

K.J.B. David Vs. Nilamoni Devi

K.J.B. David Vs. Nilamoni Devi

SooperKanoon Citation : sooperkanoon.com/524250

Court : Orissa

Decided On : Sep-02-1952

Reported in : AIR1953Ori10; 19(1953)CLT34

Judge : Narasimham, J.

Acts : Indian Christian Marriage Act, 1872 - Sections 3, 4 and 5; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488; [Evidence Act, 1872](#) - Sections 50; Indian Divorce Act - Sections 494, 495, 497 and 498

Appeal No. : Criminal Revn. No. 40 of 1952

Appellant : K.J.B. David

Respondent : Nilamoni Devi

Advocate for Def. : N.K. Das, Adv.

Advocate for Pet/Ap. : A.B. Ray and ;S.C. Palit, Adv.

Disposition : Revision dismissed

Judgement :

Narasimham, J.

1. This revision is against an order passed by the Subdivisional Magistrate of Berhampur under Section 438, Cr. P. C. directing the petitioner to pay Rs. 35/- per

month towards maintenance of the opposite party who was said to be his legally married wife.

2. The parties are residents of Berhampur town and the petitioner is a Government servant employed as an Inspector of Co-operative Societies. He is an Oriya Christian. The opposite party also claimed to be a Christian though she admitted that she was not baptised. She is the daughter of one Shyamsundar Mohanty (deceased), an Advocate of Berhampur Bar, through one Krishnabeni (P. W. 2) who is the daughter of one Chintala Ramaswami Naidu. The religion of the parents of the opposite party was not brought out in evidence; but there is evidence to show that two elder sisters of the opposite party were married under Christian rites in the local Church. It was further alleged that the opposite party (Nilamoni) was married to the petitioner according to Christian rites in the house of her mother Krishnabeni (P. W. 2) in Berhampur town. A pastor of a Church witnessed the ceremony and blessed the couple. Soon after marriage the petitioner gave a declaration in writing on a stamped paper (Ext. 1) acknowledging Nilamoni to be his married wife. The relevant passage from that document may be quoted: 'Ajudina 13 October 48 re Swargiya Shyamsundar Mohanty B.A. B.L., Advocate, ankar kanistha kanya Srimati Nilamoni Mohanty nku tankar matamata noi mora bibahita bharijya rupe grahana karuchhi.' (To-day, the 13th Oct., 1948, I am accepting Nilamoni Mohanty (with her consent), the youngest daughter of late Shyamsundar Mohanty, B.A. B.L., Advocate, as my married wife). It was signed both by the petitioner and by the opposite party. Soon after the marriage the couple left for their honeymoon and after it was over they lived as husband and wife at several stations such as Puri and Jatni (Khurda) where the petitioner was transferred. At Puri the opposite party gave birth to a daughter who subsequently died. In the first year of the marriage the couple were on affectionate terms and the petitioner wrote to her two letters (Ext. 3 dated the 2nd May, 1949 and Ext. 2 dated the 16th July, 1949)--the former from Bonaigarh and the latter from Puri. Both the letters contained very endearing terms and the petitioner while signing them subscribed himself as her 'Swami' which expression ordinarily means a 'husband'. Moreover, in Ext. 3 he used the following words :

'Jahara adeshare dina rati gadha hoichhi--je ki tumara O mora bahaghara deichhanti--sei--sei eka jananti mu sukhara kimba dukhara jibana katuchhi.' (Under whose order day and night have been created, who has brought about our 'marriage', it is he and he alone who knows whether I am passing time in happiness or sorrow.)

The expression 'Bahaghara' clearly implies that he was addressing her as his wedded wife. Subsequently the couple quarrelled & it was alleged that eventually the petitioner severely assaulted the opposite party and drove her out of the house and also refused to maintain her.

3. The main defence taken by the petitioner was that the opposite party was not a Christian, that he never married her and that they never lived as husband and wife. He admitted that Exts. 1, 2 & 3 were written by him in his own hand, but gave no explanation regarding the circumstances under which those documents were written.

4. In view of the denial of marriage the main question for consideration by the lower Court was whether the opposite party was the legally wedded wife of the petitioner. To prove the marriage the opposite party relied on--(i) the testimony of herself, her mother (P. W. 2), her sister Brundabati (P. W. 6) and another Christian of Berhampur town named Anand Rao (P. W. 7) who claimed to have witnessed the performance of the marriage; (ii) the unambiguous admission made by the petitioner himself in the document (Ext. 1) executed on the date of the marriage; (iii) the subsequent conduct of the petitioner as evidenced by his two letters (Exts. 2 and 3) in which he styled himself as her 'Swami', wrote in very endearing terms and also used the expression 'Bahaghara' in Ext. 3 implying marriage; (iv) the evidence of a domestic servant Pothi Appalaswarni (P. W. 4) who worked in the house of the petitioner and the opposite party for about a month at Jatni (Khurda) and that of one T. Appalaswami (P. W. 5) who is a co-villager of the petitioner; and (v) the admission of marriage made by the petitioner in the presence of Sri P. Dutt (P. W. 8), the Asst. Health Officer, Berhampur town.

5. Mr. Roy Counsel for the petitioner, urged that marriage amongst Indian Christians was regulated by the provisions of Indian Christian Marriage Act, 1872,

and that where the fact of marriage was disputed, it was the duty of the opposite party to prove affirmatively that the marriage was solemnized in accordance with the provisions of Section 5 of that Act. He urged that the marriage was invalid for two reasons, namely,--(1) It was not established that the marriage was solemnized in accordance with the provisions of Section 5; and (2) The opposite party was admittedly not baptised as a Christian and hence should be deemed to be a Hindu. A marriage between a Hindu and a Christian is according to Mr. Roy, invalid.

6. Sections 4, 5 and 88 of the Indian Christian Marriage Act are as follows:

'Section 4.--Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.'

'Section 5.--Marriages may be solemnized in India-

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any minister of Religion licensed under this Act to solemnize marriage;

(4) by, or in the presence of, a marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.'

'Section 88.--Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.'

7. The opposite party has not established affirmatively that the marriage was solemnized in accordance with the provisions of Section 5 of that Act. Doubtless she stated that the marriage took place at the residence of her mother under Christian rites and that a pastor of a Church came and witnessed the ceremony and blessed the couple. But there is no evidence to show who that pastor is and whether he is a Minister of Religion licensed under the Indian Christian Marriage Act to solemnize marriages or licenced to grant certificates of marriage between Native Christians. There is also no evidence to show that he has received episcopal ordination. It is also not clear as to whether the said pastor solemnized the marriage or merely witnessed the ceremony. Doubtless i the opposite party had produced before the Court a certified copy of the marriage certificate then under the provisions of Section 80 of that Act marriage can be said to have been proved without further evidence. But no such certificate has been produced.

8. The first question for consideration is whether marriages amongst Indian Christians can be proved only by affirmatively establishing that the provisions of Section 5 of the Indian Christian Marriage Act were complied with or by production of a certified copy of the marriage certificate as permitted by Section 80 of that Act. I am, however, unable to find any authority in support of Mr. Roy's contention on this point. There is no provision in the Indian Christian Marriage Act to the effect that marriages amongst Indian Christians can be proved only in the manner stated above. The Indian Evidence Act also does not lay down any special mode of proof of a Christian marriage. Hence admissions by either of the spouses of the fact of marriage, evidence of eye-witnesses who were present during the marriage ceremony, subsequent conduct of the couple in living as husband and wife for some time and the opinion expressed by conduct of persons who had special means of knowledge of the subject, are all various recognised modes of proof of any marriage. The proviso to Section 50 of the Indian Evidence Act, however, says that to prove a marriage in a proceeding under the Indian Divorce Act or in prosecutions under Sections 494, 495, 497 or 498 of the Indian Penal Code mere opinion based on conduct would not suffice and that a stricter proof would be required. But Section 488 of the Criminal Procedure Code is not included in the said proviso from which one may reasonably infer that for proof of marriage in a proceeding under Section 488, Cr. P. C. the standard of proof need not be so high

as required either in a proceeding under the Indian Divorce Act or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code. In other words, even opinion expressed by conduct of persons who had special means of knowledge on the subject, may suffice to prove the fact of marriage in a proceeding under Section 488, Cr. P. C. There is no statutory duty cast on an Indian Christian applicant in a proceeding under Section 438, Cr. P. C. to affirmatively establish that the marriage was solemnized in accordance with the provisions of Section 5 of the Indian Christian Marriage Act.

9-11. Admissions of marriage made by the petitioner on repeated occasions should be given great weight. On the very date of the marriage he wrote and signed a document (Ext. 1) declaring that he had taken the opposite party as his 'Bibahita bharjya'--(married wife). On the 2nd May, 1949, he wrote to her a very endearing letter from Bonaigarh styling himself as her 'Swami' and using the unambiguous expression 'Bahaghara'. On the 16th July, 1949, he wrote to her another letter (Ext. 2) from Puri in the same strain. Again, even after the couple had quarrelled violently, he said to the opposite party in the presence of Sri P. Dutta (P. W. 8) as follows:

'Go to the Court and claim compensation. Since I have 'married' you this is the most you can do to me.'

In English law also admissions of marriage have always been considered a good piece of evidence of the fact of marriage though somewhat weak as regards its validity (see Phipson on Evidence, 8th edition, pp. 217 & 218). (After further considering the evidence his Lordship concluded:) In a summary proceeding under Section 488, Cr. P. C. the aforesaid pieces of evidence (which have been accepted by the Court of fact) are sufficient to prove marriage and if the petitioner challenges the validity of the marriage it is his duty to establish affirmatively that the provisions of Section 5 of the Indian Christian Marriage Act were not complied with or else that the marriage was invalid for other reasons. He has led practically no evidence to show that the marriage was not solemnized by any of the authorised persons referred to in clauses (1) to (5) of that section.

12. In -- 'King v. Brampton', (1808) 103 E R 782, it was held that where the parties lived as man and wife for about eleven years there may be a presumption of valid marriage. In -- 'Bogis Mangati v. Applama', 34 Cri. L. J. 108 (Cal), it was held that where the parties lived for about 17 or 18 years as man and wife and where the priest who married them was dead, a very strict proof of actual celebration of marriage was not necessary in a proceeding under Section 488, Cr. P. C. Mr. Roy tried to distinguish these cases on the ground that the long period during which the parties lived as husband and wife justified a presumption of valid marriage whereas in the present case the evidence was to the effect that the couple lived together only for about two or three years. He further urged that as there was no evidence to show that the pastor who witnessed the marriage ceremony and blessed the couple was dead, the petitioner ought to have examined that pastor and further proved that he was one of the authorised persons referred to in Section 8 of the Indian Christian Marriage Act. It is true that in the present case the couple lived as husband and wife for hardly two or three years and consequently the presumption of valid marriage from their conduct in so living may be somewhat weak. But as against this, there is the clear admission of the petitioner himself in several documents that the opposite party is his married wife. There is also the evidence of a domestic servant and a co-villager to the effect that they thought that the couple were man and wife. There is also the direct testimony of some people who witnessed the marriage including a fellow Christian of Berhampur named Anand Rao. In -- 'Rex v. William Allison', (1806) 168 E. R. 709, it was held in a case of bigamy that if a marriage was proved by a person present during the ceremony it was not necessary to prove the registration or licence or bans.

13. The second point raised by Mr. Roy urged that no person can profess Christianity unless that person is baptised and that as the opposite party was admittedly not baptised she should be held to be a Hindu and that a marriage between a Hindu and a Christian is invalid Doubtless Section 4 of the Indian Christian Marriage Act permits marriage between two persons one of whom alone need be a Christian. But Section 88 of that Act expressly says that any marriage which is forbidden by the personal law applicable to either of the parties cannot be validated by the provisions of that Act.

14. Mr. Roy urged that under Hindu Law a Hindu cannot marry a non-Hindu and that consequently on the admission of the opposite party herself the marriage should be held to be invalid. This argument is undoubtedly attractive. But the evidence in support of the same is quite meagre. There is no evidence to show that the opposite party was a Hindu on the alleged date of marriage or on any previous date. The religion of her parents was not brought out in evidence. Her two sisters had been married in the Church according to Christian rites and she also stated that she was a Christian. Nothing was elicited to show that she practised rituals common amongst the Hindus of that place. The very fact that a Christian pastor attended the marriage ceremony and blessed the couple corroborates her claim to be a Christian. I am therefore not prepared to accept Mr. Roy's contention that the opposite party was a Hindu on the date of the marriage.

15. It is true that she was not baptised as a Christian as admitted by her. A question arises as to whether baptism is a condition precedent to a person professing Christian religion and whether there can be an unbaptised Christian for the purposes of the Indian Christian Marriage Act. It will be noticed that the definition of the expressions 'Christians' and 'Native Christians' as given in Section 3 of that Act reproduced below do not contain any reference to baptism.

' 'Christians' means persons professing the Christian religion.

'Native Christians' includes the Christian descendants of Natives of India converted to Christianity, as well as such converts,'

Any person professing the Christian religion is a Christian for the purpose of the Act. Similarly, Christian descendants of Natives of India converted to Christianity as well as such converts are classified as Native Christians. The petitioner himself though the son of a Christian father admitted that he was baptised only in 1947 when he was about 22 years old. Surely it is not Mr. Roy's contention that prior to the date of baptism the petitioner did not profess Christianity. It is true that:

'Baptism is the sacrament by which a person is admitted into the Church of Christ'. 'It is not only a sign and distinguishing mark of the Christian profession, but also a sign of regeneration or new birth.....' (See Halsbury second edition, Vol. 11 p. 80G,

para 14G9 and note (b).

But the age at which a person is baptised may depend on the particular denomination of the Church to which he belongs though ordinarily baptism is done in infancy. I have not been shown any authority in support of the view that a person cannot profess Christianity unless and until he is baptised. It is true that once there is evidence to show that a person was baptised there may be a presumption that he continued to profess Christian religion until evidence to the contrary is given: see -- 'Queen Empress v. Veeradu', 13 Mad 230. But the converse does not necessarily follow. In the absence of any indication in the Indian Christian Marriage Act regarding baptism and in view of the clear admission by the petitioner himself (whose profession of Christianity was never under challenge) that he was baptised at a fairly advanced age of about 22 years, I see no reason to disbelieve the opposite party's statement that she is a Christian notwithstanding her admission that she was not baptised. There is also no evidence to show that under the personal law applicable either to the petitioner or to the opposite party, marriage between a baptised Christian and a person professing Christianity who is not baptised is forbidden. Consequently, Section 88 of the Indian Christian Marriage Act on which Mr. Roy has relied has no application to the present case.

16. For the aforesaid reasons I would agree with the lower Court that for a summary proceeding under Section 488, Cr. P. C., the marriage of the petitioner with the opposite party has been sufficiently proved. As regards the quantum of maintenance the order of the lower Court was challenged before me and I see no reason for interference. The revision petition is therefore dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com