

Santi Deb Berma

Vs

Kanchan Prava Devi

Criminal Appeal No. 567 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

10.10.1990

JUDGMENT

S. RATNAVEL PANDIAN, J.:-

1. This appeal is directed against the judgment of the Gauhati High Court rendered in Criminal Appeal No. 16/75 convicting the appellant under S.494, I.P.C. and sentencing him to imprisonment till raising of the Court and to pay a fine of Rs. 1,500/-, in default to undergo rigorous imprisonment for six months with a direction that out of the fine amount, if collected, a sum of Rs. 1,000/- should be paid to the complainant. The brief facts of the case are as follows:-

The appellant while his first marriage, solemnised on 7-7-62 with the respondent complainant (PW-1) is validly subsisting, has contracted a second marriage, with Namita Ghosh on 24-2-1969. The respondent filed a criminal complaint before the Munsiff Magistrate Ist class, Sadar, Agartala and the trial Court convicted the appellant under S. 494, I. P. C. and sentenced him for 1 1/2 years rigorous imprisonment and in addition to pay a fine of Rs. 1,000 / -. The rest of the accused who were arraigned along with the appellant were convicted under S. 494 read with S. 109, I.P.C. Besides all the accused were also convicted under S. 119, I.P.C.

2. The convicted accused preferred an appeal before the Additional Sessions Judge, Tripura West. The learned Sessions Judge acquitted all the accused persons inclusive of the appellant. It was as against the order of the said acquittal, a criminal appeal was preferred before the High Court, which rendered the impugned judgment convicting the appellant alone under S. 494, I.P.C. and, sentencing him as aforementioned. Hence the present appeal.

3. Admittedly, the parties to this proceeding are all Hindus. The Additional Sessions Judge acquitted the appellant and others mainly on the ground that there was no specific evidence regarding the performance of the essential rite - namely - Saptapadi in regard to the second marriage. The relevant portion of the finding of the Additional Sessions Judge reads thus:

"From the above analysis of the prosecution evidence, it transpires that there is grave doubt as to whether the most essential ceremony of Saptapadi was duly performed."

4. The High Court on appeal preferred by the respondent while confirming the order of acquittal of the rest of the accused convicted this appellant.

5. The conclusion arrived at by the High Court, taking a view contrary to that of the Sessions Court is based on three letters, namely, Exts. P-6, P-7 and P-8 coupled with the oral evidence showing that both the appellants and his alleged second wife, namely, Namita Ghosh were leading a marital life as husband and wife.

6. Mr. Dutta, the learned counsel appearing on behalf of the appellant herein assailed the impugned judgment contending that in the absence of acceptable proof that the marriage of the appellant with Namita Ghosh was celebrated or performed with proper ceremonies and in due form, it cannot be said that the marriage had been solemnised within the ambit of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') and that the finding of the High Court based on the three letters and the oral evidence to the effect that the appellant and Namita Ghosh were living together as husband and wife cannot in any way serve as proof of a valid marriage as per the Act, especially when there is no plea that the marriage was solemnised in accordance with the customary rites and usage which do not include Saptapadi. In other words, it is not the case of the respondent that the marriage was celebrated in accordance with the customs, dispensing with the ceremony of Saptapadi and usage applicable to the parties. In fact, the courts have proceeded on the footing that according to the parties the ceremony of Saptapadi is one of the essential requirements for constituting a valid marriage.

7. The High Court in the instant case has drawn an inference that all the ceremonies essential for a valid marriage had been performed on the strength of the three letters and the oral evidence as aforementioned. We, after going through the judgment of the High Court very carefully are of the opinion that the High Court is not at all justified in drawing such an inference in the absence of any reliable and acceptable - evidence, in regard to the performance of Saptapadi. The result will be that the alleged marriage between the appellant and Namita Ghosh, celebrated in defiance of the law applicable to the parties is held to be a marriage not valid in law. Hence the judgment of the High Court is not sustainable and consequently we allow the appeal by setting aside the conviction and sentence awarded by the High Court and acquit the appellant.

Appeal allowed.

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