

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2004

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

CRL.A.NO.475 OF 1996

Baby ...Appellant

-Vs-

1. Thiagarajan
2. Lakshmi
3. Eswari
4. Mohan Nawas ..Respondents

Criminal Appeal filed against the order of acquittal passed by the Judicial Magistrate,Kangayam in C.C.No.86 of 1991 dated 27.4.1993

!For Appellant: Mr.A.K.Kumaraswamy

^For Respondents: Mr.S.Ramaswamy
appointed as Legal Aid Counsel.

:J U D G M E N T

This appeal is filed against the order of acquittal of the respondents passed by Judicial Magistrate,Kangeyam. The offence alleged against the accused is punishable under Sections 494 r/w 109, 506(i), 344 and 385 I.P.C.

2.The brief case of the prosecution is as follows: A.3, Eswari gave a complaint to the Vellakoil Police Station stating that she developed relationship with P.W.3, which resulted her becoming pregnant. Therefore, she gave a complaint to arrange for the marriage between P.W.3 and A.3. A.4 , Sub Inspector of Police at that time compelled P.W.3 to marry A.3 and their marriage took place in the Police Station. Thereafter , the marriage was registered at the Sub Registrar office also. After coming to know of this, P.W.1,gave a complaint against A.1 father of A3 and A.2, mother of A.3. A private complaint was also registered and taken on file. Charges were framed against the four accused for the offence punishable under Sections 344,385, 494 r/w 109 I.P.C.

3. To prove the charges, on behalf of prosecution, P.Ws.1 to 4 were examined and Exs.P.1 to P.9 were marked. On behalf of the accused, Sub registrar was examined as D.W.1 and Ex.D.1 was marked.

4. The trial Court after going through the evidence found that all the accused are not guilty of the offence alleged and acquitted them.

Aggrieved by the acquittal of the accused, P.W.1 has preferred this appeal.

5. Learned counsel for the appellant submitted that complainant was married to P.W.3 in the year 1986 itself and to prove that, ration card was marked and petitions seeking anticipatory bail were also filed.

6. The trial Court found that P.W.1 was not married to P.W.3 and there was no second marriage between P.W.3 and A.3 and hence no offence under Section 494 has been committed. Holding so, the trial Court acquitted all the accused. The counsel for the appellant submitted that the trial Court erred in coming to the conclusion that there was no proof for the first marriage between P.W.3 and P.W.1.

7. Counsel for the respondent also heard on that point.

8. The trial Court has found that the marriage between P.W.3 and P.W.1 was not proved and therefore, the Court came to the conclusion that there was no valid marriage between P.W.3 and P.W.1 and hence, P.W.1 not married to PW.3. There was no valid marriage between P.W.1 and P.W.3. Under the circumstances, no offence under Section 494 is attracted and consequently all offences were not proved

9. A perusal of the evidence on record shows that P.W.1 and P.W.3 has stated in their evidence that the marriage between them took place in the year 1986. There is no challenge at all in the cross examination about the status of P.W.1 and P.W.3 as the husband and wife. When that be so, there was no reason for the trial Court to come to the conclusion that the first marriage between P.W.1 and P.W.3 has not been proved and therefore, there was no valid marriage between P.W.1 and P.W.3. This finding of the trial Court is erroneous for the reason that it was not the case of either by A.3 or A.4 or A.1 or A.2 or P.W.s 1 and P.W.3 that there was no marriage and however, P.W.1 and P.3 were specifically stated in their chief examination that they are husband and wife. It was not even been denied in the cross examination and further in the 313 statement, no such statement that P.W.1 and P.W.3 were not husband and wife made In the absence of any such challenge by P.W.1 and P.W.3, the trial Court was not correct in holding that there was no valid marriage between P.W.1 and P.W.3. So far as that finding is concerned, viz., P.W.1 and P.W.3 are not husband and wife, it is liable to be set aside and accordingly, it is set aside.

10. The next question for consideration is as to whether any offence punishable under Section 494 has been made out. Ex.D.1, Marriage invitation shows that there was marriage between P.W.3 and A.3. Inasmuch as the first marriage is held valid, this appears to be invalid marriage. But at the same time, P.W.3 in his evidence has stated that he was compelled to marry A.3 in the Police Station and he was also compelled to go for the Registration Office to get the marriage registered. Further, the offence under Section 494 cannot stand unless, co-respondents are also made as a party. Co-respondents has been examined as P.W.3 A.3 cannot be alone be convicted for the offence under Section 494 when the main offence is not

proved. The charge against A.4 under Section 494 r/w 109 cannot stand. For these reasons, the charges levelled against A.4 cannot stand. In these circumstance, the acquittal of A.4 is justified. There is no illegality in the order passed by the lower Court. Hence, the conclusion of the trial Court is confirmed in favour of A.1 and A.2 are concerned. There is absolutely no evidence to prove any of the charges levelled against them. Therefore, the acquittal of A.1 and A.2 of both charges cannot be said to be illegal and the same is confirmed.

11. In the result, the appeal against the acquittal is dismissed except for the modification in the finding that there was no marriage between P.W.1 and P.W.3 and in other aspects the order of the trial Court is confirmed.

24.02.2004

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Internet:Yes/No

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To

1.The Judicial Magistrate, Mayiladuthurai.

2.The Public Prosecutor, High Court,Madras.

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