

**Sarup Chand Vs. State**

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**Court :** Delhi

**Decided On :** Sep-06-1973

**Reported in :** ILR1974Delhi215

**Judge :** P.N. Khanna and; M.R.A. Ansari, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 415 and 494

**Appeal No. :** Criminal Appeal Nos. 200 of 1967 and 7 of 1968

**Appellant :** Sarup Chand

**Respondent :** State

**Advocate for Pet/Ap. :** B.B. Lal,; Daya Kishan and; D.C. Mathur, Advs.

**Judgement :**

**M.R.A. Ansari, J.**

(1) These two appeals arise out of the judgment of the Assistant Sessions Judge, Delhi, dated 17th October, 1967 in Sessions Case No. 121 of 1966 by which he convicted SarupChand for an offence under section 494 Indian Penal Code and sentenced him to suffer rigorous imprisonment for 44 years and also to pay a fine of Rs. 2,000 and in default, to suffer rigorous imprisonment for a further period of 11/2 years and acquitted both Sarup Chand and Raj Kumari Suri of the offences under sections 420 read with section 34 Indian Penal Code and acquitted Raj

Kumari Suri of the offence under section 494 read with section 34 Ipc with which they had been charged. Sarup Chand has filed an appeal against his conviction and the sentence passed against him and Janak Rani on the basis of whose complaint Sarup Chand and Raj Kumari Suri had been prosecuted has filed the other appeal against their acquittal after having obtained special leave of this Court. Both these appeals shall be disposed of by a common judgment.

(2) The prosecution case against Sarup Chand and Raj Kumari Suri is that Sarup Chand married Janak Rani on 28-4-1960 at Nawanshehr, District Jullundur, according to the Sanatani rites, that they lived as husband and wife both at Nawanshehr as well as at Delhi and that they had two children by this marriage. Raj Kumari Suri, who was working as a teacher in a school in Delhi, used to visit them and was aware of the fact that Janak Rani was the legally wedded wife of Sarup Chand. Sarup Chand developed illicit intimacy with Raj Kumari Suri and ultimately married her on August 13, 1964 and that the said marriage was solemnized through Arya Samaj, Sadar Bazar, Delhi, according to Vedic rites. This marriage was solemnized as a result of a fraud played by Sarup Chand and Raj Kumari Suri on the Arya Samaj by making a misrepresentation that Sarup Chand as well as Raj Kumari Suri were not previously married. After this marriage with Raj Kumari Suri, Sarup Chand deserted Janak Rani and was living with his second wife Raj Kumari Suri. They were therefore, guilty of offences under section 420 and 494 read with section 34 Indian Penal Code .

(3) The prosecution examined 9 witnesses in the trial Court. These witnesses may be classified in the categories, namely, -

(I) those who prove the marriage of Sarup Chand with Janak Rani, and (ii) those who prove the marriage of Sarup Chand with Raj Kumari Suri.

P.Ws. 1, 2, 3, 4, 7, and 9 belong to the first category and Public Witness s. 5 and 8 belong to the second category. Public Witness 7 also testified to the marriage of Sarup Chand with Raj Kumari Suri. The evidence of P.W. 6 is intended to prove knowledge on the part of Raj Kumari Suri that Sarup Chand was already married to Janak Rani. The evidence of these witnesses will be discussed at the appropriate stage.

(4) Sarup Chand when examined under section 342 Criminal Procedure Code . while admitting that he had married Raj Kumari Suri, denied that he had married Janak Rani and stated that he was only having a love affair with her. Raj Kumari Suri also in her statement under section 342 Cr.P.C. admitted having married Sarup Chand but denied any knowledge of the alleged marriage of Sarup Chand with Janak Rani. The statements of Sarup Chand and Raj Kumari Suri under section 342 Criminal Procedure Code . may also have to be examined in greater detail at the appropriate stage.

(5) 5 witnesses were examined for the defense. D.W.1, Shri Perma Nand Dua, is the Principal of the Central City College, East Patel Nagar, New Delhi. He merely stated that Raj Kumari Suri was working in the school attached to the college from 31-10-1965 to 31-1-1966 and was drawing a salary of Rs. 45 per month. D.W.2, Shri Giriraj Singh, Clerk of the Delhi Central Circle No. 1, C.P.W.D., merely produced a list of approved contractors of the li circle and that one of the said contractors was M/s. K. L. Arya & Sons. D.W. 3 is Shri Sat Pal, a resident of Lajpat Nagar New Delhi. According to him, Sarup Chand had come to his shop along with Janak Rani about five or six years prior to the date of his statement and that on being questioned by him, Sarup Chand told him that Janak Rani was merely his friend. He further stated that on a number of occasions, Janak Rani herself met him and told him that Sarup Chand had promised to marry her but that later he refused. D.W. 4 is Sh. Jawala Pershad, an employee of Adhyapak Sri Saraswati Sanskrit College, Khanna Punjab. He produced the admission register of the college from 18-5-1940 to 4-11-1961. This evidence is led by the defense to discredit the evidence of Public Witness 9 D.W. 5 is Shri Mangal Sen, a Clerk of Government Girls High School, Jind. He produced the attendance register maintained by the school from 1948 to 1952. According to this register, Raj Kumari Suri was admitted in the 6th class on 6-2-1948 and that she studied in the same school up to the 9th class and that her name was struck off on 19-3-1952.

(6) We shall first deal with the appeal filed by Sarup Chand against his conviction under section 494 Indian Penal Code . Section 494 Indian Penal Code reads as follows:-

'WHOEVER, having a husband or wife living, married in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

(7) The rest of the section is not relevant. Prior to the passing of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act), there was nothing in the Hindu law which made a second marriage of a male Hindu during the life-time of his previous wife void. But the position is different after the coming into force of the Act. Under section 5 of the Act ;-

'A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely,- (i) neither party has a spouse living at the time of the marriage.'

Section 7 of the Act lays down how a Hindu marriage may be solemnized. It reads:-

'(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. (2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.'

Section 17 of the Act provides that :-

'ANY marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of section 494 and 495 of the Indian Penal Code shall apply accordingly.'

(8) The scope of sections 5, 7 and 17 of the Act with reference to an offence under section 494 Indian Penal Code was considered by the Supreme Court in *Bhaurao Shankar Lokhande and another v. The State of Maharashtra and another* : 1965 CriLJ544 , *Raghubar Dayal, J.*, who spoke for the Court after referring to section 494 Indian Penal Code , observed as follows :-

'PRIMAfacie, the expression 'whoever xx. xx. xx. marries' must mean 'whoever xx. xx. xx. marries validly' or 'whoever xx. xx. xx. marries and whose marriage is a valid one.' If the marriage is not a valid one according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law. The bare fact of a man and a woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife.'

(9) After referring to sections 5 and 17 of the Act and sections 494 and 495 Indian Penal Code , the learned judge proceeded to observe as follows:-

'THEmarriage between two Hindus is void in view of S. 17 if two conditions are satisfied: (i) the marriage is solemnized after the commencement of the Act; (ii) at the date 220 of such marriage, either party had a spouse living, xx. xx. xx. xx. xx. xx. x. The word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form', according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is 'celebrated or performed with proper ceremonies and due form' it cannot be said to be 'solemnized'. It is, therefore, essential, for the purpose of S. 17 of the Act, that the marriage to which S. 494, Indian Penal Code . applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ]ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by law or approved by any established custom.'

(10) The learned Judge concluded by referring to the following passage from Mulla's Hindu Law, 12th Edition, at page 605:-

'(1)There are two ceremonies essential to the validity of a marriage, whether the marriage be in the Brahma form or or the Asura form, namely,- (1) invocation before the sacred fire, and (2) saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire. (2) A marriage may be completed by the performance of ceremonies other than those referred to in sub-

section ( 1 ), where it is allowed by the custom of the caste to which the parties belong.'

(11) The principles enunciated in the above decision were reiterated by the Supreme Court in *Kanwal Ram and others v. The Himachal Pradesh Administration* : 1966 CriLJ472 . A more elaborate discussion of the position of law is to found in a later decision of the Supreme Court in *Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh* AIR 1971 Sc 1153. In that case, Priya Bala Ghosh who had filed a complaint against Suresh Chandra alleging that they had been married near about 1948 according to Hindu law and were living as husband and wife together, that sometime before the date of the complaint, Suresh Chandra had begun to ill treat her and that he married Sandhya Rani as his second wife on May 31, 1962 and that he and Sandhya Rani had been living together as husband and wife. Suresh Chandra pleaded that he had never married Sandhya Rani and that the entire prosecution case was false. The trial Magistrate, after considering the evidence, held that the marriage of Priya Bala with Suresh Chandra was established and that Suresh Chandra had admitted the second marriage with Sandhya Rani in his objections filed to a claim made by Priya Bala for maintenance under section 488 Criminal Procedure Code . In this view, the learned Magistrate held that there could not be any doubt that Suresh Chandra had married Sandhya Rani while his first wife Priya Bala was still alive. Suresh Chandra was convicted for an offence under section 494 Indian Penal Code . On appeal before the Sessions Judge, it was held that the evidence did not establish that the essential ceremonies to constitute a valid marriage had been performed either in the case of the marriage claimed to have taken place between Priya Bala and Suresh Chandra or in respect of the alleged second marriage with Sandhya Rani. The Sessions Judge, therefore, set aside the conviction of Suresh Chandra. An appeal was filed by Priya Bala in the High Court against the judgment of the Sessions Judge. The High Court differed from the finding of the Sessions Judge and held that the evidence established that a valid marriage according to Hindu law by which the parties were governed had taken place between Priya Bala and Suresh Chandra. But regarding the second marriage, the High Court agreed with the finding of the Sessions Judge that the essential ceremonies to constitute a valid marriage had not been proved to have taken place and in this

view, the High Court confirmed the order of acquittal passed in favor of Suresh Chandra. Priya Bala preferred a further appeal by special leave before the Supreme Court. It was contended before the Supreme Court on behalf of Priya Bala that:-

(I)the view of the High Court that the essential ceremonies to constitute a valid marriage had not been proved to have taken place regarding the second marriage of Suresh Chandra with Sandhya Rani was erroneous and contrary to the evidence adduced in the case; and (ii) that in any event in view of the specific admission made by Suresh Chandra in Ex. 2 about the second marriage and having due regard to the other surrounding circumstances, it must be held that Suresh Chandra was guilty of the offence under section 494 Indian Penal Code .

(12) The Supreme Court took note of the fact that before the Sessions Judge both sides had agreed that according to the law prevalent amongst the parties Homa and Saptapadi were essential rites to be performed to constitute a valid marriage and further that there was no specific evidence as to the performance of Saptapadi and Home in the case of the alleged marriage of Suresh Chandra with Sandhya Rani and further that the only evidence adduced in respect of the second marriage was that of the priest who claimed to have officiated at the marriage of suresh Chandra and Sandhya Rani and whose evidence was only to the effect that the marriage was solemnized according to Hindu rites. The Supreme Court then posed for itself the following question:-

'THEREFORE,the main question that has to be considered is whether the performance of the above ceremonies and rites have to be established by evidence specifically before the respondent could be convicted under section 494 IPC.'

(13) A contention was raised before the Supreme Court that when once the priest had given evidence to the effect that the marriage between Suresh Chandra and Sandhya Rani had been performed according to Hindu rites, it followed that all the essential ceremonies that were necessary to constitute a valid marriage must be presumed to have been performed and that in any event, when there was evidence to show that the marriage as a fact had taken place, the presumption

was that it had taken place according to law. Some English decisions appeared to have been cited in support of this contention, the Supreme ] Court rejected this contention with the following observations:-

'In our opinion, it is unnecessary to refer to those cases cited by the learned counsel, as the position is concluded against the appellant by the decisions of this Court on both points.'

(14) After referring to the decision in Priya Bala's case, the Supreme Court observed as follows:-

'from the above quotations it is clear that if the alleged second marriage is not a valid one according to law applicable to the parties, it will not be void by reason of its taking place during the life of the husband or the wife of the person marrying so as to attract Section 494, Indian Penal Code . Again in order to hold that the second marriage has been solemnized so as to attract Section 17 of the Act, it is essential that the second marriage should have been celebrated with proper ceremonies and in due form. xx. xx. ix. xx. ix. The effect of the decision, in our opinion, is that the prosecution has to prove that the alleged second marriage had been duly performed in accordance with the essential religious rites applicable to the form of marriage gone through by the parties and that the said marriage must be a valid one according to law applicable to the parties.'

(15) In view of the decisions of the Supreme Court referred to above. it would be unnecessary to consider the decisions of the various High Courts on the subject, we shall, however, notice some of the decisions which have been cited at the Bar. In *Kunta Devi v. Siri Ram Kalu Ram* , there was an application by Siri Ram under section 9 of the Act for restitution of conjugal rights against Kunta Devi whom he claimed to be his wife. This application was resisted by Kunta Devi mainly on the ground that the alleged ]marriage between her and Siri Ram was not a valid marriage. The only evidence in support of the alleged marriage was that it was solemnized according to Vedic rites by a Pandit of the local Arya Samaj. There was no evidence with regard to the actual rites that were alleged to have been performed. Tek Chand, J., observed as under:-

'IT is well-known that according to Vedic rites there is a Kanya Dan. Obviously, there was no guardian of the girl present to do the Kanya Dan. Saptapadi is a very , essential rite and neither Pt. Dharma Pal nor any other witness has deposed to this essential ceremony having been performed. There is no reference even to Homam. He has merely made a bold statement that the ceremony was performed according to Vedic rites. There is complete lack of proof to show what the ceremonies were and whether the basic and essential ceremonies had been performed in this case or not.' xx. xx. xx. xx. xx. xx. Section 7 of the Hindu Marriage Act lays down that where such rites and ceremonies include the Saptapadi, the marriage becomes complete and binding when the seventh step is taken. There is no proof on the record of this case that the rite of Saptapadi, or as a matter of that, other essential rites, were performed, xx. xx. xx. xx. xx. xx. I am of the view that no valid marriage was performed between the parties.'

(16) In Venkata Subbarayudu Chetty v. Tanguturu Venkatiah Shresthi and others : AIR 1968 AP107 , it was held that where there was no evidence to prove that the two ceremonies essential to the validity of .a marriage, namely,-

(I) invocation before the sacred fire, and (ii) Saptapadi. that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire,

had been performed and where the only evidence was that Tali was tied by the husband around the neck of the wife, it was not a valid marriage and that the conviction for an offence under section 494 Ipc was bad. In Boloram Baruati v. Mt. Surja Baruati AIR 1969 Gau 90 , it was held that the prosecution was under an obligation to satisfactorily establish by evidence that the second marriage had been solemnized in accordance with law or custom which was applicable to the parties and that where there was no evidence to show that any of the material ceremonies which were necessary to be performed had been observed, mere admission by the accused that he married a second time would not satisfy the ingredients which were necessary to be established by me prosecution for an offence under section 494 Indian Penal Code . In Ram Singh v. R. Susila Bai and another AIR 1970 Mys 201, it was held that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved

and that admission of marriage by the accused was not evidence of it for the purpose of proving marriage in an adultery or bigamy case and that where, therefore, in prosecution for offences under sections 494/109 Indian Penal Code the evidence of the witnesses called to prove the marriage ceremonies, showed that the essential ceremonies had not been performed, the conviction of the accused persons could not be sustained.

(17) The decisions of the several High Courts cited above are in line with the rule laid down by the Supreme Court. But the learned counsel for Janak Rani, however, seeks to rely upon the following decisions, namely, The Andhra Pradesh High Court in the case cited held that section 7 of the Act was not in the nature of a special rule of evidence which enjoined upon the prosecution to establish in all cases by direct evidence the taking of the seventh step by the bridegroom and bride before the sacred fire and the complainant could not be considered to have failed to prove for this reason the second marriage of the accused in cases of bigamy. It was further held that there was nothing in the language of that section that all legal presumptions which arose in regard to the taking of the seventh step, as well as the performance of ceremonies, were set at naught and that the argument that the presumption in regard to the performance of the ceremonies would arise only when the witnesses spoke at least to the adoption of some or part of the ceremonies at the marriage was not supported by any authority. With respect, we consider that the rule laid down by the Andhra Pradesh High Court in this decision is no longer good law after the decisions of the Supreme Court in : 1965 CriLJ544 . The Assam & Nagaland High Court in the case cited held that the admission of the accused that he had married the second wife when considered along with the prosecution evidence regarding the second marriage was sufficient to raise a presumption that all the essential ceremonies had been performed even though there was no evidence describing the actual ceremonies that had been performed. In so holding, the Assam & Nagaland High Court appears to have followed the decision of the Andhra Pradesh High Court in Air 1962 AP 311. As that decision, in our view, is no longer good law, we cannot, with respect accept the view taken by the Assam & Nagaland High Court. The Judicial Commissioner, Tripura, in the case cited while holding that in order to prove a charge under section 494 Indian Penal Code , it had to be proved that the second marriage was

solemnized in accordance with the customary rites and ceremonies of the parties as required under section 7(2) of the Act, expressed the view that the definition of the expression 'proved' in section 3 of the Evidence Act permitted the Court to take into consideration all varieties of admissible and relevant pieces of evidence while adjudicating upon whether a particular fact was proved or not and that the expression 'after considering the matters before it' employed in the definition was of such wide amplitude as to justify the Court taking into consideration, besides the direct and circumstantial evidence, the opinion evidence made relevant by section 50 of the Evidence Act, the pretrial admissions of the accused, and the statement made by the accused during the trial under section 342 Criminal Procedure Code . We do not agree with this view of the learned Judicial Commissioner as, in our view, it is not supported by the decisions of the Supreme Court.

(18) The position of law that emerges from a consideration of the several authorities cited above may not be stated. Before a person can be convicted for an offence under section 494 Indian Penal Code the prosecution must prove that both the first as well as the second marriage were valid marriages and that the first marriage was subsisting on the date of the second marriage. A marriage is said to be valid when it satisfies the conditions laid down in sections 5 and 7 of the Act. The marriage should have been performed according to the customary rites and ceremonies of the parties. Except in cases where it is proved that the parties are governed by a special custom, it must be proved that the two essential ceremonies, namely,-

(I) invocation before the sacred fire, and (ii) saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire,

were performed. It is not sufficient to prove merely that the marriage was performed according to Vedic rites. If the parties are governed by any special custom, then such custom must be strictly proved and it must also be proved that the rites and ceremonies which are prescribed by such custom have been performed. We shall now proceed to consider the evidence in this case in the light of the position of law stated above.

(19) In view of the fact that appellant Sarup Chand had denied that he had married Janak Rani, it has to be considered whether the alleged marriage of Sarup Chand with Janak Rani has been proved as required under the law. The learned counsel for Janak Rani as well as for the State have contended that in a case under section 494 Indian Penal Code it is not necessary to prove the first marriage as strictly as it is necessary to prove the second marriage and that it would be sufficient if the first marriage is proved by evidence which is relevant under section 50 of the Evidence Act. This contention cannot be accepted not only in view of the proviso to section 50 itself which excludes the applicability of section 50 to cases under section 494 Indian Penal Code , but also in view of the decisions of the Supreme Court already referred. But we are satisfied that in the present case, the prosecution has succeeded in proving the first marriage as required by law. Janak Rani in her complaint has stated that her marriage with Sarup Chand was performed according to Hindu rites. In her evidence as Public Witness 1, she has added that Pandit Ram Sarup performed the marital ceremonies and that the marriage took place according to Sanatani rites. She has further stated that there were Lawans and Pheras at the time of the marriage and that there were 4 Lawans. Public Witness 2, Devki Nandan, Stated that he was present at the time of the marriage of Janak Rani with Sarup Chand that the marriage had been performed according to Sanatani rites and that there were Lawans and Pheras. He did not, however, remember of Lawans and Pheras. Public Witness 3, Ram Murti, who claimed to be a friend of Sarup Chand, stated that he also attended his marriage with Janak Rani. He also stated that there were 4 Lawans and Pheras at the marriage. Public Witness 4, Kundan Lal, also stated that he was present at the marriage of Janak Rani with Sarup Chand and that Pandit Ram Sarup had performed the marriage ceremony and that there was Lawans and pheras. In cross-examination. he admitted that he did not know what Saptapadi meant. But according to the note made by the learned trial Court, Sarup Chand himself explained to this witness that Saptapadi meant Lawans and Pheras. Upon this being told by Sarup Chand, this witness stated that the ceremony of Lawans and Pheras was performed and that there were 4 such Lawans and Pheras. He further explained that both the bride and bridegroom went round the fire four times. He could not tell how many steps were so covered by the bride and bridegroom.

P.W.7, Madan Lal, is the brother of Janak Rani. He also stated that Pandit Ram Sarup performed the marriage ceremony and that the marriage had been performed in accordance with Sanatani rites. He also stated that Lawans and Pheras of Sarup Chand and Janak Rani were done while Pandit Ram Sarup chanted Mantras. He also stated that the Lawans and Pheras took about 2' hours. Public Witness 9 is Pandit Ram Sarup. He stated that he acted as a Pandit for the performance of the marriage of Janak Rani with Sarup Chand appellant and that the marriage was performed in accordance with the Sanatani rites and further that there were 4 Lawans and Pheras and that the Lawans and Pheras took place from 4 A.M. to 7 A.M. The above evidence, in our view, is sufficient to prove that the marriage between Janak Rani and Sarup Chand was performed according to Sanatani rites and that these rites included Lawans and Pheras which again included Saptapadi. We, therefore, hold that the marriage of Janak Rani with Sarup Chand was a valid marriage and that such marriage was subsisting on the date of the alleged second marriage by Sarup Chand with Raj Kumari Suri.

(20) As regards the alleged marriage of Sarup Chand with Raj Kumari Suri, the only direct witness examined by the prosecution is Public Witness 5, Parlhad Dutt. He is a Vaid by profession and professes to have some connection with the Arya Smaj Mandir, Sadar Bazar, Delhi. The exact nature of his connection with the said Arya Smaj Mandir is, however, not apparent from the record. According to his evidence, Sarup Chand and Raj Kumari Suri came to him on the 12th or 13th August, 1964 with applications to the effect that they were both unmarried and that they wanted to get married at the Arya Smaj Mandir. He obtained the orders of the Vice President of the Arya Smaj on these applications and after further obtaining affidavits from Sarup Chand and Raj Kumari Suri in support of their applications, he directed Pt. Perma Nand to solemnize the marriage. He further stated that the marriage of Sarup Chand with Raj Kumari Suri was accordingly celebrated according to the Vedic rites. This witness however, has not stated the nature of the Vedic rites which were actually performed at the marriage. The pandit who is alleged to have solemnized the marriage has not been 'examined by the prosecution. The evidence of Public Witness 5 thus falls short of the proof that is required regarding the rites and ceremonies that were performed in the alleged marriage of Sarup Chand with Raj Kumari Suri.

(21) The prosecution, however, seeks to prove the alleged marriage of Sarup Chand with Raj Kumari Suri by some documentary evidence, namely, the applications given by them to Public Witness 5 and also the affidavits which were sworn by them in support of their applications. The application of Raj Kumari Suri is marked as Ex. P/C and that of Sarup Chand as Ex. P/D. Both these applications are stereotyped and in these applications which are addressed to the Secretary of the Arya Smaj, Sadar Bazar, Delhi, a request is made that their marriage should be performed by the Prohit of the Arya Smaj on 13th August, 1964. The affidavits are marked as Exs. P/E and P/F in these affidavits, in addition to the averment that Sarup Chand and Raj Kumari Suri were both unmarried, it is stated that-

'THE marriage ceremonies are being performed according to the Vedic rites at Arya Smaj Mandir, Pahari Dhiraj, Delhi.', and further that- 'Since. I, the executant, and aforesaid lady believe in the ideology of the Vedic Dharma (religion), the marriage is being solemnized according to the Vedic rites.'

Apart from the fact that these applications as well as the affidavits were written by Sarup Chand and Raj Kumari Suri before their marriage and not after their marriage, the recitals in these documents do not advance the prosecution case any further. They do not go beyond what Public Witness 5 had already stated. These documents do not, in our view, satisfy the requirements of law regarding the performance of the essential rites and ceremonies at the marriage.

(22) In addition to the evidence of Public Witness 5, the prosecution seeks to rely upon the evidence of Public Witness s. 7 and 8 to prove that there was a valid marriage between Sarup Chand and Raj Kumari Suri. Both these witnesses were admittedly not present at the time of the marriage between Sarup Chand and Raj Kumari Suri. Public Witness 7 being the brother of Janak Rani is an interested witness. He speaks to an alleged admission by Sarup Chand and Raj Kumari Suri that they had married. Even if the evidence of this witness is accepted, it does not prove that the marriage between Sarup Chand and Raj Kumari Suri was a valid marriage. Public Witness 8, who is an Accounts Officer in the Railway Accounts Department, Deputy Ganj, Sadar Bazar, Delhi and who at the time of his statement in the trial Court was the President of the Arya Smaj, Sadar Bazar,

Delhi, has stated that Sarup Chand and Raj Kumari Suri came to Arya Smaj, Delhi, in connection with a marriage and that their marriage was performed on 13-8-1964. He does not say that he was present at the marriage. He does not say according to what rites the marriage was performed. According to this witness, Sarup Chand and Raj Kumari Suri met him sometime in January or February 1965 and requested him to destroy the record of the marriage and that he told them that the record could not be destroyed. His evidence is hardly sufficient to prove that the marriage of Sarup Chand and Raj Kumari Suri was performed according to any particular rites and ceremonies or that it was a valid marriage.

(23) The prosecution also seeks to rely upon the statements made by the appellant and Raj Kumari Suri in their examination under section 342 Criminal Procedure Code . both in the committing Court as well as in the trial Court. The statement of the appellant under section 342 Criminal Procedure Code . is as under :-

'QUESTION:It is further in evidence that thereafter on the direction of Prahlad Dutt Public Witness 5 your marriage with Raj Suri co-accused had been solemnized through Pt. Perma Nand on 13-8-1964?' 'Answer : It is correct. But I cannot say if it was Pandit Perma Nand or any other pandit who solemnized the marriage.'

(24) The statement of Raj Kumari Sun under section 342 Criminal Procedure Code . is as under :-

'QUESTION: It is further in evidence that thereafter on the direction of Prahlad Dutt Public Witness 5 your marriage with Raj Suri co-accused had been solemnized through Pt. Perma Nand on 13-8-1964. Answer : On the direction of Prahlad Dutt Public Witness 5 both Sarup Chand and I went to the Arya Smaj Mandir. We were asked to bring two garlands which we brought. We were asked by Pandit Ji, whose name I do not know, to put garlands in the necks of each other which we did. Then that Pt. Ji said that the marriage had been performed. No other ceremony took place.'

(25) The statement of Raj Kumari Suri is obviously not an admission that the marriage was performed according to the Vedic rites muchless is it an admission

that the essential rites and ceremonies were performed at the marriage. On the other hand, this statement amounts to a denial of the marriage being performed according to the Vedic rites, because Raj Kumari Suri has stated that the marriage was performed by the mere exchange of garlands. Even the statement of Sarup Chand does not amount to an admission that the essential rites and ceremonies were performed at the marriage. The statement is only an admission of what Public Witness 5 has stated in his evidence, namely, that the marriage was performed according to the Vedic rites. This admission of Sarup Chand does not prove anything further than what Public Witness 5 had already stated and this admission taken along with the evidence of Public Witness 5 does not prove that the essential rites and ceremonies were performed at the marriage.

(26) The prosecution has also not proved that the marriage between Sarup Chand and Raj Kumari Suri was performed in accordance with any special custom and it has also not been proved that the rites and ceremonies which such custom required were performed at the marriage. On the other hand, the evidence of Public Witness 5 as well as the documentary evidence adduced by the prosecution, namely, Exs. P/C, P/D, P/E, and P/F, merely indicate that Sarup Chand and Raj Kumari Suri were not governed by any special custom nor were they married according to any special custom. But, on the other hand, they were married according to the Vedic rites. We have, therefore, to hold that the prosecution has failed to prove that the marriage between Sarup Chand and Raj Kumari Suri was a valid marriage in accordance with law. Although the prosecution has proved that the marriage of Sarup Chand and Janak Rani was a valid marriage and that the said marriage was subsisting on the date of the alleged marriage of Sarup Chand with Raj Kumari Suri, the prosecution has failed to prove that the marriage of Sarup Chand with Raj Kumari .Suri was a valid marriage. One of the necessary ingredients of an offence under section 494 Indian Penal Code has, thus, not been proved. The conviction of the appellant under section 494 Indian Penal Code cannot, therefore, be sustained and his conviction and the sentence passed against him under section 494 Indian Penal Code are set aside.

(27) We do not take up the appeal filed by Janak Rani against the acquittal of Raj Kumari Suri under section 494 read with section 34 and section 420 Indian Penal

Code and against the acquittal of Sarup Chand under section 420 Indian Penal Code . In view of the acquittal of Sarup Chand under section 494 Indian Penal Code , it automatically follows that the acquittal -of Raj Kumari Suri under section 494 read with section 34 Indian Penal Code has to be upheld.

(28) The only question remains to be considered is whether the acquittal of Sarup Chand and Raj Kumari Suri under section 420 Indian Penal Code is correct. The charge framed by the trial Court under section 420 Indian Penal Code is in the following terms :-

'THATyou on or about August 13, 1964, in furtherance of your common intention of both cheated Arya Smaj, Delhi, by fraudulently producing false affidavits to the effect that Sarup Chand accused was unmarried knowing fully well that Sarup Chand was married to Smt. Janak Rani and thereby induced Arya Smaj, Sadar Bazar, Delhi, to perform the marriage of you both which they would not have done had they known the true facts and thereby committed an offence punishable under section 420 read with section 34 of the Indian Penal Code within the cognizance of this Court.'

(29) Section 420 Indian Penal Code reads as follows :-

'WHOEVERcheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or any thing which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

(30) It is not the prosecution case that the Arya Smaj, Delhi, who is alleged to have been cheated, was induced to deliver any property to any person or that it was induced to do any of the acts which are mentioned in section 420 Indian Penal Code . therefore, on the face of it, section 420 Indian Penal Code is inapplicable to the case of the accused. According to the prosecution case, the proper charge which should have been framed against Sarup Chand and Raj Kumari Suri is under section 417 Indian Penal Code which is the penal section for an offence of

cheating. The offence of cheating itself is defined in section 415 Indian Penal Code which reads as follows :-

'WHOEVER, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or it likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.  
Explanation.-A dishonest concealment of facts is deception within the meaning of this section.'

(31) We shall assume for the purpose of this section that the Arya Smaj who is alleged to have been cheated is a person within the meaning of section 415 read with section 611 Indian Penal Code . The prosecution has to prove the following ingredients :-

(i) that the accused deceived any person either by making a false representation or by any dishonest concealment of facts; (ii) that the accused fraudulently or dishonestly induced the person so deceived to do any of the acts mentioned in section 415; and (iii) that the act or omission of the person deceived caused or was likely to cause damage or harm to that person in body, mind, reputation or property.

So far as Raj Kumari Suri is concerned, there is no evidence that she made any representation to Public Witness 5 that Suresh Chand was unmarried. The prosecution evidence only proves that she stated before Public Witness 5 as well as in her application and the affidavit filed in support of it, that she was unmarried on that date. It is not the case of the prosecution that this statement was false or that she was already married on that date. therefore, so far as Raj Kumari Suri is concerned, no deception was practiced by her either on Public Witness 5 or on the Arya Smaj. The very first ingredient that has to be proved against her, therefore, is absent. The further question whether the other ingredients which are necessary to be proved before she can be convicted under section 417 Indian Penal Code does not arise.

(32) So far as Sarup Chand is concerned, it is undoubtedly true that he made a representation to Public Witness 5 that he was still unmarried on the date he gave the application Ex. P/D and also the affidavit Ex. P/E. This is undoubtedly a false representation, as we have held that he was already married to Janak Rani and that that was a valid marriage which was still subsisting on the date of the second marriage. But we are not satisfied that Public Witness 5 was actually deceived by this misrepresentation. According to Public Witness 5, it was Raj Kumari Suri who first met him along with one Chanderwati on the 12th or 13th August, 1964 and informed him that she wanted to get married to Sarup Chand according to Samajic rites. Then Public Witness 5 told her that she as well as her would-be husband should bring separate applications in that respect. In compliance with this direction, Sarup Chand and Raj Kumari Suri gave their applications Ex. P/C and Ex. P/D to Public Witness 5. These applications were signed by them in Public Witness 5's presence. Thereafter, P.W. 5 obtained the orders of Hori Lal Gupta, Vice President of the Arya Smaj on the said applications. But these orders the Vice President permitted the marriage to be performed at the Arya Smaj Mandir. But in spite of having obtained the applications as well as the orders of the Vice President on these applications, Public Witness 5 thought it necessary to ask Sarup Chand and Raj Kumari Suri to bring affidavits in support of their respective applications. Both these affidavits contained averments to the effect that in case it was proved that either of them had already been married and were guilty of any criminal offence, the management of the Arya Smaj shall be free of all kinds of responsibility. Public Witness 5 has not stated that this is the usual procedure followed by the Arya Smaj before a marriage is allowed to be performed in the Arya Smaj Mandir. All these precautions taken by P.W. 5 raise a suspicion that he was aware that Sarup Chand was already married with Janak Rani and that he was merely protecting himself as well as the Arya Smaj from any responsibility by reason of performing the second marriage at the Arya Smaj Mandir. Under these circumstances, we are not satisfied that Public Witness 5 was in fact deceived by any misrepresentation made by Sarup Chand.

(33) Even if it is assumed for a moment that Public Witness 5 was in fact deceived by Sarup Chand and as a result of such deception, he was induced to perform this marriage with Raj Kumari Suri at the Arya Smaj Mandir, it has still to be proved

that this act caused or was likely to cause damage or harm to the reputation of the Arya Smaj. Public Witness 5 has no doubt stated in his evidence that the performance of this marriage had injured the reputation of the Arya Smaj, but his statement by itself does not necessarily prove that the reputation of the Arya Samaj was in fact injured -or that it was likely to be injured. If according to Public Witness 5, he had taken all the necessary precautions to satisfy himself that Sarup Chand was a bachelor at that time and that he was merely the victim of a deception, then it is difficult to understand how the reputation of the Arya Smaj will suffer by such deception being practiced upon the Arya Smaj. In this respect, the Arya Smaj is like any other registrar of marriages who is required to perform a marriage in accordance with law and if he is induced to perform such a marriage as a result of a deception or fraud practiced upon him, he is not to be blamed and it cannot be said that his reputation will suffer any injury. thereforee, the third ingredient under section 415 Indian Penal Code has not been proved by the prosecution. Sarup Chand cannot, thereforee, be convicted under section 417 Indian Penal Code .

(34) In the result, while upholding the acquittal of Sarup Chand and Raj Kumari Suri for offences under sections 420 Indian Penal Code , the conviction of Sarup Chand and the sentence passed against him under section 494 Indian Penal Code is set aside. The appeal filed by Sarup Chand is allowed and the appeal filed by Janak Rani is dismissed.

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