

accused was prosecuted. The courts below convicted the accused u/s. 493 IPC.

In appeal, the case was decided by Division Bench. One of the Judges was of the view that no offence u/s. 493 IPC was committed. The other Judge was of the view that offence u/s. 493 IPC was made out. In view of the difference of opinion, the case was referred to Three Judges Bench.

Dismissing the appeal, the Court

HELD:

Per Anil R. Dave, J. (for himself and Sudhanshu Jyoti Mukhopadhyay, J.):

1. Upon perusal of Section 493 IPC, to establish that a person has committed an offence u/s. 493 IPC, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the afore-stated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception. [Para 9] [1056-G-H; 1057-A]

2.1. The accused-appellant had got a form, with regard to marriage registration, signed by the complainant. The form was signed by the accused and he also induced the complainant to sign the form so as to get married. The form duly signed by both the persons had been exhibited and the signature of the appellant had been identified. The afore-stated fact made the complainant to believe that the accused-appellant had married her and, therefore, she had started residing with him as his wife. In fact, the appellant did not marry the complainant. The persons related to the complainant and the accused were also made to believe that the

A complainant was the wife of the appellant, though rituals necessary for Hindu marriage had never been performed. It is an admitted fact that no marriage had taken place between the complainant and the appellant, but only on the basis of the documents signed by the complainant at the instance of the accused-appellant, the complainant was made to believe that she was a lawfully married wife of the accused-appellant. [Para 12] [1057-G-H; 1058-A-C]

C 2.2. As a result of the afore-stated deceitful act of the accused-appellant, the complainant started residing with him as she believed that she had lawfully married the accused-appellant. The afore-stated fact was also reflected in the voters' list. In the voters' list the name of the complainant was shown as the wife of the appellant. As a result of the cohabitation, the complainant had given birth to two children. The accused-appellant had acknowledged the fact that the said two children were his children. Several ceremonies in relation to the birth of the children had also been performed by the accused-appellant. [Para 13] [1058-D-F]

E 2.3. Thus, upon perusal of the evidence, there was sufficient evidence to the effect that the accused-appellant has deceived the complainant, which ultimately resulted into a belief in the mind of the complainant that she was a lawfully married wife of the accused-appellant, though she was not, and thereafter, there was cohabitation and sexual intercourse as a result of the deception. [Paras 11 and 15] [1057-F; 1058-G]

G Per R.M. Lodha, J. (Concurring):

H 1.1. The essence of an offence u/s. 493 IPC is, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not, and then make her cohabit with him. [Para 2] [1059-G]

1.2. 'Deceit', in the law, has a broad significance. Any device or false representation by which one man misleads another to his injury and fraudulent misrepresentations by which one man deceives another to the injury of the latter, are deceit. Deceit is a false statement of fact made by a person knowingly or recklessly with intent that it shall be acted upon by another who does act upon it and thereby suffers an injury. It is always a personal act and is intermediate when compared with fraud. Deceit is sort of a trick or contrivance to defraud another. It is an attempt to deceive and includes any declaration that misleads another or causes him to believe what is false. [Para 6] [1060-F-H; 1061-A]

Stroud's Judicial Dictionary [Fifth Edition]; Black's Law Dictionary[Eighth Edition]; Law Lexicon by P. Ramanatha Aiyar [2nd Edition,Reprint 2000] – referred to.

1.3. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493 IPC. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved – (a) deceit causing a false belief of existence of a lawful marriage and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawful married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC. [Para 6] [1061-B-E]

A 2. The prosecution has been able to prove – (i) the
 B appellant and the victim woman had been living for a
 period of nine years like a husband and wife, (ii) the
 C accused and the victim woman had two children from
 D that relationship, (iii) an application (Exhibit 3) was made
 E by the accused/appellant for information to the Special
 Marriage Officer, regarding his marriage with the victim
 woman, (iv) an agreement (Exhibit 2) was executed for
 marriage certificate wherein the accused admitted that he
 was living a normal family life as a married couple with
 the complainant for the last one year and she was his
 wife, (v) voters' list (Exhibit 6) of the assembly electoral
 list for the year 1984; Voters' List (Exhibit 6/1) for the year
 1988 and another Voters' List (Exhibit 6/2) for the year
 1993 indicated that victim woman was shown as wife of
 the accused, (vi) the appellant and the victim lived
 together as a normal couple at different places of posting
 in course of service and (vii) the appellant had practiced
 deception on the complainant causing a false belief of
 existence of lawful marriage and making her cohabit with
 him in that belief. Thus, the ingredients of Section 493 IPC
 have been fully established by the prosecution. The
 offence under the said Section is made out beyond any
 reasonable doubt. [Para 9] [1062-G-H; 1063-A-D]

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

From the Judgment & Order dated 8.9.2005 of the High
 Court of Jharkhand at Ranchi in Cr. Rev.No. 788 of 2005.

G Deba Prasad Mukherjee, Ratan Kumar Choudhury,
 Brahmajeet Mishra, Annwasha Deb, Jyotika Kalra for the
 Appearing Parties.

The Judgments of the Court was delivered by

H ANIL R. DAVE, J. 1. Being aggrieved by an order dated

RAM CHANDRA BHAGAT v. STATE OF JHARKHAND 1055
[ANIL R. DAVE, J.]

8th September, 2005 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No.788 of 2005, whereby the order of conviction of the appellant was confirmed by the High Court, the appellant has filed this appeal. By virtue of the impugned order, the appellant was sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for a period of two months has been confirmed. .

2. This appeal was initially heard by this court but after hearing the appeal, one of the learned judges was of the view that the appellant could not have been convicted for committing an offence under Section 493 of the Indian Penal Code (for short 'the IPC'), whereas the said view was not accepted by another learned judge.

3. In the afore-stated circumstances, the appeal was placed before the Hon'ble Chief Justice, who referred it to a three-judge Bench and, therefore, it had been placed before us.

4. As the facts have been duly discussed by both the learned judges in their respective orders, we narrate the same in a nutshell. According to the case of the prosecution, the appellant had acquaintance with the complainant and upon developing intimate relationship with her, by his actions he made the complainant to believe that she had become the wife of the appellant herein and thereby they had stayed together for nine years as husband and wife and during that period the complainant had given birth to two children ? a son and a daughter. Thereafter, the allegation is that the appellant had turned the complainant out of his house.

5. In the afore-stated circumstances, a complaint was filed by the complainant and in pursuance of the said complaint the appellant was prosecuted. After a full-fledged trial, the appellant was convicted by an order dated 20th December, 2003 passed in G.R. Case No.27 of 1992 (Lohardaga P.S. case No.12/92)

A by the Judicial Magistrate First Class, Lohardaga. An appeal
filed against the order of conviction, being Criminal Appeal No.1
of 2004, was dismissed by the learned Additional District and
Sessions Judge, Lohardaga. Being aggrieved by the order of
dismissal of the appeal, the appellant had filed Criminal
B Revision No.788/2005 before the High Court of Jharkhand at
Ranchi and the same was rejected by an order dated 8th
September, 2005, which lead to the filing of this appeal.

C 6. We heard the learned counsel and also meticulously
perused the impugned judgments and the record pertaining to
the case.

7. Before dealing with the case in hand, let us see as to
how and why the learned judges of this Court had come to
different conclusions.

D 8. As we are concerned with the provisions of Section 493
of the IPC, it would be just and proper to look at the said section
before we deal with the subject.

E “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,
shall be punished with imprisonment of either description
F for a term which may extend to ten years, and shall also
be liable to fine.”

G 9. Upon perusal of Section 493 of the IPC, to establish that
a person has committed an offence under the said Section, it
must be established that a person had deceitfully induced a
belief to a woman, who is not lawfully married to him, that she
is a lawfully married wife of that person and thereupon she
should cohabit or should have had sexual intercourse with that
person. Looking at the afore-stated section, it is clear that the
H accused must induce a woman, who is not lawfully married to

RAM CHANDRA BHAGAT v. STATE OF JHARKHAND1057
[ANIL R. DAVE, J.]

him, to believe that he is married to her and as a result of the
afore-stated representation, the woman should believe that she
was lawfully married to him and there should be cohabitation
or sexual intercourse as a result of the deception. **A**

10. One of the learned judges was of the view that no
deception was practised by the appellant and, therefore, no
offence under the provisions of Section 493 of the IPC had been
committed. It was the view of the learned judge that though the
appellant had acted in an immoral manner which might not be
approved by the society but he had not committed any offence
in the eyes of law by staying with the complainant for about nine
years. On the other hand, on appreciation of the evidence,
another learned judge had confirmed the concurrent findings of
the courts below and had come to the conclusion that the
appellant had in fact practised deception, which led the
complainant woman to believe that she was a lawfully married
wife of the appellant though in reality she was not a lawfully
married wife of the appellant and thereupon she had cohabited
with the appellant. In these circumstances, another learned
judge wanted to confirm the concurrent findings of the courts
below. **B**
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11. Upon perusal of the evidence, we also are of the view,
like the courts below that the appellant had practised deception
and as a result thereof the complainant believed that she was
a lawfully married wife of the accused and thereafter there was
cohabitation and sexual intercourse as a result of the deception. **F**

12. Upon perusal of the evidence we find that upon being
acquainted with the complainant, the accused had developed
a close relationship with the complainant. He used to visit the
complainant from time to time and he had promised the
complainant to marry her. Upon perusal of the evidence, we
further find that the accused-appellant had got a form, with
regard to marriage registration, signed by the complainant. The
form was signed by the accused-appellant and he also induced
the complainant to sign the form so as to get married. The form **G**
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A duly signed by both the persons had been exhibited and the signature of the appellant had been identified. The afore-stated fact made the complainant to believe that the accused-appellant had married her and, therefore, she had started residing with him as his wife. In fact, the appellant did not marry the

B complainant. The persons related to the complainant and the accused were also made to believe that the complainant was the wife of the appellant, though rituals necessary for Hindu marriage had never been performed. It is an admitted fact that no marriage had taken place between the complainant and the

C appellant but only on the basis of the documents signed by the complainant at the instance of the accused-appellant, the complainant was made to believe that she was a lawfully married wife of the accused-appellant.

D 13. As a result of the afore-stated deceitful act of the accused-appellant, the complainant started residing with him as she believed that she had lawfully married the accused-appellant. There is sufficient evidence on record to show that the complainant had resided with the accused-appellant and the afore-stated fact was also reflected in the voters' list. In the

E voters' list the name of the complainant was shown as the wife of the appellant. As a result of the cohabitation, the complainant had given birth to two children. The accused-appellant had acknowledged the fact that the said two children were his children. Several ceremonies in relation to the birth of the

F children had also been performed by the accused-appellant.

G 15. Thus, upon perusal of the evidence, we find that there was sufficient evidence to the effect that the accused-appellant has deceived the complainant, which ultimately resulted into a belief in the mind of the complainant that she was a lawfully married wife of the accused-appellant, though she was not.

H 16. The afore-stated evidence which has been found by all the courts below is sufficient to show that the complainant was made to believe by the deceitful act of the accused-appellant that she was lawfully married to the accused-

RAM CHANDRA BHAGAT v. STATE OF JHARKHAND1059

appellant. The complainant had also cohabited with the appellant and had sexual intercourse with the accused-appellant and thereby she had given birth to two children also. A

17. In the afore-stated set of circumstances, when there is ample evidence to the effect that only on the deceitful representation of the accused-appellant the complainant believed herself to be a lawfully married wife of the accused-appellant and as she had cohabited with the accused-appellant, there cannot be any doubt with regard to commission of an offence under the provisions of Section 493 of the IPC. Moreover, we do not find any error committed by the courts below in coming to the final conclusion with regard to commission of the offence by the appellant and, therefore, we confirm the order passed by the High Court. B C

18. In these circumstances, we dismiss the appeal. The bail bonds shall stand cancelled and the accused-appellant is directed to surrender to undergo the remaining period of sentence with immediate effect. D

R.M. LODHA, J. 1. I have had the benefit of going through the judgment proposed by my esteemed brother Anil R. Dave, J. I entirely agree with his view, however, I wish to add few lines of my own. E

2. Section 493 IPC does not need to be reproduced by me as the text of Section 493 has already been quoted in the lead judgment. When a man deceitfully induces a woman to have sexual intercourse with him causing her to believe that she is lawfully married to him, such man commits an offence under Section 493 IPC. The essence of an offence under Section 493 IPC is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him. F G

3. Stroud's Judicial Dictionary [Fifth Edition] explains H

A “Deceit, ’ *deceptio, fraus, dolus*, is a subtle, wily shift or device, having no other name; hereto may be drawn all manner of craft, subtilly, guile, fraud, wiliness, slight, cunning, covin, collusion, practice, and offence used to deceive another man by any means, which hath none other proper or particular name but offence”.

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4. Black’s Law Dictionary [Eighth Edition] explains ‘deceit’ thus :

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“The act of intentionally giving a false impression ?the juror’s deceit led the lawyer to believe that she was not biased?. 2. A false statement of fact made by a person knowingly or recklessly (i.e., not caring whether it is true or false) with the intent that someone else will act upon it.....”

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5. In the Law Lexicon by P. Ramanatha Aiyar [2nd Edition, Reprint 2000], ‘deceit’ is described as follows :

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“Fraud; false representation made with intent to deceive; ‘Deceit, ‘deception of fraud’ is a subtle, wily shift or device, having no other name, In this may be included all manner of craft, subtlety, guile, fraud, wiliness, slight, cunning, covin, collusion, practice and offence used to deceive another may by any means, which hath none other proper or particular name but offence’.

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6. ‘Deceit’, in the law, has a broad significance. Any device or false representation by which one man misleads another to his injury and fraudulent misrepresentations by which one man deceives another to the injury of the latter, are deceit. Deceit is a false statement of fact made by a person knowingly or recklessly with intent that it shall be acted upon by another who does act upon it and thereby suffers an injury. It is always a personal act and is intermediate when compared with fraud. Deceit is sort of a trick or contrivance to defraud another. It is an attempt to deceive and includes any declaration that

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RAM CHANDRA BHAGAT v. STATE OF JHARKHAND1061
[R.M. LODHA, J.]

misleads another or causes him to believe what is false. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved – (a) deceit causing a false belief of existence of a lawful marriage and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawful married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC.

7. When the criminal appeal came up for hearing before a two-Judge Bench, the Judges differed in their views. One of the Judges, Markandey Katju, J., held that Section 493 IPC was not attracted as there was no proof of lawful marriage although the appellant lived with the complainant for nine years and had two children by her. On the other hand, the other Judge, Gyan Sudha Misra, J. was of the view that for an offence under Section 493 there should be an inducement of belief in the woman that she was 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. She observed as follows :

A "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.
B 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 marriage cannot be
C 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
D 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 assertion that the marriage should have been
performed by customary rituals or in similar manner only
E 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 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."

F 8. We find ourselves in complete agreement with the
position stated above.

G 9. The prosecution has been able to prove – (i) the
appellant and the victim woman had been living for a period of
nine years like a husband and wife, (ii) the accused and the
victim woman had two children from that relationship, (iii) an
application (Exhibit 3) was made by the accused/appellant for
information to the Special Marriage Officer, Lohardaga
H regarding his marriage with the victim woman on 13.4.1982,

RAM CHANDRA BHAGAT v. STATE OF JHARKHAND1063
[R.M. LODHA, J.]

(iv) an agreement (Exhibit 2) was executed for marriage certificate on 4.6.1982 wherein the accused admitted that he was living a normal family life as a married couple with Sunita Kumari (complainant) for the last one year and Sunita Kumari was his wife, (v) voters' list (Exhibit 6) of the assembly electoral list of Lohardaga for the year 1984; Voters' List (Exhibit 6/1) for the year 1988 and another Voters' List (Exhibit 6/2) for the year 1993 indicated that victim woman was shown as wife of the accused, (vi) the appellant and the victim lived together as a normal couple at different places of posting in course of service and (vii) the appellant had practiced deception on the complainant causing a false belief of existence of lawful marriage and making her cohabit with him in that belief. Thus, the ingredients of Section 493 IPC have been fully established by the prosecution. The offence under the said Section is made out beyond any reasonable doubt.

10. In view of the above, the appeal is liable to be dismissed and is dismissed.

K.K.T.

Appeal dismissed.