

State Vs. Pandya Mangubhai

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Court : Mumbai

Decided On : Nov-23-1955

Reported in : AIR1956Bom439; 1956CriLJ861

Judge : Shah and Vyas, JJ.

Acts : Special Marriage Act, 1872 - Sections 2, 2(3) and 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 199

Appeal No. : Criminal Appeal No. 946 of 1955

Appellant : State

Respondent : Pandya Mangubhai

Advocate for Def. : C.P. Patel and ;B.M. Patel, Advs.

Advocate for Pet/Ap. : A.A. Mandgi, Asst. Govt. Pleader

Judgement :

Vyas, J.

1. This is an appeal by the State of Bombay from a judgment of the learned Sessions Judge, Katra, at Nadiad, acquitting the respondent Pandya Mangubhai alias Bapalal Shankerlal of an offence under Section 199, Penal Code read with Section 21, Special Marriage Act, with which offence the respondent was charged.

The learned Judicial Magistrate, First Class, Balasinor at Dakor, who had tried the case originally, had convicted the respondent of an offence under Section 199, Penal Code read with Section 21, Special Marriage Act and had sentenced him to Buffer two weeks' simple imprisonment and to pay & fine of Rs. 500/- or in default to suffer further simple imprisonment for two months.

But in appeal the learned Sessions Judge, Katra at Nadiad, reversed that order of conviction and sentence and ordered the acquittal of the respondent. It is from this Judgment of the learned Sessions Judge that the State has come in appeal.

2. The facts of the case which led to the prosecution of the respondent may now shortly be stated. One Shivshankar Someshwar Adhvarya, who is the complainant in this case, has a daughter of the name Sulochana. On 16-1-1953, this Sulochana was about 19 years of age. Some twelve years ago, Sulochana had been betrothed to one Rajnikant.

For some reasons which have not been disclosed before the Court, the complainant Shiv-shanker Someshwar Adhvarya did not wish that his daughter Sulochana should marry Rajnikant. On 16-1-1953, Sulochana was married to Rajnikant and the marriage was performed under the Special Marriage Act. For the purpose of the valid marriage of Sulochana with Rajnikant under the Special Marriage Act, the present appellant assumed guardianship of Sulochana and signed the declaration Ex. 12.

It may be noted that Sulochana was at the material date studying in the Sansthan High, School at Dakor. At 11 O'clock in the morning on that day, she had gone to the school from her father's place where she was residing. She was removed from the school and married to Rajnikant under the Special Marriage Act by herself and the appellant making false declarations and statements before the Special Marriage Registrar.

The prosecution contends that a false marriage certificate was procured. Sub-section (3) of Section 2, Special Marriage Act 3 of 1872 lays down that marriages under this Act may be celebrated upon certain conditions, one of which is that each party must, if he or she has not completed the age of 21 years have obtained

the consent of his or her father or guardian to the marriage. It is not disputed In this case that on 1G-1-1953, Sulochana had not attained the age of 21 years. She was between 12 and 21 years of age on that date.

Therefore, it was obligatory under the provisions of Sub-section (3) of Section 2 that before a valid marriage under the Special Marriage Act could be performed between Sulochana and Rajnikant, there should have been obtained the consent of the father of Suiochana or the guardian o! Suiochana to the marriage.

The prosecution contends that although the appellant knew that he was not the guardian of Suiochana, and therefore, had no right to give a consent under Sub-section (3) of Section 2 of the Act to the marriage of Sulochana with Rajnikant, he gave such a consent. This the appellant did although he knew very well that Shivshankar Someshwar Adhvarya, the father of the girl and her natural guardian, was not prepared to give his daughter in marriage to Rajnikant.

In these circumstances, says the prosecution, the appellant became a bogus guardian of Suiochana and as such he made false declaration and statements before the Special Marriage Registrar on 16-1-1953 and thereby committed an, offence under 8. 199, Penal Code read with Section 21, Special Marriage Act.

3. The appellant resisted the charge which was brought against him upon a contention that he was not guilty of any offence. His case was that he had been requested by the girl Sulochana to officiate as her guardian for the purpose of her marriage with Rajnikant under the Special Marriage Act and that all that he did was to accept that invitation. His further contention was that all the material facts were placed before the Special Marriage Registrar.

For instance, the Registrar was Informed of the fact that the father of Sulochana was not a consenting party to her marriage with Rajnikant, the Registrar was also informed of the fact that Sulochana was below 21 years of age; the Registrar was also informed of the fact that Sulochana had asked the appellant to be her guardian and that the appellant had accepted that invitation. The appellant's defence was that in those circumstances the Special Marriage Registrar had not been misled in any manner by him and that he had not made any false

declarations nor signed any false statements before him.

4. The learned Sessions Judge, while acquitting the respondent, observed in the course of his judgment that before the various declarations were signed in this case by Sulochana and by the appellant, all the material facts were placed before the Registrar.

The learned Judge said that the Registrar, had been clearly told that Sulochana's father was not a willing party to the marriage and that 16 was the girl herself who had invited the appellant to be her guardian for the purpose of the marriage. In the view of the learned Judge, all that the appellant had done was that he had accepted the invitation of Sulochana to officiate as her guardian for the purpose of this marriage. Then the learned Judge went on to observe :

'It may be said that the Registrar has not properly discharged his duties in accepting this appellant as a guardian. It can be said only that it may be a wrong notion on the part of the girl and the present guardian that the appellant can be a guardian only for the purposes of marriage at the sweet will of this girl. It may be a mistaken belief, it may be a wrong notion of law. But it cannot be said that any false statement of fact was made which the appellant knew to be false or had reasons to believe it to be false or knew that it was not true.'

In this view of the matter which the learned Sessions Judge took, he came to the conclusion that the appellant could not be convicted of an offence under Section 199, Penal Code read with Section 21, Special Marriage Act.

5. In our view, the learned Sessions Judge was in error when he held that no false declaration was signed by the appellant or no false statement was made by him. The declaration which was made by the girl Sulochana Snlv-shankar Adhvaryu before the Special Marriage Registrar is exhibited on the record of this case. in Clause 5 of that declaration, Sulochana stated thus :

'The consent of Bapalal Shankarlal Pandya, my guardian, has been given to marriage between myself and Rajnikant Bapalal Upadhyaya and has not been revoked,'

at the foot of Sulochana's declaration, the present appellant signed and he signed in these terms:

'Signed in my presence and with my consent by the abovenamed Sulochana ShivshatiKar Adn-varyu'. There is no doubt whatever that before the appellant put his signature at the foot of Sulochana's declaration in the abovementioned terms, he must have carefully perused the declaration of Sulochana.

I have already pointed out above that Sulochana had declared in her declaration that the appellant's consent had been given to her marriage with Rajnikant in his capacity as a guardian of Sulochana. To this statement of Sulochana, contained in Clause 5 of her declaration, the appellant expressly stated that he had consented when he wrote at the foot of Sulochana's declaration: 'Signed in my presence and with my consent by the above Sulochana Shivshankar Adhvaryu'.

Therefore, there is no doubt that the statement made by Sulochana in Clause 5 of her declaration to the effect that the appellant was her guardian being a false statement, the appellant subscribed to that false statement when he put his signature at the foot of Sulochana's declaration in the terms stated above.

6. Now, there is no doubt whatever that the appellant was not a guardian of Sulochana. He was not a natural guardian of Sulochana. He was not her legal guardian either. He was not appointed by any Court to be a guardian of Sulochana. He was not a de facto guardian either. Sulochana was never under the care nor in the custody of the appellant. The appellant had never done anything to provide for her maintenance or education and had done nothing whatever by way of looking after her upbringing.

In this connection, it is pertinent to bear in mind that the appellant is no relation at all of Sulochana. He is the uncle of the bridegroom and it is a strange thing to be told that the uncle of a bridegroom can be a guardian for the bride. When we put this question to the appellant's learned Advocate, he said that there was some relationship between the appellant and Sulochana. But when we asked him to point out the relationship to us, he said he could not tell.

Surely it must be a strange relationship between the appellant and Sulochana if the appellant's own Advocate when specifically questioned about it is unable to answer the question. The father of Sulochana has stated in categorical terms that there is no relationship between himself and the appellant.

An ad hoc guardian got up temporarily for the purpose of a marriage to be performed under the Special Marriage Act cannot be said to be a guardian within the meaning of Sub-section (3) of Section 2, Special Marriage Act. As, in our view, the appellant was not a guardian of Sulochana, there was no consent to the marriage as required by Section 2(3) of the Act, which, be it noted, is a mandatory provision of the Act.

7. The learned Advocate for the appellant has contended before us that there were departmental instructions under which the appellant, could officiate as a guardian of Sulochana for her marriage under the Special Marriage Act, in this connection, our attention is invited to instruction No. 9 (b) of the Departmental Instructions at page 50 of the supplement to the Bombay Registration Manual. Now, instruction No. & Sub-instruction (b) says;

'When parties are between 18 and 21 years, it is enough to accept the person brought in by, the parties as guardian unless from the facts of the case the guardian appears to be a bogus person in which case the parties might be asked to get a guardian duly appointed for the purpose of the marriage.'

In the first place, we are not concerned in these proceedings with any Departmental Instructions which the Department concerned might have thought fit to issue. What we have to construe are the provisions of the Act and we have no doubt that the appellant, who acted as the guardian of Sulochana, was not in any sense of the term Sulochana's guardian. He was not either a natural guardian or a legal guardian or an appointed guardian or a de facto guardian.

In any case, we have no doubt that the Registrar must have known that the appellant, was a bogus guardian. We cannot believe that a responsible person such as a Special Marriage Registrar would not have been able to see through a bogus show which was only too obvious, viz, that as there were two parties, a

young girl and a young man, who wanted to marry under the Special Marriage Act and as the father of the girl was not willing to give his consent to the marriage, the appellant who was no relation whatever of the girl and who was the uncle of the bridegroom was held out as the girl's guardian.,

If these circumstances were not sufficient to tell the Registrar that the appellant was being, put forward as a bogus guardian of the girl for defeating the provisions of the Act we do not understand what other circumstances would have reminded the Registrar of that fact. Surely the Registrar must have known that the uncle of a bridegroom could not be a guardian of the bride.

The point, therefore, is that Instruction No. 8 sub-instruction (b) of the Departmental instructions cannot be invoked for the help of the appellant. Lastly, our attention was invited by the appellant's learned Advocate to the charge In this case. The charge alleged that the appellant had made a declaration before the Marriage Registrar to the effect that he was the guardian of Sulochana though he was knowing that he was not her guardian.

Mr. Patel for the appellant contended before us that the appellant merely signed at the foot of the declaration made by the girl Sulochana and did not make any declaration himself. In our view, the signature, in the terms in which the appellant signed at the foot of Sulochana's declaration, viz. 'Signed In my presence and with my consent by the abovenamed Sulochana Shiv-shankar Adhvaryu', would mean that he was a party to the declaration made by Sulochana, which declaration was contained in Clause 5 of, Sulochana's statement. In Clause 5, Sulochana said:

'The consent of Bapalal Shankarlal Pandya, my guardian, has been given to marriage between myself and Rajanikant Bapalal Upadhyaya and has not been revoked'.

When the appellant made it known by signing as the foot of Sulochana's declaration that the statement afovementioned made by Sulochana in Clause 5 had been made with his consent, the appellant certainly declared himself before the Registrar and through him before the public that he was Sulochana's guardian for the purpose of her marriage with Rajanikant under the Special, Marriage Act.

In this connection, it must not be lost sight of that, while signing at the foot of Sulochana's statement, the appellant signed in his capacity as a guardian of Sulochana. The signature was in these terms : 'Pandya Bapalal Shankarlal, guardian of abovenamed'. Therefore, there is no doubt that the appellant made a declaration which to this knowledge was false. In these circumstances, there is no substance in this last-mentioned contention of Mr. Patel either.

8. We cannot conclude this judgment without pointing out that in this particular matter the Special Marriage , Registrar was not only grossly negligent and remiss in the performance of his duties but deliberately connived at the conduct of the girl Sulochana and the appellant in falsely holding out the appellant as a guardian of the girl.

From the circumstances pointed out above, It is inevitable that we must come to the conclusion that the Registrar was a colluding party so far as this marriage was concerned, and this indeed was regrettable.

9. For the reasons stated above, the appeal filed by the State of Bombay is allowed, the order of acquittal passed by the learned Sessions Judge in favour of the respondent is set aside and the respondent is convicted of an offence under Section 199, Penal Code read with Section 21, Special Marriage Act and he is sentenced to suffer two weeks' simple imprisonment and to pay a fine of Rs. 500/- or in default to suffer two months' further simple imprisonment.

10. Appeal allowed.