
(1990) 11 AHC CK 0028
In the Allahabad High Court
Case No : Criminal Revision No. 17 of 1982

Smt. Raj Kumari and Another	Vs	APPELLANT
Smt. Kalawati and Another		RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 5
Penal Code, 1860 (IPC) — Section 494
Hindu Marriage Act, 1955 — Section 11, 5
Penal Code, 1860 (IPC) — Section 494
Hindu Marriage Act, 1955 — Section 11, 5
Penal Code, 1860 (IPC) — Section 494

Citation : (1992) CriLJ 1373

Hon'ble Judges : S. Saghir Ahmad, J

Bench : Single Bench

Advocate : L.N. Gupta, for the Appellant;

Judgement

S. Saghir Ahmad, J.—The applicants have been convicted u/s 494, I.P.C. and each of them has been sentenced to one year R.I.

2. The facts giving rise to this revision are that Srimati Kalawati, opposite party No. 1, was married to Kallo (applicant No. 2). It is alleged that Kalloo ill-treated Srimati Kalawati and about 2 1/2 years before the date of complaint, he snatched her ornaments and clothes and turned her out of the house so that she was compelled to live with her mother and brother.

3. It is further alleged that Kalloo contracted a second marriage with Smt. Raj Kumari (applicant No. 1) in August 1977 although Smt. Raj Kumari was already married to Ram Ratan and on the date of the second marriage with Kalloo, her earlier marriage still subsisted. With regard to Kalloo's first marriage with Smt. Kalawati, the allegation was that this marriage also subsisted on the date on which Kalloo married Smt. Raj Kumari. The second marriage was, therefore, assailed to be invalid.

4. It was in these circumstances that Srimati Kalawati (opposite party No. 1) filed a complaint u/s 494, I.P.C. and prayed that action be taken both against Srimati Raj Kumari and Kalloo as they had contracted a second marriage during the life time of their spouses. The applicants on being summoned in the case appeared before the magistrate and pleaded not guilty. While admitting that they were already married and that their first marriage still subsisted, they denied to have contracted the second marriage.

5. The trial court, on a consideration of the evidence on record, came to the conclusion that Smt. Raj Kumari and Kalloo had contracted a second marriage although Smt. Raj Kumari's husband as also Smt. Kalawati, who was the wife of Kalloo, were both alive and the marriage of the applicants with them still subsisted. The learned magistrate, therefore, proceeded to convict them u/s 494, I.P.C. for the offence of bigamy and sentenced Smt. Raj Kumari to one year R.I. and Kalloo to three years R.I.

6. Smt. Raj Kumari as also Kalloo both filed appeal in the Court of the Sessions Judge, Lucknow, which was heard and disposed of by the VII Additional Sessions Judge, Lucknow on 7-1-1982. The appeal was partly allowed and the sentence awarded to Kalloo was reduced to one year R.I.

7. It is in these circumstances that the present revision has been filed in this court.

8. I have heard the learned counsel for the applicants as also the learned counsel appearing on behalf of Smt. Kalawati.

9. A perusal of the judgment passed by the lower appellate court would show that the parties are Harijans and Raidas and in their family there is a custom of "Chutta-Chutti". There is also a custom of remarriage in "Ghar Bethaua" form in which two essential ceremonies are required to be performed :--

(1) that the husband would have the bangles placed in the hands of the bride by a Manihar, and

(2) he would hold a feast.

10. The revisional court on a consideration of the evidence on record came to the conclusion that although the first ceremony, namely, wearing of bangles had been performed, the second essential relating to the holding of the feast had not yet been performed. The revisional Court, therefore, came to the conclusion that the marriage of Kalloo with Srimati Raj Kumari was, for that reason, invalid, but it still proceeded to convict the applicants u/s 494, I.P.C. and, as pointed out earlier, while maintaining the sentence awarded to Srimati Raj Kumari, it reduced the sentence of Kalloo from three year R.I. to one year R.I.

11. Once the revisional court recorded a finding that the marriage between the applicants, namely, marriage of Kalloo with Smt. Raj Kumari was invalid, he could not have proceeded to convict the applicants for the offence contemplated

by Section 494, I.P.C. which provides as under :--

"492 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.

12. The marriage contemplated by Section 494, extracted above, has to be shown to be void by reason of the fact that there was already a husband or wife living.

13. Section 5 of the Hindu Marriage Act provides that a marriage may be solemnised between the two Hindus where neither party has a spouse living at the time of marriage. This condition that neither party shall have a spouse living at the time of marriage is one of the essential requirement of the marriage. The contravention of this condition would render the marriage void as provided by Section 11 of the Hindu Marriage Act.

14. The above requirement of a valid marriage, namely, that neither party shall have a spouse living at the time of marriage has been given the shape of an offence in Section 494 of the Indian Penal Code.

15. In order, therefore, that an offence u/s 494 can be said to have been committed, it has to be proved that the party to the marriage or both of them, who had married each other had a spouse living at the time of marriage. It must be proved that the second marriage is void by reason of the fact that the first marriage still subsisted. The second marriage cannot be contracted in the life time of the person with whom the first marriage was contracted.

16. It may also be specified that the marriage contemplated by Section 494 is a complete marriage in which all the essential requirements of the marriage had been performed, that is to say, all the marriage ceremonies should have been performed but the marriage itself should be void by reason of the fact that it was contracted during the life time of the person with whom the first marriage was contracted. In other words, if the first marriage had not been subsisting, the second marriage would have been a legal and valid marriage.

17. In the instant case the revisional Court had itself come to the conclusion that one of the essentials of the customary marriage had not been performed and the marriage was thus not a valid marriage. The implication of this finding is that if the earlier spouses were excluded, the second marriage would still not be valid as an essential requirement of the said marriage had not been performed.

18. The Additional Sessions Judge, who had disposed of the appeal, had not recorded the finding that the second marriage between the applicants is void as both of them had their spouse living at the time of marriage. Their marriage had been found to be void by reason of the fact that one of the essential requirements of the marriage had not been performed. The marriage, thus, having not taken place at all between the applicants, they cannot be held guilty

of having committed an offence u/s 494, I.P.C.

19. In view of the above the revision is allowed. The judgment and order passed by the courts below convicting the applicants u/s 494, I.P.C. and sentencing them both to undergo R.I. for one year are set aside and the applicants are acquitted. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.