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**(1961) 08 AP CK 0006**  
**In the Andhra Pradesh High Court**

Morrapu Satyanarayanan

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 11-08-1961

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 17  
Penal Code, 1860 (IPC) — Section 109, 494, 497, 498

**Citation :** (1962) CriLJ 644

**Hon'ble Judges :** Sanjeeva Row Naidu, J

**Bench :** Single Bench

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## Judgement

Sanjeeva Row Naidu, J.—These two Criminal Revision Cases are directed against the judgment and order of the Additional Sessions Judge, Visakhapatnam dated 31st May 1960 in Criminal Appeal No. 387 of 1956 on the file of the said Court, confirming the conviction of the petitioners in the two cases and sentencing the petitioner in Cri. R. C. No. 293 of 1960 to two months rigorous imprisonment and a fine of Rs. 20/- and in default to rigorous imprisonment for five days; and the petitioner in Cri. R. C. No. 294 of 1960 to rigorous imprisonment for one month and a fine of RS. 10/- and in default to suffer rigorous imprisonment for five days.

2. The petitioner in Cri R. C, No. 293 of 1960 hereinafter referred to as the 1st accused, and the petitioner in Cri. R. C. No. 294 of 1960, hereinafter referred to as the 7th accused, along with five others, were prosecuted in the Court of the Judicial First Class Magistrate, Parvatipuram in C.C. No. 124 of 1956 on the file of the said Court, the 1st accused, on a charge u/s 494; IPC read with Section 17 of the Hindu Marriage Act (XXV of 1955) for the offence of bigamy, punishable u/s 494, IPC and the remaining accused 2 to 7 on a charge u/s 494, IPC read with Section 17 of the Hindu Marriage Act (XXV of 1955), and with Section 109, IPC for having abetted the offence of bigamy, alleged to have been committed by the 1st accused.

3. The learned Magistrate, after trying the accused on the charges, found A-I guilty of the charge framed against him, namely of bigamy, and sentenced him to

suffer rigorous imprisonment for six months and a fine of Rs. 100/- and in default of payment of fine to further rigorous imprisonment for two months, and found A-2 to A-7 guilty of the charges framed against them u/s 494, read with Section 109, IPC for abetment of the offence of bigamy committed by A-I, and sentenced each of them to suffer rigorous imprisonment for four months and a fine of Rs. 50/- and in default of payment of fine to a further rigorous imprisonment of one month.

4. Aggrieved by the conviction and sentence of the said Magistrate, accused 1 to 7, preferred an appeal to the Sessions Judge's Court, Visakhapatnam, which appeal came on for hearing before the Additional Sessions Judge, Visakhapatnam who found all the accused not guilty and. directed them to be acquitted by his judgment and order dated 21st February, 1957. This finding of the learned Additional Sessions Judge was called in question before this Court, and a Bench of this Court set aside the judgment and order of the Additional Sessions Judge on the technical ground that the Additional Sessions Judge had no jurisdiction to hear a criminal appeal filed in the Court of Sessions Judge, Visakhapatnam, without an order of the Sessions Judge making over the case for disposal to the Additional Sessions Judge. The judgment of this Court is found reported in *Marrapu Narayanamma Vs. Marrapu Satyanarayana and Others*, . Hence the appeal went back to the Court of Sessions, Visakhapatnam, and on duly being made over to the Additional Sessions: Judge, Visakhapatnam, was heard and disposed of as aforesaid, the order whereof is the subject-matter of the revisions before me.

5. The facts of the prosecution case may be briefly noticed, before I take up for consideration, the various points raised by Mr. Adavi Rama Rao, the learned Counsel for the petitioners in both the cases-.

6. The complainant in the case, one Wlarrapu Narayanamma, is the wife of A-I, having been married to him according to the Hindu sastras and customs, in the year W42. She joined her husband A-I on her attaining puberty in 1946, and had lived with him as his wife, until about a year prior to the date of the complaint, namely 27-4-1956. She also bore a daughter through A-I. During this period, she had been loved and well-cared for both by A-I, her husband, as well as by her husband's relations, until the time she left her husband's home to her father's place in April, 1955. A-I,, on account of differences bet been him and his brothers on the one side, and the father of the complainant on the other, omitted to take back the complainant to his own house, which necessitated her continuing to remain at her parent's house.

Subsequently on the night of 22-4-1956, A-I married A-7 at the house of the latter's parents A-5 and A-6 according to the customs obtaining in the community of Koppuvelamas, to which the parties belong; and after the marriage, A-7 accompanied A-I and the other accused to the village of A-I. It is claimed that A-I committed the offence of bigamy u/s 494, IPC having married A-7 during the lifetime of the complainant, the marriage between the

complainant and A-1 continuing to remain operative and in force. It is also claimed that A-7 was equally liable with A-1 under the same section, while the accused 2 to 6 were claimed to be liable u/s 494 read with Section 109, Indian Penal Code.

7. It should be noticed that accused 1 and 3 in the case are the brothers of A-1; A-4 is the wife of A-2; A-5 and A-6 are the father and mother respectively of A-7.

8. In support of the prosecution case and in proof thereof, the complainant examined herself as P.W. 1 and her father as P.W. 2 and four other witnesses, who figured as P.Ws. 3 to 6, who had been put forward by the prosecution as having been present at and witnessed the marriage ceremony between A-1 and A-7 on the night of the 22nd April, 1956.

9. In defence, the accused claimed that no marriage took place between A-1 and A-7 as claimed by the prosecution, that as a matter of fact, A-7 is the lawfully wedded wife of one Yandrapu Audinarayana, that the marriage between A-7 and the said Audinarayana examined as D.W. 4, was continuing, and that they were living together as man and wife, that this prosecution was started and continued at the instance of P.W. 2, father of the complainant, who, as the village music of four villages, is an influential man, and who is on inimical terms with A-1 to A-3. The defence of the accused, therefore, at the trial was, that the second marriage relied on by the prosecution never took place and never could have taken place as A-7 is the wife of D.W. 4 and the marriage between them is subsisting.

10. The learned Magistrate placed considerable reliance on the evidence for the prosecution and accepted the same to be credible and as sufficient to establish the charges in the case, and accordingly convicted the accused and sentenced them as aforesaid.

The learned Additional Sessions Judge on appeal also placed considerable reliance on the evidence for the prosecution and accepted the same as credible and as sufficient to support the charges against A-1 to A-7, but on the same evidence he held that the charges against A-2 to A-6 had not been established and accordingly acquitted them.

11. Mr. Adavi Rama Rao, the learned Counsel for the petitioners, contended that the appreciation of the evidence in the case by both the learned Magistrate as well as the learned Additional Sessions Judge is perverse, that there has been a gross misappreciation of the evidence on their part, and accordingly contended that the evidence in the case must be reappreciated by this Court for that reason, if not for any other.

He further claimed that so far as A-7 is concerned, it is not clear from the judgment of the learned Additional Sessions Judge in respect of what charge she has been found guilty by him that in the complaint A-7 was shown as a principal offender u/s 494, IPC whereas the learned Magistrate who tried the case found her guilty of the charge of abetting the offence u/s 494, IPC committed by A-1,

and that the learned Additional Sessions Judge's judgment does not throw any light on the question in regard to what charge A-7 had been convicted and sentenced.

12. As regards A-I, he pointed out that apart from the fact that on the evidence he claimed that the fasten of second marriage has not been established, that as the second marriage claimed by the prosecution to have been celebrated is not a valid marriage under law, even apart from the fact that it is bigamous as claimed by the prosecution. It cannot be said that the offence of bigamy could be held to have been committed, which, according to him presupposes the accused marrying another, which marriage should for all intents and purposes be valid and good but for the infringement of Section 17 of the Hindu Marriage Act and Section 494, IPC

13. At the outset, it was noticed that when the revision petitions were admitted no notice had been given to the complainant, which should have been done in view of the fact that these proceedings arose out of a private complaint and the proper thing to do is to afford an opportunity to the complainant to be heard in support of the conviction, but Mr. Balaparameswara Rao, having entered appearance on behalf of the complainant in the case and having sought permission to assist the Public Prosecutor, opportunity was tannin to hear him in full in support of the conviction and sentence, besides hearing the learned Public Prosecutor, who has appeared in the case on behalf of the State.

14. On the question whether this Court in exercise of its revisional powers should reappreciate the evidence already appreciated by the two Courts below, the answer would be in the negative normally. But, where the appreciation of evidence by the Court below is of such a character as to offend the judicial conscience of this Court, by not satisfying the normal requirements of such appreciation by Courts, as correctly contended by Mr. Ramarao, it would be the duty of this Court to go into the evidence and satisfy itself whether the conclusions reached by the Courts below are supportable on that evidence. Accordingly, both the learned Counsel for the petitioners as well as Mr. Balaparameswara Rao, the learned Counsel for the complainant took me through the relevant portions of the evidence on which reliance was placed by them.

15. At the outset, one striking feature about the judgment of the two Courts below is that they seem to have approached the case as though it were a civil case. Neither the learned Magistrate, nor the learned Additional Sessions Judge appear to be conscious of the fact that in a criminal case, the burden of establishing the guilt of the accused on the charges is exclusively and entirely on the prosecution, that a presumption of innocence has always to be drawn in favour of the accused, which, until rebutted, should be given effect to, and also that where reasonable doubt exists not only on the main Issue that arises for consideration in the case but also on any subsidiary issue that benefit of doubt should be given to the accused. It is this failure to bear in mind the fundamental principles that distinguish the consideration of a criminal case from that of a civil

case, in my opinion, has garbled the appreciation of evidence made by the Courts below in this particular case.

16. That apart, I find a number of serious errors committed both by the learned Magistrate as well as by the learned Additional Sessions Judge.

To give a few examples: The learned Magistrate assumed that the second marriage in this case has been proved not only by P.Ws. 3 to 5 but also by P.Ws. 1 and 2. This statement is clearly wrong because on their own showing P.Ws. 1 and 2 were never near the alleged second marriage, and it is only subsequently that they came to (now through P.W. 3 and others) about it.

The learned Magistrate also assumed that the evidence of P.Ws. 3 to 5 established that the custom of Marumanuvu marriage as obtaining in the Koppuvelama community, to which the parties belong, of performing the marriage near a mortar (ROLU) and that the marriage in this particular case had in fact been performed in accordance with that custom. This conclusion is obviously based on a complete misunderstanding of the evidence of P.Ws. 3 to 5, as none of them furnished any evidence of this custom, nor have they deposed that the marriage in the particular case was performed in the presence of a mortar, as, on their own showing they never saw a mortar there, whatever might be the reason why they did not.

17. A similar mistake has been committed by the learned Additional Sessions Judge in his judgment; besides certain unwarranted assumptions and inferences drawn by the learned Additional Sessions Judge from the evidence. He assumes that as blood is thicker than water, D.W. 4 must have come to the rescue of his uncle and uncle's wife in order to relieve them of the prosecution by deposing that A-7 continued to be his wife.

Another assumption made by the learned Additional Sessions Judge not borne out by the evidence is that A-1 took advantage of the fact that A-5 was celebrating the marriage of his brother's daughter in order to get through his second marriage. About this, there is absolutely no indication or suggestion in the evidence of P.Ws. 3 to 6.

Another assumption made by the Courts below is that A-7 was divorced by her husband, D.W. 4, although there is absolutely no evidence for the prosecution worth the name to indicate that any such divorce had taken place. This was even more necessary in view of the fact that A-7's husband comes before the Court and gives evidence as D.W. 4 to the effect that A-7 is his lawfully wedded wife, that she is living with him as his wife, that the marriage between him and her is in force.

Both the learned Additional Sessions Judge and the learned Magistrate failed to consider and determine whether the evidence supplied by the prosecution was sufficient to establish that a valid ceremony of marriage had taken place in conformity with the customs obtaining in the community to which the parties

belong. It is these and other errors and omissions in the judgments of the two Courts below that, in my opinion, require that the entire evidence should be examined by this Court in order to be satisfied that the conviction of the accused in the case was properly reached.

18-20. In doing so, I would only advert myself only to the broad features of the evidence in the prosecution and the probabilities of the case.

The evidence of the alleged bigamous marriage forming the basis of the charges in this case is supplied by that of P.Ws. 3 to 6. ((His Lordship appraised the evidence and proceeded).

21. Thus, taking all the broad features of the case and the probabilities, I feel no hesitation in holding that the evidence of P.Ws. 3 to 6 is unreliable, and cannot be accepted as true in the circumstances. I therefore, do not believe that any ceremony of second marriage had been gone through by the 1st accused with the 7th accused as claimed by the prosecution; and the Courts below were clearly wrong in the appreciation of the evidence of these witnesses made by them, which appreciation, as already pointed out, is partly based on a misunderstanding of their evidence and a wrong approach to the case, and partly by reason of their overlooking the striking circumstantial features of the case.

22. Further, even assuming for the sake of argument, that any weight or value could be attached to the evidence of P.Ws. 2 to 6, I am clearly of opinion that their evidence does not establish that a valid marriage had been performed between accused 1 and 7, that is, their evidence does not establish that the ceremonies required for a valid marriage, according to the Hindu Law, custom and tradition have taken place. It is not established that the 1st accused intended" to marry the 7th accused, that the 7th accused accepted the same and that all the ceremonies including saptapadi, kanyadanam and various other ceremonies had been performed for solemnizing the marriage. I, therefore, hold that the proof supplied by the evidence of these witnesses even on their face value, falls far short of the proof that is required to establish) that a valid marriage had taken place in accordance with the customs and traditions and the law obtaining among Hindus.

23. That such proof must be forthcoming in support of a charge of bigamy has been laid down in a number of decisions of which it is sufficient to make a reference to the following namely, Akshay Kumar Maiti and Others Vs. Emperor, Mt. Kalan v. Emperor AIR 1938 Sind 127 and Malan v. State of Bombay AIR 1960 Bom 393. In AIR 1933 Cal S80, the following observations occur and may be quoted with advantage:

The evidence about marriage was proof only of the factutti. There was no proof that the marriages had been celebrated strictly in accordance with the requirements of custom and law applicable to the parties. This is not sufficient in cases Under Sections 497 and 498, where the validity of the marriage is questioned.

24. The reasoning of the learned Judges in the above case, in my opinion, applies with equal force to a case u/s 497, IPC where the proof of the case depends on the proving of a valid second marriage, in AIR 1938 Sind 127, the expression "marries" occurring in Section 494, IPC came up for interpretation. The learned Judges constituting the Division Bench observed:

But we do not think it is sufficient for the prosecution on whom the burden lies merely to show that something which the prosecution chooses to assert is "some form of marriage ceremony" was gone through. We think it is necessary for the prosecution to prove that, the form of marriage was a form recognised by or known to the law, otherwise it would be open to the prosecution by or herself not eligible to be taken in marriage; and there mere assertion to constitute any mutual act on the part may be many other instances, and it is unnecessary to of the man and woman a form of marriage.

xx xx xx xx xx Clearly when the word "marries" is used in Section 494, IPC it means marries by some form of marriage known to or recognised by the law. Section 494 when it uses the word "marries" does not of course refer to a valid marriage. A bigamous marriage cannot be a valid marriage, and apart from the bar of the first marriage, it may be that there may be some other legal impediment to the validity of the marriage of the man or woman, some legal impediment personal to the man or woman, such as consanguinity, yet if the second marriage be a form rife cognized by or known to the law, that would, we think, be sufficient to satisfy this particular provision of the section.

In AIR 1960 Bom 393, it was held that in order that an offence u/s 494 may be committed it is necessary, at least, that all the ceremonies which are necessary to be performed in order that a valid marriage may take place, ought to be performed and, ordinarily all these ceremonies would amount to a valid marriage tot for the fact that the marriage becomes void on account of the existence of a previous wife.

25. Mr. Adavi Rama Rao, the learned Counsel for the petitioners, raised a point that Section 494, IPC, as it stands, requires as a condition that the second marriage characterised as bigamy should be a marriage which would otherwise be valid, apart from its invalidity by reason of its being bigamous. Section 494, I-P. c. is as follows-

494. "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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Mr. Rama Rao contends that the words, "is void by reason of its taking place during the life of such husband or wife" should be construed as "is void only by reason of its taking place during the lifetime of such husband or wife." Obviously,

where the second marriage is bigamous, it goes without saying that the marriage is void for that I reason. But the gravamen of the charge of bigamy lies in the circumstance that a husband goes through the form " of a marriage which is, for all intents and purposes a "good and valid marriage, as a marriage, and well knowing that by reason of the fact that he has a wife living be "ought not to enter into that marriage. In other words, the policy of the law is to prevent a second marriage by a person who has a husband or wife living, and the previous marriage not having been dissolved or declared void by a Court of law. This object of the person committing bigamy and which is sought to be defeated by the Section by declaring it an offence, is not achieved if the second marriage is one which is no marriage at all in the eye of law, or which is otherwise void, in which case it cannot be said that there was a valid marriage, and the meaning of the word "marries" is not satisfied.

There may be many instances where a second marriage may be no marriage at all and in which case there could be. no question of bigamy, as for example, where the parties are so closely related that a marriage between them is void according to their personal laws, or where the person sought to be taken in second marriage is himself notice all of them in this connection. I am inclined agree with Mr. Rama Rao when he contends that the second marriage should be something which could be regarded as a marriage in the sense in which marriages are understood; and if it is no marriage at all, and if it cannot have any validity in law, apart from the fact that by reason of its being a bigamous marriage, it would be declared void, it cannot be said that the offence of bigamy had been committed.

In this connection, reliance may be placed on a case decided by the Madras High Court on 8th November W, 3 Mad H C R App VII (7). In that case, the prisoner once a Roman Catholic convert, had married a woman according to the Christian form and thereafter became again a professing Hindu, and married according to Hindu forms a Hindu woman. The Sessions Judge of Guntur had, on a charge of bigamy, treated him as being still a Roman Catholic Christian who had contracted a second marriage in such circumstances as would render the second marriage void during the existence of the former. On appeal to the Madras High Court, the following observations were made by Holloway, J.:

If then he is a Hindu, although there is the greatest doubt whether the primitive Hindu law authorised polygamy, it is impossible after the numerous decisions upon the subject to say that a second marriage of a Hindu is void in consequence of a previous valid Hindu marriage. It is manifest, therefore, that the 2nd Hindu marriage cannot be rendered void in consequence of a previous marriage which the Hindu Law would not have recognised, it not having been performed with any reference to its provisions. The ceremony could not make it a Hindu marriage, because that was not a Hindu ceremony and the consensual contract could not make it a Hindu marriage, because the consent was not to such a union but to a very different, one.



If again as it seems to me impossible to do, the man is to be treated as still a Christian, the union entered into with the Hindu woman would not in the view of any law governing Christian unions be considered a marriage at all.

In either point of view it seems impossible, on the facts found, to say that the prisoner has, within the meaning of the section, contracted a marriage which is void in consequence of the previous marriage. There is no evidence that it is void.

I am of the opinion, therefore, that the conviction is bad in law and should be quashed.

This decision was quoted with approval in a subsequent decision of the Madras High Court in *Emperor v. Antony* ILR 33 Mad 371. This position was referred, in turn, in *Swapna Mukherjee Vs. Basanta Ranjan Mukherjee and Others*, wherein it was held:

In order that a person may be convicted of an offence of bigamy, u/s 494, the second marriage must be a form of marriage recognised by law; otherwise it would be simply an adulterous union and it will not be hit by the provisions of Section 494. Where A, a poor Christian and having a Christian wife living, marries once again a Hindu woman, the marriage being celebrated according to Hindu rites, the subsequent marriage between A and the Hindu woman is a void marriage not because of the existence of the Christian wife of A but because of the fact that there cannot be a valid form of marriage between an Indian Christian and a Hindu woman celebrated according to Hindu rites. And as one of the essential ingredients of Section 494, namely, that the second marriage must be void by reason of its taking place during the lifetime of the husband or the wife of the first marriage, is not satisfied, A, when prosecuted u/s 494 deserves to be acquitted.

These decisions recognise the principle that a marriage is no marriage at all unless it satisfies the requirements of the law of a valid marriage by which the parties are governed; and if it is not a valid marriage by reason of the fact that the 1st accused had married the 7th accused who is somebody else's wife and with whom he could not enter into a lawful marriage, it is no marriage at all, although as pointed out by the learned Judges of the Calcutta High Court in *Swapna Mukherjee Vs. Basanta Ranjan Mukherjee and Others*, it may be an adulterous union. Hence, in the instant case, as it is not established that the 7th accused had been divorced by D.W. 4 and that the marriage between them had been dissolved, any marriage ceremony entered into by the 1st accused with the 7th accused is no marriage in the eye of law; and it cannot, therefore, be said that the 1st accused had "married" the 7th accused within the meaning of Section 494, and hence, the offence of bigamy u/s 494, I.P.C. cannot be held to have been committed by reason of the so-called marriage. For this reason also, the conviction in this case of both accused 1 and 7 must be set aside.

26. These Revision Petitions are accordingly allowed and the convictions and sentences imposed by the lower Court on accused 1 and 7 are set aside. Their

bail bond will be cancelled. The fine amounts if already paid, shall be refunded to them.