

Manju Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-22-2000

Judge : D.P.S. Choudhary, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 494

Appeal No. : Crl. Appeal No. 9 of 1999

Appellant : Manju Devi

Respondent : State of Bihar and ors.

Advocate for Def. : Anant Prakash Sahay, A.P.P. for the Respondent No. 1 and Sheojee Mishra, Adv. for the Respondent Nos. 2 to 7

Advocate for Pet/Ap. : Baxi S.R.P. Sinha, Adv.

Disposition : Appeal dismissed

Judgement :

D.P.S. Choudhary, J.

1. This appeal has been preferred against the judgment' of acquittal passed by the Judicial Magistrate, 1st Class, Bhojpur, Arrah in Com-plaint Case No. 245 of 1992/69 of 1998, dated 25th of July, 1998, The respondent No. 2 Hareram Sao was charged for the offence under Section 494 of the Indian Penal Code

(hereinafter referred to as the 'I.P.C.') and remaining respondents were charged under Section 120B, I.P.C.

2. The case was registered on the complaint petition of the complainant Smt. Manju Devi wife of respondent No. 2, Hareram Sao, alleging therein that she was married to this accused on 8.6.1987 and she was living with him as husband and wife. It is alleged that after some time her husband and other accused persons started torturing her for dowry and for non-fulfilment of the demand of dowry she was left at Arrah station for which Arrah Mofussil P.S. Case No. 48 of 1992 under Section 498A, I.P.C. and under Sections 3 and 4 of the Dowry Prohibition Act was instituted. It is further alleged that on 27.6.1992, the complainant got information with regard to second marriage of her husband in Aranya Devi Temple at Arrah. She got information from Moti Lal Sao (P.W. 3) that accused persons after concealing the fact of first marriage got the second marriage performed on 28.6.1992 (17.4.1992). The complainant alleged that her husband Hareram Sao performed the second marriage with respondent No. 8 Meera Devi. There was also a Panchayati in between 28.6.1992 and 29.6.1992 at village Khajuria but no result came out of the said Panchayati. Thereafter she filed the complaint petition in the Court of Chief Judicial Magistrate, Bhojpur on 30.6.1992, thereafter cognizance was taken and the trial proceeded in the-Court below.

3. The case of the defence is that they have been falsely implicated because a divorce case has been filed by accused Hareram Sao against the complainant which was dismissed. It is also the case of the defence that respondent No. 8, Meera Devi was legally married with accused Siyaram Sao, brother of Hareram Sao and not with Hareram Sao, as alleged on behalf of the complainant. It is also the case of the defence that complainant is in habit of instituting the cases against her husband and his family members. In order to harass them in all she has filed five cases, including one maintenance case, in which Hareram Sao paying the maintenance to the complainant till date The complainant does not want to live in her Sasural along with her husband.

4. The complainant in support of its case has examined five witnesses, including herself as P.W. 4. P.W. 1 (Manji Pathak), P.W. 2 (Shiv Kumar Prasad) and P.W. 3

(Moti Lal Sao) who are named as prosecution witnesses have deposed on the point that they had seen accused Hareram Sao performing marriage with Meera Devi in Aranya Devi Temple. The complainant (P.W. 4) stated that she get the information of second marriage of her husband from Moti Lal Sao (P.W. 3) but this witness in his evidence has not stated that he had given information about the second marriage of Hareram Sao to the complainant. Even in her examination-in-chief the complainant (P. W. 4) has not categorically stated that Moti Lal Sao has been informed about the second marriage of her husband with Meera Devi. P. Ws. 1 and 2 stated that they were present in the temple alongwith P. W. 3 and had seen accused Hareram Sao performing marriage with Meera Devi in the temple. Both stated that P.W. 3 was also present alongwith them but surprisingly P.W. 3 has not admitted (his) presence with P.W. 2 in the temple. P.W. 1 stated that he has informed about this marriage to the father of the complainant but her father has not been examined in this case and there is no explanation for the same. In the complaint petition (Ext. 2) it is not mentioned that P.W. 1 has informed about the second marriage of Hareram Sao to the father of the complainant but as stated above the complainant stated that she was informed about this marriage by Moti Lal Sao. P.W. 1 stated that after the occurrence of second marriage he at once informed the father of the complainant. The date of marriage alleged is 17.4.1992 but the complaint has been filed on 30.6.1992.

5. With regard to the delay in filing the complaint petition (which is) of more than two months, the explanation given in the complaint petition is that there was a Panchayati after this marriage which took place on 28.6.1992 to 29.6.1992. But no witness has been examined on behalf of the complainant who participated in the alleged Panchayati. P. Ws. 1,2 and 3 have not stated about their participation in the Panchayati. As stated above, the complainant's father has not been examined in this case as a witness. As per the complaint petition (Ext. 2) he also participated in the Panchayati. He was a competent witness to depose on this point. Therefore, the complainant has failed to prove beyond all reasonable doubt that there was a Panchayati in the village on 28.6.1992 to 29.6.1992 and when there was no result in this Panchayati, thereafter she filed the complaint petition. This explanation for the delay in institution of the case is not satisfactory nor it should be believed in absence of any cogent and reliable evidence. The alleged occurrence took place

on 17.4.1992 and the alleged Panchayati took place on 28.6.1992 and 29.6.1992, but no explanation has been given on behalf of the complainant that in between this period for more than two months, why she did not take any step for the institution of the case and why there was a delay in the Panchayati for more than two. months. This abnormal delay in the institution of the case creates a serious doubt about the veracity of the prosecution case.

6. In complaint petition it is mentioned that the second marriage of Hareram Sao was performed with Meera Devi by exchange of garlands. The learned Lawyer appearing on behalf of the accused persons (respondents herein) submitted that under the Hindu rites, such marriage has no legal sanctity unless it is not performed according to Hindu rites or it is performed before the Registrar of Marriage Bureau. Performance of marriage with the exchange of garland is not a legal marriage. As such, in absence of any proof that accused Hareram Sao had performed marriage with Meera Devi as per the Hindu rites or before the Registrar of Marriage that will not amount to be a legal marriage in the eye of law, as such, Hareram Sao is not liable to be convicted for the offence under Section 494, I.P.C.

7. The learned Lawyer appearing on behalf of the accused persons further submitted that the priest of the temple of Aranya Devi has not been examined, who was competent witness on the point of marriage of Hareram Sao with Meera Devi nor any certificate issued by the priest of the said temple regarding the alleged marriage of Hareram Sao has been produced in support of performance of second marriage. Therefore, there is no cogent and reliable evidence on the point of alleged second marriage of Hareram Sao with Meera Devi

8. From the submissions made on behalf of the parties and after going through the evidence on record I find substance in the submissions made on behalf of the accused persons (respondents) and come to the finding that the complainant has failed to prove that Hareram Sao had performed second marriage with Meera Devi. The complainant has also failed to furnish any satisfactory explanation in the delay in filing the complaint case which is of more than two months after the alleged date of marriage or the date of knowledge of the marriage. The complainant (P.W. 4) is not an eye-witness on the point of alleged second

marriage. The evidence of P. Ws. 1 to 3 do not inspire confidence that they had seen accused Hareram Sao performing second marriage with Meera Devi in the temple. There appears to be substance in this contention of the respondents that mere exchange of garlands is not a recognised mode of marriage under the Hindu custom. Therefore, mere exchange of garlands in between Hareram Sao and Meera Devi will not amount to performing marriage as per the Hindu rites. Admittedly there is strained relationship in between the complainant and her husband, accused Hareram Sao and several cases are pending in between them, including one of maintenance. In the circumstances, it was essential for the complainant to adduce cogent and reliable evidence in support of her case which she has filed. Surprisingly her father, who was the most competent witness in this case, has been withheld by the prosecution and not examined in the Court and there is no explanation for the same.

9. The complainant has not produced any reliable evidence that respondent Nos. 3 to 8 had criminally conspired with respondent No. 2 (Hareram Sao) in the performance of alleged second marriage in between accused Hareram Sao and Meera Devi. There is no reliable and cogent evidence against these respondents adduced on behalf of the complainant. Therefore, the prosecution has failed to prove the charge under Section 494, I.P.C. against the accused-Hareram Sao and charged under Section 120B, I.P.C. against the remaining respondents beyond all reasonable doubt. In the facts and circumstances of the case, I find that the Trial Court has rightly given the benefit of doubt to all the accused persons (respondents) and acquitted them from all the charges.

10. In the result, I do not find any merit in this appeal, which is accordingly dismissed.

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