

Asit Kumar Barman Vs. Smt. Radha Barman Alias Bauri

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Court : Kolkata

Decided On : Jan-22-1993

Reported in : (1993)1CALLT249(HC)

Judge : Gitesh Ranjan Bhattacharjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 401

Appeal No. : Cr. Rev. No. 1451 of 1991

Appellant : Asit Kumar Barman

Respondent : Smt. Radha Barman Alias Bauri

Advocate for Def. : U.K. Majumdar, Adv.

Advocate for Pet/Ap. : D.P. Sengupta and ;Himanshu De, Advs.

Disposition : Application allowed

Judgement :

Gitesh Ranjan Bhattacharjee, J.

1. This revisional application is directed against the order and judgment dated the 6th July, 1991 passed by the learned Sessions Judge, Purulia in Criminal Revision No. 8 of 1991 whereby he reversed the order of the Judicial Magistrate, Raghunathpur by which the learned Magistrate dismissed an application under

Section 125 of the Code of Criminal Procedure for maintenance. By his impugned order the learned Sessions Judge granted maintenance of Rs. 250/- per month in favour of the opposite party herein. The Opposite Party herein Smt. Radha filed an application under Section 125 Cr. P.C. on 20th June, 1987 alleging inter alia that she was married to the petitioner herein Asit Kumar Barman more than 20 years back and thereafter they stayed together as husband and wife, but during sometime past the petitioner herein started ill-treating her and ultimately on 17th June, 1987 she was abused, assaulted and driven away from his residence and she was thereafter residing with neighbour Smt. Santi Biswas. The petitioner herein contested the said application under Section 125 Cr.P.C. denying the allegations of marriage and staying together. The parties adduced evidence before the learned Magistrate and the learned Magistrate after considering the facts, circumstances and evidence disbelieved the allegations of marriage, staying together and torture. Accordingly he dismissed the application under Section 125 Cr.P.C.

2. The opposite party herein examined 4 witnesses including herself before the learned Magistrate and the petitioner herein examined two witnesses including himself. The learned Magistrate found that PW-1 and PW-3 had no knowledge about marriage. PW-2 is the brother of the PW-4 who is the opposite party herein. The learned Magistrate elaborately analysed all the evidence and the discrepancies appearing therein. If the marriage was held 20 years back as is the averment in the application then it would come to this that the marriage took place in or around 1967. But in their evidence both the PWs-2 and 4 stated in 1990 that the marriage took place about 20 years ago which would indicate that the marriage took place in or around 1970. Therefore the learned Magistrate found discrepancy between the evidence and the original case about the time when the alleged marriage took place. This discrepancy along with the other discrepancies in the evidence as to where the negotiation of marriage took place, the rituals; observed at the alleged marriage, etc. were also considered by the learned Magistrate. No independent witness to the alleged marriage was also forthcoming. The opposite party herein belongs to Bauri community. The petitioner herein is originally a resident of Diamond Harbour Sub-Division, 24-Parganas and he passed the Pre-University examination from Diamond Harbour Fakirchand College in 1967. In

November, 1977 he got appointment in SouthEastern Railway at Adra in the district of Purulia as junior clerk in Accounts Department. He has stated that prior to that he never visited Adra. The opposite party herein is a resident of Adra locality. It is the case of the petitioner herein that she works as maid-servant in different houses. PW-1 has admitted that Radha works as maid-servant in some houses at Adra. PW-3 has also stated that Radha works as maid-servant. In view of the difference in social and educational levels of the parties the evidence on record about the negotiated marriage should be cautiously considered. The contention that the parties were married more than 20 years before the application under Section 125 Cr.P.C. was filed, as is the case of the opposite party herein, is however not sustained by the very fact that the petitioner herein who is originally a resident of Diamond Harbour for the first time came to Adra in 1977 on getting an appointment and posting at Adra under the South-Eastern Railway.

3. The learned Sessions Judge in his impugned judgment observed that the learned Magistrate had rightly discarded the evidence of PW-1 on the ground that he was not born at the time of alleged marriage of the parties. He also observed that the learned Magistrate also discarded the evidence of PW-3 as he was not present at the time of marriage. The learned Sessions Judge however observed that the learned Magistrate should not have been totally discarded the evidence of PWs-1 and 3 and that part of their evidence which would go to show that the parties lived as husband and wife could be believed. This approach of the learned Sessions Judge is also not a correct one. In revisional jurisdiction the court has to consider not- what could be believed by the trial court but whether or not the view taken by the trial court is on a question of fact also a possible view on the basis of the materials on record. If two views are possible then the mere fact that the trial court took one of the two possible views which the revisional court would not have preferred to take is by itself no ground for replacing the view taken by the trial court by the alternative view which the revisional court would feel inclined to take. The learned Magistrate has considered the evidence elaborately and he did not find the evidence convincing as to prove that the parties lived as husband and wife. PW-1 is a boy of 21 years. The opposite party herein is his Pisi (aunt). He said that he went to the house of the parties on different occasions but did not spend night there. He could not tell what kind of furniture was there in the room of

the petitioner herein. If he really had gone to his house he was expected to have been acquainted with the nature of furniture the petitioner was having in his house. P'W-3 in his cross-examination unequivocally stated that he never went to the house of the parties and he was not able to say where and how Radha lived with Kumar Barman (meaning, the petitioner herein) or where and how they used to reside for the last 20 years. In view of such state of deposition of the PWs-1 and 3. I find it extremely difficult to concur with the observation of the learned Sessions Judge that the part of the evidence of those two witnesses which would go to show that the parties lived as husband and wife could be believed by the learned Magistrate. On the other hand, I am clearly of the opinion that there was no impropriety on the part of the learned Magistrate in declining to rely on the evidence of those two witnesses or for that matter the evidence on record adduced on behalf of the opposite party herein.

4. As regards, the time when the alleged marriage took place the learned Sessions Judge observed that the PWs-2 and 4 being brother and sister were both illiterate village people who could not even sign their names and they belonged to Bauri community and as such there might be minor discrepancy with regard to the year of marriage, but for that, the factum of marriage should not be totally thrown away if marriage could be believed on the evidence of the parties. In this connection, it is to be stated that the discrepancy in the evidence was not with regard to the particular year of marriage, but the discrepancy was with regard to the length of time which elapsed since the alleged marriage. If opposite party herein said in 1987 in her application that the marriage took place more than 20 years ago then even if she is illiterate she is not expected to say 3 years thereafter in 1990 that the marriage took place 20 years back. It would have been understandable if she would have described the length of time as 22/23 years in her deposition. Be that as it may, the marriage could not have taken place 20 or 23 years back, whatever might it be, in view of the fact that the petitioner herein came to Adra on getting a railway job for the first time only about 10 years before the opposite party herein filed the application under Section 125 Cr.P.C. The allegation that the marriage between the parties took place more than 20 years before the filing of the application is therefore palpably absurd because the case of the opposite party herein is that the marriage took place while the petitioner was working in South-

Eastern Railway at Adra. It was alleged in the written objection filed by the petitioner herein before the learned Magistrate and it was also the case of the petitioner herein that the opposite party herein was married to someone else and she also had a daughter by her husband which were however all denied by the opposite party herein. The learned Sessions Judge observed that the particulars of the alleged husband had not been given in the show-cause petition filed by the petitioner herein. It is needless to mention that even if the plea taken by the petitioner herein that the opposite party herein was married to some one else is not proved or even falsified that will not prove marriage between the parties which has to be proved by convincing evidence, direct or circumstantial, in a proceeding under Section 125 Cr.P.C. The learned Sessions Judge made comments on the evidence and plea of the petitioner herein as to when he first saw Radha. But these matters taken in an isolated way cannot be magnified to a disproportionate extent as to dispense with the necessity of proving marriage or staying of the parties together as husband and wife. The opposite party herein did not examine independent witnesses to prove the alleged marriage nor did she examine other witnesses of the locality who could convince the court that the parties stayed together as husband and wife.

5. On the other hand, one very curious aspect of the case should not go unnoticed. The opposite party herein filed the application under Section 125 Cr.P.C. on 20th June, 1987 in Raghunathpur Court after being allegedly driven away from the house of the petitioner herein in the night of the 17th June, 1987. She therefore filed the application under Section 125 Cr.P.C. for maintenance in Court at Raghunathpur within 3 days from the alleged date of her being driven away from the house of the petitioner herein at Adra. She is a rustic village woman. It is almost unbelievable at the first blush that it would have been possible for her to file an application under Section 125 Cr.P.C. in Court within 3 days of her being driven away from the house of her alleged husband. There was no effort for reconciliation during these 3 days, no complain to anybody at private level, and she straight-way filed an application in Court for maintenance on the allegation of refusal and negligence to maintain her and this she filed within 3 days of her being driven away by her alleged husband. An incredible swiftness indeed. The truth of the allegation, in the circumstances, that the petitioner was driven away in the

night of 17th June, 1987 is exposed to grave doubt. Be that as it may, the learned Sessions Judge, I am clearly of the opinion committed grave error in reversing the findings of the learned Magistrate on the basis of isolated materials picked up from here and there without taking into consideration a comprehensive view of all relevant facts, circumstances and evidence on record as was done by the learned Magistrate. In the circumstances, the judgment and order of the learned Sessions Judge cannot be sustained. The view taken by the learned Magistrate seems to be a balanced one and the same did not call for any interference in revisional jurisdiction. The impugned order of the learned Sessions Judge is therefore set aside and the order of the learned Magistrate is restored to effect. The present revisional application stands allowed accordingly.

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