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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 117 OF 2023
AND
CRIMINAL APPEAL NO. 118 OF 2023

Vaishali Prabhakar Khedkar

APPELLANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. Yogesh K. Bobade, Advocate for the appellant
Mr. D. B. Bhangé, APP for respondent - State
Mr. M. S. Karad h/f Mr. S. S. Thombre, Advocate for respondents -
accused

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th AUGUST, 2024

ORDER :

1. By these appeals, filed under section 372 of the Criminal Procedure Code, appellant – original complainant challenges the judgments and orders of acquittal passed by learned Sessions Judge, Beed in Criminal Appeals No. 41 of 2016 and 46 of 2016 thereby acquitting the respondentz – accused.

2. Appellant filed complaint against 43 accused persons, contending that they have committed offence punishable under section 494 r/w 109 of the Indian Penal Code. It is her case that, her marriage with accused No.1 was performed on 25th March, 2000 at 12.30 hours, as per Hindu rites and rituals. Their marital

relationship is still subsisting. Accused No.1 performed second marriage with accused No.2 on 15th August, 2005 at village Nagtala, Taluka - Ashti at 12.30 p.m. Accused No.3 to 43 have abetted performance of marriage of accused No.1 with accused No.2. The complaint was registered as RCC No. 82 of 2005.

3. Appellant examined 4 witnesses. Accused persons examined one witness. Trial Court convicted accused No.1, 3 to 5 and 8 under section 248 (2) of the Criminal Procedure Code for the offence punishable under section 494 read with section 109 of the Indian Penal Code and sentenced them to suffer RI for 3 years and imposed a fine of Rs.2000/- on each of them. Accused No.1 was directed to pay compensation of Rs.10,000/- to the appellant.

4. Being aggrieved by the conviction, accused persons preferred Criminal Appeals No. 41 of 2016 and 46 of 2016, which are allowed by the learned Sessions Judge and the accused are acquitted. Hence, the present appeals by the original complainant.

5. Heard learned advocate for appellant, learned APP for the State and learned advocate for respondent accused. Perused the record and the impugned judgments and orders of acquittal.

6. Learned advocate for appellant assailed the impugned judgments and orders of acquittal, contending that there is cogent and reliable evidence of CW 2 and 3 on record, who have witnessed the marriage of accused No.1 with accused No.2 and have deposed about the ceremonies performed in the said marriage. By relying on the said witnesses, Trial Court was justified in convicting the respondents – accused. However, the Appellate Court has misread the evidence and has erroneously acquitted the accused persons. The impugned judgments and orders of acquittal are, therefore, unsustainable and the same are liable to be quashed and set aside and the judgment and order of conviction passed by the learned Trial Court is liable to be sustained.

7. Learned advocate for respondent – accused, on the other hand, supported the impugned judgments and orders of acquittal. Learned APP submits that appropriate orders, as per the record may be passed.

8. Perusal of the record indicates that CW-2 and 3 are the chance witnesses. They have stated that they went to Nagnath Temple on the date of marriage, as they routinely used to go to said temple on every Monday falling in the marathi month of Shrawan. After Darshan, they have witnessed the marriage

ceremony. They were there for about one to one and half hour.

In cross examination, they have admitted that lakhs of people used to come to Nagnath Temple on each Monday in the month of Shrawan. Both of them are from the brotherhood of the complainant. CW 3 has also admitted that after returning to their house, after witnessing the marriage ceremony, he did not feel it necessary to tell the incident to the complainant, on the same day.

9. The Appellate Court, after assessing their evidence, has observed that CW-2 and 3 have specifically admitted in the cross examination that they did not know what role the individual accused has played in the said marriage.

10. Admittedly, the complainant in the present case, is a hearsay witness, having no personal knowledge about the alleged marriage ceremony.

11. Much is argued by learned advocate for appellant about the deposition of accused No.2 in a criminal case lodged by her against accused No.1 - her husband and in laws, wherein she has stated that her marriage is performed with accused No.1. This does not, in any manner, prove the factum of solemnization of second marriage by accused No.1, which is allegedly witnessed

by CW 2 and 3.

12. Accused persons have examined Defence Witness i.e. Priest of the Nagnath Temple, who has stated that no marriage ceremonies are being performed in Nagnath Temple and he did not know accused No.1 and 2. On every Monday of marathi month Shrawan, yatra is being organized in the temple and on that day pooja and abhisheks are performed in the said temple from 7.00 a.m. to 8.00 p.m.

13. It is well settled that first and second marriage have to be proved in accordance with legal requirements. Absence of proof of solemnization of any one of the marriage would defeat the charge under section 494 of the India Penal Code (Vide ***“Smt. Kerabai Ramrao Nakhate V/s Ramrao Laxman Nakhate and Others” 2013 (9) LJSOFR 216***)

14. On going through the record, it is clear that, the view taken by the Appellate Court is a possible view. The Appellate Court has assigned proper reasons while acquitting the respondent - accused. No case is made out by the appellant to interfere in the impugned judgments and orders of acquittal. Both the appeals are, therefore, dismissed.

[NITIN B. SURYAWANSHI]
JUDGE