

Rabindra Nath Dutta Vs. the State

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Court : Kolkata

Decided On : Apr-11-1968

Reported in : AIR1969Cal55,1969CriLJ164

Judge : R.N. Dutt and ;K.K. Mitra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 494; ;[Hindu Marriage Act, 1955](#) - Sections 7, 7(2) and 17; ;Hindu Law

Appeal No. : Criminal Revn. No. 661 of 1964

Appellant : Rabindra Nath Dutta

Respondent : The State

Advocate for Def. : Chintaharan Roy, ;Sarojesh Biswas and ;Amal Ch. Chatterjee, Advs.

Advocate for Pet/Ap. : A.K. Dutt, ;Tarak Nath Banerjee and ;Dilip Kumar Dutt, Advs.

Judgement :

K.K. Mitra, J.

1. This is a rule directed against the order passed by the Presidency Magistrate, convicting the petitioner under Section 494 Indian Penal Code and sentencing him

to rigorous imprisonment for three months.

2. The facts of the case are as follows:

One Sovarani Dutta made a complaint to the effect that she was married with the petitioner according to Hindu rites, on the 1st of May, 1962 and she lived with the petitioner as husband and wife for sometime till November, 1962 and then the petitioner married for the second time under the Special Marriage Act of 1954 on the 24th of January, 1963.

3. On these allegations the petitioner was charged under Section 494 Indian Penal Code for marrying again when he had a wife living. The petitioner pleaded not guilty to the charge. His defence was that he never married Sovarani, the complainant.

4. The Learned Magistrate found the charge under Section 494 Indian Penal Code proved and convicted the petitioner.

5. There is no dispute on the point that the petitioner married one Manika Sarkar under Act XLIII of 1954 on 24th of January, 1963. Exhibit II is the certificate of marriage given by the Marriage Officer under Section 13 of Act XLIII of 1954. The question is if Sovarani is the wife of the petitioner.

6. Section 494 Indian Penal Code reads as follows:

'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 punishable.....'

Section 17 of the Hindu Marriage Act renders a marriage solemnised after the commencement of the Act void if at the date of such marriage the party had a wife living and the provisions of Sections 494 and 495 Indian Penal Code are then made applicable.

7. So the provision of Section 494 Indian Penal Code is attracted when a person marries after the commencement of the Hindu Marriage Act when he has a wife living.

8. The law prohibits and makes punishable a husband who marries for the second time during the lifetime of the first wife. It is a settled principle of law that in order to attract the penal provision of Section 494 Indian Penal Code it must be shown that the subsequent marriage was solemnised upon due performance of the essential ceremonies upon which only a marriage becomes a valid marriage.

9. Here it is conclusively proved that the petitioner had married Manika Sarkar and that marriage had been in accordance with law and therefore duly solemnised to make it a valid marriage. The contention of the petitioner is that Sovarani cannot be said to be his wife as there was no marriage between him and Sovarani celebrated with proper ceremonies and in due form. Obviously, if the marriage between the petitioner and Sovarani had not been solemnised with due performance of the ceremonies, Sovarani even though alive cannot be said to be the wife of the petitioner and in that sense the marriage of the petitioner with Manika Sarkar does not become void and such marriage does not make the petitioner punishable under Section 494 Indian Penal Code.

10. The essential elements needed to be established to make a person punishable under Section 494 Indian Penal Code, are as follows:

(1) There must be a wife living.

(2) There must be another marriage by reason of its taking place during the life of the wife.

11. So while Section 17 of the Hindu Marriage Act renders a second marriage of a male Hindu during the lifetime of an existing wife void, the husband marrying for the second time is also punishable under Section 494 Indian Penal Code. In the case reported in : 1965 CriLJ544 , Bhaurao Sankar Lokhande v. State of Maharashtra, it had been held that it is 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 and that merely going through certain ceremonies without the intention that the parties be taken to be married will not make the ceremonies prescribed by law or approved by any established customs. In that

case the husband was charged under Section 494 Indian Penal Code as he had married for the second time during the lifetime of his wife. The second marriage was said to have been performed in 'gandharbha' form as has been modified by the custom prevailing amongst the Maharashtrians. It was found that the alleged second marriage had not been solemnised after due observance of the ceremonies and there was no evidence to show that there had been any modification of the essential marriage ceremonies on the observance of which a marriage becomes valid by the proof of any custom in the particular community or caste.

12. The question, however, arises for consideration if it is necessary to sustain a charge under Section 494 Indian Penal Code to prove that the wife who is living is a legally married wife. In other words, the question is if it is to be shown that the alleged first marriage can be treated as a legally valid marriage being solemnised with due observance of the ceremonies before it can be said that there is a wife living. Naturally, one acquires the status of a husband or wife only when it is shown that there was a marriage duly solemnised after due performance of the rites and ceremonies.

13. Under the Hindu Marriage Act, monogamy has become the law of the land to the persons to whom the Act applies. So, marriage for the second time, when there is already a subsisting marriage has been made null and void and at the same time the man entering into a second marriage has been made punishable under the Act. It is, therefore, necessary to see before one can be made punishable to determine the fact whether there had been a subsequent marriage during the lifetime of the spouse from the stand-point that the prior marriage was duly solemnised. So, in a case where the allegation is that a man has married twice it has got to be decided if the first marriage had been duly solemnised and then there had been another marriage duly solemnised. In case where either of the two marriages is found to be not duly solemnised the position is that in the eye of law there is only one legal and valid marriage making the charge of bigamy unsustainable.

14. The allegation of a prior marriage by a man with a woman giving the status of a wife to the woman must therefore be seen if the alleged prior marriage had been solemnised after due observance of the rites and ceremonies. If it be found that the alleged prior marriage had not been so solemnised, the mere fact that the petitioner had lived with such a woman with whom some ceremonies of marriage had been performed will not satisfy the essential ingredient to prove the charge under Section 494 Indian Penal Code that there was a wife living as obviously such woman cannot claim the status of a legally married wife.

15. There is, of course, a strong presumption in favour of the validity of a marriage if from the time of such marriage the parties are recognised by the people concerned as man and wife and such presumption applies also as to the question whether the formal requisites of a valid marriage ceremony were satisfied. In the instant case, evidence had been adduced by the prosecution regarding the ceremonies as to marriage which took place on the 1st of May, 1962.

16. The prosecution proved a letter Ext. 5 which was written by P. W. 11 Balai Chandra Dutta on 21-1-63 to Sovarani Dutta under instruction of the petitioner and the contents of the letter show that the petitioner wanted Sova Dutta to come to his place and live with him as being the legally married wife. It is urged by Mr. Roy, that the petitioner under whose instruction this letter had been written had admitted the marriage with Sova and therefore, this letter creates an evidence as to the fact of the marriage. In a case reported in : 1966 CriLJ472 , Kanwal Ram v. Himachal Pradesh Administration it had been held that admission in letter is not to be taken as an evidence of the fact of the marriage having taken place.

17. In this criminal case the prosecution must prove their case beyond reasonable doubt and for that the onus is heavy upon the prosecution to prove first of all that Sovarani was a legally married wife of the petitioner and secondly that during the subsistence of the marriage tie the petitioner had entered into another marriage duly solemnised in accordance with law. The presumption of innocence always stands in favour of the accused. There cannot be presumption in favour of a valid legal marriage as between the petitioner and Sovarani just merely on the basis of evidence that some ceremonies of marriage had been performed. It is only a proof

of due performance of essential ceremonies of a marriage that the marriage tie becomes legally enforceable.

18. Section 7 of the Hindu Marriage Act provides how a Hindu marriage may be solemnised. The section runs as follows:

'(1) A Hindu Marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.

(2) 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.'

19. Thus, the entire question for determining the validity of a marriage will depend on observance of the customary rites and ceremonies of either party as were prevalent in 1955. In fact, the solemnisation of a Hindu Marriage depends solely on observance of the customary rites and ceremonies with no hard and fast connection with these religious ceremonies as enjoined in the Hindu Sastras.

20. The Hindu Marriage Act does not lay down any special or particular kind or form of ceremonies to be compulsorily observed in all Hindu marriages. In fact, the form of marriage, prescribed by the Sastras, is subject to modifications by custom or usage. But the expression 'Customary Ceremonies' cannot be taken to mean that 'Sastric Ceremonies' have been totally ignored. The expression 'Customary Rites and Ceremonies' naturally means such sastric ceremonies, which the caste or community to which the party belongs is customarily following. Customary rites and ceremonies to be accepted must be shown that such custom as an essence of marriage ceremony had been followed definitely from ancient times and that the members of the Caste, Community or Sub-Caste had recognised such ceremonies as obligatory. Once it is proved by evidence what ceremonies had been followed as customary rites, it is no longer left to the will of the Caste, Community or Sub-Caste to alter them as the essence of custom is that on account of its definiteness it had been recognised and adopted by the caste or community with certainty and without any variation.

21. Sub-section (2) of Section 7 makes It clear, however, that when such rites and ceremonies include the Saptapadi the marriage becomes complete and binding when the seventh step is taken. When it is proved that Saptapadi Gaman is not a part of the Customary rite it need not be performed. Otherwise, Saptapadi remains as essential ceremony in a Hindu Marriage. As a Hindu Marriage is a sacrament, the performance of a Sanskar, the customary religious rite must be observed in order to make a marriage valid.

22. In the instant case no evidence had been adduced to show if there was any particular customary ceremony prevailing in the family of the parties and from the side of the prosecution, evidence had been given on the point as to what religious ceremonies had been observed at the marriage. P. W. 4, Bejoy Bhatta-charjee who acted as the priest at the marriage in question stated that the marriage had been performed according to Hindu Rites and the 'Sampradan Ceremony' had been performed by the mother of the bride. The priest stated that on the marriage night there was no 'Kushandika', The priest further stated that during 'Kushandika' the function of Saptapadi is held. Under the Act the taking of seven steps by the bride-groom and the bride together before the nuptial-fire is an essential ceremony to make a marriage valid. It is clear from the evidence that after the marriage Sovarani went to her husband's place at Begumpur on the following day morning. P. W. 13 Sovarani, stated that 'Kushandika' was performed on the following day at the house of the accused at Begumpur. Taking the evidence of the priest who performed the marriage ceremonies and the evidence of Sovarani it appears to me that 'Kushandika' had been performed at the following day and at that time the Saptapadi ceremony had been performed. The meaning of the word 'Kushandika' as given in the well-known Bengali Dictionary of Colloquial words 'Chalantika' by Rajsekhar Bose as 'Bibahedey Kariya Homer Janna Agnisanskar Kriye'. The taking of seven steps by the bride and the bride-groom together before the nuptial fire and the performance of 'nuptial homa' are the two essential ceremonies of a Hindu marriage. The ceremony known as 'Kushandika' is associated with 'nuptial homa' and the performance of a Sanskar. The evidence conclusively shows that at the time of performance of 'Kushandika' on the following morning both the ceremony of Saptapadi Gaman as well as the performance of homa had been done together and that the marriage became complete and binding between the

parties.

23. The petitioner has, therefore, been rightly convicted u/s. 494 I. P. C. There is no extenuating circumstances for which the sentence can be reduced. The petitioner is an educated person engaged in the profession of teaching. It is clear from the evidence that after entering into a legal valid marriage he had taken a second wife and that he tried to avoid and deny the prior marriage with Sova-rani.

24. The rule is, accordingly, discharged. The petitioner do surrender to the bail bond to serve out the sentence of rigorous imprisonment passed by the court.

R.N. Dutt, J.

25. I agree.

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