

Anandrao Tulsiram Bhawar and Another

Vs

The State of Maharashtra

Criminal Appeal No. 99 of 1969

(A. N. Grover, A. N. Ray, D. G. palekar JJ)

09.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Bombay High Court.
2. The conviction of Anandrao appellant under Section 494, Indian Penal Code, was upheld by the High Court and he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-. In default he was to suffer further rigorous imprisonment for three months. The conviction of the appellant Tulsiram who is his father under Section 494 read with Section 114 was upheld and he was sentenced to undergo rigorous imprisonment for three months and pay a fine of Rs. 300/-. In default he was to undergo further imprisonment for one month.
3. The appellant Anandrao was married to Yamnabai about 9 or 10 years before she filed a complaint on February 24, 1966 alleging that she had been driven out of her house by her husband some years earlier and then he had contracted a second marriage with one Asrabai alias Suman. This marriage was celebrated on February 24, 1965 at Arangaon in Ahmednagar district. She further alleged that the parents of Anandrao and of his second wife Asrabai as also two priests who had officiated at the marriage had all aided and abetted the celebration of the second marriage which was wholly illegal and by celebrating which Anandrao was guilty of offence under Section 494 of the Indian Penal Code. Originally eight persons were tried including the second wife, the respective parents of the husband and the second wife and the two priests on charges under Section 494 etc., of the Indian Penal Code. The trial magistrate, however, gave them benefit of reasonable doubt and acquitted them. An appeal was taken to the High Court by special leave under Section 417(3) of the Criminal Procedure Code by Yamnabai.
4. After a careful examination of the evidence of all the prosecution witnesses the High Court was unable to sustain the reasoning of the magistrate. It was observed that the magistrate had discarded the evidence on account of certain discrepancies which did not effect the credibility of the witnesses. Complainant Yamnabai had deposed that ever since his marriage with the second wife the appellant Anandrao had been living with that wife and that she had given birth to a son during the pendency of the proceedings. That part of her evidence was fully corroborated by the entry Exhibit 31 in the birth register of village Tikhi. The two witnesses Sitaram Narain, P.W. 2 and Vithoba Chuda, P.W. 3 who were present when all the marriage ceremonies were performed between Anandrao and his second wife Asrabai were believed by the High Court on a full consideration of their evidence. It was held that their testimony was sufficient to establish that the celebration of the marriage would have been valid but for the provisions of Section 17 of the Hindu Marriage Act,

1955, by which the parties are governed. P.W. 4, Waman Vithoba Arsul was the Police Patel of village Tikhi to which village Asrabai belonged and where her parents resided. As part of his duties he had to maintain the birth and death register authenticated by the seal of Mamlatdar on every page. He produced that register and the extract from it relating to the entries made by him in December, 1966. The entry exhibited as Exhibit D-31, dated December 11, 1966, showed that a male child had been born in the house of Babu Santu Delvi, the father of the second wife. The name of the father of the child was given as Anandrao Tulsiram Bhawar of Matkuli. This witness deposed that the entry had been made by him personally after verifying the same after going to the house of Asrabai whom he knew. He had also enquired about the parentage of the child and the entry was made by him on the strength of the information supplied to him. It was noticed by the High Court that the Magistrate had discarded the evidence of the Police Patel mainly on the ground that his name did not appear as a witness in the complaint filed by Yamnabai. But it was pointed out that the complaint was filed on February 24, 1966 while the entries related to the birth of a child on December 11, 1966. Yamnabai could not, therefore, have known when she filed that complaint that such an entry would be made. The High Court was satisfied, particularly, from the proof of birth of a child to Asrabai and the entry relating to the birth of that child and the parentage of the child given therein that the evidence of the two witnesses who had deposed to the actual marriage having taken place was fully corroborated and shall be accepted. As regards the appellant, Tulsiram, the father of Anandrao the High Court entertained no doubt that he had actively participated in the marriage of his son with Asrabai. The other accused, however, were found not to be guilty of the offences alleged against them.

5. Learned counsel for the appellant has made an attempt to assail the conclusion of the High Court with regard to the commission of the offences alleged against the appellants. He has, however, not been able to show how the finding relating to the birth of a child to Asrabai, the father being Anandrao, could be challenged. If the fact of the birth of a child was established the other evidence received strong corroboration from it and we have not been shown any such error in the reasoning or the conclusion of the High Court which would justify interference by us in this appeal so far as the conviction of the appellants is concerned. However, keeping in view the entire circumstances we consider that the ends of justice will be served if the sentence of imprisonment imposed on both the appellants is reduced to one already undergone. But a fine of Rs. 1,000/- is imposed on each one of them in place of the fine imposed by the High Court. In default of payment of fine they shall have to undergo imprisonment for six months. The fine, if realized, from the appellants shall be paid to Yamnabai the first wife of Anandrao. In making this direction we have kept in view clauses (a) and (b) of Section 545(1) of the Criminal Procedure Code.

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