

(2013) 07 MAD CK 0073

Madras High Court

Case No: Criminal R.C. No. 795 of 2004

V. Raja and Others

APPELLANT

Vs

R. Alamelu

RESPONDENT

Date of Decision: July 29, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 494

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: K. Kalyanasundaram, for the Appellant;

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The brief facts of the case are as follows:-

The respondent herein/complainant has filed a case in C.C. No. 71 of 1997, on the file of Judicial Magistrate-II, Sankari, against 10 accused

persons including the revision petitioners herein, stating that the first accused, viz., Raja had married her on 18.08.1990, as per Hindu Customs and

Rites. The said marriage had been registered on 20.08.1990, on the file of Sub Registrar, Kumarapalayam. Out of wedlock, the complainant, viz.,

Alamelu gave birth to a female child, viz., Uma Maheswari, who is now studying in the first standard. After the marriage, the first accused had

demand a sum of Rs. 10,000/- from the parents of the complainant, on the instigation of his parents. The same was not provided due to non-

payment capacity of her parents. Therefore, the accused 1, 3 and 4 had driven out the complainant and her child from the matrimonial home.

Under the circumstances, on 27.03.1997, the first accused had married the second accused with the co-operation of the parents of the second

accused. The fifth and sixth accused are sister and brother-in-law of the first accused and the 7th and 8th accused are parents of the second

accused and the 9th and 10th accused are the uncle and aunt of the first accused. All the accused have assembled on 27.03.1997, at about 9.30

a.m., in front of the Sakthi Vinayagar Temple and performed the said marriage as per Hindu Customs. The said marriage had been witnessed by

one Manickam and Vellaiyan. Knowing the same, the complainant went to the first accused house on 06.04.1997 and questioned him about the

second marriage. The accused, in reply, used abusive language towards the complainant and hence, the complainant has levelled a case u/s 494

against the first accused and u/s 494 r/w 109 against the other accused. On questioning, the accused had pleaded not guilty after receiving copy of

the complaint.

On the side of the complainant, five witnesses were examined and one document has been marked, viz., marriage registration certificate bearing

registration No. 42 of 1990, on the file of Sub Registrar, Kumarapalayam. On scrutiny of this, it is seen that the first accused had married the

complainant.

2. P.W.1 had adduced evidence that the first accused married her 7 years ago and the said marriage has been registered. Further, the marriage

was solemnized as per Hindu Rites and Customs. Immediately, after marriage, she led her marital life at the matrimonial home. After a few months,

her in-laws had started torturing her and demanded dowry. Out of wedlock, she gave birth to a female child. P.W.1 further stated that her husband

had demanded a sum of Rs. 10,000/- in order to discharge a loan for payment of lorry dues. Her parents were however not able to provide the

loan due to financial difficulties. Therefore, she was driven out from the matrimonial home. On 14.12.1998, she met one Manickam of Kaveri

Village and he informed that her husband had married the second accused herein on 27.03.1997, and he and one Ramalingam had witnessed the

said marriage and the said witness had disclosed the date, time and kind of marriage. Further, he disclosed that at the time of marriage, all the accused had assembled in front of the vinayakar temple and performed the marriage as per Hindu Customs and Rites.

3. P.W.2, Manickam had stated in his evidence about the conduction of marriage which was on similar lines to the statements made by him to

P.W.1. P.W.4, Sub Registrar had adduced evidence that marriage of the first accused with the complainant had been registered on his file on

20.08.1990 and that the marriage certificate bears the No. 42 of 1990. P.W.5, had spoken about the first marriage solemnized between P.W.1

and A-1 and that he also signed in the Sub Registrar Office as witness. Further, he was informed by A-1 about the second marriage.

4. On considering the evidence of witnesses and on perusing the documentary evidence marked by the complainant and on hearing the arguments

of the learned counsels on either sides, the learned Magistrate observed that the first accused was guilty of offence u/s 494 of IPC and that the

accused 3 to 6 were found guilty of offence u/s 494 r/w 109 of IPC and as such, the first accused was sentenced to undergo one year rigorous

imprisonment and imposed a fine of Rs. 250/-, in default, he was to undergo further period of one month simple imprisonment and each of the

accused 3 to 6 were sentenced to undergo three months rigorous imprisonment and each of them were imposed a fine of Rs. 250/- in default, they

have to undergo further period of simple imprisonment for one month. The accused 2, 7, 8, 9 and 10 were discharged from the criminal case.

5. Against the conviction and sentence passed by the trial Court, the accused have filed the above appeal in C.A. No. 167 of 2002, on the file of

Principal Sessions Judge, Namakkal. The learned Judge, after hearing the arguments of the learned counsels on either side and on carefully

verifying the trial Court judgment, dismissed the appeal and confirmed the conviction and sentence passed imposed by the trial Court.

6. Against the concurrent findings of the Courts below, the above revision has been filed by the accused.

7. The highly competent counsel for the revision petitioner argued that actually the alleged marriage was not witnessed by P.W.1. The P.W.2 is an

interested witness and as per his statements, he had met P.W.1 on 14.12.1998 i.e., after 1 1/2 years of the alleged marriage and had disclosed

about the performance of the said marriage which is not a believable one. Further, the complainant had initially levelled the complaint against 10

accused including parents of the second accused and the other two accused who were the uncle and aunt of the first accused. On the said

complaint, the accused 2, 7 to 10 were acquitted and therefore, the co-accused are also entitled to get similar relief. The complainant herself had

deserted the first accused and left the matrimonial home, without assigning any reason. Due to difference of opinion between the P.W.1 and A-1,

the case has been falsely foisted on all the accused. The complainant had not produced any material evidence pertaining to the alleged marriage,

which had been solemnized between A-1 and A-2 in the presence of the other eight accused, like photographs and other material evidence.

Further, as per evidence of P.W.1, the marriage was not solemnized by the temple priest (prohit). The complainant had not proved the case

beyond doubt through marking substantial documents. As per the statements of P.W.2, the marriage was not performed properly and as such, his

statements are only hypothetical theory and not backed by any documentary truth. As per the ingredients of the complaint, the complainant has to

lodge a complaint before the concerned police station but instead of that she had filed a complaint in order to punish the accused to take

vengeance on them.

8. The very competent counsel for the revision petitioner further contended that the accused 3 to 6 are aged persons who are involved in the

agricultural operations as coolies. The third and fourth accused are aged parents of the first accused and both are bedridden and their health

condition does not permit them to move from one place to another place. The fifth and sixth accused are the sister and brother-in-law of the first

accused and they are living separately after marriage and are not in touch with the family of the first accused. The complainant had impleaded them

as co-accused with mala-fide intentions. It was submitted that the accused had never participated in the marriage. Further, all the accused are

illiterate persons and depending upon the agricultural coolie work for their livelihood.

9. On considering the factual position of the case and arguments advanced by the learned counsel for the revision petitioner and on verifying the

judgments of the Courts below, this Court does not find any infirmity in the conclusions arrived at for finding the first accused guilty of offence u/s

494 IPC and that the accused 3 to 6 were found guilty of offence u/s 494 r/w 109 of IPC. This Court is of the view that on the side of the defence,

they have not denied to performance of second marriage before the trial Court. Therefore, this Court confirms the findings of the Courts below.

However, the quantum of punishment imposed on the first accused i.e., a period of one year rigorous imprisonment is slightly harsh. Therefore, this

Court reduces the sentence from one year rigorous imprisonment to three months rigorous imprisonment, as it is found to be appropriate in the

instant case. The fine imposed on the first accused remains unaltered. The sentence imposed on the accused 3 to 6 i.e., a period of three months

rigorous imprisonment is also slightly harsh since all the accused are advanced in age and their health condition is not sound as per the submission

made by the learned counsel for the revision petitioners. Besides this, it is seen that they were involved in cultivation work as coolies upto their

retirement. Considering this aspect, this Court is inclined to reduce the sentence imposed on each of the accused 3 to 6 from three months rigorous

imprisonment to one month rigorous imprisonment. The fine amount imposed on them is confirmed. The period of sentence already undergone by

the accused would be deducted from the period of sentence imposed by this Court, as it is found to be appropriate in the instant case. In the result,

the above revision is partly allowed. Consequently, the judgment and conviction passed in C.A. No. 167 of 2002, on the file of Principal Sessions

Judge, Namakkal, dated 09.12.2003, confirming the conviction and sentence passed in C.C. No. 71 of 1997, on the file of Judicial Magistrate-II,

Sankari, dated 10.04.2000 is modified. Accordingly ordered.