
(1995) 09 AHC CK 0071
In the Allahabad High Court
Case No : Criminal Revision No. 1152 of 1982

Anil Kumar Srivastava

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 22-09-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 494

Citation : (1995) 09 AHC CK 0071

Hon'ble Judges : N.S.Gupta, J

Final Decision : Dismissed

Judgement

N. S. Gupta, J.—This is a criminal revision against the judgment and order dated 2861982 passed by Sri Prahlad Narain the then District Sessions Judge, Gorakhpur in Criminal Appeal No. 82 of 1982, dismissing the appeal and maintaining the conviction of the applicantrevisionist under Section 494, I.P.C. and sentence of two years R.I. and fine of Rs. 2,009 imposed by the Munsif Magistrate, VIII Gorakhpur in Case No. 1298 of 1981 as per his judgment and order dated 2431982.

The facts of the case briefly stated are as follows.

2. The opposite party Smt. Maya Devi, PW 6 filed a criminal complaint on 2071976 in the Court of Chief Judicial Magistrate, Gorakhpur with the allegations that she was a legally wedded wife of accused revisionist Anil Kumar Srivastava. Having been married with him according to Hindu reties on 9th July, 1970. A son was born to her out of her union with the accused revisionist Anil Kumar Srivastava. The complainant pleaded that at the time of her marriage, the revisionist was employed in the Income Tax Department at Maradabad. He became addicted to intoxication. His services were subsequently terminated, because of the bad habit. He started misbehaving with the complainant. His mother Smt. Shanti Devi contributed to the atrocities of the accused revisionist. The accusedrevisionist had gone to the extent of assaulting the complainant and threatening to kill her and her son. The complainant maintained that the accused

revisionist in connivance with his parents remarried with Smt. Asha Devi in the intervening night of 13/1471975.

3. As many as eight persons were arrayed as accused in the original complaint. They were, (1) Anil Kumar: Srivastava, the accused revisionist, (2) Smt. Asha Devi, second wife of Anil Kumar, (3) Narvedeshwar Prasad, who is since died, father of the accused revisionist (4) Shanti Devi, mother of the accused, (5) Mahadeo, Mama of the accused, (6) Satyawati, Mami, of the accused (7) Chandrika Lal, father of the second wife Smt. Asha Devi, (8) Janki Devi, mother of Asha Devi.

4. After recording the evidence of the parties, the learned Magistrate, Gorakhpur found only accused revisionist Anil Kumar guilty of an offence punishable under Section 494, I.P.C. He vide his judgment and order dated 2431982 convicted and sentenced the accused revisionist as aforesaid. On appeal, the conviction and sentence passed by the trial Magistrate against the accused revisionist were maintained by the then Sessions Judge, Gorakhpur as per his judgment and order dated 2861982. Aggrieved by the said judgment of the learned Sessions Judge, Gorakhpur, the accused revisionist Anil Kumar has come up in revision before this Court.

5. I have heard Sri K. C. Saxena, learned counsel for the revisionist and Sri Vijai Bahadur learned counsel for the respondent Smt. Maya Devi and Additional Government Advocate for the State, considered their contentions and have gone through the facts and circumstances of the case.

6. It was urged by the learned counsel for the accusedrevisionist that the complainant failed to establish the second marriage of the accusedrevisionist Anil Kumar with Smt. Asha Devi. It was argued on behalf of the revisionist that the complainant failed to prove that the accused Anil Kumar and Smt. Asha Devi jointly took seven steps before the sacred fire and performed Saptapadi, the necessary ceremony for the performance of marriage in accordance with Hindu Law, were not established and, as such, the conviction of the accused revisionist under Section 494, I.P.C. was illegal and improper.

7. It is admitted case of the parties that accused revisionist was married to the complainant on 9th July, 1970.

8. The point when arose for consideration before the court below was, as to whether the accused revisionist has remarried with Smt. Asha Devi. The trial Court as well as learned appellate court placed reliance upon the evidence of Shri Shiv Shanker Pandey, PW 1, the Pandit who had performed the marriage ceremony of the accusedrevisionist with Smt. Asha Devi, Rangai Nai PW 2, who had participated in the said marriage Shatrughna Lal, PW 4, who was an eyewitness of the marriage of Anil Kumar with Smt. Asha Devi, they believed the contention of the complainant held that accusedrevisionist had remarried with Smt. Asha Devi during the subsistence of the marriage of the accused with Smt. Maya Devi and thereby committed an offence punishable under Section 494,

I.P.C.

9. Learned counsel for the revisionist argued before me that the learned court below grossly erred in placing reliance upon the evidence of these witnesses. It was argued that the Pandit, Shiv Shanker Pandey, never stated his qualification as B. A. B. Ed. Learned appellate court observed in his judgment that Sri Shiv Shanker Pandey was a graduate and also B. Ed. It was argued that the approach of the learned Sessions Judge, Gorakhpur in importing these qualifications of Pandit Shiv Shanker Pandey for which there was no evidence, amounts to perversity of his judgment. It was argued that Pandit Shiv Shanker Pandey, PW 1 and Rangai PW2, both belong to village Baiju Dehra, which was the village of Smt. Maya Devi. It is, therefore, not believable that at the time of performing the second marriage with Smt. Asha Devi the accused revisionist would have taken witnesses to Azamgarh from Gorakhpur. Learned counsel for the revisionist further argued that there was no dearth of Pandits and Barbers in Azamgarh hence there was necessity to take these two witnesses from Gorakhpur to Azamgarh. I am unable to agree with, the consent of the learned counsel for the revisionist. The mere fact that these two witnesses belong to the village of the first wife Smt. Maya Devi, is no ground to discard their solemn testimony. It was specifically stated by Shiv Shanker Pandey, the Pandit, PW 1 that he had gone in the second marriage of the accused revisionist to Azamgarh in a Taxi at about 3 p.m. He stated that the said marriage was performed according to Hindu rites. He stated to have got the said marriage performed. Sri Shiv Shanker Pandey, the Pandit, stated that Dwar Pooja, Kanya Parthistha Bhanwar Pooja and Sindooran were performed. Although the Pandit Shiv Shanker has not specifically stated that he got the Saptapadi performed yet he has stated that he got the marriage of the accused revisionist with Smt. Asha Devi performed according to Hindu Dharm Shastras and that ceremony like Dwar Pooja, Kanya Parthistha, Kavar Ctiharai, Bhanwar Pooja and Sindooran were duly performed. It is thus obvious that Saptapadi was also performed. The circumstance that friend like Shatrughna Lal PW 4 of the accused revisionist had also participated in the said marriage, besides other persons fully go to prove that the accused revisionist had remarried with Smt. Asha Devi according to Hindu rites and that the said marriage was duly solemnized.

10. I should state here that Hindu Shastras describes the solemnization of Hindu marriage before the sacred fire and the performance of Saptapadi. The evidence of Pandit Shiv Shanker Pandey is quite clear on this point that the marriage of the accused revisionist with Smt. Asha Devi was performed according to Hindu Dharmashastras which obviously means that it was performed before the sacred fire and that the Saptapadi was performed.

11. It was argued on behalf of the revisionist that as many as three witnesses, namely, Ram Briksh DW 1 Ram Raj, PW 2, Prem Prakash DW 3 were examined by the accused revisionist before the court below who denied the performance of the second marriage of accused revisionist with Smt. Asha Devi. Learned

counsel for the revisionist argued that the learned Sessions Judge, Gorakhpur grossly erred in not considering their testimony and as such the findings of the learned Sessions Judge are vitiated.

12. I am unable to agree with the contentions of the learned Counsel for the revisionist. I find that Sri Briksh Yadav DW 1 in his statement on oath before the court below on 431982 had stated the age of Asha Devi is 1415 years, whereas Smt. Asha Devi in her statement under Section 313, Cr. P. C., which was recorded on 2671978, had stated her age as 20 years. Similarly. DW 2 Ram Raj, stated the age of Asha Devi as 1718 years in his statement on oath, which was recorded on 431982. Since these two witnesses did not even correctly know the age of Smt. Asha Devi, they cannot be expected to know as to whether or not Smt. Asha Devi had really married with the accused revisionist. Sri Prem Prakash, DW 3 is the brother of Smt. Asha Devi. He was highly interested in saving the skin of the accused revisionist and his sister. I am, therefore, of the opinion that the court below was perfectly justified in not placing any reliance upon the evidence of these defence witnesses.

13. It appears that Smt. Maya Devi had stated her qualification as B. A. B. Ed. There appears to be a clerical error in the judgment of the Sessions Judge describing the qualification of Pandit Shiv Shanker Pandey as B. A., B. Ed. If due to clerical error the learned Sessions Judge, Gorakhpur mentioned in his judgment that Pandit Shiv Shanker Pandey was B. A. B. Ed. I am of the opinion that solemn statement of Pandit Shiv Shanker Pandey on the point that he had performed the marriage of the accused revisionist with Smt. Asha Devi is not vitiated and the findings of the Sessions Judge does not become perverse on that ground.

14. The circumstance that Ram Briksh DW 1 was cited as a witness of the complainant but was examined by the accused revisionist in his defence as DW 1 does not vitiate the whole trial. When it has been proved as a fact before the court below by the evidence of Pandit Shiv Shanker Pandey PW 1 and Rangai PW 2, or Shatrughna Lal, PW 4 that the accused revisionist had married with Smt. Asha Devi and when it is clear from the statement of Smt. Maya Devi PW 1 that she is the first legally wedded wife of the accused revisionist, it is obvious that the accused revisionist has remarried with Smt. Asha Devi during the subsistence of his marriage with his former wife and as such, I am of the opinion that the learned court below was perfectly justified in holding the accused revisionist guilty for an offence punishable under Section 494, I.P.C.,

15. The learned counsel for the revisionist placing reliance upon the proposition of law laid down in Shambhu v. State of U. P., reported in 1991 A Cr.R 465, argued that the finding recorded by the court below being perverse, this Court in its revisional jurisdiction can set aside these findings, I am of the opinion that the findings recorded by the court below on the point of second marriage of the accused revisionist with Smt. Asha Devi is not perverse and therefore, there is no occasion for this court to set them aside. This ruling is, therefore, of no help to

the revisionist.

16. Learned counsel for the revisionist placed reliance, upon the following rulings and has vehemently argued that Saptapadi of the second marriage having not been proved, the learned Sessions Judge grossly erred in sustaining the conviction of the revisionist under Section 494, I.P.C.:

(1) Smt. Urmila v. State of Uttar Pradesh, 1994 HVD (All) CR VolII at page 22; (2) Gopal Lal v. State of Rajasthan, 1979 SCC (CrI) at page 401; (3) Lingari Obulamma v. L. Venkata Reddy, 1979 SCC (CrI), at page 655; (4) Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh, 1971 SCC (CrI.) at page 362.

In Smt. Urmila case (1994 HVD (All) CR VolII at page 23) the findings of the learned Sessions Judge was that there was no evidence of Saptapadi and other ceremonies of the marriage. In the instant case before this court, there is a positive evidence of Pandit Shiv Shanker Pandey PW 1 Barber PW 2 as also Shatrughna Lal PW 4 that a valid marriage in between the accusedrevisionist and Smt. Asha Devi had taken place. This ruling is, therefore, of no help to the revisionist.

17. The proposition of law laid down by their Lordships of the Supreme Court in Gopal Lal v. State of Rajasthan, 1979 SCC (CrI) at page 401 and Lingari Obulamma v. L. Venkata Reddy, 1979 SCC (CrI) at page 654, was that it should be proved that both the marriages were properly performed by necessary ceremonies.

18. Applying this proposition of law to the facts of present case I find that Pandit Shiv Shanker Pandey clearly stated that he has performed the second marriage of the revisionist with Smt. Asha Devi according to Hindu Dharam Shastras. Sri Shatrughna PW 4 specifically averred in his statement on oath before the court below as follows:

19. True it is that Pandit PW 1, Shiv Shanker Pandey and Shatrughna PW 4 have not specifically stated in their statement before the court below that Saptapadi in between the accusedrevisionist and Smt. Asha Devi before the sacred fire was performed yet both the witnesses have categorically stated that the marriage in between the accusedrevisionist and Smt. Asha Devi was performed according to Hindu rites and the necessary ceremonies therein were performed. When PW 4 Shatrughna has specifically stated that Mantras were recited, Phereys were taken and that ceremonies like Gathjor were performed, it becomes obvious that the parties had taken Phereys before the sacred fire and that ceremony like Saptapadi was duly performed. I am accordingly of the opinion that the approach of the Sessions Judge, Gorakhpur in believing that the second marriage of the accusedrevisionist with Smt. Asha Devi was validly performed according to Hindu law, was quite correct.

20. It was pleaded in the grounds of revision that according to the prosecution case second marriage of the applicant with Smt. Asha Devi took place in village

Dharwal, Patraw, P. S. Madhuban district Azamgarh, therefore the court of Gorakhpur had no jurisdiction to try the matter. I am unable to agree with it. The first marriage of the applicant had admittedly taken place at Gorakhpur. His first wife Smt. Maya Devi was residing at Gorakhpur. The applicant proceeded to perform his second marriage from Gorakhpur and brought his second wife Smt. Asha Devi after marriage to Gorakhpur. It would, thus, be seen that part cause of action arose within the jurisdiction of the courts at Gorakhpur. The court at Gorakhpur were therefore, fully competent to try the matter. It was further pleaded in grounds of revision that sentence of 2 years R. I. imposed upon the applicant is too severe. Keeping in view the facts that the occurrence had taken place about 20 years back and that the applicant was facing prosecution and conviction for the last about 15 years, I am of the opinion that the applicant revisionist must have suffered a lot of mental agony. I am, therefore, of the opinion that it will meet the ends of justice if the sentence of 2 years R. I. is reduced to 1 year R. I.

21. In the result, I find that the conviction of revisionist under Section 494, I.P.C. affirmed by the learned Sessions Judge, Gorakhpur was quite proper and legal. The sentence of revisionist is, however, reduced from 2 years R. I. to one year R. I. and a fine Rs. 2,000 and in default of payment of the same, to undergo R. I. for a period of three months. The amount of fine, if realised, shall be paid to the complainant Smt. Maya Devi.

22. With these observations the revision is dismissed. Let the record of the case be sent to lower court for needful compliance;

Revision dismissed.