

Ashwin Nanabhai Vyas

Vs

The State of Maharashtra

Criminal Appeal No. 86 of 1970

(S. M. Sikri, I. D. Dua JJ)

04.08.1970

JUDGMENT

DUA, J. -

1. Ashwin Nanabhai Vyas, appellant in this Court was tried under Sections 417, 493 and 496, I.P.C. and acquitted by the Additional Sessions Judge, Greater Bombay. On appeal by the State, the High Court set aside his acquittal and convicted him under all the three sections. He was, however, sentenced to rigorous imprisonment for one year for the offence under Section 496, I.P.C. only. No separate sentence was imposed under Sections 417 and 493. Special leave was granted by this Court only on the question of sentence.

2. The facts of the case may now be briefly stated. Shalini Vithal Abhyankar, a Maharashtra Brahmin lady, used to live in a flat on the first floor in Tarabag Estate of Girgaum locality with her two daughters and a son. Her elder son stayed separately. The appellant used also to stay on the second floor with his parents in the same Estate. This was a Gujarati Brahmin family. The flats in which the two families lived were practically opposite each other. It appears that the appellant and Kusum, one of the daughters of Shalinibai Vithal Abhyankar became friendly and their friendship developed into close intimacy. In 1955 when Kusum was about 14 or 15 years of age and the Appellant 19 or 20, they both went and consulted a lawyer in connection with their proposed marriage. Kusum being a minor the lawyer advised them that her guardian's consent was necessary. When Kusum's mother came to know about it she scolded her daughter but on being convinced of the honesty of purpose on the part of the appellant whom Shalinibai knew, she became agreeable to their marriage. It seems that Kusum was suffering from the enlargement of heart which had been detected when she was about 9 years old and on that account she had been advised to give up her studies. The friendship between the two continued until 1960. They used to visit each other freely and frequently. The appellant who had joined his father's business was required by 1960 to go to Bangalore and Mysore and to stay there for quite sometime. The appellant and Kusum used to correspond with each other and the appellant wrote to her from Bangalore that he would marry her on his return to Bombay near about the coming Diwali day. On October 20, 1960, the appellant went to Shalinibai's house and told her that he could not wait any further and that his marriage with Kusum should be performed on the 24th of that month when the Registrar of Marriages would come to her house and register their marriage. The appellant did not want to give any publicity to this marriage and did not want even the other members of the two families to be invited. On the 24th at about 4 p.m. the appellant his close friend Jayantilal and another gentleman represented to be the Marriage Registration Officer came to Shalinibai's house when Kusum was ready dressed as a bride in accordance with the appellant's suggestion. Earlier in the morning that day the appellant had gone to Kusum's house with a green sari, a blouse, a ring and a Mangalsutra for her. At 4 p.m. a form was

got signed by Kusum and attested by Jayantilal at the instance of the gentleman represented to be the Marriage Registration Officer. Thereafter he declared the appellant and Kusum to be husband and wife. Though this marriage was performed in secrecy, the couple started living openly as husband and wife from that very night. One out of the three rooms in Shalinibai's flat was allotted to Kusum and her husband. In May, 1961, Kusum became pregnant. As she had been suffering from the enlargement of heart since her childhood it was considered advisable to take expert medical opinion. Dr. Date and Dr. (Mrs.) Shrodkar advised termination of her pregnancy and as a result the necessary operation was performed. Both of them had so far been living in the room allotted to them in Shalinibai's flat. The appellant naturally felt that this arrangement could not last indefinitely. He and his father had in fact been looking for a flat on Malabar Hill. In 1961 a flat was purchased by the appellant's father at Walkeshwar but its possession could not be obtained till 1963. Though there was an understanding that on securing its possession this flat would be allotted to the appellant so that he and his wife may live there it was actually allotted to the appellant's brother Dinesh. This led to some bitterness between the appellant and his wife Kusum. The appellant then began avoiding her and a month later it transpired that he had married one Kiran Patel. On learning about this marriage Kusum and his brother made enquiries from the office of the Registrar of Marriages but were surprised to find that the appellant's marriage with Kusum had not been registered with the Registrar of Marriages. Kusum thereupon filed a complaint giving rise to the present appeal. This complaint was filed on November 1, 1963. The appellant admitted substantially the whole story except incidents alleged to have taken place on the 20th and 24th October, 1960. Kusum having died on November 20, 1963, the prosecution was continued by Shalinibai after securing the requisite permission from the Court. This permission was unsuccessfully challenged by the appellant up to this Court.

3. The appellant's conviction is fully established on the record and indeed the only question we are required to consider is one of sentence. The High court has observed in this connection that the appellant was sincere in his affections for Kusum in spite of his knowledge that she was suffering from a heart disease. That Court also noticed that Kusum, the worst sufferer at the hands of the appellant, had since died. On these grounds the Court felt that though a severe sentence was not called for, a nominal sentence would also not meet the ends of justice. The appellant was thus sentenced to rigorous imprisonment for one year.

4. We are informed that the appellant has by now undergone nearly six months' imprisonment. It is argued that the sentence undergone should be held to meet the ends of justice on the peculiar facts and circumstances of this case. In our view the appellant is not shown to have been inspired by any dishonest or mean motive when he committed the offence on October 24, 1960. It is not disputed that after that date the appellant and Kusum openly lived as husband and wife and they were quite happy. The manner in which they lived after October 24, 1960 clearly discounts any fraudulent motive or intention on the part of the appellant. The mere fact that the performance of the marriage was kept secret by the appellant does not necessarily lead to the conclusion that he had a fraudulent intent and a mean and dishonourable motive because such a conclusion does not seem to us to fit in with his subsequent behaviour towards Kusum. Both of them openly lived as husband and wife to the knowledge of all who were interested in knowing of their marriage. His desire not to give prior publicity to the marriage might well have been influenced by an honest and honourable motive of checkmating and defeating some apprehended opposition from his parents. Later he of course did marry Kiran but the circumstances in which that marriage took place are not disclosed on this record and is not known whether it was a result of pressure from his parents or it was a matter of his own free choice and volition. The appellant's previous consistent conduct and behaviour towards Kusum seems to some extent to detract from the probability of the latter suggestion. At least a reasonable

possibility of effective pressure from his parents after learning of Kusum's operation cannot be ruled out. Now in determining the question of adequacy of sentence in this case this factor can legitimately be taken into consideration along with the other relevant fact like (i) that the trial has lasted nearly seven years, which means that the appellant must have incurred considerable expenditure on this litigation (the matter, as already noticed, came to this Court on an earlier occasion) and indeed there is a clear suggestion that the appellant has become insolvent, (ii) that this litigation must also have caused mental agony to the appellant during all these years, (iii) that Kusum is now dead and (iv) the tribulation suffered all these years by Kiran (who is apparently not to blame for her marriage with the appellant) who could only look to the appellant for her maintenance. All these factors, when given due consideration, in our view, justify a more lenient sentence in this case. We feel that on giving due weight to all the relevant circumstances the sentence already undergone will meet the ends of justice.

5. The appeal is accordingly allowed to this extent.

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