
(1991) 09 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 865 of 1985

Gurcharan Singh

APPELLANT

Vs

State of Punjab and Amarjit Kaur

RESPONDENT

Date of Decision : 09-09-1991

Acts Referred:

Citation : (1992) 1 CurLJ 44 : (1992) 1 RCR(Criminal) 177

Hon'ble Judges : H.K.Sandhu, J

Advocate : I.P.S. Sidhu, M.S. Kohli, Vinay Mittal, K.K. Mehta, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. This judgment will also dispose of Criminal Miscellaneous No. 7037M of 1985.
2. This Revision filed by Gurcharan Singh arises out of the conviction for bigamy under section 494 Indian Penal Code. Gurcharan Singh and Tasvir Kaur were convicted for an offence under Section 494 Indian Penal Code by the trial Court vide judgment dated 30/4/1984 and were sentenced to undergo Rigorous Imprisonment for one year and to pay fine of Rs. 500/ each. Against this judgment both Gurcharan Singh and Tasvir Kaur filed an appeal and Amarjit Kaur complainant filed a Revision for enhancement of the sentence. The appeal as well as the Revision were dismissed by Shri S.S. Sohal, the learned Additional Sessions Judge, Patiala vide judgment dated 30th May, 1985. Gurcharan Singh filed the present revision against this judgment and Criminal Miscellaneous petition mentioned above was submitted by Amarjit Kaur for enhancement of the sentence awarded to Gurcharan Singh.
3. The case of Amarjit Kaur complainant was that she was married to Gurcharan Singh on 7/11/1985 according to Sikh rites in village Chalheri. They lived together as husband and wife for sometime when Gurcharan Singh fell in bad company and started maltreating her. He also developed illicit intimacy with Tasvir Kaur and inspite of protests and requests by her he did not leave the company of

Tasvir Kaur. On 28th November, 1978, she was turned out of the house after she was given beating. At that time she was in a family way and she gave birth to a son named Harjinder Singh at her parents' house in village Chalheri on 27(sic)1979. Gurcharan Singh contracted second marriage with Tasvir Kaur on 14/11/1979. The marriage was performed according to customary rites of the Sikhs. This marriage took place during the subsistence of the first marriage of Gurcharan Singh with the complainant. Hence the complaint.

4. Originally the complaint was filed against Gurcharan Singh, Tasvir Kaur and against the parents, brother and sisters of Gurcharan Singh. After preliminary evidence was recorded only Gurcharan Singh and Tasvir Kaur were summoned to face trial" and after trial they were held guilty. Against her conviction Tasvir Kaur had filed a separate revision petition which was dismissed today as Tasvir Kaur was stated to have died in a car accident.

5. I have heard Shri Vinay Mittal, the learned counsel for the petitioner Shri I.R.S. Sidhu, the learned Assistant Advocate General for respondent No. 1 and, Shri I.K. Mehta, the learned counsel for respondent No. 2 and have perused the record.

6. It was contended on behalf of Gurcharan Singh petitioner that there was no reliable and convincing evidence on record to show that Gurcharan Singh ever performed marriage with Tasvir Kaur and rather Tasvir Kaur was married to his brother Joginder Singh. She was living with Joginder Singh as his wife and she had given birth to a son and a daughter from his loins. The evidence led in support of the allegations made in the complaint was far from convincing and consisted of the state interested witnesses. Even Saudagar PW1 1 who was a relative of the complainant admitted that Joginder Singh brother of Gurcharan Singh was married to Tasvir Kaur. It was also stressed on behalf of the petitioner that there was delay in filing the complaint which had not been explained in a satisfactory manner. The relations between the complainant and her husband were not cordial and although the delay itself was not fatal but in view of the circumstances of the case it lent great plausibility to the version set up in defence.

7. The evidence on record shows that Amarjit Kaur belonged to village Chalheri while both Gurcharan Singh and Tasvir Kaur were residents of village Madanpur and the distance between the two villages was only 30/40 yards. As per statement of Amarjit Kaur one Rani her cousin informed her about the marriage of Gurcharan Singh with Tasvir Kaur and then she went to the house of Tasvir Kaur and witnessed the marriage alongwith her maternal uncle Budh Singh and her distant grandfather Saudagar Singh. The statements of these witnesses are not convincing as they have materially contradicted each other on the points as to how the marriage was performed and whether any protest was lodged at that time or not. When the marriage itself was witnessed by the complainant and she had already been turned out of the house by her husband then there was no reason for her to wait for such a long time. The complaint was filed more than a

year after the alleged second marriage. The witnesses stated that the marriage was performed by Jagat Singh Granthi, a relative of Amarjit Kaur. In spite of the fact that Jagat Singh was an important witness to prove the second marriage and he was also related to Amarjit Kaur, he was not examined by her. The petitioner examined Jagat Singh in his defence as DW 2. He stated that he was the only granthi in village Chalheri and also in village Madanpur. He never performed marriage of Tasvir Kaur with Gurcharan Singh.

8. The evidence on record shows that in fact Joginder Singh brother of Gurcharan Singh who was earlier married, divorced his wife and developed intimacy with Tasvir Kaur. Tasvir Kaur eloped with him and a case under Sections 363/366 and 376 Indian Penal Code was registered against Joginder Singh at Police Station Rajpura on 3121978 at the instance of father of Tasvir Kaur. Joginder Singh and Tasvir Kaur were apprehended but by that time "they had "married in village Jhil, District Ludhiana. They were produced in the court of Shri B.S. Bedi, Judicial Magistrate 1st Class Rajpura on 19121978 where statement of Tasvir Kaur Ex. D9 was recorded. This incident had taken place long before the alleged second marriage. In her statement Tasvir Kaur stated that she had married Joginder Singh of her own accord as she was a major and she did not want to go to the house of her parents. She apprehended danger at the hands of her parents. She wanted to go with her husband Joginder Singh but as he was in jail, she prayed that she may be sent to Nariniketan, Jullundur. Photographs Ex. D.1 to Ex. D.5 regarding the marriage of Joginder Singh with Tasvir Kaur were also placed on record. Ex. D. 6 was the Passport of Tasvir Kaur wherein earlier she was described as daughter of Gurbax Singh but after marriage she was shown as wife of Joginder Chauhan. Birth entries Ex. D. 7 and Ex D. 8 show that Tasvir Kaur gave birth to a son at Sanaur. Father's name of the child was mentioned as Joginder Singh Amarjit Kaur admitted that sister of Joginder Singh was married at Sanaur. Daughter was born in Dubai.

9. The complainant relied upon photographs Ex. D.1 and Ex. D.1 is photograph of Joginder Singh and Tasvir Kaur and two other relatives. Ex D6 is photograph of Gurcharan Singh and Tasvir Kaur in which Gurcharan Singh is carrying a child. Gurcharan Singh is also carry the same child in photograph Ex. D. 1. The negatives of these photographs have not been produced. It was the contention of the petitioner that photograph Ex. D. 6 was developed from his family photograph Ex. D. 1. This contention was supported by Vijay Kumar DW. 1 who is a Photographer. Moreover, the mere fact that Gurcharan Singh is photographed with Tasvir Kaur, is itself not enough to maintain his conviction under Section 494 Indian Penal Code.

10. The complainant also produced photostat copies of the letters which are Exhibits P.1 to P 5. The letters photostat copies of which are Exhibits P. 3 and P.4 are alleged to have been written to the complainant by Gurcharan Singh while letters Exhibits P.1 and P.2 were sent by Tasvir Kaur to Gurcharan. These letters have not been duly proved. Even the complainant did not state that she was

conversant with the handwriting of Gurcharan Singh petitioner and Tasvir Kaur and the same were written by them. No other evidence was produced to prove the letters. The mere fact that the letters were exhibited does not itself dispense with the formal proof. Even the original letters were not placed on record. The envelopes in which the letters were posted were also not produced. Unless this fact was proved that the letters were written by Gurcharan Singh and Tasvir Kaur the same could not be looked into and no support could be sought from these documents to establish the fact of bigamy alleged to have been committed by Gurcharan Singh. There was thus no cogent and reliable evidence on record on the basis of which conviction of the petitioner could be sustained. The, courts below were clearly in error in convicting the petitioner on the basis of manifestly unbelievable evidence produced by the complainant.

11. For the reasons given above I accept the Revision Petition filed by Gurcharan Singh, set aside his conviction and sentence and acquit him of the charge under section 494 Indian Penal Code. Fine if deposited be refunded to him. Since the Revisions Petition of Gurcharan Singh has been accepted, Criminal Miscellaneous No. 7137M of 1995 filed by Amarjit Kaur fails and the same is hereby dismissed.