

(1960) 07 GAU CK 0003
In the Gauhati High Court

Thokchom Ningol Heisnam Ongbi Bhani Devi	APPELLANT
Vs	
H. Baruniton Singh and Another	RESPONDENT

Date of Decision : 07-07-1960

Acts Referred:

Hindu Marriage Act, 1955 — Section 17, 29
Penal Code, 1860 (IPC) — Section 114, 494, 495

Citation : (1961) CriLJ 258

Hon'ble Judges : T.N.R. Tirumalpad, J.C.

Bench : Single Bench

Judgement

T.N.R. Tirumalpad, J.C.

1. Criminal Revision No. 10 of 1960 is filed by the petitioners against the dismissal by the learned Sessions Judge of Criminal Appeal No. 39 of 1958 and the confirmation of the conviction of the petitioners by the Magistrate in Criminal Case No. 101 of 1957 u/s 494, I.P.C. Criminal Revision; Case No. 8 of 1960 is filed by the complainant against the order of the Sessions Judge rejecting Criminal Revision No. 32 of 1958 and confirming the order of the Magistrate in Criminal Case No. 10 of 1957 by which he treated the two accused persons who were convicted by him u/s 494, I.P.C. as first offenders and released them on probation of good conduct on execution of bonds for Rs. 500/- each.

2. The complainant Bhani Devi, the petitioner in Criminal Revision No. 8 of 1960 married Heisnam Baruniton Singh, the first petitioner In Criminal Revision No. 10 of 1960 and the first accused in the Criminal Case on 9-6-1952. Baruniton Singh at that time was a student in the Technical Institute at Kharagpur and Bhani Devi was a student in the High School in Tamphasana Girls' High School at Imphal. Her father was Sri Birahari Singh, a S.D.O. in the Manipur Administration.

After the marriage, the couple lived together while both of them were in Imphal. The houses of Baruniton Singh and of the father of Bhani Devi were near each other. It would however appear that the husband and wife were not pulling on well. Sri Birahari Singh, the father of Bhani Devi was helping Baruniton Singh

after the marriage to continue his studies at Kharagpur. In June, 1954 he was posted as S.D.O. at Churaehand-pur.

When Baruniton Singh came to Imphal from Kharagpur during the holidays in June, 1954, he stayed with his wife Bhani Devi for a month in the house of her father at Churachandpur. Subsequently also Shri Birahari Singh continued to help Baruniton Singh with remittances for his education at Kharagpur and affectionate letters were passing between the father-in-law and son-in-law. As late as July, 1955, such letters continued as evidenced by Exts. 5 and 6. Exhibit 7 (1) shows the Money Order for Rs. 200/- sent to Baruniton Singh by Birahari Singh in July, 1955.

We have also the letter Ext. D (1) written by the brother of Birahari Singh to Baruniton Singh in July, 1955 telling him about the welfare of his wife Bhani Devi and stating that she was studying in Kean's College, Shillong. The same letter requested Baruniton Singh to go on with his studies until its completion in the course of the year. In June, 1956, Baruniton Singh completed his studies and became a full-fledged Engineer and returned to Imphal.

On 27-7-1956, he married Ibechaobi Devi, who was the second accused in the Criminal Case and was acquitted by the lower Court. On 20-4-1957, Bhani Devi filed the complaint charging Baruniton Singh with bigamy u/s 494, I.P.C. and the second wife Ibechaobi Devi, her father Kula Singh and Banjniton's brother and mother Gourachand Singh and Amubi Devi with abetment of the said offence.

3. During the pendency of the Criminal Case Baruniton Singh filed an application before my learned predecessor for quashing the proceedings on the ground that the Hindu Marriage Act, which by Section 17 made such a marriage amount to bigamy and punishable u/s 494, I.P.C. was ultra vires of the Indian Constitution as it interfered with the religious beliefs of the Manipuris. That petition was of course dismissed by my learned predecessor and the criminal proceedings continued.

4. The criminal case was fought out very keenly and all the accused denied the offence and various pleas were raised. Baruniton Singh admitted his marriage to Ibechaobi Devi on 27-7-1956, but he sought to prove that his previous marriage to Bhani Devi was an invalid marriage. In order to prove it, he let in evidence to show that Bhani Devi had voluntarily eloped with D.W. 6 - R. K. Maipaksana Singh on 24-1-1951 and spent a night with him. Evidence was let in to show that according to the custom in Manipur, a woman who has eloped and spent a night with her consent with a man cannot be legally married to another man and hence her marriage to Baruniton Singh was an invalid marriage. The Magistrate as well as the Sessions Judge rejected this plea.

5. Then it was sought to be proved that even though the marriage may have been a valid marriage, there was a divorce on 31-5-1954 according to the Manipuri custom. It was stated that in Manipur a husband or wife could divorce the other by orally expressing their intention. It was alleged that on 31-5-1954

Bhani Devi divorced Baruniton Singh orally. But this was not accepted by the lower Courts, because Baruniton Singh and Bhani Devi had spent the entire month of June, 1954 as husband and wife in the house of Bhani Devi's father Birahari Singh at Churachandpur.

A feeble attempt was made to show that this spending of one month at Churachandpur in June, 1954 was an attempt at reunion after the divorce which is said to have failed. But it was not seriously pressed as the letters - Exts. 2 and 3 written by Baruniton Singh to his father-in-law in July, 1954 requesting for monetary help to continue his studies- clearly disproved the story of divorce and the alleged attempt at reunion. In those letters, Baruniton Singh has expressed himself as the affectionate son of Birahari Singh and monies were also sent by Birahari Singh to Baruniton Singh as requested showing clearly that the marriage still subsisted.

6. Most despicable suggestions were also made in cross-examination to Bhani Devi when examined as P.W. 1 that she spent about one year in the house of one Soibam Sarau Singh and that Baruniton Singh and his brother Gourachand Singh saw her coming out of the house of the said Samu Singh early morning on 2-5-1955 and again that Baruniton Singh and his brother and mother saw her coming out of the said house on 6-5-1955.

Another suggestion was that she became pregnant through the said Samu Singh, and that an abortion was caused. There is no gainsaying the fact that such suggestions being made by a husband against the wife as defence to a charge of bigamy, if they are not later sought to be proved by proper evidence are very serious. The defence examined 8 witnesses, but no attempt of any kind was made to justify the vile insinuations made by Baruniton Singh against his own wife.

I Have already referred to the letters Exts. 5 and 6 written by Baruniton Singh to Birahari Singh in July, 1955 styling himself as the son-in-law of Birahari Singh. In Ext. 6 he has stated that he wanted to hear the result of Bhanumati's examination and wanted to know whether she would like to continue her studies and he has further stated that she was angry towards him because of his defects. Such letters would certainly not be Written by a person who had divorced or been divorced by Bhani Devi and who had detected his wife coming out of another man's house.

It was clear therefore that they were most improper suggestions to have been made to his wife. Another suggestion made in cross-examination was that when Baruniton detected Bhani Devi coming out of Samu Singh's house on 6-5-1955, he confirmed the previous divorce and gave her a letter by way of such confirmation of divorce. In the face of the letters Exts. 5 and 6 written two months later to Birahari Singh and in the face of his acceptance of money from Birahari Singh, the story of the alleged confirmation of divorce in May, 1955 was rightly treated by the lower Courts as utterly false.

The real truth of the matter appeared to be that so long as he was continuing at Kharagpur, Baruniton Singh required the help of Birahari Singh, the father of his wife and that by July, 1956 by which time he became a full fledged Engineer, he thought that he could snap his fingers at his father-in-law and at his wife with whom he was not pulling on well and take a second wife. The story of the divorce either on 31-5-1954 or the confirmation of the divorce on 6-5-1955 were utterly false.

7. In the course of the arguments before me the learned Counsel for Baruniton Singh and his mother Amubi Devi again stressed the plea that the marriage of Baruniton Singh to Bhani Devi was an invalid marriage and that Section 494, I.P.C. will not apply to the case. It was pointed out that the elopement of Bhani Devi with D.W. 6 R. K. Maipaksana Singh was proved to have taken place with the consent of Bhani Devi in the face of the letter Ext. B dated 9-9-1951 which she had written to Maipaksana Singh and the F.I.R. Ext. C which also referred to the consent.

My attention was also drawn to the evidence of D.W. 2, the S. I. of Police, who prepared the F.I.R. Ext. C and also to the evidence of D.W. 6 who proved the letter Ext. B, The learned Magistrate accepted Bhani Devi's plea that she was kidnapped by D.W. 6 and that it was not an elopement with consent and further that the letter Ext. B was caused to be written by her at the point of a dagger. We need not go into the question whether it was an elopement with consent or a case of kidnapping. Bhani Devi has given her age in the complaint filed by her as 21 years in April, 1957. Hence she cannot have been more than 16 years at the time of the alleged elopement. Her age in the complaint was not questioned. The consent by her when she was a minor was no consent at all.

8. Even granting that she consented and that the consent was valid, it was not the evidence of any of the D.Ws., that mere elopement and spending of a night together would amount to marriage. D.W. 5 who was examined as an expert on Manipuri custom stated that if after eloping some sort of marriage took place, then it was called Gandharva marriage and that if the parents of both parties were agreeable then a ceremony called Loukhatpa was performed.

Thus for Gandharva Bibaha to be complete, some sort of marriage or Loukhatpa ceremony has to take place after the elopement. Again, in cross" examination, D.W. 5 made it clear that mutual con-sent was the most essential ingredient in a Gandharva Bibaha and that from the subsequent conduct of both the parties- it can be inferred whether the Gandharva Bibaha had taken place. He also said that if after the Gandharva Bibaha, Loukhatpa ceremony was not held, the Bibaha was not recog-nised by Society.

Thus, it is clear from even the expert evidence that granting that there was consent for the elopement, the Gandharva marriage was not complete in this case as the boy and the girl separated the very next day and their conduct showed that the Bibaha has not taken place and that Society has not accepted it

as a marriage. Where an alleged marriage is sought to be proved through custom, it is the acceptance by the Society, which is the most important. It is clear that, in the present case, the elopement or kidnapping, whatever it may be called, was not accepted by any person as marriage.

So long as there was no marriage there was nothing to prevent either party from contracting a regular marriage. It is clear from the conduct of Baruniton Singh that knowing of this elopement as a neighbour of the parties, he was prepared to marry Bhani Devi in June, 1952 and hence the marriage took place and the said marriage was accepted by Society. It is idle for Baruniton Singh to contend that his marriage to Bhani Devi was not a valid marriage.

9. No doubt, the expert D.W. 5 stated that if a girl eloped with a man with her own consent and spent one night with him as husband and wife she cannot be given in marriage to another man. He however clarified this by stating that if a girl eloped and spent one night with one man and was married later to another man then the husband and wife or their offspring are debarred from attending marriages. This very answer shows that marriage to another man was possible, though it may not be considered to be of a very high order.

In this case, the fact of the valid marriage of Baruniton to Bhani Devi is clear beyond any doubt. Baruniton Singh himself treated it as a valid marriage when he filed the petition before my learned predecessor for quashing the proceedings. The present plea of the invalidity of the marriage was only an afterthought. I allowed the point raised as it was more or less a question of custom and law. I entirely agree with the Courts below that Baruniton Singli was legally and validly married to Bhani Devi.

10. The said marriage was in force on 18-5-1955 when the Hindu Marriage Act, 1955 came into force. I agree with the lower Courts in disbelieving the story of the alleged divorce said to have taken place on 31-5-1954 and of the alleged confirmation of the divorce on 6-5-1955. The alleged divorce and confirmation have been deliberately put to a date prior to the coming into force of the Hindu Marriage Act, 1955. It is not the defence case that subsequent to 18-5-1955 there has been any divorce. Thus the marriage was subsisting on 27-7-1956 when Baruniton's marriage to Ibechaobi Devi took place. Section 17 of the Hindu Marriage Act, makes it clear that the second marriage was void and that the provisions of Sections 494 and 495, I.P.C. would apply in such a case.

11. There is no doubt therefore that the conviction of Baruniton Singh u/s 494, I.P.C. by the Magistrate and the confirmation by the appellate Court were perfectly correct. With regard to Amubi Devi, the mother of Baruniton Singh, I am not prepared to accept the findings of the lower Courts. She has been convicted of abetment u/s 114, I.P.C. But on the same evidence Ibechaobi Devi, the second wife, her father and Baruniton's brother have been acquitted by the Magistrate.

The learned Magistrate has not given any reason in his judgment why he

convicted Amubi Devi alone of abetment. The only thing that he has stated is he was satisfied that the charge of abetment has been brought home against her. The learned Sessions Judge has also not dealt with that question but treated the case on the same footing against both of them. There is no doubt that he has erred in that matter. Amubi Devi is as much entitled to the benefit of doubt as Gourachand Singh, the brother of Baruniton.

After all, she is said to have been present at the second marriage function. Divorce in Manipur is very easy and if Baruniton Singh had made his mother understand that he has divorced Bhani Devi she cannot be guilty of abetment. Divorce can be obtained in Manipur by expression of mere oral intention. I am even inclined to think particularly in the face of the letter Ext. 6 that Baruniton Singh was playing a double game. He has written in that letter requesting Birahari Singh not to disclose to any person of either family that he was sending money to Baruniton Singh,

It is quite possible that he had made his mother understand that the marriage was not subsisting, while he behaved to Birahari Singh and Bhani Devi as if the marriage continued, perhaps, for getting money from his father-in-law. I, therefore, disagree with the lower Courts and hold that Amubi Devi, the second petitioner in Criminal Revision Case No. 10 of 1960 is not guilty of abetment and I direct her acquittal. I confirm the conviction of Baruniton Singh, the first petitioner in Criminal Revision No. 10 of 1960.

12. I now come to the more difficult question whether the learned Magistrate and the Sessions Judge were right in applying the provisions of Section 562, Cr. P.C. to this case and in not passing sentence on Baruniton Singh. The complainant Bhani Devi has filed Criminal Revision No. 8 of 1960 against it. The learned Magistrate has given his reasons for applying Section 562, Cr. P.C.

He has stated that the age-old practice of having more than one wife has created an impression that the offence of bigamy was not very heinous, that the I.P.C. and Cr. P.C. have only been recently introduced in Manipur, and that there was a certain laxity in the minds of the people regarding bigamy which was not taken very seriously. He said further that as far as Baruniton Singh was concerned, he was just fresh from College and had just entered service and there was nothing against his character and no question of moral turpitude was involved and hence he was tempted to invoke the provision of Section 562(1) and release him on probation of good conduct.

The learned Sessions Judge has even gone farther and stated that the complainant appeared to be of questionable character as she ran away with R. K. Maipaksana Singh to the disgrace of her father and family and further that she appeared to be responsible to some extent for not remaining with her husband and almost compelled him to secure another bride. He has even stated that it was not disputed before him after the arguments that Section 562, Cr. P.C. could be applied.

13. I am unable to understand the statement of the learned Sessions Judge that the application of Section 562 was not disputed before him. In that case it was not necessary for him to deal with the question at all and he ought to have dismissed the revision petition as not pressed. It was stated before me by the complainant's Advocate that the applicability of Section 562 was seriously disputed before the Sessions Judge, In view of the fact that the present revision case has been filed before me and in the face of the fact that such, a revision petition was filed in the Sessions Court also, I cannot accept the Sessions Judge's statement that the applicability was not questioned. Moreover, it is a question of law, or rather a mixed question of law and fact.

14. Before we proceed to decide the question of the applicability, let us re-state the facts a bit. The marriage took place in June, 1952, Ever since then, Baruniton Singh was getting monetary help from his wife's father. There is evidence that even as late as July, 1955 he has received such monetary help. The evidence of Birahari Singh was that even after July, 1955, he has given money to Baruniton, but he has not produced any receipts after July, 1955.

Baruniton Singh raised the deliberately false plea of divorce in 1954 May and of confirmation of divorce in May, 1955. In support of such a false plea, he even made serious imputations against his wife not only of lapse from chastity and living continuously for a year with another man, but of even having got pregnant and secured abortion, thereby even accusing her of a criminal act in obtaining the abortion. Even after that, he continued to draw money from her father showing thereby that they were most reckless and baseless allegations against her.

No attempt was made to justify or to prove the imputation. As soon as he returned to Manipur on the completion of his study, he straightaway entered into this second void marriage. Suggestions were made to Birahari Singh in cross-examination that he tried to prevent the second marriage. This very suggestion showed that the second marriage was deliberate and intentional and that the story of the divorce must be false .

If there had been a divorce, then Birahavi Singh would not have tried to stop the second marriage. Baruniton Singh is an educated man and he must be held to have been aware of the Hindu Marriage Act, u/s 17 of which such an offence is made punishable u/s 494, I.P.C. Ignorance of law is no excuse. Again, the fact that the custom of plural marriage was prevalent in Manipur is no excuse.

When such an enactment like the Hindu Marriage Act comes into force in Manipur where plural marriage was quite common before that, it cannot be said that local people could have been ignorant of the new law, as it interfered with their age-old custom. Thus, it is clearly a deliberate disobedience of the law and a person who thus deliberately disobeys the law has to be punished,

15. The learned Sessions Judge's observations against Bhani Devi as an excuse for Baruniton Singh for having contracted the second marriage, are not fully

warranted. The evidence no doubt showed that the marriage was not a very happy one. But we do not know which party or whether either party was responsible for it. We cannot therefore accuse the wife alone,

16. Section 562 states that if it appeared to the Court before which a person is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it was expedient that the offender should be released on probation of good conduct, the Court may do so instead of sentencing him at once to any punishment. I have referred to the circumstances in which this offence was committed.

I can understand a case where a person commits the offence of bigamy and repents of it and accepts the offence before Court and promises to be of good behaviour in future. But that is not the case here. Baruniton Singh did not accept his offence. He raised deliberately false pleas. He made wild allegations against his wife. He has not in any manner expressed his regret for the offence or made any amends for it. It was admitted during arguments that he continues to live with the second wife and that he has even got two children by her.

He has no intention of returning to Bhani Devi. I cannot understand how there can be any bond taken from him to be of good behaviour in future. He committed the offence and he has stuck to such conduct. I cannot understand what value can be attached to any bond executed by him to be of good behaviour. The only good behaviour, which can be expected from him is to repent of his offence and to return to his wife and not to continue the void marital relationship. So long as he was not prepared to do it, there is no question of any probation of good conduct.

The good behaviour expected for the application of Section 562 is not desisting from entering into a second void marriage with another lady, I have already referred to the character and antecedents of the offender. The defence set up by him and the allegations made by him against the complainant certainly did not show him to be a man of high principles and moral probity. I have no doubt that Section 562 was wrongly applied by the Magistrate and by the Sessions Judge, I have therefore to act under Sub-section (3) of Section 562 and pass sentence on Baruniton Singh.

17. The offence is certainly a very serious offence for which the punishment provided is 7 years" rigorous imprisonment and fine. This Court cannot pass any sentence which the Magistrate, who tried the case did not have the power to inflict. But, in deciding the sentence, I cannot lose sight of Section 29(2) of the Hindu Marriage Act. Baruniton Singh could have obtained a dissolution of his marriage to Bhani Devi under the customary law in Manipur, merely by expressing his intention to divorce her or by executing a unilateral document divorcing her before he married Ibechaobi Devi.

This custom of Khainaba in Manipur was admitted by both parties. Thus if before 27-7-1956 Baruniton Singh had done so, he would not have been guilty u/s 494,

I.P.C. It was the omission to do so that brought about all the trouble for him. This customary law of Manipur has been saved by Section 29(2) of the Hindu Marriage Act. Thus, the offence was committed by this omission on the part of Baruniton Singh. Under those circumstances, it cannot be said that it was after all such a serious offence.

I cannot also lose sight of the fact that Bhani Devi herself could have got a similar divorce from Baruniton Singh in a similar manner. Where therefore divorce is easy and could be obtained at the volition of either party by custom without having recourse to Courts and such customary divorce is saved by Section 29(2) of the Hindu Marriage Act and the offence u/s 494 is committed due to omission on the part of the husband to get the dissolution of his marriage, we have to treat the offence as more or less a technical one and serious punishment as provided in Section 494 cannot be given by a Court for a conviction u/s 494.

Section 494 is based more or less on the English Law of bigamy and under the English Law and also under the Hindu Marriage Act, divorce is not very easy and can be obtained only through Courts for valid reasons. If therefore Section 29(2) of the Hindu Marriage Act had not specifically saved the customary law of divorce obtaining in Manipur, this Court would have taken a more serious view of the offence. Under the circumstances I consider that a sentence of imprisonment till the rising of the Court and a fine of Rs. 100/- will meet the ends of justice in the present case.

18. In the result, Criminal Revision No. 10 of 1960 is allowed as far as the second petitioner Heisnam Ongbi Amubi Devi is concerned and she is acquitted. It is dismissed so far as the first petitioner Shri Heisnam Baruniton Singh is concerned and his conviction is confirmed. Criminal Revision No. 8 of 1980 is dismissed as far as the second respondent Heisnam Ongbi Amubi Devi is concerned and it is allowed as far as Heisnam Saruniton. Singh is concerned. Shri Heisnam Baruliton Singlji is sentenced to S.I. till the rising of the Court and to a fine of Rs. 100/-

I am aware that this is the first case of this kind in Manipur. But this Court has no power to withhold sentence after conviction, particularly as Section 562, Cr. P.C. has been held by me to be not applicable to the present case. If under the circumstances of this case, suspension or remission of sentence is considered necessary, it is a matter left to the appropriate Government u/s 401, Cr. P.C. This Court will not have any objection to such suspension or remission of sentence by the Government.