
(1989) 11 AHC CK 0020
In the Allahabad High Court
Case No : Criminal Revision No. 386 of 1985

Nepal	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 09-11-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 494

Citation : (1991) 1 DMC 497

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Judgement

S.I. Jafri, J.—This revision filed by Nepal applicant impugning his conviction u/s 494/109 I.P.C., was admitted by this Court on the question of sentences only.

2. Initially, applicant and others were prosecuted u/s 494/109 I.P.C. on a complaint filed by Smt. Urmila Devi and they were tried by Sri B.K. Sharma, Special Judicial Magistrate Bulandshahr in Criminal Case No. 106 of 1982 Smt. Urmila v. Nepal and Ors., the learned Magistrate upon a consideration of the material son record, recorded a finding of conviction against the applicant u/s 494/ 109 I.P.C. and sentenced him to undergo R.I. for two years and further to pay a fine of Rs. 2000/- u/s 494 I.P.C. accused Umrao was sentenced for 18 months R.I. u/s 494/109 I.P.C. and Rs. 1500/-as fine. The learned Magistrate also recorded conviction against Smt. Dhapo and sentenced her to pay a fine of Rs. 1500/. The remaining accused persons Jagram and Smt. Rohati were acquitted. Aggrieved, the applicant and two others went up in appeal before the Sessions Judge Bulandshahr which came to be heard by Additional Judge Bulandshahr Sri M.L. Sharma. The learned Additional Sessions Judge upon a consideration of the facts and circumstances on record, dismissed the appeal of the applicant Nepal. The appeal of Umrao and Smt. Dhapo was allowed and they were purged of the charges.

3 The facts of the case are that during the life time of Smt. Urmila Dev,, the 1st wife of the applicant, Nepal has contracted and solemnised a second marriage

with Smt. Saroj on 31-1-79 according to Hindu rites and out of the union of the applicant and his second wife, a daughter was also born. Despite attempts to dissuade the applicant from contracting a second marriage and vis-a-vis the fact that a stay order was also obtained from Civil Courts injuncting the applicant to refrain from contracting second marriage and also in view of the fact that the witnesses Phul Singh, Virpal, Mohanlal and others tried to prevail upon the applicant he contracted the second marriage with Smt. Saroj. After the marriage of the applicant with Smt. Saroj, the complainant filed a complaint against the applicant and others and the Court below on 15-12-82 after recording the statements of the complainant and the witnesses under Sections 200 and 202 Cr.P.C. framed charges u/s 494 I.P.C. against accused Nepal and u/s 494/109 I.P.C. against remaining accused persons. The applicant and others pleaded not guilty to the charge.

4. Without delving deep into the merits of the instant case, I may observe that the findings arrived at by the Courts below are fortified by cogent and convincing reasons and do not warrant any interference by this Court. The evidence of the witnesses examined in this case have by a consistent finding of the two courts below, been found to be above reproach and suspicion to be not suffering from any incompetence. The testimony of the witnesses should be sterling of a competent and honest man and the testimony in the instant case, of the witnesses is sterling of a competent and honest man, I concur with the findings arrived at by the Courts below, I feel that the guilt of the accused that he contracted a second marriage has been proved beyond reasonable doubt by the truthful evidence of the witnesses adduced in this case.

5. I have carefully gone through the judgments and orders of both the Courts below. I have also heard the learned Counsel for the State who submits that both the courts below have correctly appreciated the evidence on record regarding the performance of the second marriage of the applicant and in this view of the matter, he deserves no leniency.

6. I have bestowed my anxious consideration to the submissions of the learned counsel for the parties.

7. In contrast the contention of the learned Counsel for the applicant that the incident of second marriage is of the year 1979 and the applicant has since settled in his life and in case, after this long time lag the applicant is recommitted to the prison to serve out the sentences of imprisonment, it would cause displacement of applicant's life, at the same time it would serve no useful purpose. Upon a consideration of the above I am persuaded to the view to take a lenient view and propose to sentence the applicant to pay a fine of Rs. 2000/- and the period of imprisonment already undergone by him.

8. In the result the revision is partly allowed. The conviction recorded against him is affirmed. However, the applicant is sentence to pay a fine of Rs. 2000/- and the period of imprisonment already under gone by him. In default, the

applicant shall undergo R I. for four months. Out of the fine, a sum of Rs. 1500/- shall be disbursed to the complainant Smt. Urmila Devi, the 1st wife of the applicant and the remaining amount of Rs. 500/- shall go to the State Exchequer. The applicant is allowed three months" time to deposit the fine from the date of this judgment. In the event, complainant may not be alive, the C.J.M. shall consider her heirs or legal representatives for disbursement of compensation.

9. Office is directed to proceed in accordance with law.