

PETITIONER:
LINGARI OBULAMMA

Vs.

RESPONDENT:
L. VENKATA REDDY & ORS.

DATE OF JUDGMENT 19/01/1979

BENCH:
FAZALALI, SYED MURTAZA
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FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1979 AIR 848 1979 SCR (2) 1019
1979 SCC (3) 80

ACT:
Penal Code-S. 494-Scope of-Essential conditions to be satisfied for application of the section.

HEADNOTE:

The appellant was the husband of respondent No. 1. Relations between the husband and wife having been strained for some years they lived separately. On the husband's complaint that his wife had married another person during the subsistence of their marriage, she and accused no. 4 were convicted under s. 494 IPC.

Allowing the wife's revision petition the High Court held the marriage to be void on the ground that there was no evidence to prove that the essential ceremonies required to be performed in a Hindu marriage, namely Dutta Homa and Saptapadi had been performed.

In appeal to this Court the husband contended that under the custom followed by the community to which the parties belonged Saptapadi was not an essential requirement to constitute a valid marriage but that tying a yarn thread round the bride's neck at the time of marriage was sufficient to make a valid marriage and this having been done, the second marriage was valid and the wife was guilty of the offence under s. 494 IPC.

Dismissing the appeal.

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HELD: The prosecution failed to prove that the second marriage was a valid marriage and, therefore, the High Court was justified in acquitting the respondents. [1022 F]

Before a conviction can be recorded under s. 494 IPC the following ingredients must be satisfied :-

- (1) that the complainant had been married to the accused;
- (2) that the accused contracted a second marriage while the first marriage was still subsisting; and
- (3) that both the marriages were valid and strictly according to law governing the parties. [1022 B]

In the instant case there was no evidence to show that there was any custom among the parties outweighing the written text of law. Secondly, the husband had not clearly mentioned

that the parties were governed by custom in derogation of Hindu Law. The priest who performed the marriage had shown complete ignorance as to whether or not the parties were governed by custom. The witness was, therefore, incompetent, to depose about the existence of any custom in the family of the parties. When the priest said that there was no custom of sacred fire and Saptapadi what he meant was that in the second marriage these two ceremonies had not been performed. [1022 C-D & 1021 G-H]

1020

In re: Dolgonti Raghava Reddy & Anr., AIR 1968 (AP) 117 held inapplicable.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 339 of 1975.

Appeal by Special Leave from the Judgment and Order dated 19-3-1975 of the Andhra Pradesh High Court in Criminal Revision Case No. 16/74 (Criminal Revision Petition No. 12/74).

P. Parmeshwara Rao, T. V. S. N. Chari and R. Nagarathnam for the Appellant.

A. V. V. Nair for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave has been filed by the complainant against the order of the Andhra Pradesh High Court acquitting the respondents, who had been convicted by the trial court Magistrate and the Sessions Judge under Section 494 I. P. C. and sentenced to six months rigorous imprisonment and a fine of Rs. 100/- as modified by the Sessions Judge.

The appellant had filed a complaint against the respondent No. 1 on the ground that he was her husband and while the first marriage was subsisting he had contracted a second marriage and was, therefore, guilty of the offence of bigamy as enshrined in Section 494 of I. P. C. According to the prosecution the first marriage of respondent No. 1 with appellant took place on 22-4-68. After about 3 years of the first marriage the relations between the husband and wife became strained and they separated, but there was no divorce. On 1-4-1972 the respondent No. 1 married accused No. 4 and the other accused who were relations of the respondent participated in the marriage. On knowing this fact the appellant filed a complaint on 26-4-1972 on the basis of which the respondents were prosecuted and ultimately convicted under Section 494 of I. P. C. The case went up in revision to the High Court which accepted the revision and acquitted the accused on the ground that there was no proof of a valid marriage having been contracted between accused No. 4 and accused No. 1. Against this order the appellant filed a petition for special leave and after obtaining special leave, the appeal has been placed before us for hearing.

The short point involved in this appeal is as to whether or not the second marriage contracted by respondent No. 1(A-1) with respondent No. 4(A-4) was a legally valid marriage. The High Court pointed out that under the Hindu Law, two essential ceremonies of

1021

a valid marriage are Datta Homa and Saptapadi i.e. taking seven steps around the sacred fire. The High Court found that there was absolutely no evidence to prove that any of these two essential ceremonies had been performed, and,

therefore, the marriage was void in the eye of law. In this view of the matter the High Court held that the conviction under Section 494 I. P. C. could not be sustained.

In support of the appeal Mr. Rao has submitted that the High Court has taken a wrong view of law and has overlooked the fact that in the instant case, the parties belonged to the Reddy Community and were therefore governed by custom and under the custom the two ceremonies mentioned by the High Court were not necessary at all to constitute a valid marriage. The other ceremonies which were necessary under the custom had been performed according to Purohit (P.W.1). Unfortunately, however, in the state of evidence in the present case it is impossible for us to hold that the second marriage was a valid one. In the first place it has not been clearly mentioned in the complaint as to whether the parties were governed by custom in derogation of Hindu Law. Secondly, P.W. 1 stated thus:-

"Among Kapus, according to their customs each community will perform the marriage. Some Kapus have only 'Yarn Thread' instead of Mangala Sutram. I do not know what is the custom (Acharam) of the accused. There was no custom of putting sacred fire. There was no 'Agni Gundam' (Sacred fire and no going round 7 times by the bride and bridegroom). I do not know whether that is true of a secret marriage".

It would appear from the aforesaid statement of P.W. 1 that he had clearly stated that he does not know what is the custom of the accused. Having shown complete ignorance of the fact as to whether or not the accused was governed by custom the witness goes on to state that there was no custom of sacred fire and Saptapadi. What the witness really means is that in the second marriage which was contracted by respondent No. 1, these two ceremonies were not performed by him. Mr. Rao, however, vehemently contended that this witness proves that in the Reddy Community the custom of Saptapadi was not prevalent and it was sufficient to put the 'Yarn Thread' instead of Mangal Sutra'. In our opinion when witness has frankly admitted that he does not know the custom of the accused he was incompetent to depose about the existence of any custom in the family

1022

of the accused. It is well settled that before a conviction can be recorded under section 494 the following ingredients must be proved:-

- (1) That the complainant had been married to the accused;
- (2) That the accused contracted a second marriage while the first marriage was still subsisting;
- (3) That both the marriages were valid and strictly according to law governing the parties.

In the instant case there was no evidence to show that there was any custom amongst the Reddys which, outweighed the written text of law. The evidence of P. W. 1, clearly falls short of the standard to prove this fact. Mr. Rao, however, strongly relied on a decision of the Andhra Pradesh High Court in some other case to show that among the Reddy Community of Telangana area the two ceremonies mentioned above were not necessary. In the first place the decision referred to above in the case of re: Dalgonti Raghava Reddy and Another(1) clearly shows that the Court in that case was concerned only with the Reddy Community of Telangana alone. The trial court has pointed out in its judgment that so far as accused is concerned he belongs to the Reddy Community

not of Telangana area, but that of Rayalaseema area. In these circumstances the Judgment of the High Court cannot be of any avail to the appellant. Moreover, as the existence of the custom was neither mentioned in the complaint nor proved in the evidence it would be difficult for this Court to rely on the decision of the High Court which was based on the evidence, facts and circumstances of the case before it. In these circumstances we agree with the High Court that the prosecution had failed to prove that the second marriage contracted by respondent No. 1 with respondent No. 4 was a valid marriage and, therefore, the High Court was fully justified in acquitting the respondents. The appeal is without any substance and is accordingly dismissed.

P.B.R.

Appeal dismissed.

1023