

Gopal Singh Vs. Surajbhaln Singh and Others

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Court : Madhya Pradesh

Decided On : Jul-11-2000

Reported in : 2001(1)MPHT389

Judge : Mr. S.P. Khare, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 49, 109, 114, 494, 495, 497 and 498; Code of Criminal Procedure (CrPC) , 1974 - Sections 357(3), 377(3) and 378(4); [Evidence Act, 1872](#) - Sections 50; [Hindu Marriage Act, 1955](#) - Sections 7(1) and (2) and 17

Appeal No. : Criminal Appeal No. 1075/90

Appellant : Gopal Singh

Respondent : Surajbhaln Singh and Others

Advocate for Def. : Shri Umesh Trivedi, Adv.

Advocate for Pet/Ap. : Shri A.K. Pathak, Adv.

Disposition : Criminal appeal allowed

Judgement :

S.P. Khare, J.

1. This is an appeal under Section 378(4) of the Code of Criminal Procedure, 1973 by the complainant challenging the order of acquittal of the respondents under Sections 494 and 494/114, IPC. Special leave to appeal was granted to the complainant by order dated 8-11-1990. Respondent No. 3 Dham Singh has died during the pendency of this appeal. Therefore, it has abated against him.

2. It is not disputed that Savita (P.W. 3) was married to accused No. 1 Surajbhan Singh on 18-2-1982. This marriage was solemnized in accordance with the customary rites and ceremonies. There was saptapadi before the sacred fire. Savita (P.W. 3) gave birth to a female child. Accused No, 2 Guljar Singh is father of Surajbhan Singh.

3. The prosecution case is that accused Surajbhan Singh re-married Chitrlekha on 19-5-1983 in village Sarangarh. According to the complainant this marriage was also solemnized in the form of Saptapadi before the sacred fire. Chitrlekha is daughter of accused Nos. 4 and 5 Pratap Singh and Yashodabai. They were apprised of the fact of the existing marriage between Savita (P.W. 3) and Surajbhan Singh but they married Chitrlekha to him.

4. The accused persons pleaded not guilty. Their defence is that accused Surajbhan Singh has not married Chitrlekha according to essential rites and ceremonies.

5. The Trial Magistrate held that the second marriage has not been proved as required by law and acquitted all the accused persons.

6. In this appeal it has been argued on behalf of the appellant that there is sufficient evidence on record which proves beyond reasonable doubt the performance of the second marriage. On the other hand, it is contended that the complainant has failed to prove the second marriage according to the standard of proof required in a criminal case.

7. The points of determination are (a) Whether accused Surajbhan Singh has re-married Chitrlekha according to the customary rites and ceremonies observed by Hindus; and (b) Whether accused Guljar Singh, Pratap Singh and Yeshoda have

abetted the commission of this crime.

8. Points (a) and (b):

Gopal Singh (P.W. 1) is uncle of Savita (P.W. 3). He has deposed that Surajbhan Singh has remarried Chitrlekha. He came to know that this marriage was about to be performed by the letter dated 12-5-1983 (Ex. P-3) which was written to Gajanan Singh Thakur of Champa by accused Dham Singh, grand father of Chitrlekha. He hastened to Sarangarh to dissuade the parents of Chitrlekha to perform this bigamous marriage. He took Jagannath (P.W. 2) also with him who was Sarpanch of his village. He has further deposed that he saw Mandap in the house of accused Pratap Singh. He informed Pratap Singh that there is already a subsisting marriage between Savita (P.W. 3) and Surajbhan Singh and therefore, he should not marry his daughter to him. But he did not listen. Barat Party came in the night and there was marriage between Surajbhan Singh and Chitrlekha in the form of Saptapadi before the sacred fire. He stayed in Sarangarh in the night and came back next day. He has further deposed that Surajbhan Singh is living with Chitrlekha and they have a son through this second marriage.

9. Jagannath (P.W. 2) has fully corroborated the testimony of Gopal Singh (P.W. 1). He has stated on oath that the marriage between Surajbhan Singh and Chitrlekha took place in his presence. There was saptapadi before the sacred fire. He has further stated that he asked accused Pratap Singh and Yeshodabai that they should not marry their daughter to Surajbhan Singh as he is already married to Savita. But they did not agree. Savita (P.W. 3) has deposed that Surajbhan Singh has a son through Chitrlekha and she was again pregnant at the time of her evidence. Bisahu Singh (P.W. 4) has also supported the evidence of the complainant. According to him there was second marriage of Surajbhan Singh in his presence. He has further deposed that Surajbhan Singh is keeping Chitrlekha as his wife and they have a son through this marriage.

10. The most important evidence on the crucial point in dispute is of Bodhan Prasad (P.W. 5). He is a Purohit. He has deposed that he had performed the marriage between Surajbhan Singh and Savita in Sohagpur in the year 1982. He has also performed the marriage between Surajbhan Singh and Chitrlekha in

Sarangarh in the year 1983. There was Saptapadi by Surajbhan Singh and Chitralkha before the sacred fire. He has further deposed that accused Pratap had come to know before the performance of marriage of Chitralkha with Surajbhan Singh that he was already married to Savita. The testimony of Bodhan Prasad (P.W. 5) is fully reliable. There is no reason to reject it.

11. From the evidence adduced by the complainant it is firmly established that accused Surajbhan Singh re-married Chitralkha in the year 1983 according to essential rites and ceremonies applicable to Hindus. He is living with Chitralkha for a number of years and they have a son through the second marriage. The argument of the learned counsel for the respondents that the second marriage has not been proved according to the caste custom is not acceptable. He has placed reliance upon the decisions of the Supreme Court in Bhaurao Shankar v. State of Maharashtra (AIR 1965 SC 1564), Kanwal Ram v. H.P. Administration (AIR 1966 SC 614) and Priya Bala Ghosh v. Suresh Chandra Ghosh, (1971) 1 SCC 864. In these decisions it has been laid down by the Supreme Court that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved. It has also been held that the admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case. The same view has been taken in P. Satyanarayan v. P. Mallaiah, (1996) 6 SCC 122, it has been reiterated that the prosecution must prove that the marriage was performed in a regular way after observance of due ceremonies for the marriage.

12. Section 7(1) of the [Hindu Marriage Act, 1955](#) provides that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. Section 7(2) further provides that where such rites and ceremonies include the Saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken. Section 17 of the Act further lays down 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 of the Indian Penal Code shall apply accordingly.

13. Section 50 of the Evidence Act provides that when the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings (under the Indian Divorce Act, or in prosecutions under Section 494, 497 or 498 of the Indian Penal Code).

14. In view of the statutory provisions referred above and the law enunciated by the Supreme Court in the decisions cited above it must be held that in a bigamy case it must be proved that the alleged second marriage was solemnized according to the customary rites and ceremonies. That is a sine qua non to prove the offence of bigamy punishable under Section 494, IPC. While appreciating the evidence in such a case the approach of the Court must be pragmatic and not pedantic. It is well known that a bigamous marriage is performed secretly at a place away from the place where the first wife is residing. It becomes an uphill task for the first wife to prove due observance of essential rites and ceremonies of the second marriage. Therefore, whatever evidence she is able to collect and produce before the Court must be examined in right perspective. The evidence adduced to establish the second marriage must be dependable and of the nature required in a criminal case. But the first wife should not be driven to a point where it becomes impossible for her to seek justice from the Court even if her husband has married second time with another woman and he is living with her and having children from her. The penal provision in Section 494, IPC, should not be rendered nugatory or otiose. Though the admission of the accused alone or the conduct of the parties to the alleged second marriage may not be sufficient to establish such a marriage these factors are relevant and corroborative of the performance of the second marriage as per customary rites and ceremonies.

15. This Court has taken note of the problem faced by the first wife in *Kashibai v. Himmat Singh* (1993 MPLJ 325) where it was observed that bigamous marriages are generally performed in a clandestine manner for obvious reasons and it may

be extremely difficult if not impossible for the other spouse to adduce clinching evidence to prove it.

16. In *Rabindra Kumar v. Prativa*, (AIR 1970 Tripura 30) it has been held that the proviso to Section 50 of the Evidence Act enacts only this much that the opinion evidence of the nature mentioned, which is otherwise made relevant by the main body of Section 50 of the Act for the purpose of proving existence of relationship, shall not be sufficient to prove a marriage in a prosecution under Section 494, IPC. The Proviso does not make the opinion evidence relating to the marriage either irrelevant or inadmissible. Therefore, the only effect of the Proviso is that on the basis of the opinion evidence alone, the Court cannot hold in a prosecution under Section 494, IPC that the factum of the marriage has been proved. Hence the contention that the opinion of persons who testify to the marriage, the factum of which is in issue, cannot be taken into consideration at all has to be rejected. Such testimony being relevant can be availed of along with other evidence to reach the conclusion that the factum of marriage had been proved. I am in respectful agreement with this statement of the law.

17. Now recapitulating the evidence adduced in the present case which has been discussed above it is found that it has been proved by direct evidence of the Purohit and other witnesses that the second marriage between Surajbhan Singh and Chitralkha was performed in accordance with the essential rites and ceremonies. There was Saptapadi by the two before the sacred fire. Thereafter they have been living together as husband and wife and there is a child through this marriage. The birth of the child through the second marriage is the strongest circumstance to support the plea that this marriage was in fact performed. After considering the relevant pieces of evidence it must be held that there has been a second marriage between accused Surajbhan Singh and Chitralkha. Accused Surajbhan Singh was already married to Savita and she had a child through her. Accused Surajbhan Singh has committed the offence of bigamy and he is punishable under Section 494, IPC. There is definite evidence on record, as discussed above, that accused Pratap Singh and Yeshodabai were apprised of the fact of the subsistence of the marriage between Surajbhan Singh and Savita and yet they married their daughter Chitralkha to Surajbhan Singh. Similarly accused

Guljar Singh who is father of accused Surajbhan Singh also knew that the second marriage of his son with Chitrlekha is illegal and yet he proceeded to have this marriage performed. Therefore, the act of accused Guljar, Pratap and Yeshodabai is punishable under Section 49/109, IPC.

18. It has been argued that the view taken by the Trial Magistrate should not be disturbed by this Court in an appeal against acquittal. It is not a case where two views are possible. The approach of the Trial Magistrate is highly perverse and wholly unreasonable warranting interference by this Court.

19. In the result, this appeal is allowed. The acquittal of the respondents is set aside. Accused Surajbhan Singh is convicted under Section 494, IPC and accused Guljar Singh, Pratap Singh and Yeshodabai are convicted under Section 494/109, IPC. Coming to the question of sentence considering all the facts and circumstances and also the delay, accused Surajbhan Singh is sentenced to rigorous imprisonment for one year. Accused Guljar Singh, Pratap Singh and Yeshodabai are each sentenced to rigorous imprisonment for six months and to a fine of Rs. 500/-. In default of the payment of fine they shall suffer rigorous imprisonment for two months. It is further directed under Section 357(3) Cr.P.C. that accused Surajbhan Singh shall pay a compensation of Rs. 10,000/- to Savita (P.W. 3) and this amount shall be recoverable from him as a fine.

20. Criminal Appeal allowed.

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