A RAM CHANDRA BHAGAT

v.

STATE OF JHARKHAND

(Criminal Appeal No(s). 439 of 2006 etc.)

NOVEMBER 24, 2010

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[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860:

C *s.393 – Cohabitation caused by a man deceitfully inducing a belief of lawful marriage – Complainant and accused lived together for nine years and had two children – Accused stated to have turned the woman out of his house – Complaint by the woman that accused had given her* D *assurance to marry her and even executed an agreement to this effect – Conviction by trial court – Upheld by appellate court as also by High Court – HELD:* ***Per Katju, J*** *– When the complainant's own case is that the accused had assured her that he will marry her, it is obvious that she was not under* E *any belief that she was already married to him – A criminal statute has to be construed strictly –Unless all its ingredients are satisfied the person cannot be punished, otherwise, there will be violation of Articles 20(1) and 21 of the Constitution of India – In the instant case, as the ingredients of s. 493 are not satisfied, the appellant is entitled to acquittal –* ***Per Gyan*** F ***Sudha Misra, J*** *– The specific issue with which the Court is confronted with in the instant appeal is confined to the question as to whether the judgments and orders of the trial court, first appellate court and the High Court, which have concurrently held the appellant guilty of an offence u/s 493,* G *under the facts, circumstances and evidence of the case, are fit to be sustained or not – Ingredients of s.493, explained – There is overwhelming evidence, that the victim and the accused had cohabited for long nine years and during this period, the accused had also executed an agreement of*

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marriage and in addition had filed an application for registration of their marriage under the Special Marriage Act – Besides, in several official documents which are the voter lists of the constituency concerned for several years consecutively, she had been shown to be the wife of the accused – Thus, there was sufficient documentary evidence to induce a belief to the complainant that she had been lawfully married to the accused although they had not been married according to the rituals – s. 493 does not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony – What has been clearly laid down and emphasized is that there should be an inducement of belief in the woman that she is lawfully married to the accused, and the inducement of belief of a lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under Special Marriage Act – If the evidence on record indicate inducement of a belief in any manner in the woman which cannot possibly be enlisted but from which it can reasonably be inferred by ordinary prudence that she is a lawfully married wife of the man accused of an offence u/s 493, the same will have to be treated as sufficient material to bring home the guilt u/s 493 – Interpretation of the Section in any other manner including an assertion that the marriage should have been performed by customary rituals or in similar manner only in order to establish that a belief of marriage had been induced, is bound to frustrate the very object and purpose of the provision for which it has been incorporated in the Penal Code which is clearly to prevent the deceitful act of a man inducing the belief of a lawful marriage for the purpose of cohabitation merely to satisfy his lust for sexual pleasure – Ingredients of s.393 are clearly fulfilled in the case.

By the Court: *Since there is a difference of opinion, the matter be placed before the Chief Justice of India for sending it before another Bench.*

A *Moideenkutty Haji and others Vs. Kunhikoya and others,* **AIR 1987 Kerala 184; and** *Dr. A.N. Mukerji Vs. State*, **IR 1969 Allahabad 489 – referred to.**

Case Law Reference:

B	**AIR 1987 Kerala 184**	**referred to**	**para 14**
	AIR 1969 Allahabad 489	**referred to**	**para 14**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 439 of 2006.

C

From the Judgment & Order dated 08.09.2005 of the High Court of Jharkhand at Ranchi in Cr. Rev. No. 788 of 2005.

Deba Prasad Mukherjee for the Appellant.

D Ratan Kumar Chaudhari for the Respondent.

The following orders of the Court was delivered

O R D E R

E **Per Hon'ble Mr. Justice Markandey Katju**

1. Heard learned counsel for the parties.

2. The separation of law from morality by the British positivist jurists Bentham and Austin was a great advance in F legal history.

3. The oft quoted story in this connection is of the famous Lord Chancellor of England Sir Thomas More (1478-1535) who once went for a walk on a street in London with his daughter G Margaret and her husband Roper. On seeing a man running on the street Margaret told Sir Thomas "Father, get that man arrested".

When Sir Thomas asked why, she replied "Because he is H a bad man."

Sir Thomas then asked "But which law has he broken?" to which she replied "He has broken the law of God". A

Sir Thomas then said "Then let God arrest him. I arrest a man only if he has broken a law of Parliament."

4. Often an act may be regarded as immoral by society, but it may not be illegal. To be illegal the act must clearly attract some specific provision of the Penal Code, or some other statute. This case illustrates the point. B

5. This appeal has been filed against the impugned judgment and order of the High Court of Jharkhand dated 8.9.2005. By the impugned judgment the appellant's conviction under Section 493 IPC by the trial Court has been upheld. C

6. Section 493 of the Indian Penal Code states as under:- D

"Section 493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, E shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

7. The facts of the present case are that the complainant F was employed in the Sub Divisional Agriculture office General) at Lohardaga in the year 1981. She got acquainted with the appellant herein and they developed intimate relationship so much as that for nine years they cohabited together and had two children – a son and a daughter. Thereafter, it is alleged G that the appellant turned the lady out of his house.

8. The complainant alleged that the appellant had given her assurance to marry her and even executed an agreement to this effect on 4.6.1990. The appellant has disputed this agreement. H

A 9. There is no finding by the courts below that by deceit the appellant caused the complainant to believe that she is lawfully married to him. Rather the allegation of the complainant is that the appellant assured her that he would marry her and even entered into an agreement to that effect, though that B agreement has been disputed. *When the complainant's own case is that the accused had assured her that he will marry her it is obvious that she was not under any belief that she was already married to him.*

C 10. Section 7 of the Hindu Marriage Act, 1955 reads as under :-

"Section 7. Ceremonies for a Hindu Marriage -

(1) A Hindu marriage may be solemnized in D 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 E fire), the marriage becomes complete and binding when the seventh step is taken."

11. Thus a Hindu marriage can be solemnized in accordance with the customary rites and ceremonies of either F the boy's caste or the girl's caste (if it is an inter-caste Hindu marriage). There is no allegation that the appellant entered into a marriage with the complainant in accordance with Section 7(1) of the Hindu Marriage Act, rather the allegation is that he promised to marry her in future. *There is also no allegation that* G *the appellant deceived the complainant into believing that they were lawfully married e.g., by getting a ceremony performed other than that referred to under Section 7(1) or by a purported civil marriage not in accordance with the Special Marriage Act.* Hence, in my opinion, the ingredients of Section 493 IPC are H not satisfied.

12. It is true that the appellant has not behaved like a gentleman. He lived with the complainant for nine years and had two children by her, and hence as a decent person he should have married her which he did not do. However, there is a difference between law and morality, as already stated above. There are many things which are regarded by society as immoral but which may not be illegal. If we say something is illegal then we must point to some specific section of the Indian Penal Code or some other statute which has been violated. Merely saying that the person has done something improper will not necessarily make the act illegal.

13. There is a story of two of the greatest figures in law, Justice Holmes and Judge Learned Hand who once had lunch together. Afterwards, as Holmes began to drive off in his carriage, Hand, in a sudden onset of enthusiasm, ran after him, crying "Do justice, Sir, do justice." Holmes stopped the carriage and reproved Hand : "That is not my job. It is my job to apply the law." (see 'The Tempting of America', by Robert Bork).

14. In the present case it can be said that the appellant has not behaved like a decent man but, in my opinion, Section 493 IPC is not attracted. The view I have taken is supported by the decisions in *Moideenkutty Haji and others Vs. Kunhikoya and others,* AIR 1987 Kerala 184 and *Dr. A.N. Mukerji Vs. State,* AIR 1969 Allahabad 489.

15. A criminal statute has to be construed strictly. Unless all its ingredients are satisfied the person cannot be punished, otherwise there will be violation of Articles 20(1) and 21 of the Constitution. In the present case since the ingredients of Section 493 are not satisfied the appellant is entitled to acquittal.

16. However, since my learned sister Hon'ble Mrs. Justice Gyan Sudha Misra has a different view, let the papers of this case be placed before Hon'ble the Chief Justice of India for sending the matter before another Bench.

A **GYAN SUDHA MISRA, J.** 1. Having perused the order of my learned Brother Katju, J. in this appeal, I respectfully take a different view from the one expressed therein which holds that no offence under Section 493 IPC is made out against the appellant under the facts and circumstances of this case. While B there is no difficulty in accepting the position that law and morality might stand on a different footing although they are inextricably linked in my perception, yet I agree that legal decision cannot be based purely on morality. However, the specific issue with which we are confronted with in this appeal C is confined to the question as to whether the judgment and order of the trial court, first appellate court and the High Court which have concurrently held the appellant guilty of an offence under Section 493 IPC under the facts, circumstances and evidence of this case are fit to be sustained or not. For this purpose, I D have meticulously perused Section 493 IPC which for facility of reference and relevance, is quoted herein as follows:-

> "493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage. –Every man who by deceit causes any woman who is not lawfully married to him that E she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

2. A perusal of the aforesaid Section, clearly indicates that F every man who by deceit causes any woman who is not lawfully married wife and goes to the extent of cohabitation and also has intimate physical relationship with her and the woman submits to that man in the belief that he is his lawfully married husband, then in my considered opinion, the offence under G Section 493 IPC can be clearly held to have been made out against the accused.

3. As already indicated in the order of my learned Brother Katju, J., the accused/appellant had been living with the victim lady for a period of nine years like a normal couple which fact H has been admitted by the appellant and out of their relationship,

they also had two children. It could be further noticed that the accused/appellant during this continuance of relationship, had also filled up an application for information to Special Marriage Officer, Lohardaga under Section 5 of the Special Marriage Act regarding marriage on 13.04.1982 marked Ex.3. In addition to this, the accused/appellant had also executed an agreement for marriage certificate on 04.06.1982 on stamp paper of Rs.1.50 paise and admitted therein that he is living a normal family life as a married couple with the complainant Sunita Kumari for the last one year (which was the duration of relationship at the relevant time) and Sunita Kumari is his wife, which document has been marked as Ex.2. Further, voter list of Booth No.25 of Village Bethathat of the assembly electoral list of Lohardaga (S.T. constituency) for the year 1984 marked Ex.6, further voter list of the same village Bethathat for the year 1988 marked Ex.6/1 and still further voter list of the year 1993 of the same Village Bethathat marked Ex.6/2 indicate that the complainant Sunita Devi was shown as wife of Ram Chandra Bhagat. All these documents had been in existence to the knowledge of the accused/appellant Ram Chandra Bhagat wherein he accepted her as his wife in writing in presence of the witnesses namely Anant Kumar Das (PW-1), Laxmi Bhagat (PW-3), Tiwari Bhagat (PW-4), Birbal Bhagat (PW-5) and Sunil Kumar (PW-6). These witnesses appeared in the Court and supported the relationship of the accused/appellant Ram Chandra Bhagat with the complainant Sunita Kumari being husband and wife who lived together at different places of posting in course of service of the accused/appellant as B.D.O., particularly at Churchur Block in the District of Hazaribagh (Jharkhand) and in course of their cohabitation, a son was born. The accused/appellant had also solemnized the birth ceremony of their daughter and son alongwith the friends.

4. Thus, there were strong documentary evidence in support of the prosecution case that the accused/appellant deceitfully induced a belief of lawful marriage in the mind of the complainant victim lady that they were lawfully married so that

A she continued to live with the appellant as wife treating him to be her husband for more than nine years but the appellant later refused to accept her as his wife and drove her out. The appellant thus had deceitfully induced the complainant Sunita Kumari to believe that she was lawfully married to him as he B had executed an agreement for issuing marriage certificate (Ex.2) and also filled up application form to submit before the Special Marriage Officer (Ex.3) to give assurance to her. It is further on record that although no ceremony of marriage took place between them, but as per social custom prevailing in the C District of Lohardaga among the members of the Oraon community, if a young man lives with a young girl in his house for a long period, she is deemed to be his wife which is recognized as marriage. Thus, in view of the oral and documentary evidence on record, the ingredients under Section D 493 IPC is well established and the offence under the said Section is clearly made out against the appellant. Hence, even though the appellant and the complainant victim lady Sunita had not been married by performing any ritual, the evidence on record clearly indicate that there were overwhelming material-documentary evidence as well as customary practice to induce E a belief to the victim lady Sunita who could infer that she was lawfully married to the accused/appellant with whom she cohabited and also had physical relationship out of which the two children had been born.

F 5. We have to bear in mind that the three ingredients necessary to be established for bringing home the offence under Section 493 IPC are:-

(i) the accused practiced deception;

G (ii) such deceit was to induce a woman (complainant) to believe that she was lawfully married to him; and

(iii) there was cohabitation or sexual intercourse as a result of the deception.

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6. In my humble opinion, the aforesaid three ingredients for the offence under Section 493 IPC in the light of the evidence recorded hereinbefore, are clearly fulfilled in the present case.

7. It is no doubt true that the essence of an offence under this section consists in the practice of deception by a man on a woman, in consequence of which she is led to believe that she is lawfully married to him while in fact she is not lawfully married to him. Thus, what is required is that, by deceitful means, the accused must induce a belief of a lawful marriage and then make the woman cohabit with him. But Section 493 although emphasizes that the victim woman should be induced the belief that she is lawfully married to the accused, this Section also lays emphasis on deceit caused by the man who is not lawfully married to the victim and mere inducement of belief of a lawful marriage is sufficient to establish the guilt under Section 493 of the IPC.

8. In so far as the ingredients of a valid marriage under the Hindu Marriage Act, 1955 is concerned, we have to bear in mind that we are not dealing with a case herein where the victim lady is claiming a civil remedy viz. the right of inheritance, merely on the basis of her cohabitation with the accused/ appellant asserting it as a lawful marriage. What we are confronted to deal with in this matter, is whether the ingredients of criminal offence under Section 493 IPC can be held to have been made out so as to hold the accused/appellant guilty of an offence under Section 493 IPC despite the overwhelming evidence, that the victim lady and the appellant had openly cohabited for long nine years and during this period, the accused/appellant had also executed an agreement of marriage and in addition had filed an application for registration of their marriage under the Special Marriage Act. Besides this, in several official documents which are the voter lists of the concerned consecutively constituency for several years, she had been shown to be the wife of the accused/appellant. Thus, there

A were sufficient documentary evidence to induce a belief to the complainant lady that she had been lawfully married to the accused/appellant although they had not been married according to the rituals.

B 9. Section 493 IPC in my opinion do not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony. What has been clearly laid down and emphasized is that there should be an inducement of belief in the woman that she is lawfully married to the accused/appellant and the inducement of belief of a lawful C marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under Special Marriage Act. If the evidence on record indicate inducement of a belief in any manner in the woman which cannot possibly be enlisted but from which it can D reasonably be inferred by ordinary prudence that she is a lawfully married wife of the man accused of an offence under Section 493 IPC, the same will have to be treated as sufficient material to bring home the guilt under Section 493 IPC. Interpretation of the Section in any other manner including an E assertion that the marriage should have been performed by customary rituals or in similar manner only in order to establish that a belief of marriage had been induced, is bound to frustrate the very object and purpose of the provision for which it has been incorporated in the Indian Penal Code which is clearly to F prevent the deceitful act of a man inducing the belief of a lawful marriage for the purpose of cohabitation merely to satisfy his lust for sexual pleasure.

10. Hence, I have not been able to persuade myself to G concur with the view taken by Brother Katju, J. This appeal therefore will have to be placed before the Hon'ble Chief Justice of India for referring it to the appropriate Bench.

R.P. Matters adjourned.