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Case Comment: Suraj Mani Stella Kujur v Durga Charan Hansdah & Anr

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INTRODUCTION

This case commentary mainly focuses on the aspect of protecting the Fundamental Rights of the Santhal tribal women from bigamy by challenging the validity of the prevailing practices and customs of the Santhal tribal community which encourages the offense under sec: 494 of Ipc^{1,2}

FACTS

In this case, the Appellant belongs to the Oraon tribal community and the Respondent belongs to the Santhal tribal community as per clause (25) of Article 366³. They are governed by Santhal customs as per this custom the commission of the second marriage by one party during his/her spouse's lifetime is considered a valid one. Therefore as per Santhal's custom Respondent who is the husband of the appellant had solemnized the second marriage during her lifetime. The appellant pleaded that there exists a custom that encourages monogamy but in reality, the

¹ Indian Penal Code 1860, s 494

² *Dr Surajmani Stella Kujur v Durga Charan Hansdah & Anr* App (Crl) 186/2001

³ Constitution of India 1950, art 366

custom which is pleaded by the appellant doesn't exist among the tribal community and she also appealed to the high court to punish the Respondent under sec:494 of IPC⁴ for committing the offense of bigamy by violating her fundamental rights.

ISSUES

1. Whether the custom which is pleaded by the appellant has the force of law.
2. Whether the Santhal custom is valid even though it encourages the offense of bigamy.
3. Whether the appellant's custom is valid.

PETITIONER'S CONTENTION

The appellant contended that her husband had solemnized the second marriage during her lifetime which violates her fundamental rights by encouraging the offense of bigamy and also she asserts that there is a custom that exists and is practiced among tribal people which promotes monogamy. So, she pleaded that as per that custom, her husband should be punished for committing the offense of bigamy under sec:494 of Ipc and also she questioned the validity of the Santhal tribe custom which encourages the offense of bigamy.

RESPONDENT'S CONTENTION

The respondent contended that the second marriage which was solemnized by him during the appellant's lifetime is a valid one as he had done the above marriage as per his Santhal tribal community's custom which permits the solemnization of the second marriage as it is practiced for the long period among their community. Therefore, he argued that the appellant cannot take up the defense that he had violated her fundamental rights as he committed that marriage as per their custom.

⁴ Indian Penal Code 1860, s 494

CASE LAWS

Satiya devi v Khem Chand:⁵ In this case, it was held that the respondent had committed the offense of Bigamy and also treated his wife with cruelty but his wife cannot able to prove that her marriage contradicted the provision of 494 of IPC. Therefore, the court held that the second marriage remained valid and her marriage was declared void. Therefore, the case was dismissed.

Sarla Mudgal, President, Kalyani & Ors v Union of India:⁶ In this case, It was held that Meena Matur is the wife of Jintendar Mathur, he had converted from Hinduism to Islam to marry Sunita Narula as she is Muslim. Meena asserted that he had committed the offense of Bigamy by marrying another woman during the subsistence of her lifetime. Jintendar Mathur stated that he had not committed the offense of Bigamy as according to Islamic law he can have four wives. Here, the court, in this case, had rejected the contention of Jintendar and stated that he had solemnized the marriage by violating the fundamental rights of the first wife and also held that the conversation made by Jintendar is void so, the marriage which was solemnized by him with Sunita is illegal as he made it to have four wives and also it violated the justice, equity, and good conscience. At last, the court advocated the requirement of the Uniform Civil Code in the Indian Legal system. So, after the introduction of the Uniform Civil Code, the trespassing personal laws for illegally achieving one own benefit will be reduced and also court further directed that the Government of India through the Secretary of the Ministry of Law and Justice, file an affidavit regarding the steps taken by the Government of India towards securing a UCC for the citizens of India.

Lily Thomas v Union of India:⁷ The court held that the contention of the petitioner that the judgment of Sarla Mudgal amounts to the violation of freedom of conscience and free profession, practice, and propagation of religion as guaranteed under Articles 25⁸ and 26⁹ of the

⁵ *Satiya Devi v Khem Chand* (2005) CrI App No 451/2005

⁶ *Sarla Mudgal President, Kalyani v Union of India* (1995) AIR 1531

⁷ *Lily Thomas v Union of India* (2000) 6 SCC 224

⁸ Constitution of India 1950, art 25

⁹ Constitution of India 1950, art 26

Constitution, is far-fetched and is alleged by those who hide behind the cloak of religion to escape the law.

COURT OBSERVATION

The high court observed that the appellant is not having any proof to assert that there exists a custom that invalidates the second marriage which happened during the lifetime of the first wife as void one. So, here it may be also emphasized that mere pleading of a custom and stressing for monogamy by itself was not sufficient and to constitute a valid custom it should be backed by the force of law. So, for having this force of law the custom should satisfy the following conditions:

- The custom must be ancient;
- It should be practiced for a long time;
- It should not be immoral;
- It should not be against public policy.

JUDGMENT

The High Court held that the second marriage solemnized by the respondent is valid as per Santhal's custom indicating that it is not violative and punishable under section 494 of IPC.

CRITICISM

The First issue which is to be noted in this case is about encouraging the validity of Santhal tribal custom which promotes the offense of bigamy by legalizing it. Even though that custom is backed up with the force of law by emerging itself as an ancient, continuous, uniform, and certain one cannot violate the fundamental rights of the first spouse who is living during the subsistence of the second marriage of her husband. Even though the custom is regarded as the highest source of dharma but in the present twenty-first century it is slowly diminishing as she is suffering from an unbalanced state of emotions and also has lost the value of her feeling she had towards her husband because of the encouragement of the practice of Santhal tribal community customs by the court. Therefore, According to my opinion, it's the central

government of India which had introduced various gender-specific schemes and programs at different phases of time to encourage literacy. For example, the state government of Odisha has provided scholarships to tribal women and also given hostel facilities, bicycles, and reservations of seats for them in schools. Also, the government has given a special focus on infrastructural development in schools in tribal and backward areas. So, nowadays, tribal women are civilized and they can make their own decisions and also value their choice by themselves through education. This brings changes to the pattern of life to make themselves economically independent. Thereby, this motivates them to participate and contribute to the overall development of the tribal women's community and similarly discourages the practices of Bigamy, as through education tribal women will become self-conscious that how to take correct decisions in their lives¹⁰. Similarly, the central government of India should notify the tribal people of the Santhal community under sec:2(2) of the Hindu marriage act 1955¹¹ for preventing the practice of bigamy for safeguarding the fundamental rights and privileges of the Appellant in this case.

CONCLUSION

I conclude that the above Santhal custom should be abolished as in the present society the tribal people are getting access to education and becoming civilized people so, they must be aware of the consequences (or) the problems which arise due to the offense of bigamy and justice should be served for the first wife. The court should give importance to the appellant's words and her emotions even though there is no said custom prevails to encourage monogamy among the Santhal tribe. The court should accept the change regarding the custom and should pass the order to safeguard the fundamental rights of the first wife. Further, this would prevent her from taking rash decisions like trying to attempt suicide, pushing herself to a depressed state (or) causing injury to her health.

¹⁰ Veena Bhasin, 'Status of Tribal Women in India' (2017) 1 Studies on Home and Community Science <<https://www.tandfonline.com/doi/abs/10.1080/09737189.2007.11885234>> accessed 08 April 2023

¹¹ Hindu Marriage Act 1955, s 2(2)