A

KANWAL RAM AND ORS.

v.

THE HIMACHAL PRADESH ADMN.

August 19, 1965

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[A. K. SARKAR, RAGHUBAR DAYAL AND V. RAMASWAMI, JJ.]

Indian Penal Code (Act 45 of 1860), ss. 494, 109—Bigamy and abetment thereof—Admission of accused whether sufficient proof of second marriage.

K, a woman, was alleged to have married a second time in contravention of the provisions of the Hindu Marriage Act. 1955 and was found guilty, alongwith the alleged second husband, of an offence under s. 494 of the Indian Penal Code. Two of her relatives were convicted for abetment of the above offence. The Trial Court as well as the judicial Commissioner of Himachal Pradesh held that the evidence of the only witness who was produced to prove the second marriage, fell short of proving it. But the Judicial Commissioner convicted the appellants on certain admissions of K and the alleged second husband. In appeal to this Court,

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HELD : In a bigamy case the second marriage has to be proved as a fact. The necessary ceremonies must be proved to have been performed. Admission of marriage by the accused is not evidence of it for the purpose of proving an offence of bigamy or adultery. [541 F-G]

Bhaurao Shankar Lokhande v. *State of Maharashtra,* [1965] 2 S.C.R. 837, relied on.

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Empress v. *Pitambur Singh,* (1880) I.L.R. 5 Cal. 566, *Empress* v. *Kallu,* (1882) I.L.R. 5 All. 233 and *Morris* v. *Miller,* 4 Burr 2057—98 E.R. 73, referred to.

R. v. *Robinson,* (1938) 1 A.E.R. 301, distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 167 of 1963.

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Appeal by special leave from the judgment and order dated July 31, 1963, of the Judicial Commissioner's Court Himachal Pradesh, in Criminal Appeal No. 7 of 1963.

S. C. Agarwala, R. K. Garg and *D. P. Singh,* for the appellants.

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K. L. Hathi and *B. R. G. K. Achar,* for the respondent.

The Judgment of the Court was delivered by

Sarkar J. This appeal arises out of a conviction for bigamy and for the abetment of it under ss. 194 and 109 of the Indian Penal Code. The trial Court acquitted the accused persons but on appeal the Judicial Commissioner of Himachal Pradesh convicted them. Hence this appeal.

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Originally four persons were charged, namely, Kubja the bride, Kanwal Ram the bridegroom, Hira Nand and Seesia both relations of the bride, the latter two having been charged under s. 494 read with s. 109 for abetment of the offence of bigamy committed by the two first mentioned accused. The charges were framed on the complaint of Sadh Ram to whom Kubja had been earlier married. The complainant had also implicated Hiroo, the mother of Kubja but she was discharged by the magistrate. Hira Nand died pending the appeal in this Court.

Sadh Ram was married to Kubja sometime in 1940-41. The marriage between the appellant Kanwal Ram and Kubja is said to have taken place in September 1955. By this time the Hindu Marriage Act, 1955 had come into force and it prohibited the marriage of a Hindu during the lifetime of his or her spouse. The parties belong to a village in Himachal Pradesh among whom a customary form of marriage called Praina, is recognised. Both the marriages were performed according to that form. The marriage of Kubja with Sadh Ram though originally challenged is now accepted. The only question is whether the second marriage of Kubja, that is to say, between Kubja and Kanwal Ram, has been proved.

The evidence would show that for a marriage in this form the following ceremonies are essential. First some agnatic relation of the bridegroom goes to the bride's house and offers her "suhag". Thereafter, a relation of the bride who is called Prainu, brings her to the house of the bridegroom. There at the door of the house of the bridegroom coins are put in a pot and then Puja and Katha (reading of holy scriptures) are held. The bride then picks up the pot and takes that to the family hearth and bows there. Then she makes obeisance to the father-in-law and the mother-in-law and other elders in the family. Lastly, with feasting the ceremonies end. The complainant Sadh Ram himself admitted that puja at the entrace and bowing at the hearth by the bride after she had picked up the pot were compulsory ceremonies. He added, "If any one of these ceremonies is not performed, then the marriage is not complete."

Now all that the only witness who spoke about the ceremonies observed at the marriage of Kubja and Kanwal Ram said was that Seesia had brought the suhag and Hira Nand acted as Prainu. He does not mention any of the other ceremonies to which we have earlier referred.

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. *The State of Maharashtra*(1) 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.

The learned Judicial Commissioner, however, thought 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. We are entirely unable to agree that this, even if true, would at all prove his marriage with Kubja. Then the learned Judicial Commissioner relied on a statement filed by Kubja, Hira Nand and Hiroo in answer to an application for restitution of conjugal rights filed by Sadh Ram against Kubja and others, in which it was stated that Kubja married Kanwal Ram after her marriage with Sadh Ram had been dissolved. Now the statement admitting the second marriage by these persons is certainly not evidence of the marriage so far as Kanwal Ram and Seesia are concerned; they did not make it. Nor do we think, it is evidence of the marriage even as against Kubja. First, treated as an admission, the entire document has to be read as a whole and that would prove the dissolution of the first marriage of Kubja which would make the second marriage innocent. Secondly, it is clear that in law such admission is not evidence of the fact of the second marriage having taken place. In a bigamy case, the second marriage as a fact, that is to say, the ceremonies constituting it, must be proved : *Empress* v. *Pitambur Singh*(2), *Empress* v. *Kallu*(3), Archbold Criminal Pleading Evidence and Practice (35th ed.) Art. 3796. In *Kallu's*(3) case and in *Morris* v. *Miller*(4) it has been held that admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultry or bigamy case : *see* also Archbold Criminal Pleading Evidence and Practice (35th ed.) Art. 3781. We are unable,

(1) [1965] 2 S.C.R. 837.
(2) [1880] I.L.R. 5 Cal. 566.
(3) [1882] I.L.R. 5 All. 233.
(4) 4 Burr 2057 : 98 E.R. 73.

therefore, to think that the written statement of Kubja affords any assistance towards proving her marriage with Kanwal Ram. A

Learned counsel for the respondent state drew our attention to *R.* v. *Robinson*(1) in support of his contention that it is not necessary to prove that all the ceremonies required for the particular form of marriage had been observed. We do not think the case supports that proposition. There the second marriage had been performed according to a Scottish custom observing all the necessary formalities. It appeared however that in order to be able to contract a marriage in that form one of the parties to it had to reside in Scotland for twenty-one days which none of the parties to the second marriage in that case had done. It was, therefore, held that the marriage was not valid and the decision was that this invalidity of the marriage did not affect the liability for bigamy. It was said that the validity of the second marriage did not signify. The judgment pointed out that the previous marriage always rendered the second marriage invalid. Reference was made there to *R. V. Allen*(2) for the proposition that the contracting of a second marriage in an offence of bigamy meant only going through the form and ceremony of marriage with another person. It was there found that the form adopted by the parties was clearly recognised by law as capable of producing a valid marriage. This form having been observed, the court upheld the conviction for bigamy though the marriage turned out to be invalid by reason of the absence of the necessary condition precedent as to residence for twenty-one days in Scotland. This case does not show that if the formalities required to create a valid marriage had not been observed. a conviction would have resulted. Indeed in *Lokhande's* case(3) this Court has held to the contrary. B C D E

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We, therefore, think that the appeal must be allowed and order accordingly. The conviction of the appellants is set aside and their bail bonds cancelled.

Appeal allowed.

(1) [1938] 1 All. E.R. 301.
(2) [1872] L.R. 1 C.C.R. 367.
(3) [1965] 3 S.C.R. 837.