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Bhupinder Singh Vs U.T. Chandigarh

Criminal Appeal No. 698-SB of 1999

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 6, 2006

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 376, 417

Citation: (2006) 4 RCR(Criminal) 692

Hon'ble Judges: M.M. Aggarwal, J

Bench: Single Bench

Advocate: K.S. Dadwal, for the Petitioner No. 2 Mr. D.D. Sharma, for the Appellant; Navkiran Singh, for the Respondent

Judgement

M.M. Aggarwal, J.
Bhupinder Singh had filed appeal against judgment dated 20.7.1999 of Additional Sessions Judge, Chandigarh

whereby accused-appellant Bhupinder Singh was convicted for the offence under Sections 376/417 IPC. He was sentenced to undergo RI for

seven years and to pay fine of Rs. 10,000/-, in default of payment of fine, he was to further RI for one year u/s 376 IPC. He was further sentenced

to undergo RI for nine months u/s 417 IPC.

2. Prosecution case against the accused-appellant was registered on written complaint filed by Manjit Kaur that she was employed as Clerk in All

Bank Employees Urban Salary Earners Thrift Credit Society Ltd. and worked as such till September 1991. She was daily commuting from

Naraingarh District Ambala, where her sister was residing. Bhupinder Singh was employed as Data Entry Operator in the State Bank of Patiala,

Sector 17-C, Chandigarh. He used to come to her office and developed intimacy and then asked her to marry after disclosing himself as unmarried

person. Accused Bhupinder Singh insisted upon her to get married at the earliest in a Gurdwara through simple ceremony and said that permission

from the parents can be taken later on and that thereafter marriage would be solemnized with great pomp and show. Then she agreed to the

proposal of the accused. Then on 4.12.1990, Manjit Kaur and Bhupinder Singh got solemnized their marriage in Gurdwara after exchanging

garland before the holy Granth Sahib. At that time, one Sohan Singh husband of her cousin sister Joginder Kaur was also present. Then she stayed

with the accused in H. No. 3166, Sector 22-C (Top Floor), Chandigarh where accused was residing jointly with one J.P. Goel, who was working

in the same bank. Then they had gone to Kasauli for honeymoon on 27.12.1990 and stayed in a hotel. Then her office was shifted from Sector 17

to Sector 42, Chandigarh. She and the accused shifted to H. No. 1110, Sector 42-B, Chandigarh in a rented accommodation owned by one

Pritam Singh. Even landlord had lodged a report in Police Station, Sector 36, Chandigarh showing them as husband and wife and prior to that a

form was duly filled by Bhupinder Singh and was handed over to the landlord to establish the fact of their being husband and wife. Then the

accused had also taken a loan of Rs. 5,000/- from a society at Panchkula in May 1991, where he had nominated her as his wife. Then she became

pregnant and then accused got her aborted from Kaushal Nursing Home against her wishes. She had left the service in September 1991 under the

pressure of the accused. In the year 1992, accused Bhpinder Singh was transferred from Chandigarh to Ropar and they shifted to Ropar in House

111, Street No. 8, Malhotra Colony, Ropar. Then they came back to Chandigarh again and started living in H. No. 859, Sector 38, Chandigarh

and accused Bhupinder Singh started going to Ropar daily from Chandigarh. She got re-employment in May 1993 in Panjab University,

Chandigarh on daily wages as Clerk and even visited H. No. C146, Sector 14, Panjab University, Chandigarh on the eve of Diwali in 1993. She

again became pregnant in July 1993 and their relations remained cordial till March, 1994.

3. On 6.3.1994 when she had got to Rose Garden and met Devinder Kumar Bansal and Vinod Sharma, who were friends of her husband

Bhupinder Singh, then those persons told her that accused Bhupinder Singh was already married with one Gurinder Kaur and was having children

out of the said wedlock. She asked them as to why they had not told her about the previous marriage of her husband but they kept mum. She was

shocked and after reaching the residence, she asked about Bhupinder Singh, who on the same day had left for Patiala on the pretext to attend

some training course and did not return till 13.3.1994. She went to the house of Devinder Bansal to know whereabouts of Bhupinder Singh

accused and there Bhupinder Singh along with his previous wife Gurinder Kaur came and started fighting and then Manjit Kaur tried to inform the

police but Daljit husband of sister of Bhupinder Singh had left her in her house. On 16.4.1994, she was admitted in General Hospital and gave

birth to a female child. She informed Bhupinder Singh about this as he was father of the child but Bhupinder Singh did not turn up. On this

complaint, case was registered for the offence under Sections 420/376/498-A IPC. It was investigated. Investigating Officer, during investigation,

collected many documents showing the accused Bhupinder Singh and prosecutrix Manjit Kaur as husband and wife. After investigation, challan

was presented. Accused-appellant faced trial. After trial, he was convicted and sentenced as aforesaid.

4. On behalf of the complainant, a Criminal Revision was filed for enhancement of sentence. Further a Crl. Misc. Application was also filed for

awarding compensation u/s 357 IPC.

5. PW-2, Harvardhan, Registrar, Births & Deaths, U.T. Chandigarh had brought on record the documents Birth Certificate to show that Manjit

Kaur had delivered a female child on 16.4.1994 in General Hospital, Sector 16, Chandigarh and name of the father is mentioned as Bhupinder

Singh and that of mother as Manjit Kaur, R/o H. No. 869, Sector 38-A, Chandigarh.

6. PW-10, Mal Singh, who was owner of H. No. 3166, Sector 22-C, Chandigarh, had deposed that Sh. J.P. Goel was his tenant. He (Goel) had

strained relations with his wife. J.P. Goel, himself left the house and Mrs. Goel kept accused Bhupinder Singh along with his wife Manjit Kaur in

that very house to which he had objected but Mrs. Goel had said that Manjit Kaur had recently married Bhupinder Singh and they had no space to

live as such they were staying with her. Accused Bhupinder Singh along with his wife Manjit Kaur remained in his house for about two months and

then left. PW-11 Pritam Singh, who is owner of H. No. 1110, Sector 42-B, Chandigarh had stated that second floor of the house was let out to

Bhupinder Singh and Manjit Kaur, who were living there as husband and wife. They had taken the premises on rent on 26.3.1991 and remained

upto May 1992. Even a proforma Ex. PK was filled in and submitted to the police authorities. Bhupinder Singh had given particulars of his father,

his age and service including that of Manjit Kaur as his wife. PW-12 Yashpal, who was residing in H. No. 859/1, Sector 38-A, Chandigarh from

the year 1984 and remained upto 1994, stated that Lachhman Singh was owner of the house. He had taken half portion of the first floor on rent

and Bhupinder Singh accused and Manjit Kaur started residing in the other half portion of the first floor of that house. They resided upto

September 1994. Both were living as husband and wife. They used to come off and on. Accused was visiting Manjit Kaur and was saying that he

was in service at Ropar in a Bank. PW-11 and PW-12 had identified Manjit Kaur in the Court as the lady, who had been residing with Bhupinder

Singh accused as his wife. PW-13 J.P. Goel, who was tenant in H. No. 2566, Sector 22-C Chandigarh, had stated that Bhupinder Singh accused

came to reside along with Manjit Kaur in H. No. 2566, Sector 22-C, Chandigarh, where this J.P. Goel was also residing. That Bhupinder Singh

and Manjit Kaur were residing as husband and wife. PW-14 Shekhar Sharma had stated that he was working as Superintendent in Examination

Branch of the Panjab University and that Manjit Kaur was also working in Panjab University as Clerk in the year 1993 on daily wage basis.

Bhupinder Singh used to come to the office for giving lift and taking her and dropping her. Both had come to his house for greetings on Diwali and

had represented that they were husband and wife. Raj Kumar Singla, PW-15, who is owner of Hotel at Kausoli had stated that on 28.12.1990,

one Bhupinder Singh along with his wife had checked in the hotel. Manjit Kaur appearing as PW-16 had asserted all the facts, which she had

stated in her complaint Ex. PM made to the police on 28.4.1994 from which FIR was registered.

7. Accused in his statement u/s 313 Cr.P.C. had explained that he started knowing Manjit Kaur after his marriage with Gurinder Kaur. He stated

that Manjit Kaur was known to his wife before her (Gurinder Kaur) marriage with him and 2-3 times she had come along her mother to their place

to visit in the year 1988 in Sector 23, where her mother requested him to get her a job as she had finished her studies and wanted to get some job

in Chandigarh. Then Manjit Kaur had stayed in their house for six months. He had arranged a job. However, she had shifted and many people

started visiting her and he learnt that she had become loose and was going with different persons at odd hours to which he had objected and told

Manjit Kaur to mend her ways but she started fighting with him and demanded money, which he could not pay and then she delivered a child and

stated that this was his child and made false complaint.

8. Gurinder Kaur PW-20 and had stated that she was wife of Bhupinder Singh and that she knew Manjit Kaur even prior to her marriage with

Bhupinder Singh accused. She (Manjit Kaur) got employment on the recommendation of Bhupinder Singh. Initially this Manjit Kaur was having

good character but in the year 1991, it was found that she was entertaining different persons at late hours and she had said that those persons were

her colleagues. This witness was cross-examined by prosecution and then she had stated that she had children and that Manjit Kaur is known to

her since 1978. PW-17 Devinder Bansal had also stated that he had seen Bhupinder Singh and Manjit Kaur together and Bhupinder Singh was

helping Manjit Kaur but Bhupinder Singh was already married to Gurinder Kaur and was having a son and daughter. That witness was also cross-

examined by the prosecution.

9. PW-9 Satpal had brought documents Ex. P-1 to P-6 of All Bank Employees Urban Salary Earners Thrift of Credit Society Ltd. There is one

application for membership out of these papers and in that Bhupinder Singh had shown Manjit Kaur as his wife and nominee.

10. DW-1 Vinod Kumar Sharma, DW-2 Gian Chand and DW-3 Sushil Kumar had stated that Bhupinder Singh had come with Manjit Kaur and

had always been introducing her as a friend of his wife.

11. From the statements of PWs 10 to 15, who could possibly have no motive to depose falsely, it would clearly come out that the appellant and

Manjit Kaur had been living together as husband and wife for a long time. From the statements of Gurinder Kaur and defence witnesses, it would

also come out that this Bhupinder Singh was already married to Gurinder Kaur. Definition of Section 375 IPC is as under :

375. Rape. - A man is said to commit ""rape"" who, except in the case hereinafter excepted, has sexual intercourse with a woman under

circumstances falling under any of the six following descriptions :-

Fourthly. - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another

man to whom she is or believes herself to be lawfully married.

12. Counsel for the appellant relied on a judgment of Hon''ble Supreme Court reported in Uday v. State of Karnataka, 2003 (2) RCR (Cri) 99

and argued that no offence u/s 376 IPC is made out but I find that the facts of this case are entirely different.

13. In this case, Bhupinder Singh and Manjit Kaur were living as husband and wife together for pretty long time at different places. There had been

sexual intercourse and Manjit Kaur had become pregnant. For that sexual intercourse consent was given by Manjit Kaur treating Bhupinder Singh

as her husband. Bhupinder Singh very well knew that he was not her husband and was already married to Gurinder Kaur. Present case will

squarely be covered under the description ""fourthly"" of Section 375 IPC.

14. The contention of the accused that he has been falsely involved, cannot be taken to be correct as it comes out from the statement of PWs 10

to 15 and from documents i.e. application from Ex. PK duly proved by Pritam Singh PW.

15. From the above discussion, I hold that the prosecution case as against the accused-appellant for the offence u/s 376 IPC was duly proved. He

was rightly convicted by the trial Court. As far as Section 417 IPC is concerned, there are statements of Gurinder Kaur and other defence

witnesses and it cannot be said that Manjit Kaur did not know about the fact that Bhupinder Singh was already married with Gurinder Kaur. As

such, no cheating had been practised in this case. Therefore, case for the offence u/s 417 IPC was not made out and the appellant is acquitted of

that offence.

16. In the facts and circumstances of the case, when Manjit Kaur had already been knowing about the marriage of Gurinder Kaur, no case for

enhancement of sentence is made out. However, taking into account the fact that a child was born to Manjit Kaur and that Bhupinder Singh fully

knowing that he is already (married) with Gurinder Kaur, had kept Manjit Kaur as his wife for a period of 2-3 years, it is a fit case where

compensation should be awarded to Manjit Kaur.

17. Where Manjit Kaur submitted to Bhupinder Singh for sexual intercourse even knowing that he was already married then it is also a fit case for

reduction of sentence and award of adequate compensation.

18. In the facts and circumstances of the case, it is directed that the sentence of imprisonment for the offence u/s 376 IPC shall stand reduced to

three years RI provided Bhupinder Singh pays/deposits a sum of Rs. 1,00,000/- as compensation for payment to Manjit Kaur in the Court of

CJM, Chandigarh. This compensation be paid within a period of three months. Bail bonds of appellant Bhupinder Singh shall stand cancelled and

he shall undergo the sentence.

19. Failing to deposit compensation within three months in the Court of CJM, there shall be no modification in the sentence as imposed by the trial

Court and appellant shall undergo that sentence.