



2026:DHC:4214



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th May, 2026

IN THE MATTER OF:

+ CRL.A. 844/2013

KAMAL KAPOOR

.....Appellant

Through: Mr. Satish Sharma, Adv.

versus

STATE

.....Respondent

Through: Mr.Satinder Singh Bawa, APP for
State with IO SI Urvashi PS Sonia
Vihar.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

VIMAL KUMAR YADAV, J.

1. The Mahabharata era 'Niyog Pratha' resurfaced in the modern times in its new avatar. The Niyog Pratha in Mahabharata era was a socio-religious practice which was used when a man dies childless or was unable to procreate children. In this pratha / custom a married woman with the consent of her husband / family appoints a man to conceive a child with the sole purpose of continuation of lineage. It was restricted to procreation only and was not for marriage or any other relationship.

2. Relationship established in 'Niyog Pratha' ends once the purpose was evolved. There are several examples in Mahabharata era where this Niyog Pratha was put into use. Incidentally in the modern times also a similar



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custom is prevalent in various communities in the world.

3. In the instant case also some sort of similar arrangement was worked out between the Complainant side and the Appellant, whereby the victim reportedly agreed rather invited the Appellant to impregnate the prosecutrix since the husband of the prosecutrix was not virile enough. Some sort of contract, though oral, was there, as has come during the evidence but something on the way went wrong which resulted into the registration of the instant FIR No. 112/2010 under Section 376, 378, 506 read with Section 34 Indian Penal Code (IPC) in which the wife of the Appellant was also roped in.

4. Succintly, the indispensable facts are as under :-

The Appellant along with his wife was a tenant in the house of the prosecutrix. In the month of November 2006, according to the allegations, the wife of the Appellant offered 'Gajar Ka Halwa' to prosecutrix, who lost her consciousness after consuming the same when she regained her composure she found herself without the shred of cloth and realized that the Appellant, with the help of his wife, had raped her. She could not raise alarm or pick up the issue with the Appellant or share it with anyone else as she was threatened with dire consequences in which her nude videos were to be misused.

5. A female child was born. The Appellant, however, continued to rape the prosecutrix. The Appellant's version is that desire of a male child was the reason which persuaded the prosecutrix to continue with the arrangement. Demand of Rs. 1,00,000/- and 25 sq. yards of land was also made by the Appellant out of which Rs. 25,000/- was paid by the prosecutrix and on 12.10.2009 another sum of Rs. 50,000/- was paid. However, it led to the registration of FIR No. 112/2010 under Section 376/384/506 IPC.



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6. Both the Appellant and his wife were charged under Section 376, 384 read with Section 34 IPC, wherein the wife of the Appellant was charged under Section 109 IPC. Expectedly, the Appellant and his wife pleaded not guilty to the charges framed. The case of the prosecution, travelling through the stage of charge, evidence, statement of accused and the arguments etc culminated into a verdict in which both the Appellant and his wife were acquitted under Section 376 and 384 whereas the Appellant alone was held guilty for the offence under Section 497 IPC with which he was not initially charged. He was sentenced to undergo Rigorous Imprisonment (RI) for 3 years and to pay a fine of RS. 20,000/- in default of fine he was to undergo Simple Imprisonment (SI) for 9 months.

7. At the outset, learned counsel for the Appellant has come up with the plea that Section 497 IPC, has since been declared unconstitutional by the Hon'ble Supreme Court in case of *Joseph Shine vs Union of India* (2019) 3 SCC 39, therefore, something which has been declared ultra vires to the Constitution cannot be made a basis to convict and punish anyone. It is further submitted with the aid of the ratio of the judgment in *Ashok Kumar Singh vs. State* (2025) SCC OnLine Del 2456 that the declaration of Section 497 as unconstitutional has retrospective effect. Reference in this context can also be made to the judgment in *Maj. Genl. A.S. Gauraya & Anr. vs S.N. Thakur* (1986 AIR 1440).

8. With these contentions, the counsel for the Appellant sought that the Appellant should be acquitted and the conviction under Section 497 IPC should be set aside.

9. Learned APP on the other hand, submitted that the legal position after the judgment of *Joseph Shine* (supra) is in the shape of Section 497 IPC being no longer part of the statute, having been declared unconstitutional. In



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view of this fact, the learned APP did not have anything else to say.

10. Hon'ble Supreme Court while dealing with the issue in the *Joseph Shine* (supra) found Section 497 IPC to be unconstitutional being violative of Article 14, 15 and 21 of the Constitution of India. Not only that the procedure prescribed in Section 198 (2) Cr.P.C has also been declared unconstitutional.

11. In terms of Article 141 of the Constitution of India law laid down by the Supreme Court of India is binding on all the Courts and Tribunals in India.

12. In view of the aforesaid circumstances, the Impugned Judgment, in which Appellant has been held guilty and convicted under Section 497, cannot be sustained as the Section itself has been declared unconstitutional and no longer part of the statute.

13. Since the retrospective effect of the judgment in *Joseph Shine* (supra) there, which encompasses the present appeal as well. In such circumstances, there cannot be any other outcome of the appeal except that the Appellant is to be acquitted of the charge.

14. Ordered accordingly. Bail bonds stands discharged. Any original document filed on behalf of the surety shall be returned under acknowledgment on completion of requisite formalities. The Appeal stands disposed of accordingly.

VIMAL KUMAR YADAV, J

MAY 11, 2026/hk