
(2006) 11 OHC CK 0043
In the Orissa High Court

State		APPELLANT
	Vs	
Prasanna Kumar Senapati		RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 306, 494, 498A

Citation : (2007) CriLJ 1344 : (2007) 1 OLR 12

Hon'ble Judges : J.P. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Mishra, J.—The State has preferred this appeal against the acquittal judgment passed by the learned Assistant Sessions Judge, Boudh in S.C. No. 8 of 1989 (S.C. No. 57 of 1989) D.C.

2. On the report (Ext. 2) lodged by P.W. 1 -the father of deceased Susama, the investigation commenced and by that time U.D. Case No. 3/86 (Ext.9) had already been registered by the O.I.C., Kantamal, for the suicidal death of Susama on the report of Laba Sahu (P.W. 7). The allegation in Ext.2 was that the accused had married his daughter Susama on 5.2.1984 at Chandimandir, Cuttack by exchange of garlands. Thereafter, the father and brothers of the accused demanded Rs. 50,000/- as dowry, but somehow he gave Rs. 10,000/- only. Thereafter, the accused being an employee in the Fire Brigade was transferred to Kantamal and stayed there on rent in the house of one Laba Sahu (P.W. 7). The accused took casual leave from 21.2.1986 and overstayed for one month leaving Susama at Kantamal. On 22.2.1986, Susama enquired from the co-worker of her husband (P.W. 12) and could know that the accused had gone for second marriage. On 28.2.1986, Susama wrote a letter (Ext.3) and committed suicide in the house of P.W. 7 at Kantamal. On the report of P.W. 7, P.W. 13 registered U.D. Case No. 3 of 1986 on 28.2.1986 (Ext. 9) and seized the suicidal note (Ext. 3) and also other incriminating materials. The accused was prosecuted and charged

under Sections 498-A/306/494 I.P.C. and after trial, the accused was acquitted.

3. The learned Court below did not accept the marriage of the accused with Susama and also the prosecution failed to prove the second marriage in toto. While holding the absence of ingredients of Section 494, I.P.C. the learned Court below further held that in the suicidal note there was no allegation of torture or provocation by the accused leading to Susama's suicide and the content thereof was not properly proved and acquitted the respondent from the charge of Section 306 I.P.C. The Court below found the evidence to be insufficient as both P.Ws. 6 and 7 turned hostile. It further held that since there was no marriage, Section 498-A, I.P.C. is not attracted.

4. The learned Additional Standing Counsel has vehemently urged that the Court below committed error by not accepting Ext. 3, the suicidal note of the deceased, as proof of marriage and has pointed out the evidence of P.W. 4 in proof of marriage. According to the learned Counsel for the State, once the charge u/s 494, I.P.C. is established, the other offences will automatically flow against the accused. On the contrary, the learned Counsel appearing for the respondent has supported the judgment of the Court below.

5. With all respect to the learned Additional Standing Counsel, I am unable to persuade myself with the contention raised by him. No doubt, the incident is a thought provoking one in the present society and the inhuman conduct of the persons involved in such an occurrence but strict proof of two marriages are required to invoke a charge u/s 494 I.P.C. The learned Court below has discussed the evidence in paragraph 6 of its judgment mentioning therein that strict proof of valid subsisting first marriage is necessary in a case where it is alleged that the accused has taken another wife during the subsistence of the first marriage. The prosecution has alleged that the marriage took place on 5.2.1984 at Chandimandir by exchange of garlands as it was an inter-caste marriage. According to P.W. 1, though there was a Marriage Register in the temple, the marriage of respondent with Susama was not recorded. Susama's mother (P.W. 2), though stated in her examination-in-chief that Susama and the accused left for Chandanpur after marriage, but in the cross-examination denied her presence at Chandimandir during the marriage. The Pujak who brought the garlands and performed the minimum rituals has not been examined. Further, not a single witness has been examined on behalf of the prosecution to prove the rituals of the second marriage of the accused with Pranati. The only witness P.W. 11 (father of Pranati) examined on behalf of the prosecution did not support the prosecution case.

6. In regard to Ext. 3, deceased Susama has not implicated any one for her death nor was its content proved by P.W. 1 though he has proved her signature. The letters were not sent to the handwriting expert during investigation/trial. The name of the accused only appears on the reverse side of the suicidal note. So, the entire content of Ext.3, if accepted, even cannot prove valid subsisting marriage of the accused with deceased Susama. Even accepting the evidence of

the hostile witness P.W. 7 - Laba Sahu of Kantamal, at the worst it can be said that the accused and deceased Susama were staying together which will not prove the first marriage, as required by the law. Moreover, P.W. 7 - Laba Sahu has stated his ignorance about the relation of the accused with Susama while he was staying in his house. The learned lower Court looked the case of the prosecution with reservation for the evidence of P.W. 12, the Fire Station Officer of Kantamal, who has stated that the accused was staying in the barrack and was occasionally taking his meal outside in any hotel. He has also testified that he received no complaint against the accused that he was staying outside in a rented house leaving the barrack of Kantamal.

7. In the present case, even accepting the case of the prosecution in toto, it cannot be said that a valid marriage was subsisting between the accused and deceased Susama on the basis of Ext. 3 in order to bring home the charge u/s 494, I.P.C. In absence of a valid marriage, Section 498-A, I.P.C. does not come into operation and the same has been discussed by the learned lower Court in its judgment including operation of limitation. I may mention here that had there been cogent evidence of acceptance by the society the relationship between the accused-respondent and Susama as man and wife, the matter would have been different and possibility of attracting Section 498-A I.P.C. read with presumption of Section 113-B of the Evidence Act was very much there *Reema Aggarwal Vs. Anupam and Others*, . The witnesses P.Ws. 6 and 7 who could have proved the relationship between Susama and respondent did not support the case of the prosecution. The evidence of P.W. 4 is also insufficient as he has simply stated that the accused-respondent married Susama and he was not present at the time of the marriage. Further, the learned Court below rightly disbelieved the abatement of suicide. Therefore, I do not find any infirmity in the judgment of the learned lower Court for interference.

8. The Government Appeal is accordingly dismissed.