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Crl.A.Nos.327 to 329 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

Crl.A. Nos.327 to 329 of 2014

R.S.Manonmani

... Appellant in all cases

Vs.

1.K.Sundarrajan

2.Rajamani

... Respondents in Crl.A.No.327 of 2014

1.Balamani

2.Palanisamy

3.Selvaraj

... Respondents in Crl.A.No.328 of 2014

1.Shanmugasundaram

2.Ponnammal

3.M.Ugamani

... Respondents in Crl.A.No.329 of 2014

Prayer in all cases: Criminal Appeals filed under Section 378 of Cr.P.C. against the judgment passed in C.A. Nos.58, 84 & 74 of 2010 on the file of the Additional District and Sessions Judge, FTC No.II, Coimbatore dated 08.09.2010 reversing the judgment in C.C. No.1794 of 2005 on the file of the Judicial Magistrate No.3, Coimbatore dated 19.03.2010.

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For Appellant in all cases : Mr.B.Kumarasamy

For Respondents in
Crl.A.No.327 of 2014 : Mr.N.Ponraj

For Respondents in
Crl.A. No.328 of 2014 : Mr.A.M.Rahamath Ali

For Respondents in
Crl.A. No.329 of 2014 : Mr.A.M.Rahamath Ali for
Mr.H.Rajasekar

COMMON JUDGMENT

These three appeals are filed against the order passed by the Lower Appellate Court reversing the judgment and conviction passed by the Trial Court holding the respondents guilty of offence under Section 494 read with 120(B) as far as A1 and A2 and 494 read with 120(B) and 109 in respect of the other accused.

2.The Trial Court convicted A1 and A2 for offence under Section 494 and sentenced to undergo three years Simple Imprisonment and to pay a fine of Rs.3,000/- and in default to undergo six months Simple Imprisonment and convicted them for offence under Section 494 read with 120(B) and sentenced to undergo three years Simple Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo six months Simple Imprisonment. Further convicted A3, A5,



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A8 and A9 for offence under Section 494 read with 120(B) read with 109 and sentenced to undergo three years Simple Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo six months Simple Imprisonment and convicted A4 and A6 for offence under Section 494 read with 120(B) read with 109 and sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo six months Simple Imprisonment.

3.The Trial Court judgment was challenged by A4 and A5 in C.A. No.58 of 2010, A1, A3 and A6 in C.A. No.74 of 2010 and A2, A8 and A9 in C.A. No.84 of 2010. The Lower Appellate Court, on re-appreciating the evidence, allowed all the three appeals and acquitted them by reversing the judgment of conviction. Being aggrieved, the present appeal is filed by the aggrieved complainant.

4.The brief facts of the case as found from the evidence is that the complainant was examined as P.W.1, who married the first accused on 02.06.1997 at Maruthamalai Subramania Temple and a son was born to them on 12.03.1998. Thereafter, the complainant and the first accused got separated.



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5.It is alleged that the first accused married the second accused on 21.02.2005 in the presence of the other accused, namely, 3 to 9 and through the said illegal wedlock, a daughter, by name, Pooja was born.

6.The other two witnesses for prosecution have witnessed the marriage, solemnized between the first and second accused, besides the documentary evidences. Particularly, the birth certificate of Mohankumar, marked as Ex.P3 indicates that he was born to the first accused through the first wife P.W.1 and the Sale deed marked as Ex.P4 dated 19.07.2006 indicates that the first accused along with his mother, brother and on behalf of his minor children Mohankumar born through his wife P.W.1 and Pooja born through the second wife A2 had executed a sale deed in favour of one Devaraj.

7.Considering the birth certificates, the Sale Deed executed by A1 disclosing that he is the father of said Mohankumar, born through his first wife and Pooja, born through the second accused, the Trial Court has convicted A1 and A2. When the first marriage was in subsistence and also other accused facilitated abetting the marriage



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and found witnessing the marriage, the Lower Appellate Court re-appreciating the evidence, has reversed the said finding on the ground that it is well established proposition of law that without pleadings, no evidence is admissible. When the first marriage with P.W.1 was subsisted, the Lower Appellate Court, while considering the ocular evidence of P.W.2 and P.W.3 had observed that no marriage invitation or photograph filed to prove that there was a congregation in the residence of A4 on 21.02.2005 to celebrate the marriage between A1 and A2 on that day. In the absence of positive evidence to prove that there was a congregation on 21.02.2005 in the residence of A4, who celebrated the marriage between A1 and A2, the Lower Appellate Court, taking note of the fact that if the evidence of P.W.2 and P.W.3 is to be accepted that A1 and A2 got married on 21.02.2005, Pooja alleged to have born on 04.12.2005 for A1 and A2, should have born within 283 days, has observed that the medical science indicates that there cannot be full grown child, delivered within 280 days and therefore, a child who was born on 04.12.2005 could not be after the date of the alleged marriage.



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8.This Court, on perusing the Lower Court judgment finds that the accused in the Sale Deed/Ex.P4 has declared that one Pooja is his daughter and Mohankumar is his son and both are born to two different mothers. When there is a documentary evidence and ocular evidence sufficient to prove that the marriage between P.W.1 and A1 in subsistence, A1 has developed intimacy with A2 and also solemnized the marriage with her in presence of his relatives, who are shown as A3 and A9 and begotten a child and also brought on record about the paternity in the sale deed executed by him, the Lower Appellate Court neither considered the evidence or the Sale Deed/Ex.P4 indicating Pooja is the daughter of A1 and A2 and the birth extract maintained in the hospital indicating A2 has given birth to a child on 04.12.2005 and the name of the first accused is shown as husband of the second accused. The Lower Appellate Court on surmises held that there cannot be full born child, delivered within 280 days as it is the case of the prosecution.

9.In the said circumstances, this Court finds that the judgment of the Lower Appellate Court reversing the well considered judgment of the Trial Court is liable to be set aside and the Trial Court judgment



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has to be restored in so far as the first accused and second accused, who had solemnized and entered into the marriage knowing well that it is illegal and punishable. As far as the other accused 3, 8 and 9 are concerned, who are charged for abetment and convicted by the Lower Court and reversed by the Lower Appellate Court, the benefit of doubt was extended and the appeal as against them is dismissed confirming the Lower Appellate Court order of acquittal.

10. In fine, Crl.A. No.327 of 2014 stands dismissed. Crl.A. No.328 of 2014 stands allowed as against the first respondent Balamani, who is the second accused and stands dismissed as against the other two respondents. Crl.A. No.329 of 2014 stands allowed as against the first respondent Shanmugasundaram and stands dismissed as against the other two respondents. In the result, the sentence and conviction as against A1 and A2 imposed by the Trial Court are confirmed. 30 days time is granted to them for surrender before the Trial Court to complete the period of imprisonment.

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Dr.G.JAYACHANDRAN,J.

vga

To

- 1.The Additional District and Sessions Judge,
FTC No.II, Coimbatore
- 2.The Judicial Magistrate No.3,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

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