Gopal Lal vs State Of Rajasthan on 30 January, 1979

Equivalent citations: 1979 AIR 713, 1979 SCR (2)1171, AIR 1979 SUPREME COURT 713, (1979) 2 SCC 170, 1979 HINDULR 636, 1979 CRILR(SC MAH GUJ) 255, (1979) 2 SCJ 25, (1979) CURLJ(CCR) 144, (1979) MARRILJ 294, (1979) 2 SCR 1171 (SC), 1979 CRI APP R (SC) 166, 1979 SCC(CRI) 401, 1979 MADLJ(CRI) 480, 1978 HINDULR 636 (SC), (1979) MADLW(CRI) 222, (1979) WLN 81 (SC), (1979) ALLCRIC 115, 1979 CHANDLR(CIV&CRI) 177, (1979) MATLR 217

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A.D. Koshal

PETITIONER:
GOPAL LAL

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT30/01/1979

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1979 AIR 713 1979 SCR (2)1171
1979 SCC (2) 170

ACT:
Bigamy, offence of under section 494 I.P.C.-Admission and legal evidence of actual marriage by custom of nata marriage attracts the provisions of section 494 I.P.C.

Nata marriage by customs and therefore void under section 17 of the Hindu Marriage Act, 1955-Whether voidness of a marriage under section 17 of the H.M.A., 1955 disattracts the applicability of the provisions of section 494 I.P.C.

HEADNOTE:

After having fallen out and parted company with his wife Kanchan in the year 1963, the appellant, belonging to Telli community contracted a second marriage prevalent amongst his community with Gopi on 20th March 1969. A complaint filed by his first wife ended in his conviction under section 494 I.P.C. and sentence of two years R.I. and a fine of Rs. 2,000/-, the conviction and sentence having been upheld by the Rajasthan High Court.

Dismissing the appeal by special leave, the Court,

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HELD: 1. The second marriage was a valid marriage according to the custom of the nata marriage prevalent in the Telli community which requires the following two essential ceremonies:-

(a) that the husband should take a pitcher full of water from the head of the prospective wife, and

(b) that the wife should wear chura by the husband.

The prosecution through PWs. 2, 3, 4 and 5 having proved that these ceremonies have been duly performed, that there was such a custom which requires the said ceremonies having been admitted by the defence witnesses 3 and 5 and the validity of the first marriage not having been disputed, Section 494 I.P.C. applies in terms and the appellant must be held to have committed the offence of Bigamy as contemplated by section 494 I.P.C. [1176A-E]

2. The combined effect of section 17 of the Hindu Marriage Act and section 494 I.P.C. is that when a person contracts a second marriage after the coming into force of the said Act while the first marriage is subsisting, such a person commits the offence of bigamy. [1174 E]

Section 17 of the Hindu Marriage Act, 1955 makes it absolutely clear that the provision has to be read in harmony and conjunction with the provisions of section 494 I.P.C., the essential ingredients of which are: (i) that the accused spouse must have contracted the first marriage (ii) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and (iii) that both the marriages must be valid in the sense that the necessary

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ceremonies required by the personal law governing the parties had been duly performed and (iv) the second marriage must have become void by virtue of the fact that it had taken place in the life time of one of the spouses. [1173F-H]

3. Where a spouse contracts a second marriage while the first marriage is still subsisting the spouse would be guilty of bigamy under section 494, I.P.C. if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed. The voidness of the marriage under

section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of section 494 because the second marriage will became void only because of the provisions of section 17 of the Hindu Marriage Act. Therefore, the contention that the second marriage being void section 494 I.P.C. will have no application is not correct. [1175F-G]

Bhaurao Shankar Lokhande and Anr. v. State of Maharashtra and Ors., [1965]2 S.C.R. 837; Kanwal Ram and Ors. v. The Himachal Pradesh Administration, [1966]1 S.C.R. 539 and Priya Bala Ghosh v. Suresh Chandra Ghosh; [1973]3 S.C.R. 961 applied.

[Bigamy being a serious offence for which the maximum punishment is seven years, the Court while maintaining the conviction reduced the sentence to one year.]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 255 of 1973.

Appeal by Special Leave from the Judgment and Order dated 16-7-73 of the Rajasthan High Court in S.B. Crl. Revn. No. 309/73.

A. N. Mulla and B. P. Singh for the Appellant. Sobhag Mal Jain and S. K. Jain for the Respsondent. The Judgment of the Court was delivered by FAZAL ALI, J.-This appeal by special leave is directed against a judgment of the Rajasthan High Court by which the conviction of the appellant under Section 494 I.P.C. and sentence of two years rigorous imprisonment and fine of Rs. 2,000/- have been upheld. The facts of this case have been detailed in the judgments of the courts below and it is not necessary to repeat them. Suffice it to say that the accused Gopal Lal married the complainant Kanchan sometime in the year, 1963 and a child was born out of this wedlock. Soon thereafter the parties appeared to have fallen out and parted company. While the first marriage was subsisting Gopal Lal contracted a second marriage which according to the custom prevalent amongst Tellis is a valid marriage commonly known as nata marriage. This marriage was contracted on 20th of March, 1969. The complainant Kanchan, the first wife having come to know about this marriage filed a complaint on the 22nd March, 1969, on the basis of which appellant was prosecuted and ultimately convicted as mentioned above.

Mr. A. N. Mulla, learned counsel for the appellant, had submitted two points before us. In the first place it was contended that in view of the provisions of Section 17 of the Hindu Marriage Act, the second marriage being a void marriage, the provisions of Section 494 I.P.C. are not attracted at all. We have given our anxious consideration to this argument but we are of the opinion that the argument is wholly untenable. Section 494 runs thus:

> "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.
>
> Exception-This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge".

The essential ingredients of this offence are:

> (1) that the accused spouse must have contracted the first marriage.
>
> (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage and (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.

It may also be noticed that Section 494 I.P.C. would come into play only if the second marriage becomes void by virtue of the fact that it had taken place in the life time of one of the spouses. Thus, it is not possible to accede to the contention of Mr. Mulla that merely because the second marriage was void under Section 17 of the Hindu Marriage Act hence Section 494 I.P.C. would not be attracted. Section 17 of the Hindu Marriage Act runs thus:

> "Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly".

What Section 17 contemplates is that the second marriage must be according to the ceremonies required by law. If the marriage is void its voidness would only lead to civil consequences arising from such marriage. Section 17 makes it absolutely clear that the provision has to be read in harmony and conjunction with the provisions of Section 494 of the Penal Code which has been extracted above. Section 17 clearly provides that provisions of Sections 494 and 495 of the Penal Code shall apply accordingly. In other words though the marriage may be void under Section 17, by reason of the fact that it was contracted while the first marriage was subsisting the case squarely falls within the four corners of Section 494 and by contracting the second marriage the accused incurs the penalty imposed by the said statute. Thus the combined effect of Section 17 of Hindu Marriage Act and Section 494 I.P.C. is that when a person contracts a second marriage after the coming into force of the said Act, while the first marriage is subsisting he commits the offence of bigamy. (Emphasis ours). This matter no longer res integra as it concluded by a decision of this

Court in Bhaurao Shankar Lokhande and Anr. v. State of Maharashtra & Anr.(1) This Court while considering the question of bigamy qua the provisions of Section 17 observed as follows:

> "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 ss. 494 and 495 I.P.C. shall apply accordingly. The marriage between two Hindus is void in view of s. 17 if two conditions are satisfied: (i) the marriage is solemnized after the commencement of the Act;
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> (ii) at the date of such marriage, either party had a spouse living. If the marriage which took place between the appellant and Kamlabai in February 1962 cannot be said to be 'solemnized', that marriage will not be void by virtue of s. 17 of the Act and s. 494 I.P.C. will not apply to such parties to the marriage as 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 in due form' it cannot be said to be 'solemnized'. It is therefore essential, for the purpose of s. 17 of the Act that the marriage to which s. 494 I.P.C. applies on account of the provisions of the Act should have been celebrated with proper ceremonies and in due form".

It was thus pointed out by this Court that Section 17 of the Hindu Marriage Act requires that the marriage must be properly solemnized in the sense that the necessary ceremonies required by law or by custom must be duly performed. Once these ceremonies are proved to have been performed the marriage become properly solemnized and if contracted while the first marriage is still subsisting the provisions of Section 494 will apply automatically. In a decision of this Court in Kanwal Ram & Ors. v. The Himachal Pradesh Administration the earlier case was noticed by the Court and relied upon. The matter has also been fully discussed in Priya Bala Ghosh v. Suresh Chandra Ghosh. In view of the authorities of this Court, therefore, the following position emerges: where a spouse contracts a second marriage while the first marriage is still subsisting the spouse would be guilty of bigamy under Section 494 if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed. The voidness of the marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section 494 because the second marriage will become void only because of the provisions of Section 17 of the Hindu Marriage Act. In these circumstances, therefore, we are unable to accept the contention of Mr. Mulla that the second marriage being void Section 494 will have no application. It was next contended by Mr. Mulla that there is no legal evidence to show that the second marriage which is said to be a nata marriage was actually performed. We are afraid, we are unable to go into this question because three courts have concurrently found as a fact that the parties were governed by custom of nata marriage and the two essential ceremonies of this marriage are:

> (1) that the husband should take a pitcher full of water from the head of the prospective wife;

(2) that the wife should wear chura by the husband.

There is evidence of P.Ws. 2, 3, 4 and 5 who have proved fact that these ceremonies had been duly performed in their presence. That there was such a custom which requires these ceremonies was admitted by D.Ws. 3 and 5 who were examined by the appellant. The evidence led by the prosecution has been accepted by the High Court and the courts below and after perusing the evidence we are not in a position to hold that the finding of facts arrived by the courts below are wrong in law or perverse. From the evidence led by the prosecution, therefore, it has been clearly established that the second marriage which was performed by the appellant Gopal Lal with Gopi was a valid marriage according to the custom of the nata marriage prevalent in the Telli community to which the appellant belonged. This being so and the validity of the first marriage not having been disputed, Section 494 I.P.C. applies in terms and the appellant must be held to have committed the offence of bigamy as contemplated by Section 494 I.P.C. Lastly, Mr. Mulla pressed this appeal on the question of sentence. Bigamy is a serious offence and the maximum punishment under Section 494 is seven years. Therefore, where the offence of bigamy is proved the Court cannot take a very lenient view. In the instant case the appellant was sentenced to two years and a fine of Rs. 2,000/-. It appears that the appellant has already paid a fine of Rs. 2,000/-. In these circumstances, therefore, we feel that the ends of justice will be met by reducing the sentence of imprisonment from two years to one year but maintaining the sentence of fine. With this modification the appeal is dismissed. The appellant will now surrender and serve out the remaining portion of the sentence.

S.R. Appeal dismissed.