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SMT. LAXMI DEVI .

v.

SATYA NARAYAN AND ORS.

AUGUST 9, 1994

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[P.B. SAWANT AND S. MOHAN, JJ.]

*Indian Penal Code 1860—Section 494—Bigamy—‘Saptapadi’ Essential ceremony of Hindu marriage—Absence of proof—Factum of second marriage cannot be held to have been made out.*

C

*Constitution of India—Art. 142—Indian Penal Code, 1860—Section 494—Bigamy—Factum of second marriage not proved—Husband living with alleged second wife—Award of Compensation to first wife in order to do complete justice—Awarded.*

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The first respondent was charged with bigamy an offence punishable under Section 494 IPC. The Trial Court held that the prosecution had not proved through proper witnesses ‘Saptapadi’ to establish the factum of second marriage of accused. The High Court found that it was not a fit case for grant of leave to appeal. The present appeal is filed against the impugned order.

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In criminal appeal it was contended that though ‘Saptapadi’ has not been proved, there is enough evidence to establish the factum of second marriage and this is enough to bring out the charge. The respondents contended that it is ‘Saptapadi’ which establishes the factum of marriage, being an essential ceremony and without proof of such a ceremony, a case for bigamy cannot arise.

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Disposing of the matter, this Court

HELD : 1.1. In the absence of proof of such a ceremony of ‘Saptapadi’, the factum of second marriage cannot be held to have been made out.

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[493-G]

*Kanwal Ram v. H.P. Administration, AIR (1966) SC 614 and Priya Bal v. Suresh Chandra, AIR (1971) SC 1153, relied on.*

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1.2. In the instant case, the first respondent is undoubtedly living with respondent no. 4 as husband and wife. Merely because the appellant

is not in a position to prove the factum of second marriage punishable under Section 494 of the Indian Penal Code that does not mean the appellant should be left in the lurch. Exercising powers under Article 142 of the constitution of India appellant is awarded compensation which will bring some solace when her life is dimly dark. The compensation of Rs. 25,000 shall be paid by the accused to the appellant. [493-H; 494-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 314 of 1981.

From the Judgment and Order dated 18.7.78 of the Rajasthan High Court in S.B. Crl. Leave to Appeal No. 107 of 1978.

Goodwill Indeevar for the Appellant

Vashnu Mathur and B.S. Jain for the Respondents.

The Judgment of the Court was delivered by

MOHAN, J. The first respondent was charged for an offence under Section 494 I.P.C., respondent No. 7 under Section 494 read with Section 109 of I.P.C. and respondent Nos. 2 to 6 and 8-9 under Section 494 read with Section 120B of I.P.C. The trial took place before Judicial Magistrate No. 1, Bikaner. It was held that the prosecution had not proved through proper witnesses 'Sapatpadi' to establish the factum of second marriage of accused (respondent No. 1). The High Court found that it was not a fit case for grant of leave to appeal. Thus, the present criminal appeal against the impugned order dt. 18.7.1978 was passed by High Court.

The only point urged before us is that though 'Sapatpadi' a fact has not been proved, there is enough evidence to establish the factum of second marriage. There are eye witnesses who have seen the marriage. That is enough to bring out the charge. The principle relating to 'Sapatpadi' taking of seven steps before the sacred fire cannot be insisted upon if as of fact marriage is established. Therefore the courts below are wrong.

The learned counsel for the respondents would urge that the courts below have correctly appreciated the legal position. It is 'Sapatadi' which establishes the factum of marriage, being an essential ceremony. Without proof of such a ceremony, a case for bigamy cannot arise.

A We have carefully gone through the evidence. The evidence of PW2 to PW5 does not establish the essential ceremony of marriage viz. 'sapatpadi'.

This Court in *Kanwal Ram v. H.P. Administration*, AIR 1966 SC 614 has held as under :

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"It was contended for the appellants that this evidence was not enough to show that the marriage of Kubja and Kanwal Ram can be said to have been performed. We think this contention is justified. In *Bhaurao Shankar Lokhande v. State of Maharashtra*, Crl. Appeal No. 178 of 1963, unreported; (Since reported in AIR (1985) SC 1564), this Court held that a marriage is not proved unless the essential ceremonies required for its solemnisation are proved to have been performed. The evidence of the witness called to prove the marriage ceremonies, showed that the essential ceremonies had not been performed. So that evidence cannot justify the conviction. The trial Court also took the same view. The learned Judicial Commissioner does not seem to have taken a different view.

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The learned Judicial Commissioner, however, though that apart from the evidence about the marriage ceremonies earlier mentioned there was other evidence which would prove the second marriage. He first referred to a statement by the appellant Kanwal Ram that he had sexual relationship with Kubja."

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The same principle is reiterated in *Priya Bal v. Suresh Chandra*, AIR (1971) SC 1153 as under :

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"According to Mr. Majumdar, when once the priest has given evidence to the effect that the marriage between the respondent and Sandhya Rani has been performed, it follows that all the essential ceremonies that are necessary to constitute a valid marriage must be presumed to have been performed. In any event, when there is evidence to show that the marriage as a fact has taken place according to law. In this connection Mr. Majumdar referred us to various English decisions where on the basis of certain evidence regarding the taking place of marriage between the parties a presumption has been drawn that the marriage must

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have been solemnized according to law. In our opinion, it is unnecessary to refer to those cases cited by the learned counsel as the position is concluded against the appellant by the decisions of this Court on both points. Section 5 of the Act lays down conditions for a Hindu Marriage. It will be seen that one of the conditions is that referred to in Clause (i) namely, that neither of the parties has a spouse living at the time of the marriage. Section 7 dealing with the ceremonies for Hindu Marriage is as follows :

"Section 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 Saptapadi (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."

We have pointed out that in the case before us both sides were agreed that according to the law prevalent amongst them *Homa and Saptapadi were essential rites to be performed for solemnization of the marriage and there is no specific evidence regarding the performance of these essential rites*. The parties have also not proved that they are governed by any custom under which these essential ceremonies need not be performed.

To conclude, we have already referred to the fact that both the learned Sessions Judge and the High Court have categorically found that the Homa and Sapatpadi are the essential rites for a marriage according to the law governing the parties and that there is no evidence that these two essential ceremonies have been performed when the respondent is stated to have married Sandhya Rani." (Emphasis supplied)

The position is similar in this case. In the absence of proof of such a ceremony the factum of second marriage cannot be held to have been made out.

Though we have come to the above conclusion, the first respondent is undoubtedly living with Bimla, Respondent No. 4 as husband and wife.

- A Merely because the appellant is not in a position to prove the factum of second marriage punishable under Section 494 of the Indian Penal Code that does not mean the appellant should be left in the lurch. Exercising our powers under Article 142 of the Constitution of India we think appellant should be awarded compensation which will bring some solace when her life is dismally dark. Therefore, we quantify the compensation at Rs. 25,000
- B which shall be paid by the first respondent to the appellant within eight weeks from today.

In the result, the criminal appeal is disposed of in the above terms.

A.G.

Appeal disposed of.