

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.5362 of 1991

Moulana Obaidul Mannan

í Appellant

-Versus-

Moulavi Aminul Hoque

... Respondent

No one appears for either of the parties

Judgment on 29.1.2012

Md. Ruhul Quddus, J:

This appeal at the instance of a complainant is directed against judgment and order dated 29.7.1989 passed by the Magistrate of first class, Coxø Bazar in Complaint Case No.183 of 1988 acquitting the accused of charge under section 6(5)(B) of the Muslim Family Law Ordinance, 1961.

This appeal has been appearing in daily cause list for a couple of days with name of the Advocate for appellant. Today it is taken up for hearing, but no one appears for either of the parties. Record shows that this appeal was filed in 1989 and was numbered as Criminal Appeal No.42 of 1989. Subsequently it was renumbered with its present number, possibly on transfer from Comilla Bench, though the reason of such renumbering is not recorded. However, in view of its long pendency for more than twenty-two years, we take it up for disposal even in absence of the parties.

Facts leading to this appeal, in brief, are that the appellant filed a petition of complaint before the Sadar Upazila Magistrate, Coxø Bazar on 24.12.1988

bringing allegation of second marriage without permission of existing first wife against the accused-respondent. It is mentioned that the complainant is the father of the respondent's first wife.

On the above complaint, trial was commenced after framing of charge against the respondent under section 6(5)(B) of the Muslim Family Law Ordinance, to which he pleaded not guilty and claimed to be tried.

The complainant examined six witnesses in support of his case, while the defense examined none. After conclusion of trial, learned Magistrate of first class, Cox's Bazar acquitted the respondent on the grounds that no registered *Kabinnama* was produced to substantiate the allegation of second marriage against the accused; that the evidence of the eye witnesses, namely, P.Ws.6 and 5 are contradictory and do not corroborate each other and that all other witnesses are hearsay, upon which it could not be proved beyond all reasonable doubt that the respondent got married for second time without permission of his existing first wife.

The evidence on record transpires that P.W.6 is an eye-witness, who was allegedly present at the time of solemnization of the second marriage in question. In his evidence he stated that amongst others Moulana Mohammad Shafi was also present at the time of marriage. P.W.5, the said Moulana Mohammad Shafi did not state in his evidence that he was present at the time of the alleged second marriage. He rather stated in cross-examination that he did not know as to how the alleged marriage took place. The other witnesses are hearsay.

No documentary evidence such as any registered *Kabinnama* or photographs have been produced by the complainant to substantiate the allegation of second marriage.

An appeal against acquittal may be entertained when the impugned judgment is perverse or so unreasonable that its maintenance would amount to miscarriage of justice. It can be allowed only in exceptional circumstances, when the inference of guilt is irresistible. In the present case, we do not find that any inference of guilt can be drawn irresistibly against the respondent.

The trial Magistrate discussed and considered the evidence on record and passed the impugned judgment and order of acquittal where we do not find any illegality.

In the result, the appeal is dismissed. The impugned judgment and order dated 29.7.1989 passed by the Magistrate of first class, Cox's Bazar in Complaint Case No.183 of 1988 is maintained.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.