
(2012) 11 UK CK 0004

In the Uttarakhand High Court

Case No : Criminal Revision No. 163 of 2003

Babu Ram Saini

APPELLANT

Vs

State of Uttaranchal and another

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 402

Hindu Marriage Act, 1955 — Section 7

Penal Code, 1860 (IPC) — Section 420, 494, 495

Citation : (2013) CriLJ 1896

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Babu Ram Saini, Revisionist in person, for the Appellant; Sandeep Tandon, Ms. Tejswina Sagar and Ms. Deepa Arya, for the Respondent

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J.—This criminal revision, u/s 397 read with Section 402 Cr.P.C. is directed against the concurrent finding of the courts below that the revisionist, having a living wife, married again with another woman, concealing the fact of former marriage from the woman with whom he contracted the subsequent marriage. He was, accordingly, convicted for the offence u/s 495 IPC and sentenced to undergo rigorous imprisonment for a period of three years. The judgment and order of court below was upheld in appeal preferred by the revisionist. Brief facts of the case are that on 9.6.1888, Ms. Savita filed a Complaint No. 1307/1990 before Judicial Magistrate II, Dehradun, wherein, inter alia, it was averred that she and Babu Ram Saini, both were working in same private company at Dehradun. Relationship between the two became very close. Babu Ram Saini proposed to marry her stating that he was a divorcee. Believing the version of Babu Ram Saini, she agreed to marry him. On 1.9.1981, their marriage was solemnized as per Hindu rituals and ceremonies. Subsequently, she came to know that, in fact, Babu Ram Saini was not a divorcee, and he was already having a living wife namely Smt. Vijay Saini, from whose wedlock a son

was born on 13.5.1981, and they were still living together as husband and wife along with their three children. So, Ms. Savita filed the said complaint alleging that the revisionist Babu Ram Saini was a bigamous spouse as his second marriage with her had taken place during the subsistence of the revisionist's first marriage with Smt. Vijay Saini.

2. In support of her averments, she produced oral and documentary evidence before the Trial Magistrate. In the oral evidence, she examined Ved Prakash and Ramesh Kumar, while in the documentary evidence, she produced photographs of her marriage along with negatives thereof, copy of gift deed wherein Smt. Vijay Saini has been shown to be wife of Babu Ram Saini even after solemnization of his second marriage with Ms. Savita, and the revisionist himself is a witness to the said gift deed executed on 30.10.1984, voter list of Smt. Vijay Saini wherein she has been shown to be wife of revisionist even after 1.9.1981, date of birth certificate of the child who born on 13.5.1981 out of the wedlock of Babu Ram Saini and Smt. Vijay Saini. Ms. Savita also produced some other documents in addition to these. To rebut, accused revisionist also adduced his evidence.

3. After appreciating the entire evidence as well as the arguments advanced by both the parties, learned Judicial Magistrate II, Dehradun vide his judgment and order dated 12.6.1995 held that the subsequent marriage of the accused revisionist with the complainant Ms. Savita was established. Accused revisionist was, accordingly, convicted for the offence u/s 495 IPC and sentenced to undergo rigorous imprisonment for three years. However, he was exonerated from the offence u/s 420 IPC.

4. In appeal preferred by the accused revisionist, learned Additional Sessions Judge, Dehradun vide his judgment and order dated 10.10.2003, passed in Criminal Appeal No. 49/1995, affirmed the finding and order of the Trial Magistrate holding that both the marriages of accused revisionist are established, but divorce of first marriage is not proved.

5. Being aggrieved, accused convict Babu Ram Saini has preferred the instant revision.

6. I have given patient hearing to the accused revisionist, who has argued in person before this Court, and also the learned counsel for the private respondent. Also perused the materials available on record.

7. Accused revisionist has been convicted and" sentenced for the offence u/s 495 IPC. Ms. Savita has adduced enough evidence to prove that the accused revisionist had concealed the fact of the former marriage by assuring her that he had taken divorce from his first wife and subsequently married Ms. Savita by performing the essential Hindu rites and ceremonies in accordance with Section 7 of the Hindu Marriage Act. It is undisputed that revisionist Babu Ram Saini firstly got married to Smt. Vijay Saini and thereafter to Ms. Savita, as admission to this effect has been made by Babu Ram Saini himself in his statement u/s 313 CrPC on 16.9.1990.

8. It appears that right from the trial court, revisionist is taking contradictory stands. Firstly, he says that his subsequent marriage with Ms. Savita was not solemnized strictly in accordance with Hindu rites and ceremonies which include saptapadi (circumambulation) and homa, secondly, he says that before contracting the second marriage, he had divorced his first wife as per the prevailing customs of his caste and community and, thirdly, which is all the more contradictory, he says that Ms. Savita married her despite knowing the fact that he was already married and was also having three children. These contradictions are apparent from his statement, which he gave u/s 313 CrPC, wherein in reply to a question he said as under:

Smt. Savita was aware of the fact that I am married and I have three children. All the same, and having knowledge of everything, she married him.

(Note: The above is not the exact transliteration of the statement. It only conveys the meaning.)

9. As regards the argument that saptapadi (the taking of seven steps by the bridegroom and the bride jointly before the sacred, fire) and homa were not performed, the same has no substance inasmuch as photographs of the marriage along with their negatives and the testimonies of some persons who had attended the said marriage are on the record which speak in volumes that the subsequent marriage, though void by reason of its taking place during the life of first wife, was not only sanctified strictly in accordance with Hindu rituals and ceremonies including saptapadi & homa in the presence of a priest, but the same was also solemnized by suppressing the fact of former marriage.

10. Revisionist has cited a judgment of the Hon'ble Apex Court rendered in case of Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh, wherein on the complaint of the first wife, learned Trial Judge convicted the husband u/s 494 IPC notwithstanding the scantiness of the evidence regarding the second marriage, but mainly on the ground the husband had admitted the second marriage in his objections filed to a claim made by the wife (appellant) for maintenance u/s 488 Cr.P.C. (old). On appeal by husband, learned Sessions Judge, held that evidence does not establish that the essential ceremonies to constitute a valid marriage were performed either in the case of alleged first or second marriage. Judgment of the Trial Judge was, accordingly, set aside. On appeal by the wife, Hon'ble Calcutta High Court, however, differed from the finding of the learned Sessions Judge regarding the invalidity of the marriage between the appellant and the respondent/husband, but regarding the second marriage, it agreed with the finding of learned Sessions Judge that the essential ceremonies to constitute a valid marriage have not been proved to have taken place. In this view, Hon'ble Calcutta High Court confirmed the order of acquittal passed in favour of the respondent/husband. The finding of the Calcutta High Court was further upheld by the Hon'ble Supreme Court.

11. As explained earlier, since this Court has already agreed with the concurrent

and categorical finding of the courts below that saptapadi and homa, essential rites in a Hindu marriage, were performed while contracting the second marriage by the accused revisionist with Ms. Savita, therefore, the aforesaid judgment has no application in the present case. Revisionist has cited a plethora of other judgments, which are of no help to his case and hence, there is no need to discuss the same.

12. Another submission of the revisionist that he had divorced his first wife in accordance with the prevailing customs of his caste and community is not acceptable for the reason that it is only a verbal statement. Revisionist has not adduced any reliable oral or documentary evidence to substantiate his claim.

13. As regards the contention of the revisionist that for the offence u/s 495 IPC, right to file the complaint always rests with the first wife, who has not filed any such complaint, has no substance because in my considered view whosoever may be the complainant, either first wife/husband or second wife/husband as the case may be, he/she should be the aggrieved person. To elaborate, Section 494 IPC introduces monogamy, which is essentially voluntary union of life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. Sections 494 & 495 IPC are intended to achieve the laudable object of monogamy. For a variety of reasons the first wife may not choose to file a complaint against her husband. Non-filing of the complaint u/s 494 or 495 IPC by the first wife does not mean that the offence is wiped out. Even otherwise, the second wife suffers several legal wrongs and legal injuries. The offence mentioned in Section 495 IPC is extension of Section 494 IPC and also is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage to the person with whom the second marriage is contracted. Moreover, a married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and, therefore, severe punishment is provided in Section 495 IPC. Hence, complainant respondent was having every right to file the complaint u/s 495 IPC.

14. In the opinion of this Court, learned Trial Magistrate after appreciating the evidence and arguments of either parties has rightly convicted and sentenced to the accused revisionist u/s 495 IPC, which has been accordingly affirmed in the appeal.

15. Hence, in the totality of circumstances and in view of the settled position of law, which this Court has considered and discussed hereinabove, the revision is devoid of any merit and is dismissed. Let a copy of this judgment and order be sent to the court below for its compliance. Lower court record be also sent back.