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**(1968) 06 AP CK 0011**  
**In the Andhra Pradesh High Court**

Kapila Venkata Laxmi

APPELLANT

Vs

Kapila Paroathanarayana and Others

RESPONDENT

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**Date of Decision :** 18-06-1968

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 3  
Penal Code, 1860 (IPC) — Section 494

**Citation :** (1969) CriLJ 836

**Hon'ble Judges :** Sharfuddin Ahmed, J

**Bench :** Single Bench

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## Judgement

Sharfuddin Ahmed, J.—A complaint was filed by K. Venkatalaxmi against her husband Parva - (SIC) and Dhanalakshmi and others with the allegation that her husband, the 1st accused, had contracted a second marriage with 2nd accused with the connivance and assistance of the other accused. The marriage was said to have been performed on 25-2-1965 at Annavaram. The accused denied the commission of the offence. The Munsif-Magistrate, Peddapuram who tried the case as C. C. No. 215 of 1966 on examining 8 witnesses on behalf of the complainant and two on the side of the defence acquitted the accused as in his opinion no valid marriage between A-1 and A 2 had been proved. The appeal is directed against this order of acquittal.

2. The learned Counsel for the appellant Sri K. B. Krishnamurthy contended that the factum of marriage had been duly established and merely because certain ceremonies had not been performed the Magistrate was not justified in holding that there was no valid marriage between A.1 and A-2, particularly when it has been proved that the omissions were not material having regard to the custom prevailing in the community. Admittedly, the parties involved in this case are Vysyas. A purohit examined on behalf of the complainant (P. W. 6) has deposed that for marriages in Vayyas and Kshatriyas there is no sacred fire which is necessary for Brahmin marriages. Even Sapatapadhi need not be performed for Vysays and Kshatriyas. It is urged therefrom that the absence of sacred fire on the occasion was not material for validating the marriage between A.1 and A.2

and the ceremony deposed to by P. W. 4, the purohit at the country was sufficient to constitute a valid marriage. It has also been pointed out that there is a presumption in regard to the validity of a marriage unless there is evidence to the contra.

3. The learned Counsel for the respondents Sri Balaparameswari Rao, on the other hand, urged that the material on record is not sufficient to prove the factum of marriage much less of a valid marriage. According to him the Vysyas standing on a higher pedestal than the Shudras were required to observe the same formalities for undergoing a valid marriage as Brahmins and Kshatriyas, The presence of sacred fire was therefore an absolute necessity and Saptapadhi consisted of taking of steps before the sacred fire. He also pointed out that the custom pleaded by the complainant did not conform to the Standard prescribed for proving a long and well, established custom.

4. To constitute an offence u/s 494, I.P.C. it has to be established that the husband or the wife, as the case may be, during the life-time of the other spouse has married and that marriage is void by reason of its taking place during the life time of such husband or wife. The mere formality of undergoing some form of ceremony is not punishable unless such marriage is validly performed. This position is well settled by a number of authorities. The only question involved in the case therefore is whether there was a second marriage and it was duly performed.

5. The main witnesses who have spoken about the solemnisation of marriage are P. W. 8, the Manager of Arya Vyaya Choultry at Annavaram and P. W. 4, the Purohit who officiates at such ceremonies at the said Choultry. According to P. W. 8, the Manager was incharge of letting rooms in the choultry for pilgrims. On 24-2-1965 A-8 took a room in the choultry at about 7 P.M. He told him that he belonged to Bbimavaram and had come there to perform his daughter's marriage. Accordingly he was allowed a room bearing No. 118. The details are entered in the register, Ex. P. 6. He however is unaware of the fact as to when the marriage was performed and who were the persons that took part in the marriage. His statement, if accepted, would only show that A-8 had taken a room in the choultry on 24 2 65 at about 7 p.m. It is, however, surprising to note that the register maintained by him does not bear the signature of the person who had either paid the money i.e., the rent for the room or who had actually taken the room on rent. In the cross-examination he conceded that there is no signature of A.8 in the register to show that he had paid the rent nor there was anything in the writing of A-8 to indicate that he had taken the room on rent. No doubt the entries in the register tally with the name of A.8 and his place of residence etc. but from the mere entries which are admittedly made by P. W. 8, it cannot be conclusively proved that A-8 was the person who had taken the room in the choultry. Even so, the mere fact that a room was taken there would not go to show that a valid marriage had also been performed at the said Choultry between A 1 and A-2.

6. The case thus rest on the testimony of P. W. 4, the Purohit at Annavaram Ohoultry, According to this witness A 1 and A 2 were married at Annavaram on 25.2-1965 at about 10 a.m. and all the formalities which are necessary for valid marriage under Hindu Law were performed. He has set out the various ceremonies that go to the solemnisation of a valid Hindu Marriage. He, however, conceded in the cross examination that he was performing number of marriages every day and within the short span of his career he had solemnized as many as 500 marriages. In the chief examination no attempt was made to get A 1 and A-2 identified by him. In the cross. examination be conceded that he was able to identify only some of the accused and could identify A.1 A.9 and A 6, but whether A.1 and A.2 were also identified by him is not clear. It has been urged with vehemence that the house chosen by him for the purpose of marriage was inauspicious, I do not think it necessary to go deep into the niceties of the question, for on a reading of this statement, which is recorded nearly six months after the marriage. I find it difficult to rely on his testimony for holding that A-1 and A-2 ware the persons whom he had got married on 25.2-65. It is to be noted that he gives the date while admittedly he does not maintain any register or account book to show how many marriages were performed, between whom and on what date. The whole incident has been deposed by him from his memory.

7. P. W. 5 is the peon attached to the choultry. He has also spoken about the solemnisation of marriage between A.1 and A.2, His testimony also suffers from the same defects as noted in the evidence of P. W. 4, the purohit. He conceded in the cross-examination that he was not in a position to give dates of marriages nor to identify the persons who were married on a particular day.

8. Thus the factum of marriage itself is not conclusively proved. The next question is of the validity of the marriage, Under 8.17 of the Hindu Marriage Act any marriage between two Hindus solemnized after the commencement of the Act is void if on the date of such marriage either party had a husband or wife living. The marriage is void only if it has been duly solemnized. The learned Counsel for the appellant contended that as the parties belong to Vysya community there was a custom amongst them to perform the marriages without the sacred fire. P. W. 6, a purohit has been examined to prove that for Vyeya and Kshatriyas there is no need to perform Suptapati but both the bride and bridegroom will be taken round without the sacred fire. According to this witness such marriages are valid in Vysya community. In the cross-examination he conceded that he was not in a position to cite authority for the proposition enunciated by him. It is not sat out how many marriages in this particular community he has performed and in what cases the parties did not insist on the sacred fire. According to writers on Hindu Law taking of even steps before the sacrad fire is an absolute necessity for the solemnization of a Hindu marriage. No doubt if a custom is established proving certain deviations or omissions, it may supersede the Shastrik lisibility, but to establish a custom it has to be proved that it was continuously and uniformly observed for a long time and has obtained the force of law among Hindus in any local area, tribe, commuity or family as

contemplated in Section 3 of the Hindu Marriage Act. Unfortunately, in this case the evidence of P. W. 6 does not conform to that standard. I am, therefore, not inclined to accept the contention of the learned Counsel for the appellant that there was a marriage, much less a valid marriage, between A-1 and A-2 so as to render them liable to penalty u/s 494, Penal Code. Accordingly the appeal is dismissed, upholding the order of the lower Court.