in this appeal. Respondent no.1 was convicted under Section 495 of the Indian Penal Code (offence of marrying again with concealment of the former marriage from the person with whom subsequent marriage is

contracted) and sentenced to suffer SI for one month and to pay a fine of Rs.1000/-, in default, to suffer further SI for seven days.

2. Aggrieved by the order of conviction, Respondent No.1 filed an appeal which appeal came to be allowed and the trial court's order of conviction was reversed. Complainant has approached this Court under Section 378 of Criminal Procedure Code impugning the order of acquittal passed by the Addl. Sessions Judge, Pune. Complainant had not challenged the acquittal of accused nos.1 to 7.

3. It is the case of complainant that he married Respondent no.1 on 30.3.1976. He was not aware that Respondent No.1 was already married and she was married to one Pandit Gauda Patil (Pandit) on 30.3.1976. Neither the accused nor any of her relatives informed him about the previous marriage or status of respondent no.1 as a married women. After the marriage, complainant and respondent no.1 had two children, a daughter and a son born in 1976 and 1980, respectively. In the year 1991 i.e., 15 years after the marriage, some discord occurred between complainant and respondent no.1 over complainant purchasing a rickshaw for his brother. Complainant thereafter made inquiries and was surprised and shocked to know that respondent no.1 was already married in

1976 when he married respondent no.1, and that fact was concealed.

4. The trial Court had its own reasons to convict accused. The sessions Court after considering the evidence, acquitted the accused on the same set of facts and circumstances. It is settled law that if there are two views possible, the accused should get the benefit and appeal Court should not disturb the order of acquittal. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

¹ (2007) 4 SCC 415

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

5. What we need to consider on the basis of the evidence on record is whether the complainant's stand that he was unaware of the married status of the accused at the time of his marriage with the accused, can be accepted ? The prosecution had examined 3 witnesses in support of the charge viz., the complainant, one Vilas D.Kadam who was an establishment clerk of Service of Command hospital and one Maruti Hande, a neighbour of complainant.

Defence led evidence of one witness Smt.G.S.Shinde (DW-1) to prove complainant had knowledge of earlier marriage of respondent no.1.

6. Let us first consider the evidence of the defence witness. In the examination-in-chief, DW-1 states she knew the accused from her childhood and she was staying at her neighbouring house after her marriage with Pandit. Pandit was the first husband of accused. DW-1

also states that she knew complainant since 1972 and Pandit and complainant were both going to her house. She also states that complainant was going to the house of accused and that he was aware of the marriage of Pandit with accused no.8. Though in the cross-examination the witness states that she did not give information of marriage of accused with Pandit to anybody, the fact that complainant and Pandit both were going to the house of DW-1 has not been contested. Prosecution has not called upon the witness to explain whether Pandit Gauda Patil and complainant were coming together or separately. When I read the examination in chief, it indicates that both were visiting house of DW-1 together. DW-1 also stated that Pandit and accused were married and they were her neighbours. Certainly if complainant was going with Pandit to the house of DW-1 near the matrimonial home of Pandit and accused, it is unbelievable that complainant did not know accused no.8 and Pandit were not married to each other. Moreover, in his cross-examination, complainant admits accused was working in the Command hospital before their marriage, during his visits he used to see accused in her house and further has specifically admitted that he had physical relationship with the accused even prior to marriage. The sessions Court has said that this admission of complainant itself is sufficient to hold that he was well acquainted with accused and for

him to say that he did not know that accused was married, when he was having illicit relationship with her, was difficult to be believed. Complainant had denied that prior to marriage, accused had conceived due to her relationship with complainant but the trial Court has felt otherwise. This is because complainant has stated that the accused delivered one daughter and one son in the year 1976 and 1980, respectively. The Court has calculated number of days between birth of the daughter and date of marriage (30.3.1976) as less than 280 days (280 days will be full term of pregnancy). It is not anybody's case that the daughter born was premature. It is also observed that the petition for divorce with Pandit was filed by accused in 1976 after her marriage to the complainant and she obtained decree of divorce on 28.7.1997. During the filing of the petition for divorce from Pandit and the decree of divorce being granted, accused and complainant were living together happily. In fact, 3 years later, a daughter has also been born to them. The sessions Court has come to a conclusion that in such a situation again it was impossible to believe that only in 1991, when there was a disagreement between accused and complainant while buying an autorickshaw for his brother, that complainant came to know that accused had married earlier and the marital status on 30.3.1976 of the accused was "married", which was concealed from him.

7. I have to also note that complainant was working in the Armed forces and the accused was also working as Attendant in Command hospital of Armed forces. Complainant has deposed that he was aware accused was in Command hospital before marriage, he used to see accused in her house and he had physical relations with accused even before marriage. Further only in 1990 accused has changed her name from Kamal Pandit Patil to Kamal Ganesh Hulgabali. Therefore, it is difficult to believe that for 14 years complainant did not know that his wife (accused) was using the surname of some other man and not his Surname. In my view also prosecution has failed to prove beyond reasonable doubt that accused concealed her former marriage from complainant.

8. In these circumstances, when two reasonable conclusions or views are possible on the same set of evidence on record, I cannot find fault with the view expressed by the sessions Court.

Appeal dismissed.

(K.R.SHRIRAM,J)