

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos.1070, 1095, 1097 & 1098/2004

R.Sundarambal	..	Appellant / Complainant in all the Appeals
Vs		
1.Jaganathan	..	Respondent in Crl.A. No.1070/2004[A7 & A9]
2.C.Subramaniam	..	
T.C.Ramaswamy	..	Respondent in Crl.A. No.1095/2004 [A-1]
Aruchamy Counder	..	Respondent in Crl.A. No.1097/2004 [A-8]
1.Rathinam	..	Respondents in Crl.A. No.1098/2004 [A-2, A-5 & A-6]
2.Mottai Gounder @ Karuppusamy Gounder		
3.Ayyathal		

Common Prayer:- Criminal Appeals filed u/s.378 [4]Cr.P.C., against the judgment of the learned Additional Sessions Judge and Fast Track Court No.1, Coimbatore dated 16.04.2004 in Crl.App.Nos.1, 8, 11 & 9 /2004 reversing the judgment of the learned Judicial Magistrate No.3, Coimbatore dated 12.12.2003 in CC.No.346/1999 and acquitting the accused.

For Appellants in all
the Criminal Appeals : Mr.N.E.A.Dinesh

For R1 & R2 in
Crl.A.No.1070/2004 : Mr.K.Rajamanickam

For Respondents in
Crl.A.Nos.1095&1098/04: Mr.B.Kumarasamy for
M/s.P.Indumathi

COMMON JUDGMENT

The above criminal appeals have been filed by the appellant/1st respondent/complainant against the common judgment of acquittal passed in Crl.App.Nos.1, 8, 11 & 9/2004, whereby the Lower Appellate Court, viz., the learned Additional Sessions Judge, Fast Track Court No.1, Coimbatore, had allowed the above appeals and set aside the judgment of conviction and sentence passed against the accused 1 to 9, by the Trial Court, viz., the learned Judicial Magistrate, No.3, Coimbatore, in CC.No.384/1999.

2 The Trial Court had convicted and sentenced the accused persons as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A-1	494 IPC	To undergo 3 years rigorous imprisonment and to pay a fine of Rs.5000/- with a default sentence of 3

Rank of the Accused	Conviction under section	Sentence Awarded
		months rigorous imprisonment.
A-2 and A-4	494 read with 109 IPC	Each of the accused to undergo 3 years rigorous imprisonment and to pay a fine of Rs.5000/- with a default sentence of 3 months rigorous imprisonment.
A-3, A-5 & A-6	494 read with 109 IPC	Each of the accused to pay a fine of Rs.5000/- with a default sentence of 3 months rigorous imprisonment. Sentence not awarded considering their age and health condition.
A-7 to A-9	494 read with 109 IPC	Each of the accused to undergo 1 year rigorous imprisonment and to pay a fine of Rs.5000/- with a default sentence of 3 months rigorous imprisonment.

3 The case of the appellant/complainant is that she married A-1, viz., T.C. Ramasamy [appellant in CrI.A.No.1095/2004] at Perur River Vinayagar Temple, Coimbatore as per the Hindu Rites and Customs. The said marriage was also registered at the Office of the Sub Registrar, Coimbatore and it was a love marriage and that, after the marriage, the complainant/appellant and A-1 lived as husband and wife at a rental house at Ondipudur, Coimbatore. After six months, they vacated the said house and started residing at Door No.303, K.K.Pudhur, Saibaba Colony, Coimbatore. Out of wedlock, the couple begot a female child during the year 1984 and the child died on the same day of delivery. After some time, A-1 used to commit cruelty on her by beating her and not giving money for food. Since it was a love marriage, the complainant did not

inform the same to her parents or relatives. A-1 stopped coming to the matrimonial home from December 1986 onwards and during the same month, the complainant had gone to the parental home of A-1 and asked him to come and live with her. A-1 had threatened her and also sent her away from his home. Thereafter, the complainant had filed a Maintenance Case against A-1 and after trial, the Trial Court had awarded an amount of Rs.300/- per month in MC.No.214/1995, as against which, A-1 had filed a Revision before this Court and this Court had dismissed the same. The appellant/complainant, expecting that A-1 will reform one day and that he will come and join with her, made repeated requests. Despite such repeated requests, A-1 did not come and join her. On 04.03.1984, A-1 had married A-2 [Rathinam] who belonged to the same Community at Palanigoundenpudhur, Pollachi and the marriage was an illegal one. The complainant had the knowledge about the second marriage only during the year 1991. A-3 to A-9 had alleged to have abetted the second marriage. The second marriage was contracted during the subsistence of the first marriage which is against the Hindu Marriage Act and hence, she filed a private complaint in CC.No.346/1999.

4 On the side of the appellant/complainant, P.Ws.1 to 4 were examined and Exs.P.1 to P.5 and M.Os.1 and 2 were marked. On the

side of the accused, D.Ws.1 to 4 were examined and Exs.R.1 to 9 were marked. No material Objects were marked on the side of the accused/respondents.

5 The Trial Court, on thorough appreciation of oral and documentary evidence, finding that A-1 had married A-2 during the subsistence of the earlier marriage with the appellant/complainant and finding that A-3 to A-9 had abetted the second marriage, had convicted them as stated above. Against the said judgment of conviction and sentence, A-7 and A-9 preferred Crl.App.No.1/2004 ; A-1 preferred Crl.App.No.8/2004 ; A-2, A-5 and A-6 preferred Crl.App.No.9/2004 ; A-3 and A-4 preferred Crl.App.No.10/2004 and A-8 preferred Crl.App.No.11/2004 before the Lower Appellate Court and the Lower Appellate Court, vide its common judgment, impugned herein, dated 16.04.2004, had allowed the criminal appeals filed by the accused and acquitted them, thereby reversing the judgment of conviction and sentence passed by the Trial Court.

6 Aggrieved over the said judgment of acquittal, the appellant/complainant/wife of A-1 had preferred Crl.A.No.1070/2004 against the acquittal of A-7 and A-9 ; Crl.A.No.1095/2004 against the

acquittal of A-1 [husband of the appellant/complainant] I Crl.A.No.1097/2004 against the acquittal of A-8 and Crl.A.No.1098/2004 against the acquittal of A-2, A-5 and A-6.

7 The learned counsel appearing for the respondents in the above appeals would submit that the respondents 2 and 3 in Crl.A.No.1098/2004 / A-5 and A-6 and the respondent in Crl.A.No.1097/2004 / A-8 died pending appeals and would submit that the charge in respect of A-5, A-6 and A-8 stands abated.

8 Recording the said submission, **the criminal appeals in Crl.A.No.1097/2004 and Crl.A.No.1098/2004 [insofar as the respondents 2 and 3/A-5 and A-6] stand abated.**

9 The learned counsel for the appellant/complainant would submit that A-1/husband of the complainant, had admitted his second marriage with A-2 and that the appellant/complainant had sent a Notice dated 12.04.1993 to her husband/A-1, who in turn, had sent a Reply Notice on 20.04.1993 which was marked as Ex.P.4, in which, he had admitted about contracting second marriage with A-2. It is his further submission that when the husband/A-1 having admitted the second

marriage, the Trial Court had rightly found A-1/husband of the complainant guilty for the offence u/s.494 IPC and the Lower Appellate Court had erred in acquitting A-1/husband of the complainant, stating that the second marriage between A-1 and A-2 was not proved by the appellant/complainant beyond reasonable doubt, by letting in evidence to show that the marriage was conducted in accordance with Section 17 of the Hindu Marriage Act. Learned counsel would further submit that when there is an admission by the husband/A-1 about his second marriage with A-2, there is no necessity for the appellant/complainant/wife to prove that the second marriage was performed in accordance with the Hindu Marriage Act.

10 *Per contra*, Mr.K.Rajamanickam, learned counsel appearing for the respondents 1 and 2 /A-7 and A-9 in Crl.A.No.1070/2004 would submit that there is absolutely no averment in the complaint that A-2 to A-9 are aware of the earlier marriage between A-1 and the appellant/complainant herein. Further, the appellant/complainant has not let in any evidence to show that the marriage between A-1 and A-2 was performed in accordance with section 17 of the Hindu Marriage Act, 1969 and that the other accused/respondents, by their presence or otherwise, facilitated the solemnisation of the second marriage with the

knowledge that the earlier marriage was in subsistence. Admittedly, even in the complaint, the appellant/complainant had stated that the marriage between her and A-1 was a love marriage and that they were living at Coimbatore and nothing had been imputed against the other accused that they were aware of the solemnisation of the earlier marriage. It is the submission of the learned counsel that the appellant/complainant cited two witnesses who are stated to have witnessed the second marriage of A-1 with A-2. Whereas, they have not been examined as witnesses before the Trial Court and on the other hand, the said witnesses have filed two separate affidavits and the Lower Appellate Court, having found that there was no mention about the presence of P.Ws.2 and 3 during the time of second marriage, had disbelieved their evidence and thereby, acquitted the respondents/accused. It is his further submission that A-3 to A-9 were unnecessarily roped in by the appellant/complainant, in order to harass them and would pray for dismissal of the appeals preferred by the appellant/complainant.

11 The learned counsel, in support of his contention, has placed reliance upon the decision of the Hon'ble Supreme Court of India

reported in **1992 [3] SCC 317 [Smt Chand Dhawan V. Jawahar Lal and Others]**, wherein the Apex Court has held thus:-

"9 We are, therefore, of the view that the High Court has clearly erred in reaching conclusion that the proceedings are liable to be quashed. In the light of the allegations made in the complaint and the materials produced in support of those allegations by the appellant before the Magistrate, the issue of the process to respondents 1 and 2 who are alleged to have solemnised the second marriage during the subsistence of an earlier valid marriage of the appellant is proper and when process has been issued, the proceedings have to continue in accordance with law against these respondents 1 and 2. So far as other respondents are concerned, it may be said that they had been unnecessarily and vexatiously roped in. The allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting. The explanation of the first respondent that the second respondent has been functioning as a governess to look after his children in the absence of the mother who had left them implies that respondents 1 and 2 are living together. In this

background, the allegations made against respondents 3 to 7 imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against those respondents."

12 Mr.B.Kumarasamy, learned counsel appearing for the respondents in CrI.A.No.1095 & 1098/2004 would submit that A-1/husband of the appellant/complainant had denied the earlier marriage between him and the complainant/appellant and though there is an admission by A-1/husband for having married A-2, mere admission by A-1/husband of the complainant that he had contracted the second marriage, is not enough to convict him. He would further submit that the Lower Appellate Court, having found that the alleged marriage between A-1 and A-2 having not been proved, has allowed the appeals and thereby, acquitted the accused and hence, prays that the impugned judgment of the Lower Appellate Court may not be interfered with and that the appeals may be dismissed.

13 In support of his contentions, the learned counsel would rely upon the following decisions of the Hon'ble Supreme Court of India:-

[1] AIR 1966 SC 614 [*Kanwal Ram and Other Vs. The Himachal Pradesh Administration*], wherein the Apex Court has held in paragraph Nos.6 and 7, which reads thus:-

"...

6 *It was contended for the appellants that this evidence was not enough to show that the marriage of Kubja and Kanwal Ram can be said to have been performed. We think this contention is justified in Bhaurao Shankar Lokhande Vs. State of Maharashtra, Crl.Appeal No.178 of 1963, unreported ; [ince reported in AIR 1965 SC 1564], this Court held that a marriage is not proved unless the essential ceremonies required for its solemnisation are proved to have been performed. The evidence of the witness called to prove the marriage ceremonies, showed that the essential ceremonies had not been performed. So that evidence cannot justify the conviction. The Trial Court also took the same view. The learned judicial Commissioner does not seem to have taken a different view.*

7 *The learned Judicial Commissioner, however, thought that apart from the evidence about the marriage ceremonies earlier mentioned there was other evidence which would prove the second marriage. He first referred to a statement by the*

appellant Kanwal Ram that he had sexual relationship with Kubja. We are entirely unable to agree that this, even if true, would at all prove his marriage with Kubja. Then the learned Judicial Commissioner relied on a statement filed by Kubja, Hira Nand and Hiroo in answer to an application for restitution of conjugal rights filed by Sadh Ram against Kubja and others, in which it was stated that Kubja married Kanwal Ram after her marriage with Sadh Ram had been dissolved. Now, the statement admitting the second marriage by these persons is certainly not evidence of the marriage so far as Kanwal Ram and Seesia are concerned ; they did not make it. Nor do we think, it is evidence of the marriage even as against Kubja. First, treated as an admission, the entire document has to be read as a whole and that would prove the dissolution of the first marriage of Kubja which would make the second marriage innocent. Secondly, it is clear that in law such admission is not evidence of the fact of the second marriage having taken place. In a bigamy case, the second marriage, as a fact, that is to say, the ceremonies constituting it, must be proved: Empress V. Pitambur Singy, ILR 5 Cal 566 [FB], Empress of India V. Kallu, ILR 5 All 233, Archbold, Criminal Pleading Evidence and Practice [35th Ed.] Art.3796. In Kallu's case, ILR 5 All 233, and in Morris V. Miller.

[1767] 4 Burr 2057 : 98 ER 73, it has been held that admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case ; see also Archbold, Criminal Pleading Evidence and Practice [35th Ed.] Art.3781. We are unable, therefore, to think that the written statement of Kubja affords any assistance towards proving her marriage with Kanwal Ram."

[emphasis supplied]

[2] AIR 1971 SC 1153 *[Smt.Priya Bala Ghosh Vs. Suresh Chandra Ghosh]*, wherein the Apex Court, by placing reliance upon *Kanwal Ram's* case *[cited above]*, has held in paragraph No.17 thus:-

"17 In *Kanwal Ram V. The Himachal Pradesh Admn.* [1966] 1/SCR 539 = [AIR 1966 SC 614], this Court again reiterated the principles laid down in the earlier decision referred to above that in a prosecution for bigamy the second marriage has to be proved as a fact and it must also be proved that the necessary ceremonies had been performed. Another proposition laid down by this decision, which answers the second contention of the learned counsel for the appellant is that admission of marriage by an accused is no evidence of marriage for the purpose of proving an offence of bigamy or adultery. On the evidence, it was held in the said decision that the

*witnesses have not proved that the essential ceremonies had been performed."***14** I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgements of both the Courts below, including the relevant provisions of Law and authorities cited by the respective learned counsels.

15 The Trial Court has convicted the accused based on the evidence of P.Ws.2 and 3. On a perusal of the complaint, it is evident that nothing has been stated about the presence of P.Ws.2 and 3 and the appellant/complainant had spoken to about two persons, viz., one Natarajan and Krishnamoorthy. Since Natarajan died, he could not be examined and the other witness, viz., Krishnamoorthy, was not examined on the side of the appellant/complainant. It is only during her evidence before the Court, the appellant/complainant had stated that she needs to examine P.Ws.2 and 3. The Lower Appellate Court, doubting the presence of P.Ws.2 and 3 and their evidence, had allowed the appeals filed by the accused, thereby acquitting them.

16 This Court has gone through the evidence of P.Ws.2 and 3 at length. Their evidence is doubtful and does not inspire the confidence of this Court as to their presence and having witnesses the marriage between A-1 and A-2. This Court is of the considered view that the appellant/complainant has not proved her case by letting in cogent evidence that the alleged marriage between her husband, viz., A-1 and A-2 was performed in accordance with section 17 of the Hindu Marriage Act, 1969 and thereby, the Lower Appellate Court was correct in acquitting the accused by reversing the judgment of conviction and sentence. Therefore, this Court finds no infirmity or perversity in the findings of the Lower Appellate Court and thereby, this Court is of the opinion that the judgment of the Lower Appellate Court warrants no interference.

17 In the result,

Criminal Appeal Preferred by the Appellant/Complainant	Against	Dismissed/Allowed/Abated
1070/2004	A-7 & A-9	Dismissed
1095/2004	A-1	Dismissed
1097/2004	A-8	Abated [since A-8 died]
1098/2004	A-2	Dismissed
1098/2004	A-5 & A-6	Abated [since A-5 & A-6 died]

A.D.JAGADISH CHANDIRA, J.
AP

confirming the judgment of the learned Additional Sessions Judge and Fast Track Court No.1, Coimbatore dated 16.04.2004 in Crl.App.Nos.1, 8, 11 & 9 /2004 reversing the judgment of the learned Judicial Magistrate No.3, Coimbatore dated 12.12.2003 in CC.No.346/1999.

25.06.2019

Web:Yes
AP

To:

- 1.The Additional Sessions Judge, FTC NO.1 Coimbatore.
- 2.The Judicial Magistrate No.3, Coimbatore.
- 3.The Principal District Judge, Coimbatore.
- 4.The Chief Judicial Magistrate, Coimbatore.
- 5.The Public Prosecutor, High Court, Madras.

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