

(1966) 09 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 75 of 1965, Criminal Revision case No. 470 of 1964 and Cri. Revision Petition No. 431 of 1964

Venkata Subbarayudu Chetty

APPELLANT

Vs

Tanguturu Venkatiah Shresthi and Others

RESPONDENT

Date of Decision : 14-09-1966

Acts Referred:

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

Citation : AIR 1968 AP 107 : (1968) CriLJ 440

Hon'ble Judges : Obul Reddi, J

Bench : Single Bench

Advocate : B. Rama Rao, for N.M. Sastry, P.C. Reddy and M. Satyanarayana Reddy, P.P, for the Appellant; P. Nagaseshaiah, for the Respondent

Final Decision : Dismissed

Judgement

1. The complainant has preferred Criminal Appeal No. 75 of 1965 against the acquittal of A-2, A-4, A-5. A-6, and A-8 by the Judicial IIInd Class Magistrate, Tirupati, in C. C. No. 91 of 1963 on his file. Cri. R. C. No. 470 of 1964 is preferred by A-1 and A-3 against the judgment of the learned Sessions Judge. Chittoor. confirming the convictions and sentences awarded to them by the said Magistrate in the same case.

2. Mr. Chenna Kesava Reddy, the learned counsel appearing for the revision petitioners contended that the prosecution has not established the factum of valid marriage, and that the ceremonies required to be gone through by the couple have not been gone through, and, therefore, there is no solemnization of marriage between A-1 and A-2 and hence the petitioners (A-1 and A-3) are entitled to an acquittal

3. A-1 is the bridegroom and A-2 (since acquitted) is the bride. A-3 is the father of the bride. P. W. 5 is the priest who officiated at the marriage of A-1 and A-2. He deposed that he solemnized the marriage between 11 a.m. and 1-20 p.m.,

and that A-1 tied a Tali" to A-2. He was not aware who performed the "Kanya Danam". but he identified the persons who performed "Kanya Danam" as A-3 and A-4. A photographer was asked to come, and he took photographs. There is nothing in the evidence of P. W. 5, or in the evidence of any other witnesses to show that the couple went through any of the ceremonies or rituals that they have to go through before the marriage could be solemnized.

4. The Supreme Court in *Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another*, held:

"Section 17 provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living, and that the provisions of Sections 494 and 495 I. P. C., shall apply accordingly. The marriage between two Hindus is void in view of Section 17 if two conditions are satisfied: (i) the marriage is solemnized after the commencement of the act; (ii) at the date of such marriage, either party had a spouse living.

The word "solemnize" means, in connection with a marriage, "to celebrate the marriage with proper ceremonies and in due form", according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is "celebrated or performed with proper ceremonies and due form" it cannot be said to be "solemnized". It is, therefore, essential, for the purpose of Section 17 of the Act, that the marriage to which Section 494 I. P. C applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by law or approved by any established custom." It was further observed:

"If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law"

To the same effect is the view taken by the Supreme Court in a later decision in *Kanwal Ram and Others Vs. The Himachal Pradesh Admn.*, wherein their Lordships observed that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies, constituting it, must be proved Admission of marriage ,by the accused is not evidence of it for the purpose of proving marriage, in an adultery or bigamy case.

It was further laid down that where in prosecution for offences under Ss. 494/109 I. P. C. the evidence of the witness called to prove the marriage ceremonies, showed that the essential ceremonies had not been performed, the conviction of the accused persons on statement of the alleged bridegroom that he had sexual relationship with the alleged bride and on admission of the accused in a written statement that the parties married after the first marriage was dissolved, was not justified.

5. In the instant case, the evidence of P. W. 5, the priest, and also the evidence of the other witnesses does not indicate that the couple went through the required ceremonies. Mere tying of "Tali" is not enough to establish that the marriage has been solemnised. The Supreme Court in *Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another*, referred to supra, extracted a passage from Mulla, which is to the following effect:

"There are two ceremonies essential to the validity of a marriage, whether the marriage be in the Brahma form or the Asura form, namely:

(1) invocation before the sacred fire, and

(2) saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire." These two essentials are absent in the instant case, and, therefore, the marriage between "A-1 and A-2 was not a marriage in the proper form and hence it has to be held that the marriage has not been solemnized. The convictions and sentences of A-1 and A-3 are, therefore, set aside, and the revision is allowed. The appeal against acquittal preferred by the complainant is dismissed.