

Lingari Obulamma

Vs

L. Venkata Reddy and Others

Criminal Appeal No. 339 of 1975

(Syed M. Fazal Ali, A. D. Koshal JJ)

19.01.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave has been filed by the complainant against the order of the Andhra Pradesh High Court acquitting the respondents, who had been convicted by the trial Court Magistrate and the Sessions Judge under Section 494 IPC and sentenced to six months' rigorous imprisonment and a fine of Rs. 100 as modified by the Sessions Judge.
2. The appellant had filed a complaint against respondent 1 on the ground that he was her husband and while the first marriage was subsisting he had contracted a second marriage and was, therefore, guilty of the offence of bigamy as enshrined in Section 494 of IPC. According to the prosecution the first marriage of respondent 1 with the appellant took place on April 22, 1968. After about 3 years of the first marriage the relations between the husband and wife became strained and they separated, but there was no divorce. On April 1, 1972 respondent 1 married accused 4 and the other accused who were relations of the respondent participated in the marriage. On knowing this fact the appellant filed a complaint on April 26, 1972 on the basis of which the respondents were prosecuted and ultimately convicted under Section 494 of IPC. The case went up in revision to the High Court which accepted the revision and acquitted the accused on the ground that there was no proof of a valid marriage having been contracted between accused 4 and accused 1. Against this order the appellant filed a petition for special leave and after obtaining special leave, the appeal has been placed before us for hearing.
3. The short point involved in this appeal is as to whether or not the second marriage contracted by respondent 1(A-1) with respondent 4(A-4) was a legally valid marriage. The High Court pointed out that under the Hindu Law, two essential ceremonies of a valid marriage are data home and saptapadi i.e. taking seven steps around the sacred fire. The High Court found that there was absolutely no evidence to prove that any of these two essential ceremonies had been performed, and, therefore, the marriage was void in the eye of law. In this view of the matter the High Court held that the conviction under Section 494 IPC could not be sustained.
4. In support of the appeal Mr. Rao has submitted that the High Court has taken a wrong view of law and has overlooked the fact that in the instant case, the parties belonged to the Reddy community and were therefore governed by custom and under the custom the two ceremonies mentioned by the High Court were not necessary at all constitute a valid marriage. The other ceremonies which were necessary under the custom had been performed according to Purohit (PW 1). Unfortunately, however, in the state of evidence in the present case it is impossible for us to hold

that the second marriage was a valid one. In the first place it has not been clearly mentioned in the complaint as to whether the parties were governed by custom in derogation of Hindu Law. Secondly, PW 1 stated thus :

Among Kapus, according to their customs each community will perform the marriage. Some Kapus have only 'Yarn Thread' instead of Mangala Sutram. I do not know what is the custom (Acharam) of the accused. There was no custom of putting sacred fire. There was no 'Agni Gundam' (Sacred fire and no going round 7 times by the bride and bridegroom). I do not know Whether that is true of a sacred marriage.

5. It would appear from the aforesaid statement of PW 1 that he had clearly stated that he does not know what is the custom of the accused. Having shown complete ignorance of the fact as to whether or not the accused was governed by custom the witness goes on to state that there was no custom of sacred fire and Saptapadi. What the witness really means is that in the second marriage which was contracted by respondent 1, these two ceremonies were not performed by him. Mr. Rao, however, vehemently contended that this witness proves that in the Reddy community the custom of saptapadi was not prevalent and it was sufficient to put the 'Yarn Thread' instead of 'Mangal Sutra.' In our opinion when the witness has frankly admitted that he does not know the custom of the accused he was incompetent to deposit about the existence of any custom in the family of the accused. It is well settled that before a conviction can be recorded under Section 494 the following ingredients must be proved :

- (1) That the complainant had been married to the accused;
- (2) That the accused contracted a second marriage while the first marriage was still subsisting;
- (3) That both the marriages were valid and strictly according to law governing the parties.

6. In the instant case there was no evidence to show that there was any custom amongst the Reddys which outweighed the written text of law. The evidence of PW 1 clearly falls short of the standard to prove this fact. Mr. Rao, however, strongly relied on a decision of the Andhra Pradesh High Court in some other case to show that among the Reddy community of Telangana area the two ceremonies mentioned above were not necessary. In the first place the decision referred to above in the case of re Dolgonti Raghava Reddy (AIR 1968 AP 117 : 1968 Cri LJ 447 : 1967 Mad LJ (Cri) 247) clearly shows that the Court in that case was concerned only with the Reddy community of Telangana alone. The Trial Court has pointed out in its judgment that so far as accused is concerned he belong to the Reddy community not of Telangana area, but that of Raialsena area. In these circumstances the judgment of the High Court cannot be of any avail to the appellant. Moreover, as the existence of the custom was neither mentioned in the complaint not proved in the evidence it would be difficult for this Court to rely on the decision of the High Court which was based on the evidence, facts and circumstances of the case before it. In these circumstances we agree with the High court that the prosecution had failed to prove that the second marriage contracted by respondent 1 with respondent 4 was a valid marriage and, therefore, that High Court was fully justified in acquitting the respondents. The appeal is without any substance and is accordingly dismissed.

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