

SUPREME COURT OF INDIA

Kannan

Vs.

Selvamuthukani

Crl.A.No.234-235 of 2012

(Aftab Alam and Ranjana Prakash Desai JJ.)

30.01.2012

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. These two appeals, by special leave, can be disposed of by a common judgment as they challenge the judgment and order dated 24.9.2008 delivered by the Madras High Court in Criminal R.C. Nos. 1439 and 1440 of 2005 filed by the respondent.

3. It is necessary to state the facts which led to these appeals. The respondent - Selvamuthukani @ Selvamuthu is the original complainant ('the complainant' for short). She filed a private complaint in the court of Judicial Magistrate No. 1, Coimbatore being CC No. 620 of 1992 against Kannan (original accused 1 - 'A1' for short), M. Rangan Chettiar (original accused 2 - 'A2' for short), Murugayee (original accused 3 - 'A3' for short), K. Palaniammal (original accused 4 - 'A4' for short), Ganesan (original accused 5 - 'A5' for short) and seven others. The complainant alleged that she was married to A1 on 16.6.1980. According to her, during the subsistence of her marriage with A1, A1 married A4 and thus committed an offence punishable under Section 494 of the Indian Penal Code (for short 'the IPC'). The complainant further alleged that by actively assisting and participating in the said marriage ceremony, the other accused abetted the commission of said offence and they are thus guilty of offence punishable under Section 494 read with Section 109 of the IPC. After perusing the complaint and deposition of the complainant, learned Magistrate framed charge under Section 494 of the IPC against A1 and under Section 494 read with Section 109 of the IPC

against A2 to A5. The complainant examined herself as PW-1. She also examined two more witnesses (PW-2 and PW-3). The accused examined two witnesses in support of their case (DW-1 and DW-2). After perusing the evidence on record, learned Magistrate held A1 guilty of offence punishable under Section 494 of the IPC. He held A2 to A5 guilty of offence punishable under Section 494 read with Section 109 of the IPC. He sentenced all the accused to undergo rigorous imprisonment for two years each and to pay a fine of Rs.1,000/- each. In default, the accused were to undergo rigorous imprisonment for one month.

4. Being aggrieved by the said judgment and order, A1 preferred Criminal Appeal No. 147 of 2004 and A2 to A5 preferred Criminal Appeal No. 146 of 2004 in the Court of District and Sessions Judge, Coimbatore. Learned Sessions Judge, while disposing of the appeals confirmed the conviction but reduced the sentence of the accused to the sentence already undergone by them. The said judgment was challenged by the complainant in the Madras High Court. She preferred two criminal revision cases being Criminal Revision Case No. 1439 of 2005 and Criminal Revision Case No. 1440 of 2005. By the impugned judgment the High Court confirmed the finding that A1 had during the subsistence of his first marriage married A4 and was, therefore, guilty of offence punishable under Section 494 of the IPC. The High Court also confirmed the finding that A2 to A5 abetted the said offence and hence, they were guilty of offence punishable under Section 494 read with Section 109 of the IPC. The High Court noted that none of the accused has chosen to prefer any appeal or revision and, therefore, conviction recorded by the trial court which was confirmed by the lower appellate court has become final.

The High Court also noted that the accused were on bail throughout and that they had not served any part of the sentence in jail. The High Court was of the opinion that in the circumstances the reduction of sentence done by the lower appellate court cannot be sustained. In the opinion of the High Court the said order was passed without application of mind. In the circumstances, the High Court reduced the sentence of two years rigorous imprisonment awarded to A1 to rigorous imprisonment for one year. Sentence of two years each awarded to A2 to A5 was reduced to six months rigorous imprisonment each. The High Court did not modify the trial court's order as regards fine. The criminal revision cases were thus partly allowed. Being aggrieved by the said judgment, the accused have preferred the present appeals.

5. Admittedly A2 (Rangan Chettiar) is dead and his name has been struck off from the array of parties vide this Court's order dated 2.9.2011. So far as A1 i.e. husband

of the complainant is concerned, he has undergone the sentence awarded to him. Thus, we have to consider the involvement of A3, A4 and A5 in the offences in question.

6. We have heard Shri A.T.M. Rangaramanujam, learned senior counsel appearing for the accused and Shri Rana Ranjit Singh, learned counsel appearing for the complainant-respondent.

7. Learned counsel for the accused pointed out that A1 had filed a divorce petition against the complainant. A divorce decree was passed on 20.2.1991. The appeal filed by the complainant was allowed on 10.2.1992 and on that date the marriage between A1 and the complainant could be said to have been revived. A1 married A4 on 8.3.1992 but there is nothing to establish that A3, A4 or A5 knew that the divorce decree dated 20.2.1991 was set aside. To hold that A3, A4 and A5 had knowledge of the fact that on 10.2.1992 the divorce decree was set aside, would be entering into the arena of conjectures and surmises. Counsel submitted that, in any case, the marriage between the complainant and A1 has been dissolved by a consent decree dated 12.1.2010. Counsel submitted that A5, the father of the second wife i.e. A4 is 80 years of age. He is seriously ill. He is surviving on one kidney. Counsel submitted that in the circumstances of the case, therefore, the impugned judgment deserves to be set aside.

8. Learned counsel for the respondent-complainant on the other hand submitted that the marriage between the complainant and A1 is established beyond doubt. There is enough evidence on record to establish that during the subsistence of the first marriage, A1 got married to A4. Counsel submitted that it is inconceivable that A3 to A5 did not know that the divorce decree obtained by A1 was set aside on 10.2.1992. Therefore, they have rightly been convicted for offence under Section 494 read with Section 109 of the IPC.

9. The prosecution has clearly established that A1 was married to the complainant on 16.6.1980. It is also a fact that A1 obtained a decree of divorce on 20.2.1991 which was set aside on 10.2.1992 in the appeal carried by the complainant against the said decree of divorce. Evidence of the complainant establishes beyond doubt that A1 married A4 on 8.3.1992. The question is whether the fact that the decree of divorce was set aside and the marriage between A1 and the complainant was revived was known to A3, A4 and A5. Merely because A3 is the sister of A1, it cannot be presumed that she knew that the decree of divorce was set aside. If A1 wanted to marry A4, it is possible that he would keep back these facts from his sister as also from A4 and A5 i.e. his second wife and her father respectively.

10. In our opinion, the evidence of PW-1, PW-2 and PW-3 does not conclusively establish that the fact that the decree of divorce was set aside on 10.2.1992 was known to A3, A4 and A5 and, therefore, benefit of doubt must be given to A3, A4 and A5. In the circumstances, in our opinion, the impugned judgment and order dated 24.9.2008 so far as it convicts and sentences A3, A4 and A5 needs to be set aside. Hence, the following order:

11. The impugned judgment and order dated 24.9.2008 passed in Criminal R.C. Nos. 1439 and 1440 of 2005 is quashed and set aside to the extent it convicts and sentences A3, A4 and A5. Murugayee (original accused 3), K. Palaniammal (original accused 4), and Ganesan (original accused 5) are acquitted of the charge under Section 494 read with Section 109 of the IPC. Their bail bonds stand discharged.

12. Appeals are disposed of in the aforesaid terms.