

Govindan Nair Vs. State

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Court : Kerala

Decided On : Jul-26-1971

Reported in : 1972CriLJ122

Judge : K. Sadasivan, J.

Appellant : Govindan Nair

Respondent : State

Judgement :

ORDER

K. Sadasivan, J.

1. The revision petitioner stands convicted on a charge under Section 494. Indian Penal Code and sentenced to R. I. for 8 months and also to a fine of Rupees 100/- . The conviction and sentence passed by the Sub-Divisional Magistrate, has been confirmed by the Sessions Judge in appeal.

2. The revision petitioner had married the complainant. Rajamma on 19-5-1957 and while that marriage was subsisting he contracted another marriage with the 2nd accused. Radha on 29-5-1968. It is on these facts that the complaint was preferred. Both the accused denied the charge. The main point argued at the final stage of the trial was that the alleged second marriage with the 2nd accused was not proved by satisfactory evidence and as such the charge is unsustainable.

Repelling this contention, the conviction has been entered by the Courts below.

3. Section 494, Indian Penal Code reads:

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....

To constitute an offence it is essential that both the marriages should be valid and in accordance with the essential religious rites of the parties thereto. In the present case I do not think the factum of the first marriage having taken place in accordance with the customary and religious rites of the parties can be disputed, P. Ws. 2 to 5 have given cogent evidence in support of the first marriage. Of these, P. W. 3 was at the time the secretary of the local N. S. S. Karavosam. He witnessed the marriage in his official capacity and P. W. 4 is the uncle of the complainant. He was present at the marriage and has sworn to the various details of the ceremony. P. W. 5 is a retired head clerk of the Sub-Registrar's Office and he too supports the complainant's case that she was married by the 1st accused in accordance with the religious rites obtaining in the community. There is documentary evidence also. For instance Ex-P-1. is the N. S. S. Karayogam register, on page 10 of which the couple have affixed their signature. There is also Ex. P-2. the certified copy of the register of marriages of Nairs in Vaikom taluk maintained by the Revenue Officials.

4. Coming to the alleged second marriage, we are confronted with difficulties. Evidence is sadly lacking in support of it. The only person who swears to have been present at the function is P. W. 6, a neighbour. The second marriage is stated to have taken place at the Guruvayoor temple, P. W. 6 claims to have been present in the temple at the time. He had gone there in connection with another marriage for which he had invitation. At that time he happened to witness the instant marriage also. As an afterthought he stated in the course of cross-examination that he was invited for this marriage also. But from the way in which he made this admission it is difficult to accept it at its face value. That apart, it is doubtful whether the alleged second marriage could be said to have been proved by his evidence. To render his evidence acceptable to prove the marriage it is

necessary that he should speak to the relevant details regarding the ceremony. This he does not do and he was not able to do also. About the ceremony as such all that he would swear is:

A1 married A2 according to custom and practice obtaining in the community.

He was content with this omnibus statement and what exactly he meant by 'Custom and practice in the Community' has not been made clear. The most important requirement so far as a Nair marriage (the parties are Nairs governed by the Nair Act) is concerned is the presentation of cloth to the female by the male. The relevant section of the Travancore Nair Act reads (Section 31:

The conjugal union of a Navar female, subject to the restrictions of consanguinity and affinity, with

i. a Navar male or.

ii. any male other than a Navar with whom conjugal union is permitted according to recognised social custom and usage, openly solemnised by the presentation of cloth to the female by the male, whether, so solemnised before the date on which Regulation I of 1088 came into force and subsisting on such date or so solemnised subsequent to that date, shall be deemed to be a valid marriage for all legal purposes.

So unless there is material to show that cloth was openly presented by the male to the female, it cannot be said that a valid conjugal union has taken place. In the Cochin Navar Act (Section 4) we see a slight innovation viz.....by the presentation of cloth to the female by the male or in any other customary form.

One of the parties to the second marriage (female) hails from Cochin area : but no customary form of marriage has been sworn to by any of the witnesses, as having been gone through by them. The witnesses swearing in support of the marriage must be able to swear to the relevant details, particularly, the presentation of cloth which is so vital for the validity of the ceremony. The Courts below have relied on certain admissions made by the parties both under Section 342, Criminal Procedure Code, and on other occasions as proof of the alleged second marriage.

Ex. P-10 is a certified copy of the counter-affidavit filed by the 1st accused in M. C, 7/69. wherein he has admitted his marriage with the 2nd accused, and Ex D-28 is a letter sent by him to D. W. 2 wherein also such an admission was made. In the 342 statement both the accused have stated that they were married on 29-5-68; but these admissions do not constitute evidence as has recently been ruled by the Supreme Court in *Priva Bala v. Suresh Chandra* AIR 1971 SC 1153. The Court observed:

Mr. Maiumdar relied on the decision of this Court in *Bharat Singh v. Bhagirathi* : [1966]1SCR606 to the effect that the admissions made by a party are substantive evidence by themselves in view of Sections 17 and 21 of the Indian Evidence Act, and that if those admissions have been duly proved they can be relied on irrespective of the fact whether the party making them appears in the witness box or not or irrespective of the fact whether such a party had or had not been confronted with those admissions. We do not think that, the said decision in any way supports the appellant with regard to prosecution for bigamy under Section 494. Indian Penal Code.... In : 1966 CriLJ472 this Court again reiterated the principles laid down in the earlier decision referred to above that in a prosecution for bigamy the second marriage has to be proved as a fact and it must also be proved that the necessary ceremonies had been performed. Another proposition laid down by this decision, which answers the second contention of the learned Counsel for the appellant, is that admission of marriage by an accused is no evidence of marriage for the purpose of proving an offence of bigamy or adultery. On the evidence it was held in the said decision that the witnesses have not proved that the essential ceremonies had been performed.

For sustaining a conviction under Section 494. Indian Penal Code, it is essential that the second marriage has taken place and the ceremonies constituting the same had all been gone through. In the Supreme Court decision cited above the parties were governed by Hindu Law and the essential element of the marriage that had to be proved for the validity of the Hindu marriage according to the customary rites was that Homa and Saptapadi were performed and as there was no evidence in support of it the acquittal had to be upheld. In that case no less than the priest who officiated at the function was cited to prove the second

marriage. He save evidence that the marriage was performed according to the Hindu rites; but that was held insufficient as the priest was not in a position to enlighten the Court as to the various details of the ceremony. The Court observed:

P. W. 6 who claims to have officiated at the marriage of the respondent and Sandhya Rani has given evidence to the effect that the marriage was solemnized according to Hindu rites. He has not said anything more than this.

So also in the present case, all that P. W. 6 would swear to is that the marriage took place according to the custom of the community. That is not sufficient. There must be evidence before Court to show that the second marriage was a valid one and in accordance with the religious and customary rites obtaining in the community. The Supreme Court in the above case would further observe:

It follows, therefore, that unless the marriage is celebrated or performed with proper ceremonies and 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. Indian Penal Code applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make them ceremonies prescribed by law or approved by any established custom.

5. These observations are on all fours with the present case. The mere fact that some ceremonies were performed at the Guruvayoor temple will not make it a valid marriage recognised by the community unless the vital features of the function are proved by evidence. by celebrating the function at the temple the venue is shifted to the temple, that is all. But that will not dispense with the observance of the necessary ceremonies and rites which alone can give the stamp of validity to the act. It must, therefore, be found that the alleged second marriage is not proved in the present case and as such the offence must be held to have not been committed.

6. The conviction and sentence are hence set aside and the petitioner accused, is acquitted. Fine, if realised. will be refunded. The revision petition is allowed.

