

**Rammilan Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Apr-09-2013

**Appellant :** Rammilan

**Respondent :** State of M.P.

**Advocate for Pet/Ap. :** Shri. Ranjan Banerjee

**Judgement :**

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :  
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Revision No.663/1999 Ram Milan  
VERSUS The State of Madhya Pradesh & another  
----- Shri Ranjan Banerjee,  
counsel for the applicant. Shri Prakash Gupta, Panel Lawyer for the State/  
respondent No.1. None for the respondent No.2.  
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**ORDER**

(Passed on the 9th day of April, 2013) The applicant was convicted for the offence punishable under section 494 of IPC vide judgment dated 19.1.1998 passed by the learned JMFC, Laundi (Shri M.S.Mishra) in criminal case No.28/1998 and sentenced for 2 years' rigorous imprisonment with fine of Rs.500/-. In criminal appeal No.11/1998, the learned Sessions Judge, Chhatarpur vide judgment dated 9.4.1999 dismissed the appeal in toto. Being aggrieved with the judgments passed

by both the Courts below, the applicant has preferred the present revision.

2. The prosecution's case, in short, is that, the complainant Babulal had lodged a criminal complainant - 2 - Criminal Revision No.663 of 1999 against 6 persons, including the applicant on 8.5.1987, that his daughter Kusma was married to the applicant Ram Milan. One daughter was also born with that marriage. Thereafter, the applicant Ram Milan harassed his wife and sent her to the house of her father. On 5.5.1987, on receiving an information, the victim Kusma went to the house of the applicant Ram Milan and found that the applicant Ram Milan was going to marry with one Pan Bai, daughter of accused Manna Patel on 6.5.1987. Kusma was held in a room and she was assaulted by the applicant and other accused persons. Thereafter, the applicant proceeded in Barat on 7.5.1987. The complainant sent Dayaram and Devraj to get the information about his daughter. They went to the village Ghurapurwa. They were informed by Rajkumar, Ashwinideen Patel, Jag Prasad etc. that the applicant entered into a second marriage with Pan Bai on 7.5.1987 and therefore, the witnesses Devraj and Dayaram went back to the complainant and informed him about the position and thereafter, the complaint was lodged.

3. The applicant abjured his guilt. He took a specific plea that actually Kusma left the house of the applicant and she was married with another person. No marriage of the applicant and Pan Bai took place. The witnesses are telling a falsehood due to instigation of the complainant Babulal, - 3 - Criminal Revision No.663 of 1999 father of Kusma. In defence, Thakurdeen (D.W.1) was examined.

4. The learned JMFC, Laundi, after considering the evidence adduced by the parties, convicted the applicant for the offence punishable under section 494 of IPC and sentenced him as mentioned above, whereas the appeal filed by the applicant was dismissed in toto.

5. I have heard the learned counsel for the parties. The complainant/respondent No.2 has already expired on 29.7.2012 and thereafter, no LR of the complainant came forward to replace him. He was the complainant before the trial Court.

6. After considering the submissions made by learned counsel for the parties, it appears that the complaint was prepared on the basis of unnatural circumstances. It is stated by the complainant Babulal that his daughter was residing with him since last more than 15 years, prior to his statement. There was a dispute between the applicant and his wife Kusma (P.W.1). When dispute was so grave that Kusma (P.W.1) did not visit the house of her husband for the last 7-8 years before the date of the incident then, there was no possibility of visit of Kusma (P.W.1) to the house of her husband to knot about the marriage. Secondly, if she was sent then, certainly she was to be accompanied by the - 4 - Criminal Revision No.663 of 1999 complainant Babulal, father of the victim Kusma. If the father Babulal was interested to sent some witnesses then, the witnesses must have been sent alongwith Kusma but, it is strange to knot that firstly Kusma was sent to the house of the applicant and on the next day, Babulal sent two witnesses to knot the whereabouts of the victim Kusma. The witnesses Dayaram (P.W.2) and Devraj (P.W.3) were the labours working in the field of the complainant. According to their statements, they were provided a sum of Rs.20/- to each of them to go and knot about the security of the witness Kusma. Under such circumstances, it cannot be accepted from the victim Kusma (P.W.1) that she went to the house of the applicant and thereafter, she was confined in a room and she was beaten by the applicant and other accused persons.

7. If the victim Kusma was confined and beaten by the applicant and other persons then, after her release it was for her and her father to lodge an FIR about the offence of wrongful confinement and assault but, no such FIR has been lodged. On the contrary, on the next day, the criminal complaint was filed before the trial Court. It is an unnatural conduct of the complainant and his daughter. It appears that some witnesses were created to file the criminal complaint after so many years and therefore, it is not proved - 5 - Criminal Revision No.663 of 1999 beyond doubt that the victim Kusma went to the house of the applicant, one day before his alleged marriage.

8. The witnesses Devraj and Dayaram have stated against the pleadings made in the complaint. It is nowhere pleaded in the complaint that these witnesses went to the village Khaminkheda and they saw the marriage ceremony of the applicant. On

the contrary, the witnesses claimed that they visited Khaminkheda and saw the marriage ceremony. According to the pleadings of para 6 of the complaint, the witnesses went to Ghurapurwa and enquired from Rajkumar, Ashwinideep Patel, Jag Prasad and other persons and thereafter, they told about the entire incident to the complainant Babulal. Hence, if the witnesses claimed themselves to be eye witnesses to the marriage ceremony then, certainly they are telling a falsehood before the Court.

9. Dayaram and Devraj have claimed that they went in the company of each other. Firstly they went to the village Ghurapurwa and then to village Sarwai and thereafter, they went to the village Khaminkheda. Dayaram said that he reached Khaminkheda at 8-9 p.m. and he did not meet with Barat and he did not visit to the house of either the applicant Ram Milan or Manna Patel. On the contrary, Devraj has stated that he went in the late night to the house of Manna Patel. He saw the marriage ceremony. If both the witnesses - 6 - Criminal Revision No.663 of 1999 were present simultaneously then, it was not possible for the witness Devraj that he saw the marriage ceremony, whereas his companion did not see the marriage ceremony. The witnesses Devraj has stated that marriage was performed by Daddu Pandit but, alleged Pandit was not examined by the complainant. Dayaram has stated that in the same night both of them went to the village of Babulal and they told him the entire story on the next day morning, whereas the witness Devraj has stated that he rested in the night in house of some friend at village Khaminkheda and in the next day morning, he went to the complainant. Looking to the aforesaid contradictions, it appears that the witness Devraj as well as the witness Dayaram are telling a falsehood. They did not visit the village Khaminkheda on that particular night and they did not see the marriage ceremony. If the entire evidence adduced by the complainant is accepted then, neither Kusma, not the witnesses Devraj or Dayaram were the eye witnesses to the marriage ceremony and therefore, it is not proved beyond doubt that the applicant Ram Milan entered into a second marriage.

10. It is admitted that Kusma was the wedded wife of the applicant Ram Milan but, it was for the complainant and his daughter Kusma to prove the second marriage, according to the principles of law. No eye witness was examined to - 7 - Criminal

Revision No.663 of 1999 show that a marriage was performed between the applicant Ram Milan and Pan Bai. No Pandit was examined before the trial Court, though name of the Pandit was known to them. It was not possible for Kusma to visit the house of her husband after 7 years of dissection, without any support. It is apparent that the witnesses Dayaram and Devraj were the employees of the complainant Babulal and therefore, they told before the Court, according to the suggestions given by the complainant Babulal and therefore, their evidence is not at all believable.

11. Under such circumstances, the prosecution failed to prove the second marriage of the applicant and therefore, the applicant could not be convicted for the offence punishable under section 494 of IPC. Both the Courts below have committed an error of law in giving the perverse judgments against the applicant and therefore, it is a fit case, in which an interference is required from the side of this Court in the impugned judgments passed by both the Courts below, by way of a revision.

12. Consequently, the present revision filed by the applicant Ram Milan is hereby allowed. The conviction as well as the sentence directed by both the Courts below for the offence punishable under section 494 of IPC is hereby set aside. The applicant is acquitted from the charge of offence - 8 - Criminal Revision No.663 of 1999 punishable under section 494 of IPC. He would be entitled to get the fine amount back, if he has deposited the same before the trial Court.

13. At present, the applicant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged.

14. A copy of the order be sent to the trial Court as well as to the appellate Court along with their records for information and compliance. (N.K.GUPTA) JUDGE 9 4/2013 Pushpendra

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