



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Case Comment: Priya Bala Ghosh v Suresh Chandra Ghosh

Kavya Shukla<sup>a</sup> Nehaol Sri LV<sup>b</sup>

<sup>a</sup>OP Jindal Global University, Sonipat, India <sup>b</sup>OP Jindal Global University, Sonipat, India

*Received* 09 February 2022; *Accepted* 25 February 2022; *Published* 01 March 2022

---

### INTRODUCTION

A Hindu marriage is considered a sacrament between two Hindus. When married, the spouses also enter into a legal obligation recognized by law. But if any one of the spouses in marriage tries to marry some other person, while the other spouse is alive, then the second marriage will not be legal and will be declared void. This scenario is called Bigamy. One of the major sources of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') is 'The Manusmriti' which acknowledged bigamy. It has very clearly mentioned that 'when a wife was barren, diseased, or vicious that she could be superseded, a second marriage was valid'<sup>1</sup>. So, Bigamy was not always illegal under the Hindu Law, and it was first abhorred by the HMA. Presently, Bigamy is illegal in India except in Islam and is a non-cognizable offense for Hindus (as defined under HMA), Christians, and Parsis. If someone governed by HMA commits bigamy, they will attract Section 11<sup>2</sup> and Section 17<sup>3</sup> of the HMA which allows a charge of Section 494<sup>4</sup> & Section

---

<sup>1</sup> Sushmitha Ram Kumar, 'Bigamy as an offense In India' (*Legal Service India*, 19 April 2021) <<http://www.legalserviceindia.com/legal/article-2438-bigamy-as-an-offense-in-india.html>> accessed 03 February 2022

<sup>2</sup> Hindu Marriage Act, 1955, s 11

<sup>3</sup> Hindu Marriage Act, 1955, s 17

495<sup>5</sup> of the Indian Penal Code (hereinafter referred to as IPC). To understand the intricacies of the offence of bigamy, it is important to look at the position of law in this subject matter. So, we aim to analyze the famous case of 'Priya Bala Ghosh v Suresh Chandra Ghosh'<sup>6</sup> which dealt with the offense of bigamy, and the question of whether the performance of essential ceremonies should be proved to determine the validity of marriages in a bigamy case.

## FACTS OF THE CASE

In the impugned case, the respondent(Suresh Chandra Ghosh) married the appellant(Priya Bala Ghosh) around 1948, with the performance of all Hindu rites necessary for a valid marriage. Then the respondent started to ill-treat the appellant and as a result, she went to reside in her mother's home. Following this, the appellant filed a complaint against the respondent that he had married another woman named Sandhya Rani on May 31, 1962, and that he should be guilty of bigamy under Section 494 of IPC. In Trial Court, the magistrate said that the respondent should be guilty under Section 494 of IPC because he admitted the fact that he married for the second time during the lifetime of his first wife, which is clearly forbidden by law. The case then went to the Sessions Court which acquitted the respondent, because there was no evidence for the performance of Homa and Saptapadi which were the essential rites to be performed for the solemnization of marriage, according to the law prevailing among the parties. This was reiterated by the Calcutta High Court which also explained that mere admission of the accused's statement cannot be used as sufficient evidence and hence, no bigamy.

In the impugned case, the court dealt with two fundamental questions regarding the validity of marriages in a bigamy case which are as follows:

- Whether the essential ceremonies and rites to be performed in either marriage in a bigamy case should be proved with evidence before the conviction of the accused under Section 494 of IPC?

---

<sup>4</sup> Indian Penal Code, 1860, s 494

<sup>5</sup> Indian Penal Code, 1860, s 495

<sup>6</sup> *Priya Bala Ghosh v Suresh Chandra Ghosh* 1971 AIR 1153

- Whether the admission of the accused of contracting a second marriage is sufficient evidence to prove the bigamous marriage?

### **IMPORTANCE OF THE PERFORMANCE OF ESSENTIAL RITES AND CEREMONIES AND ITS INFLUENCE ON THE COURT'S DECISION**

Section 7<sup>7</sup> of HMA lays down that the essential rites and ceremonies must be performed by either party to solemnize a valid Hindu marriage. Though the courts have not determined the essential ceremonies which are always necessary to solemnize a Hindu marriage, it has been generally held that the ritual of 'Saptapadi' is essential for a valid marriage.<sup>8</sup> But in this case, no evidence was found for the performance of Homa and Saptapadi, which were the essential rites among the parties. According to Mulla Hindu Law, two ceremonies are required for the validity of Hindu marriage, they are:

- Invocation before the sacred fire
- Saptapadi

The marriage can also be completed by performing the ceremonies which are prescribed or followed in the custom of either party of the marriage.<sup>9</sup> In deciding whether evidence of essential rites is necessary for bigamy under Section 17 of HMA and Section 494 of IPC in this case, the Supreme Court placed its reliance on the Bhaurao Shankar case which laid down that both marriages in a bigamous case should have been celebrated with proper ceremonies and in due form. Merely performing certain rites with the intention that the parties be taken to be married, will not make them ceremonies that are prescribed by law or approved by custom.<sup>10</sup> Thus, the position of existing law was that when either of the two marriages in a bigamy case was not solemnized properly with essential rites, there will be only one legally valid marriage, thus making the bigamy charge unsustainable.<sup>11</sup> This view was also adopted in the impugned case where the Supreme Court explained that Homa and Saptapadi were the essential rites that should have been performed to solemnize a valid marriage based on the customs of both

---

<sup>7</sup> Hindu Marriage Act, 1955, s 7

<sup>8</sup> *Deivanai Achi and Anr. v R.M. Al. Ct. Chidambaram Chettiar* AIR 1954 Mad 657

<sup>9</sup> Sir Dinshaw Fardunji Mulla, *Mulla: Hindu Law* (21<sup>st</sup> Edition, Lexis Nexis 2013)

<sup>10</sup> *Bhaurao Shankar Lokhande and Anr. v State of Maharashtra* 1965 AIR 1564

<sup>11</sup> *Rabindra Nath Dutta v The State* AIR 1969 Cal 55

parties in the case. It held that there was not enough evidence to prove that these essential rites were performed during the husband's second marriage and thus, it was not a valid one. It is interesting to note that the high court findings show that the priest who officiated the marriage between the respondent and alleged second wife, has given evidence that the marriage was solemnized according to Hindu rites. But the High Court ruled that the Priest has not given any evidence regarding the performance of the essential rites and upheld the acquittal of the respondent, which was also accepted by the Supreme Court. The Supreme Court explained that there was neither specific evidence proving the performance of essential ceremonies, nor any customs governing the parties which exempted them from performing those ceremonies. This implies that the court did not consider the statement of the Priest about "the alleged second-marriage being solemnized according to Hindu rites" to be indicative of the performance of essential ceremonies. The Court held that the onus is on the prosecution to prove that the second marriage had been duly performed with the essential rites applicable to the parties. So, to attract a bigamy offense under Section 17 of HMA, the prosecution has to prove that the alleged second marriage was a valid one according to the law applicable to the parties, including the performance of essential rites for the solemnization of the alleged marriage.

### **INSUFFICIENCY OF THE ACCUSED'S ADMISSION AS EVIDENCE**

Secondly, the Supreme Court relied on the Kanwal case<sup>12</sup> which held that admission of marriage by the accused will not be considered as evidence for proving bigamy or adultery. It was held in the case that the prosecution must prove that the alleged second marriage as a fact has taken place after performing all the essential and necessary ceremonies. The High Court contended that the accused's admission to accepting his second marriage with Sandhya Rani was a confession statement and cannot be considered as evidence. This is because the respondent was not given an opportunity to explain his statement during his examination under Section 342<sup>13</sup> of the Civil Procedure Code and the statement does not give any evidence about the completion of essential ceremonies either. In the impugned case, the Supreme Court

---

<sup>12</sup> *Kanwal Ram v The Himachal Pradesh Admn* 1966 AIR 614

<sup>11</sup> *Ibid*

<sup>13</sup> Code of Civil Procedure, 1908, s 342

agreed that this reasoning of the High Court was substantially correct. Though the Supreme Court considered that the accused's statement was not strictly a confession statement, it accepted that the statement could incriminate the accused if acted upon. The Court explained that the respondent should be given an opportunity to explain his statement and such opportunity was not provided to him. This reasoning of the Court was logical and consistent with law as it is based on the well-established principle of natural justice 'Audi alteram partem' which means that "no party should be judged without being given an opportunity to respond to the evidence against them". The court has also sufficiently justified its decision that the accused's admission of contracting a second marriage is not sufficient evidence for bigamy, by using the law laid down in the Kanwal case<sup>11</sup>. Therefore, the Supreme Court ruled that the performance of essential rites should be proved with evidence before attracting an offense of bigamy under Section 17 of HMA and Section 494 of IPC. This was the existing position of law in 1971 which was further reiterated in the impugned Priya Gosh judgment. The Supreme Court thus confirmed with the existing law and further clarified the law in this subject matter.

#### **LACUNA IN LAW: CONCLUDING REMARKS**

Though the court's decision in declaring the accused's second marriage as invalid, is 'appropriate' based on the position of law in 1971, it, unfortunately, creates a big loophole or lacuna in the law which can be exploited by the people to escape the punishment of bigamy. This law also creates confusion among the people. From the impugned case, it is clear that to prove a valid Hindu marriage in a bigamy case, the performance of all essential ceremonies should be proved (in this case being Homo and Saptapadi) and mere admission of the fact that the man has married another woman or vice versa will not suffice as evidence. Therefore, it becomes difficult to prove this at all times because of various factors like the inability to find the priest who performed the rituals, the inability to find out whether all the essential rites took place between the married couple or not, etc. Overemphasis on the essential rites has made it even more difficult for the prosecution to prove the validity of marriages in bigamy, which leads to a situation where people can easily evade the punishment even though they have performed a bigamous marriage. This is more prevalent in cases of men, where they are seen to take advantage of innocent women and escape punishment, merely using the fact of

non-performance of essential rites. For example, a man married the first wife by performing all the essential rites that were required by the law and after some time marries another woman. But when this case of bigamous marriage comes to the court, it is found that the second marriage was not a valid marriage due to the non-performance of essential rites. Here, both the wives suffer because if the second marriage is not proven in the eyes of law, it puts the second wife in an unstable position while also damaging the mental well-being of both wives. There might also be cases where the second wife is unaware of the first marriage. In such cases, if the wife is highly dependent on the husband, it will greatly affect her when the marriage is declared null and void. There are instances when the first marriage is also declared void because of the lack of evidence of performing the essential rites. Most people are unaware of the necessary essential rites to be performed, which leads to a scenario where they think they have married in accordance with the law, but end up being in a marriage invalid in law. Finally, these situations can lead to frustration, anger, confusion, and a waste of time for both the people and the court. So, the courts should come up with a solution that is more feasible in every situation and try to rectify this lacuna in the bigamy law to ensure that the people are not affected so as to curb its misuse.