

(2013) 12 KAR CK 0149
In the Karnataka High Court
Case No : Criminal Appeal No. 608 of 2008

Smt. Padma Ramachandrappa by Her Power of Attorney
Holder

APPELLANT

Vs

Dr. G. Ramachandrappa and Smt. Sujatha Alias Sushila

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0149

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : S. Sudindranath, for the Appellant; M.D. Basavanna, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—On a complaint filed by the appellant (complainant), respondents No. 1, and 2 (hereinafter referred to as accused No. 1 and 2) were tried for offences punishable under Sections 120-B 494 and 107 IPC. The learned Magistrate has acquitted accused No. 1 and 2. Therefore, complainant is before this court. I have heard learned counsel for parties.

2. It is not in dispute and cannot be disputed that the complainant is the wife of first accused. They have two children by their marriage. It is also not in dispute that children of complainant and accused No. 1 are staying in United Kingdom.

3. It is the case of complainant that during subsistence of her marriage with first accused, he had married accused No. 2. Accused No. 2 knowing full well that accused No. 1 had already married the complainant, entered into marriage with accused No. 1, therefore, accused No. 1 and 2 have committed an offence punishable u/s 494 IPC.

4. The complainant, was examined as P.W. 1. P.W. 2-Shivananda Swamiji was examined in chief however, he was not tendered for cross-examination. Therefore, his evidence has been eschewed from consideration. P.W. 3-

Raghavendra is the son of elder sister of P.W. 1. P.W. 1 and P.W. 3 have not witnessed the bigamous marriage. They have relied on documentary evidence such as photographs (marked as Ex. P4 to P16), pooja book (marked as Ex. P2).

5. The learned trial judge on appreciation of evidence has held that, evidence of P.W. 1 and P.W. 3 is hardly sufficient to prove an offence punishable u/s 494 IPC. P.W. 1 and P.W. 3 have not witnessed the bigamous marriage. They have relied upon documentary evidence in particular, the photographs (marked as Ex. P4 to P16).

6. In a decision reported in *Santi Deb Berma Vs. Smt. Kanchan Prava Devi*, , the Supreme Court has held:

Penal Code (1860), S. 494 - Bigamy - Second marriage - Proof - Accused alleged to have contracted second marriage - Both parties Hindu - performance of "saptapadi" not proved - No plea that accused's marriage was performed as per custom which dispensed with saptapadi - Oral evidence and letter to effect that accused and his alleged second wife were living as husband and wife - Not sufficient to draw inference as to performance of ceremonies essential for valid marriage - Accused entitled to be acquitted.

7. In a decision reported in *Lingari Obulamma Vs. L. Venkata Reddy and Others*, , the Supreme Court has held:

Penal Code [45 of 1860] S. 494 - Conviction under - evidence and proof - Second marriage contracted by accused not proved to be legally valid - Existence of custom neither mentioned in complaint nor proved - Conviction under S. 494 cannot be recorded.

8. In a decision reported in *Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh*, , the Supreme Court has held:

Penal Code (1860), S. 494 - Bigamy - Proof of solemnization of second marriage in accordance with essential religious rites applicable to parties is a must for conviction for bigamy - Mere admission by accused that he had contracted second marriage is not enough.

9. In a decision reported in *Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another*, , the Supreme Court has held:

Hindu Marriage Act (1955), Ss. 17 and 3 - Penal Code (1860), S. 494 - Punishment for bigamy - For application of S. 494, marriage must come within "solemnized marriage" - "Solemnize" means "to celebrate the marriage with proper ceremonies and in due form" - Mere going through certain ceremonies with intention of marriage will not make the ceremonies prescribed by law or approved by custom.

10. In view of what has been held in the aforesaid judgments, it is necessary for the complainant to state in the complaint that necessary ceremonies to constitute a valid marriage were performed. The intention of parties to undergo

marriage without performance of ceremonies prescribed by law or approved by custom will not constitute a valid marriage. Even the admission of accused that he had contracted second marriage is not enough.

The complainant has not stated about the place, date and time of marriage, the names of witnesses who are allegedly present at the time of second marriage. P.W. 1 and 3 have not witnessed the marriage. There is no evidence that accused No. 1 and 2 while undergoing marriage had observed necessary ceremonies to constitute a valid marriage.

11. The law is fairly well settled that complainant has to prove that second marriage (bigamous marriage) was performed after observing all the ceremonies necessary to constitute a valid marriage.

12. The learned counsel for complainant relying on the judgment of Supreme Court reported in 2001 AIR SCW 3372 (in the case of S. Nagalingam vs. Sivagami) would submit that "Saptapadi" is not an essential ceremony for a valid marriage and exchange of garlands three times and utterance of father of bride that he is giving his daughter in the presence of Agni Deva is sufficient to constitute a valid marriage.

13. In the case on hand, there is no evidence to prove that "Saptapadi" is not an essential ceremony in the community of accused No. 1 and 2. There is no evidence to prove that father of accused No. 2 had given his daughter in marriage to first accused. There is no evidence to prove that there was exchange of garlands for three times. Therefore, what has been held in the aforesaid judgment is not applicable to the facts and circumstances of the instant case.

14. The learned counsel for appellant has made an application (Mis. Crl. 4077/2010) to adduce additional evidence to establish that accused No. 1 has admitted the photographs marked as per Ex. P4 to P16.

15. In the discussion made supra, I have held that production of photographs is not sufficient to prove valid marriage. Therefore, even if additional evidence is accepted, it will not improve the case of complainant. Therefore, application for additional evidence cannot be accepted. The learned trial judge has rightly acquitted the accused. There are no reasons to interfere with the impugned judgment. Therefore, the appeal as also the application (Mis. Crl. 4077/2010) are dismissed.