

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ananya Bandyopadhyay**

C.R.A. 19 of 1997

Smt. Shasthi Chatterjee
– Vs. –
Sri Jibananda Chatterjee

For the Appellants:	Mr. Sudipto Maitra, Id. Sr. Advocate, Mr. Vijay Verma, Mr. Dwaipayan Biswas, Mr. Arik Bhattacharya.
For the State:	Mr. Kallol Mondal, Id. P.P. Ms. Sagnika Banerjee.
For the acquitted accused:	Mr. Amartya Ghose.
Heard on:	July 9, 2026 and July 10, 2026.
Judgment on:	July 10, 2026.

Rajasekhar Mantha, J.:

1. The instant appeal is directed against the judgment and order of acquittal dated 20th December, 1996 passed by the learned Judicial Magistrate, First Class, Raghunathpur, Purulia in Complaint Case No. 1 of 1990.
2. The case of the complainant in her application under Section 200 of the Code of Criminal Procedure, 1973 was that the respondent/opposite party had married the appellant under

Hindu rites in a negotiated marriage between their respective families on 11th August, 1984. The appellant was thereafter brought to the house of the respondent and kept with her in-laws i.e. parents of the opposite party.

3. It is an admitted position that the opposite party Jibananda Chatterjee was employed with the West Bengal Police. He was posted at Kolaghat. Upon repeated insistence by the appellant, the opposite party agreed to take her to live with him in his police residential quarters at his place of posting at Kolaghat. At Kolaghat that the appellant found, one Manabi Roy and a child living with the appellant in the said quarters. The opposite party informed the appellant that Manabi Roy was the wife of a colleague and he was merely accommodating her for sometime. The appellant, however, became suspicious of the relationship between the said Manabi Roy and the opposite party in view of their conduct. It later transpired to the appellant that the opposite party was actually married to the said Manabi Roy under the provisions of the Special Marriage Act sometimes in January, 1983.

4. Feeling cheated and deceived by the opposite party, the appellant returned to her parental house sometime in the later part of 1985. At the instance of the appellant, the local Member of Legislative Assembly addressed to a complaint to the Superintendent of Police, Purulia complaining that the opposite

party was guilty of bigamy. It further transpired that the disciplinary proceedings were lodged against the opposite party by the employer and he was dismissed from service. Such penalty was, however, quashed by this Court in its Constitutional Writ Jurisdiction.

5. Prior thereto, sometimes in April, 1986 the appellant obtained a certified copy of the marriage certificate of the opposite party with the said Manabi Roy.

6. A Complaint Case was filed by the appellant on 2nd January, 1990 under Section 200 of the Criminal Procedure Code against the opposite party. Cognizance was taken by the learned Magistrate on 3rd January, 1990. Pre-charge examination of witnesses cited by the appellant occurred. Post-charge examination as well as cross-examination occurred of as many as seven witnesses.

7. **PW-1** was Dibakar Bandyopadhyay, the first priest on the bride side, who conducted the first day ceremony of the marriage of the appellant with the opposite party. He clearly deposed about all the rites and customs conducted by him and performed by the appellant and the opposite party. In cross-examination, however, the rituals performed by the second priest normally from the groom side was, however, not appropriately brought in evidence. PW-1 only deposed about the ceremony performed by him on the first day of marriage and

stated that he did not know the name of the priest who conducted the rituals on the second day.

8. **PW-2** was one Kalyani Prasad Banerjee, who knew the appellant and her father. He was present and witnessed the entire marriage ceremony between the appellant and the opposite party no.1. He further deposed about the absence of PW-3 and some persons in the marriage ceremony.

9. **PW-3** was Rabi Lochan Moni. He was an acquaintance and the next door neighbour of the appellant's parental house. He deposed about the ceremony performed in the marriage on both days i.e. first and second days.

10. **PW-4** was a local MLA, who knew both the families of the appellant and the respondent. He attended the marriage ceremony of the appellant with the opposite party. He further deposed that at the instance of the appellant, he had written to the Superintendent of Police, Purulia that the opposite party had married the appellant during the subsistence of a previous marriage with the said Manabi Roy. None of PW-1, PW-2 and PW-3 or PW-4 were cross-examined as regards the previous marriage of the opposite party with the said Manabi Roy. There was no suggestion by the defence in cross examination that there was no previous marriage by the opposite party with Manabi Roy. The marriage with the appellant was also not questioned by the defense.

11. **PW-5** was the father of the appellant, who deposed about the marriage ceremony between the appellant and the opposite party on both days.

12. **PW-6** was the appellant herself. She detailed her entire case in the petition of complaint under Section 200 and deposed further.

13. **PW-7** was Haridas Chakraborty. He was a S.I. of Police attached to Midnapore District and was deposed on the directions of the Superintendent of Police, Midnapore. He deposed that departmental proceedings are drawn up against the Opposite Party and that he was dismissed from service on 24th January, 1990 as a result thereof.

14. The accused was examined under Section 313 of the Cr.P.C. Based on the evidence on record, learned Trial Judge found the following omissions on the part of the appellant and the prosecution:

(a) The appellant could not prove the first marriage of the Opposite Party with Manabi Roy since she could not support the Marriage Certificate with appropriate oral evidence from the officials of the concerned marriage registry office.

(b) It was also found by the Trial Court that the appellant did not produce the Marriage Register to prove the authenticity of the Marriage Certificate between the Opposite Party and the

said Manabi Roy under the provisions of the Special Marriage Act.

(c) The Trial Judge next found that the delay in lodging the complaint from 1986 till 1990 to be fatal to the prosecution case. The Trial Judge further found that even the second marriage of the Opposite Party with the appellant was not proved because the ceremonies of the second day of marriage were not proved. Admittedly, the ceremonies of the second day of marriage were conducted by a priest appointed by the family of the Opposite Party. Such priest could not be traced out and according to the Trial Judge he ought to have been summoned to depose in evidence.

(d) The Trial Judge lastly found that there were omissions in the formal complaint under Section 200 of the Cr.P.C. filed by the appellant, which omissions were sought to be covered up by the oral evidence of the prosecution witnesses.

15. Based on the above, the Trial Judge found that the charge under Section 495 of the Indian Penal Code was not proved against the opposite party.

16. This Court has carefully considered the entire evidence on record, the complaint and the findings of the Trial Judge. To say the least, the findings of the Trial Judge are preposterous and de hors the evidence that is glaring. The Trial Judge adopted a hyper technical approach which eventually led to the acquittal

of the opposite party. This could clearly be described as a grave miscarriage of justice.

17. This Court firstly notes that the proof of secondary evidence in the absence of primary evidence is required to be done in terms of rigmarole prescribed in the Evidence Act. Indeed it is true that an official of the registry office or the Marriage Registrar itself ought to have been brought before the Trial Court to prove the document evidencing the marriage between the Opposite Party and the said Manabi Roy.

18. However, this Court notes that none of the witnesses of the prosecution were cross-examined on the absence of marriage between the opposite party and the said Manabi Roy. The marriage between the opposite party and the said Manabi Roy is also evident from the departmental proceedings conducted against the opposite party by the employer, West Bengal Police. The result of such proceeding is a finding of guilt whereunder the opposite party was dismissed from service.

19. In the backdrop of the above, this Court is of the view that production of even a copy of the Certificate of Marriage under the Special Marriage Act is sufficient prove of a previous marriage by a person accused thereunder. The certificate of marriage of the opposite party with the said Manabi Roy marked as an Exhibit in the trial ought to have been accepted by the Trial Judge. The learned Trial Judge, therefore, laid

unnecessary and excessive emphasis on the requirement of proof of the first marriage of the opposite party with the said Manabi Roy.

20. As for the delay in filing of the complaint case, the Trial Judge should have noticed that a proceeding under Section 495 does not have any prescribed period of limitation under Section 468 of the Cr.P.C. In any event it could take a lot of courage and gumption for a lady in semi urban areas to Muster Support and initiative to file a complaint case of this nature. Indeed the appellant should have approached Court at the earliest. The delay in filing of the complaint however will not extinguish or dilute the offence committed by the opposite party.

21. In so far as the alleged omissions on the part of the appellant and the prosecution to prove the ceremonies of the second day of marriage, this Court is of the view that the findings of the Trial Judge are rather ludicrous. There is a presumption that will obviously follow in respect of a marriage ceremony conducted under the Hindu customs and rites that the entire ceremonies first, second and once thereafter including the one on the tenth day in the house of the groom must have occurred. Several witnesses have deposed of having attended the Hindu marriage ceremony of the appellant with the opposite party.

22. To, therefore, insist on the production of the priest, who conducted the ceremonies on the second day of marriage and to hold that the second marriage with the appellant has not been proved merely because the second priest was not summoned and examined is to stretch the decree of proof beyond rational, logical and legal limits.

23. It is an admitted position that the appellant after completion of all ceremonies in the marriage was taken to the house of the groom and lived there as lawful daughter-in-law. Some letters that have been brought on evidence (Exhibit 10 and 11 series) clearly indicate that the father of the Opposite Party had in no uncertain terms stated that the appellant was his only lawful daughter-in-law. The tone and tenor of Exhibit 10 series, addressed by the opposite party to the appellant, indicate that the appellant was brought to the opposite party's parental house after all ceremonies of marriage were performed between the appellant and the opposite party. To, therefore, question the marriage of the opposite party with the appellant conducted as per Hindu rites and customs was grossly inappropriate and contrary to the facts established and proved by the appellant.

24. The finding of the Trial Court that the deposition of the PWs was far outside and wider than the petition of complaint, is ridiculous. The object of examination of the witness in a

complaint pre and post charge, is to enable a complainant and prosecution witnesses, to depose as freely and widely as possible. Otherwise the purpose of examination of witnesses and their cross examination would be defeated. There is always scope for bringing in new facts in examination of witnesses. The Trial Judge therefore erred in suspecting the appellant on this score.

25. The ingredients of Section 495 of the Indian Penal Code are primarily two fold. Firstly, a second marriage during the subsistence of an existing marriage. The next important ingredient of Section 495 is an active concealment of the first marriage to induce the victim to enter into a marital relationship with the accused.

26. In the facts of the instant case, this Court is of the unequivocal view that both the vital ingredients of Section 495 of the Indian Penal Code have been proved beyond any reasonable doubt by the appellant. The first marriage between the opposite party and Manabi Roy was clearly proved. The concealment of the same from the appellant is equally blatant and evident. The Trial Judge while having copiously written the judgment in his own handwriting has unfortunately misdirected himself while appreciating the evidence on record and the undisputed facts.

27. In the backdrop of the above, this Court is of the view that the opposite party Jibananda Chatterjee is guilty of offence under Section 495 of the Indian Penal Code and is liable to be convicted and is hereby convicted thereunder.

28. On the question of sentence to be imposed on the appellant, his counsel has made two fold prayers. Firstly, that his client is above 75 years old and secondly that he has not ill treated or misbehaved with the appellant.

29. It is further argued that the Opposite Party's family was ready and willing to accept the appellant as their daughter-in-law. Such conduct on the part of the Opposite Party, therefore, should not warrant the imposition of any sentence at all.

30. This Court, however, finds that the Opposite Party has deceived the appellant as well as his first wife Manabi Roy. Such deceit is, inter alia, evident from the fact that Manabi Roy was cited as a prosecution witness. She was not, however, examined formally by the prosecution. The appellant, who is deceived into getting married to a person, who is already married, was standing on cross-roads after discovery the conduct of the opposite party. To say that her life has been seriously prejudiced and compromised emotionally and mentally would be an understatement. Likewise, the life of the first wife Manabi Roy has been equally jeopardized by the opposite party.

31. The opposite party has, therefore, caused serious emotional and mental turmoil to two ladies. Such emotional and mental turmoil cannot be compensated in money or in any form whatsoever.

32. This Court is, therefore, left with no option than to impose a sentence of three years of simple imprisonment on the opposite party/Jibananda Chatterjee. This Court has imposed a lesser quantum of punishment as opposed to maximum quantum of ten years of punishment considering the appellant is above seventy-five years of age.

33. The opposite party in addition to the sentence of three years shall pay a fine assessed at Rs.1,00,000/- (Rupees One Lack Only) to the appellant. In default of payment of the said fine of Rs.1,00,000/-, the opposite party shall suffer further simple imprisonment of one year.

34. The Officer-in-Charge, Raghunathpur Police Station and/or the Trial Judge shall cause the Opposite Party/Jibananda Chatterjee to be taken into custody forthwith to undergo the sentences imposed hereinabove.

35. Accordingly, CRA 19 of 1997 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

36. Let a copy of this judgment along with the Trial Court's Record be forthwith sent down to the trial Court for necessary compliance.

37. Before parting with the case, this Court wishes to record appreciation for the assistance rendered by Mr. Amartya Ghose, learned Advocate appointed by this Court from the panel of the High Court Legal Services Authority.

38. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ananya Bandyopadhyay, J.)