

Veerappan Vs. Poongothai

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Court : Chennai

Decided On : Feb-23-1993

Reported in : 1993CriLJ3695

Judge : N. Arumugham, J.

Appeal No. : Crl.R.C. No. 510/88

Appellant : Veerappan

Respondent : Poongothai

Advocate for Pet/Ap. : : Mr. K. Kuppusami, Adv. (1St Accused)

Judgement :

ORDER

1. The revision petitioner is the first accused before the trial Court. He along with three other accused were charged for the offence under Section 494 read with 109 I.P.C. by the trial court on the allegation that though P.W. 1 the complainant remains to be his legally wedded wife, the revision petitioner deserted her by purporting cruelty and illtreatment for one reason or other and that after having driven her away from the conjugal home, he contracted the second marriage unlawfully and illegally with the second accused, who was acquitted by the trial Court on the same charge with the help of the third and fourth accused, who were the second and third appellant before the lower appellate court. On the evidence adduced by P.W. 1 both oral and documentary in the context of the plea of total

denial by the appellant and the other accused, the trial court found the second accused, namely, the second wife alone not guilty and whereupon acquitted her, but convicted the revision petitioner and the accused 3 and 4 for the offence under section 494, I.P.C. on the one count against the first accused and for the offence under section 494 read with 109, I.P.C. against the accused 3 and 4 imposed the same terms of sentence and against which Criminal Appeal No. 4 of 1988 has been preferred by the convicted accused, and the learned Sessions Judge after reassessing the entire recorded evidence, confirmed the conviction of the revision petitioner herein for the offence under Section 494, IPC but however, modified the sentence of imprisonment into one of six months and found the accused 3 and 4 were not guilty of any offences and accordingly acquitted them up all, and against which the first accused has come forward with this revision challenging the legality and propriety of the impugned judgment passed by the lower appellate court as above stated.

2. I have gone through the judgment recorded by both the courts below in the context of the evidence oral and documentary adduced on behalf of the respective parties herein. When the above revision was taken up for hearing Mr. Kuppusamy, learned counsel for the revision petitioner has stated before opening the arguments that the parties in the above proceedings have since arrived at a settlement out of court, he wanted time to file a petition under section 320 of Cr.P.C. for recording settlement and on that score he took time till 16-2-1993. But however, when the matter was taken up on 16-2-1993, learned counsel has represented that though he has written to the revision petitioner for giving necessary instructions with a view to file a petition under Section 320, Cr.P.C. he has not responded so, and that therefore, he was not in a position to comply his assurance. This was recorded by me on 16-2-1993 in the case record. I heard the arguments from the learned counsel. He was not in a position to canvass the impugned Judgment with regard to its illegality or error of law or misappreciation of the evidence. Nothing was argued on behalf of the respondent also. A careful perusal of the impugned judgment rendered by the lower appellate Court clinches the fact that the lower appellate court has elaborately discussed the entire evidence and the probative value of the same so rightly and only rendered its judgment confirming the conviction of the revision petitioner for the offence under

Section 494, of I.P.C. but however, modified the terms of sentence for the reasons stated. Thus, after having perused the entire case records and judgment, I do not come across any impropriety or illegality committed by learned Sessions Judge while rendering the Judgment in the above appeal.

3. But however my perusal of the judgment more particularly in paragraph 20 of the Judgment requires me to pass a comment which necessitates legally to help the lower Subordinate Courts while dealing with the matter of this kind. It appears from the records that the trial court has recorded a judgment of conviction against the first accused for an offence under section 494 of I.P.C. and accordingly sentenced him to undergo imprisonment for a period of one year and against which an appeal has been preferred and while the learned Judge on reassessing the entire recorded evidence has confirmed the conviction of the first accused for the offence under Section 494 I.P.C. as recorded by the trial court. But, however, while doing so, in paragraph 20 of its Judgment, it appears that the learned Sessions Judge while exercising the appellate power has questioned the first accused, namely, the revision petitioner herein with regard to the sentence to be imposed against him on modification and on questioning he has recorded his reasoning namely, that the first accused was suffering from Tuberculosis and getting treatment and that therefore, pleaded for the lesser sentence through his advocate. On seeing the above remark found in paragraph 20 of the impugned Judgment, I am rather surprised to see as to under what procedural law the learned Sessions Judge, namely, the Appellate Authority, while exercising the appellate power had any jurisdiction to question the accused under Section 235 or any of the provisions of the Code of Criminal Procedure with regard to the modification of sentence while confirming the conviction of sentence recorded by the trial court. There is no law, much less a procedural law which empowers the appellate authority to question the accused on the question of sentence while exercising its appellate power more particularly when confirming the conviction recorded against any accused by the trial court. Therefore, it is made clear the lower appellate court has exceeded its limit and assumed jurisdiction voluntarily by himself not provided by any procedural law or mandate which is bad in law. True, the appellate court has ample power to modify the sentence while exercising its appellate power, but instead of exercising the same the procedure adopted by the

lower appellate court is quite unknown to law and would clearly amount to be set aside. But, however, in the circumstances, the reasoning given by the lower appellate court to modify the sentence into one of six months against the revision petitioner in my considered view is correct, and that, therefore, I am not inclined to interfere with the said order with reference to its quantum. I would make it very clear that only with regard to the procedure adopted by the lower appellate court in questioning the accused with regard to the quantum of sentence while confirming the conviction is without jurisdiction and not provided by any law. I hereby set aside the same by means of interference. In short the judgment of the lower appellate court except one as above pointed out is so perfect and correct and cannot be deemed to be vitiated by any serious laches or legality. In short, the revision lacks any merits.

4. In the result, except the above modification, the revision fails and accordingly it is dismissed.

5. Order accordingly.