

Gopal Lal

Vs

State of Rajasthan

Criminal Appeal No. 255 of 1973

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

30.01.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a judgment of the Rajasthan High Court by which the conviction of the appellant under Section 494, IPC and sentence of two years' rigorous imprisonment and fine of Rs. 2000 have been upheld. The facts of this case have been detailed in the judgments of the courts below and it is not necessary to repeat them. Suffice it to say that the accused Gopal Lal married the complainant Kanchan sometime in the year 1963 and a child was born out of this wedlock. Soon thereafter the parties appeared to have fallen out and parted company. While the first marriage was subsisting Gopal Lal contracted a second marriage which according to the custom prevalent amongst Tellis is a valid marriage commonly known as nata marriage. This marriage was contracted on March 20, 1969. The complainant Kanchan, the first wife having come to know about this marriage filed a complaint on March 22, 1969, on the basis of which appellant was prosecuted and ultimately convicted as mentioned above.

2. Mr. A. N. Mulla, learned Counsel for the appellant, had submitted two points before us. In the first place it was contended that in view of the provisions of Section 17 of the Hindu Marriage Act, the second marriage being a void marriage, the provisions of Section 494, IPC are not attracted at all. We have given our anxious consideration to this argument but we are of the opinion that the argument is wholly untenable. Section 494 runs thus :

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception - This section does not extend to an person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his knowledge.

3. The essential ingredients of this offence are :

- (1) that the accused spouse must have contracted the first marriage
- (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and
- (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.

4. It may also be noticed that Section 494, IPC would come into play only if the second marriage becomes void by virtue of the fact that it had taken place in the lifetime of one of the spouses. Thus, it is not possible to accede to the contention of Mr. Mulla that merely because the second marriage was void under Section 17 of the Hindu Marriage Act hence Section 494, IPC would not be attracted. Section 17 of the Hindu Marriage Act runs thus :

Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code shall apply accordingly.

5. What Section 17 contemplates is that the second marriage must be according to the ceremonies required by law. If the marriage is void its voidness would only lead to civil consequences arising from such marriage. Section 17 makes it absolutely clear that the provision has to be read in harmony and conjunction with the provisions of Section 494 of the Penal Code which has been extracted above. Section 17 clearly provides that provisions of Sections 494 and 495 of the Penal Code shall apply accordingly. In other words though the marriage may be void under Section 17, by reason of the fact that it was contracted while the first marriage was subsisting, the case squarely falls within the four corners of Section 494 and by contracting the second marriage the accused incurs the penalty imposed by the said statute. Thus the combined effect of Section 17 of Hindu Marriage Act and Section 494 is that when a person contracts a second marriage after the coming into force of the said Act, while the first marriage is subsisting he commits the offence of bigamy : This matter is no longer res integra as it is concluded by a decision of this Court in *Bhaurao Shankar Lokhande v. State of Maharashtra* ((1965) 2 SCR 837 : AIR 1965 SC 1564 : (1962) 2 Cri LJ 544). This Court while considering the question of bigamy qua the provisions of Section 17 observed as follows :

Section 17 provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living, and that the provisions of Sections 494 and 495, IPC shall apply accordingly. The marriage between two Hindus is void in view of Section 17 if two conditions are satisfied : (i) the marriage is solemnized after the commencement of the Act; (ii) at the date of such marriage, either party had a spouse living. If the marriage which took place between the appellant and Kamlabai in February, 1962 cannot be said to be 'solemnized', that marriage will not be void by virtue of Section 17 of the Act and Section 494, IPC will not apply to such parties to the marriage as had a spouse living.

The word 'solemnized' means, in connection with a marriage, 'to celebrate the marriage with proper

ceremonies and in due form', according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is 'celebrated or performed with proper ceremonies and in due form' it cannot be said to be 'solemnized'. It is therefore essential, for the purpose of Section 17 of the Act that the marriage to which Section 494, IPC applies on account of the provisions of the Act should have been celebrated with proper ceremonies and in due form.

It was pointed out by this Court that Section 17 of the Hindu Marriage Act requires that the marriage must be properly solemnized in the sense that the necessary ceremonies required by law or by custom must be duly performed. Once these ceremonies are proved to have been performed the marriage becomes properly solemnized and if contracted while the first marriage is still subsisting the provisions of Section 494 will apply automatically. In a decision of this Court in *Kanwal Ram v. Himachal Pradesh Administration* ((1966) 1 SCR 539 : AIR 1966 SC 614 : 1966 Cri LJ 472), the earlier case was noticed by the Court and relied upon. The matter had also been fully discussed in *Priya Bala Ghosh v. Suresh Chandra Ghosh* ((1971) 1 SCC 864 : 1971 SCC (Cri) 362 : (1971) 3 SCR 961). In view of the authorities of this Court, therefore, the following position emerges : where a spouse contracts a second marriage while the first marriage is still subsisting the spouse would be guilty of bigamy under Section 494 if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed. The voidness of the marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section 494 because the second marriage will become void only because of the provisions of Section 17 of the Hindu Marriage Act. In these circumstances, therefore, we are unable to accept the contention of Mr. Mulla that the second marriage being void, Section 494 will have no application. It was next contended by Mr. Mulla that there is no legal evidence to show that the second marriage which is said to be a nata marriage was actually performed. We are afraid we are unable to go into this question because three courts have concurrently found as a fact that the parties were governed by custom of nata marriage and the two essential ceremonies of this marriage are :

(1) That the husband should take a pitcher full of water from the head of the prospective wife;

(2) that the wife should wear chura by the husband.

6. There is evidence of PWs 2, 3, 4 and 5 who have proved the fact that these ceremonies had been duly performed in their presence. That there was such a custom which requires these ceremonies was admitted by DWs 3 and 5 who were examined by the appellant. The evidence led by the prosecution has been accepted by the High Court and the courts below and after perusing the evidence we are not in a position to hold that the finding of facts arrived at by the courts below are wrong in law or perverse. From the evidence led by the prosecution, therefore, it has been clearly established that the second marriage which was performed by the appellant Gopal Lal with Gopi was a valid marriage according to the custom of the nata marriage prevalent in the Telli community of which the appellant belonged. This being so and the validity of the first marriage not having been disputed, Section 494, IPC applies in terms and the appellant must be held to have committed the offence of bigamy as contemplated by Section 494, IPC. Lastly, Mr. Mulla pressed this appeal on the question of sentence. Bigamy is a serious offence and the maximum punishment under Section 494 is seven years. Therefore, where the offence of bigamy is proved the Court cannot take a very lenient view. In the instant case the appellant was sentenced to two years and a fine of Rs. 2000. It appears that the appellant has already paid a fine of Rs. 2000. In these circumstances, therefore, we feel that the ends of justice will be met by reducing the sentence of imprisonment from two years to

one year but maintaining the sentence of fine. With this modification the appeal is dismissed. The appellant will now surrender and serve out the remaining portion of the sentence.

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