

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1156 of 2006

DIPAK MAHATA
VS.
SUSOMA MAHATA

For the Petitioner	: Mr. Milon Mukherjee, Sr. Adv. Mr. S. Sarkar, Adv.
For the O.P.	: Mr. Prabir Kr. Chatterjee, Adv.
For the State	: Mr. Binay Kumar Panda, Adv. Mr. P. Bose, Adv.
Hearing concluded on	: 21 st March, 2023
Judgement on	: 30 th March, 2023

Siddhartha Roy Chowdhury, J.:

1. This revisional application challenges the judgement passed by learned Judge, Special Court-cum-Additional Sessions Judge, Durgapur in Criminal Appeal No. 3 of 2005 dated 31st March, 2006 thereby affirming the judgement and order of conviction passed by Sub-Divisional Judicial Magistrate, Durgapur (as then was) in connection with Complaint Case being C.R. Case No. 339 of 1994 recording an order of conviction against Dipak Mahata for committing offence within the meaning of Section 494 of the Indian Penal Code and sentenced him to suffer imprisonment for three years and to pay fine of Rs. 3000/- with default clause.

2. Briefly stated, the opposite party Smt. Susoma Mahata filed a petition of complaint stating, *inter alia*, that she was married to the petitioner Dipak Mahata on 19th July, 1990 according to Hindu Rites and Customs and in the wedlock a daughter was born to them on 8th August, 1991. The complainant was subjected to torture both physically and mentally by the mother and brother of her husband in order to make her fetch more dowry and on 19th February, 1993 she was driven out of her matrimonial home. On 21st April, 1994, her husband married Rina Mishra for the second time following Hindu Rites and Customs. Learned Sub-Divisional Judicial Magistrate was pleased to take cognizance of the offence and was pleased to issue process.
3. Dipak Mahata, the petitioner before this Court stood trial pleading his innocence. All 9 persons were examined as witnesses on behalf of the complainant. After considering the evidence on record learned Trial Court was pleased to pass the order of conviction. The accused person made an unsuccessful attempt to get the order of conviction reversed.
4. Assailing the impugned judgement Mr. Milon Mukherjee, learned Senior Counsel submits that in order to prove the charge under Section 494 of the I.P.C. the complainant is under obligation to prove both the marriages beyond reasonable doubt.
5. Drawing my attention to the impugned judgement Mr. Mukherjee submits that P.W. 1 stated that Saptapadi was performed during second marriage but she was not present when the alleged second

marriage took place. Therefore, learned Trial Court capers the conclusion on the basis of oral evidence which was not direct. Apart from P.W. 1, P.W. 7 is the person who spoke about seven steps before sacred fire and none of the other witnesses allegedly present at the time of marriage. Therefore, according to Mr. Mukherjee, the alleged second marriage cannot be said to have been proved beyond reasonable doubt which is sufficient to reverse the order of conviction.

6. Refuting such contention Mr. Prabir Kr. Chatterjee, learned Counsel for the opposite party submits that in view of the concurrent findings of both the Courts below there is hardly any room before this Court to interfere with such findings of learned Courts below. It is further contended that in CRR 1498 of 2002, Hon'ble Justice P.N. Sinha observed that evidence of P.W. 1, 2 and 4 that the second marriage of Dipak Mahata was performed with Rina Mishra according to Hindu rites and rituals. So there is no need of recall to recall P.W. 3 for of re-examination of the said witnesses. Therefore, second marriage, after concurrent findings of learned Courts below should be considered to have been proved. Mr. Chatterjee, learned Counsel for the opposite party, however, submits that apart from P.W. 1, P.W. 7 stated in detail about the performance of religious rites and rituals required to prove Hindu marriage including seven steps before sacred fire. It is settled principle of law that evidence of solitary witness is sufficient to record an order of conviction if that evidence inspires confidence. To buttress his contention Mr. Chatterjee placed his reliance upon the judgement pronounced by Hon'ble Supreme Court

in ***Kartik Malhar vs. State of Bihar*** reported in **AIR 1995 SCW 4540**, ***Binay Kumar Singh vs. State of Bihar*** reported in **AIR 1997 SC 332**, ***Kunju vs. State of Tamil Nadu*** reported in **AIR 2008 SC 1381**.

7. It is further submitted by Mr. Chatterjee that inherent jurisdiction conferred under Section 482 of the Cr.P.C. can be exercised by this Court to quash the proceeding either to prevent the abuse of process of law or to secure ends of justice. Keeping in view the concurrent findings of learned Courts below, provision of Section 482 of the Code of Criminal Procedure Code may not be invoked in this case.
8. In order to attract the provision of Section 494 of the I.P.C. both the marriages must have to be proved as valid in the sense that necessary ceremonies required by personal law governing the parties must have been duly performed. In this regard, we can rely upon the decision of Hon'ble Apex Court pronounced in the case of ***Gopal Lal vs. State of Rajasthan*** reported in **AIR 1979 SC 713**.
9. In order to prove an offence under Section 494 of the I.P.C. the prosecution is to prove: (1) The accused person must have contracted first marriage. (2) That while the first marriage was subsisting the spouse concerned must have contracted a second marriage. (3) Both the marriages must be valid in the sense that necessary ceremonies required by personal law governing the parties had been duly performed.
10. In this case the allegation is that the petitioner Dipak married for the second time and such marriage was solemnized at Kalyaniswari

temple. The witness P.W. 7, Debabrata Das stated that he along with Pranab Bhattacharjee, Amal Das and Prabir Bhandari went to Kalyaniswari temple and there they found Dipak with Rina Mishra. Dipak married Rina at the temple ignoring the protest raised by them. So is the evidence of Pranab Bhattacharjee, P.W. 4. P.W. 2 Dilip Deoghoria is the head priest of Kalyaniswari temple who issued a certificate Exhibit-2 and also produced a register to substantiate fact that on 21st April, 1994, marriage was solemnized between Dipak and Rina at Kalyaniswari temple. Badal Mishra put his signature on the register on behalf of the Rina. The certificate was admitted into evidence as Exhibit-2. P.W. 3 Debasis Roy Chowdhury claimed to have presided over the marriage ceremony between Rina and Dipak.

11. Section 7 of the Hindu Marriage Act lays down the ceremonies for a Hindu marriage.

“Section 7 in The Hindu Marriage Act, 1955

7 Ceremonies for a Hindu marriage.

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptpadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

12. That apart it goes without saying that evidence should be considered from the point of view of human probability. From the attending facts of the case, it is admitted that P.W. 1, the complainant was not present at the temple on 21st April, 1994. Her brother and his friends were present. They were chance witnesses, who having

reached Kalyaniswari temple to offer Puja, found that Dipak was about to marry Rina.

13. The witness P.W. 7 and P.W. 8 stated to have voiced their protest.

When the temple authority maintains the record of marriage, there is every reason to presume that objection claimed to have been raised by the elder brother of the complainant and his friends would have had an impact. Had there been any such hue and cry or protest, the temple authority would not have allowed the second marriage to perform. Evidence of P.W. 2 and P.W. 3 are silent on this aspect. Exhibit-2, the certificate issued by the head priest of the temple, is not sufficient to prove a marriage for the purpose of a proceeding under Section 494 of the I.P.C. P.W. 3 who presided over the marriage did not say anything that would satisfy the ingredient of Section 7 of the Hindu Marriage Act. P.W. 7 is not the witness of sterling quality. In absence of any statement either from P.W. 2 or P.W. 3 the priests of the temple, supporting the testimony of P.W. 4, P.W. 7 and P.W. 8 do not inspire confidence in me. Looking at the evidence from the point of view of human probability, I find it absolutely difficult to accept the claim of P.W. 7 and P.W. 8 regarding their presence at the temple on 21st April, 1994 only to witness the second marriage to be performed that too ignoring their protest.

14. It is trite to say that Evidence Act does not require any particular number of witnesses to prove any charge or any fact in issue. A solitary witness can be relied upon to record an order of conviction if it inspires the confidence in Court.

15. In my humble opinion, the second marriage cannot be said to have been proved beyond reasonable doubt and as such order of conviction under Section 494 of the I.P.C. cannot be sustained. In order to secure ends of justice, I am inclined to invoke the provision of Section 482 of the Code of Criminal Procedure to set aside the judgement and order impugned.
16. Consequently, the revisional application succeeds. Dipak Mahata is found not guilty to the charge under Section 494 of the I.P.C. He be set at liberty and be released from bail bond subject to execution of bond under Section 437A of the Cr.P.C. for six months.
17. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court for information and necessary compliance.
18. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)