

SUPREME COURT OF INDIA

State of Jharkhand

Vs.

Ram Chandra Bhagat

Cr.1.No.439of2006

(Anil.R.Dave and Sudhansu Jyoti Mukhopadhyay,JJ.)

9.11.2012

JUDGMENT

Anil. R. Dave,J.

1. Being aggrieved by an order dated 8th September, 2005 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No.788 of 2005, whereby the order of conviction of the appellant was confirmed by the High Court, the appellant has filed this appeal. By virtue of the impugned order, the appellant was sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for a period of two months has been confirmed.

2. This appeal was initially heard by this court but after hearing the appeal, one of the learned judges was of the view that the appellant could not have been convicted for committing an offence under Section 493 of the Indian Penal Code (for short 'the IPC'), whereas the said view was not accepted by another learned judge.

3. In the afore-stated circumstances, the appeal was placed before the Hon'ble Chief Justice, who referred it to a three-judge Bench and, therefore, it had been placed before us.

4. As the facts have been duly discussed by both the learned judges in their respective orders, we narrate the same in a nutshell. According to the case of the prosecution, the appellant had acquaintance with the complainant and upon developing intimate relationship with her, by his actions he made the complainant to believe that she had become the wife of the appellant herein and thereby they had stayed together for nine years as husband and wife and during that period the complainant had given birth to two children - a son and a daughter. Thereafter, the allegation is that the appellant had turned the complainant out of his house.

5. In the afore-stated circumstances, a complaint was filed by the complainant and in pursuance of the said complaint the appellant was prosecuted. After a full-fledged trial, the appellant was convicted by an order dated 20th December, 2003 passed in G.R. Case No.27 of 1992(Lohardaga P.S. case No.12/92) by the Judicial Magistrate First Class, Lohardaga. An appeal filed against the order of conviction, being Criminal Appeal No.1 of 2004, was dismissed by the learned Additional District and Sessions Judge, Lohardaga. Being aggrieved by the order of dismissal of the appeal, the appellant had filed Criminal Revision No.788/2005 before the High Court of Jharkhand at Ranchi and the same was rejected by an order dated 8th September, 2005, which lead to the filing of this appeal.

6. We heard the learned counsel and also meticulously perused the impugned judgments and the record pertaining to the case.

7. Before dealing with the case in hand, let us see as to how and why the learned judges of this Court had come to different conclusions.

8. As we are concerned with the provisions of Section 493 of the I PC, it would be just and proper to look at the said section before we deal with the subject. "Section 493: Cohabitation caused by a man deceitfully inducing a belief of lawful marriage - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

9. Upon perusal of Section 493 of the IPC, to establish that a person has committed an offence under the said Section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the afore-stated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the afore-stated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception.

10. One of the learned judges was of the view that no deception was practised by the appellant and, therefore, no offence under the provisions of Section 493 of the IPC had been committed. It was the view of the learned judge that though the appellant had acted in an immoral manner which might not be approved by the society but he had not committed any offence in the eyes of law by staying with the complainant for about nine years. On the other hand, on appreciation of the evidence, another learned judge had confirmed the concurrent findings of the courts below and had come to the conclusion that the appellant had in fact practised deception, which led the complainant woman to believe that she was a lawfully married wife of the appellant though in reality she was not a lawfully married wife of the appellant and thereupon she had cohabited with the appellant. In these circumstances, another learned judge wanted to confirm the concurrent findings of the courts below.

11. Upon perusal of the evidence, we also are of the view, like the courts below that the appellant had practised deception and as a result thereof the complainant believed that she was a lawfully married wife of the accused and thereafter there was cohabitation and sexual intercourse as a result of the deception.

12. Upon perusal of the evidence we find that upon being acquainted with the complainant, the accused had developed a close relationship with the complainant. He used to visit the complainant from time to time and he had promised the complainant to marry her. Upon perusal of the evidence, we further find that the accused-appellant had got a form, with regard to marriage registration, signed by the complainant. The form was signed by the accused-appellant and he also induced the complainant to sign the form so as to get married. The form duly signed by both the persons had been exhibited and the signature of the appellant had been identified. The afore-stated fact made the complainant to believe that the accused-appellant had married her and, therefore, she had started residing with him as his wife. In fact, the appellant did not marry the complainant. The persons related to the complainant and the accused were also made to believe that the complainant was the wife of the appellant, though rituals necessary for Hindu marriage had never been performed. It is an admitted fact that no marriage had taken place between the complainant and the appellant but only on the basis of the documents signed by the complainant at the instance of the accused-appellant, the complainant was made to believe that she was a lawfully married wife of the accused-appellant.

13. As a result of the afore-stated deceitful act of the accused-appellant, the complainant started residing with him as she believed that she had lawfully married the accused-appellant.

14. There is sufficient evidence on record to show that the complainant had resided with the accused-appellant and the afore-stated fact was also reflected in the voters' list. In the voters' list the name of the complainant was shown as the wife of the appellant. As a result of the cohabitation, the complainant had given birth to two children. The accused-appellant had acknowledged the fact that the said two children were his children. Several ceremonies in relation to the birth of the children had also been performed by the accused-appellant.

15. Thus, upon perusal of the evidence, we find that there was sufficient evidence to the effect that the accused-appellant has deceived the complainant, which ultimately resulted into a belief in the mind of the complainant that she was a lawfully married wife of the accused-appellant, though she was not.

16. The afore-stated evidence which has been found by all the courts below is sufficient to show that the complainant was made to believe by the deceitful act of the accused-appellant that she was lawfully married to the accused-appellant. The complainant had also cohabited with the appellant and had sexual intercourse with the accused-appellant and thereby she had given birth to two children also.

17. In the afore-stated set of circumstances, when there is ample evidence to the effect that only on the deceitful representation of the accused-appellant the complainant believed herself to be a lawfully married wife of the accused-appellant and as she had cohabited with the accused-appellant, there cannot be any doubt with regard to commission of an offence under the provisions of Section 493 of the IPC. Moreover, we do not find any error committed by the courts below in coming to the final conclusion with regard to commission of the offence by the appellant and, therefore, we confirm the order passed by the High Court.

18. In these circumstances, we dismiss the appeal. The bail bonds shall stand cancelled and the accused-appellant is directed to surrender to undergo the remaining period of sentence with immediate effect.