

Supreme Court, Division Bench
Honorable Justice Tanka Bahadur Moktan
Honorable Justice Hari Prasad Phyal

Decision

071-CR-0763

Case: Bigamy

Appellant Defendant: Manuwar Hassan resident of Kathmandu District, Kathmandu Metropolita City, Ward No. 33 currently residing at Kathmandu District, Kathmandu Metropolitan City Ward No. 16

Vs.

Respondent Plaintiff: Nepal Government through the FIR of Sabiya Tanvir

071-CR-0948

Appellant Defendant: Meena Halwai (mentioned as Meena Hasan in the charge-sheet) resident of Banke District, Nepalgunj Municipality, Ward No. 1

Vs.

Respondent Plaintiff: Nepal Government through the FIR of Sabia Hassan

Court of First Instance:	Honorable Justice Lekhnath Ghimire Kathmandu District Court
Date of Decision:	2067/02/19 (corresponding to 2 June, 2020)
Appellate Court:	Honorable Justice Deepak Kumar Karki Honorable Justice Bishnu Dev Paudel Appellate Court, Patan
Date of Decision:	2069/12/18 (corresponding to 31 March, 2013)

Pursuant to Clause 12 (1) (a) of the Justice Administration Act, 2048, a review petition was filed before this court wherein a leave for review was granted. Consequently, the present case has been registered equivalent to an appeal petition and the brief facts and findings of the case are as follows:

Fact

A First Information Report was filed by the complainant, Sabia Hassan, stating that she was the first wife of Manowar Hassan, and that she had been living with her husband along with their two sons. She further alleged that while her husband was physically and mentally sound, he contracted a second marriage with Meena Hassan, thereby committing the offense of bigamy, and accordingly requested that legal action be initiated against them.

The deposition made by Manowar Hassan states that he had married the complainant Sabia Hassan in the year 2040 B.S., and that two sons were born from their relationship. They had been living together happily; however, about 12 to 14 years ago, his wife began to misbehave, act independently, and disobey him. Consequently, due to incompatibility between them, they mutually agreed to sever their marital relationship in accordance with religious customs and Islamic law, and thereafter, he married Meena Hassan as his second wife.

The deposition made by the defendant Meena Hassan states that she was aware that her husband Manowar Hassan had already been married before; however, since he had informed her that he had divorced his first wife, she consequently married him.

A written statement submitted by Anwar Alam states that he believes the defendant Manowar Hassan committed the offense of bigamy by marrying Meena Hassan while his first wife Sabia Hassan was still physically and mentally sound.

A charge-sheet dated 2066/06/20 (corresponding to October 6, 2009) was filed, stating that while his first wife was still residing in the same household, the defendant Manowar Hassan contracted a second marriage with Meena Hassan, and that both defendants thereby committed the offense of bigamy as defined under Clause 9 of the Chapter on Marriage. Accordingly, it was requested that the defendants be punished pursuant to Clause 10 of the same Chapter.

In his deposition dated 2066/06/21 (October 7, 2009), the defendant Manowar Hassan stated that he had married the complainant in 2041 B.S. according to tradition, and that two sons were born from the marriage. He explained that although they initially had a harmonious relationship, conflicts arose over the past 5–7 years, and during his work-related absences from Kathmandu, the complainant allegedly denied food to their sons and placed them in boarding schools. Due to unresolved differences, they mutually separated in the presence of local villagers approximately 12 years ago. He further stated that he did not marry Meena Hassan, who is a sister known to him, and that there is no court record of a formal divorce with the complainant, as the separation was effected according to customary village practices. He asserted that the statements made before the authorized officer are false, and since he did not contract a second marriage, he should not be subjected to punishment as alleged.

In her deposition dated 2066/06/21 (October 7, 2009) before the court, the defendant Meena Hassan stated that she had not married Manowar Hassan, and that he was merely an acquaintance. She further explained that she had come to Kathmandu about a month ago, and that she had been staying at a place provided by an acquaintance, and that she had been wrongly accused of marrying

Manowar Hassan. She further stated that the statement made before the investigating authorities was not hers, and that she had signed it under fear when asked to do so. She asserted that since a false case was filed against an unmarried woman, she should be acquitted of the charges.

The deposition of the complainant, Sabia Hassan, states that the defendant, Manowar Hassan, had entered into a second marriage with Meena Hassan, and that Meena Hassan was aware of his prior marriage. Likewise, while deposing before the Court of First Instance, Bimala Devi Thapaliya, a witness for Meena Hassan, stated that, to her knowledge, Meena Hassan has not entered into any marriage to date. Similarly, Mukim Shah, a witness for the defendant Manowar Hassan, stated that Manowar Hassan and Sabia Hassan were married approximately twenty years ago according to religious rites, and that they were divorced twelve years ago pursuant to Muslim customs. He further stated that he had no knowledge of Manowar Hassan entering into a second marriage.

The decision dated 2067/2/19 (corresponding to 2 June 2010) of the Kathmandu District Court reads as follows: Since the defendants have denied cohabiting as husband and wife, and in the absence of conclusive evidence, it would be unjust to establish the commission of the offence of bigamy merely on the basis of suspicion or presumption, particularly when such a finding would affect their social and economic status. Therefore, the charge brought against the defendants cannot be sustained. Accordingly, the defendants, Manowar Hassan and Meena Hassan, are acquitted of the alleged offence.

The appeal petition filed by the plaintiff, the Government of Nepal, before the Court of Appeals reads as follows: The defendant, Manowar Hassan, in his statement before the authorized officer, stated that he had divorced his first wife in accordance with Islamic law and had subsequently married the defendant, Meena Hassan. Likewise, the defendant, Meena Hassan, stated that, since Manowar Hassan had already divorced his first wife under Islamic law, she had married him. However, under the prevailing laws of Nepal, as no lawful divorce had taken place with the first wife prior to the second marriage, it is evident that the defendants, after contracting the second marriage, were cohabiting as husband and wife. The witnesses examined have also testified that the defendants committed the offence of bigamy. Therefore, it is established that both defendants are guilty of the said offence. Consequently, as the defendants ought to have been punished in accordance with the charge filed, the decision of the Court of First Instance to acquit them is erroneous. Hence, the said decision should be set aside, and the defendants should be punished as charged.

An order had been set aside by the Court of Appeal on 2069/02/14 (corresponding to 27 May, 2012) which reads as follows: where the defendants have been specifically named in the first information report and during the course of investigation the defendants had confessed to the commission of the offence and since the complainant appeared before the court and gave her testimony, it appears that the initial judgment could differ upon reassessment of the evidences and therefore, pursuant to No. 202 of the Court Proceedings (*Adalati Bandobasta*) and rule 47 of the

Appeal Court Regulations, 2048, the court hereby directs the defendants be summoned to appear before this court or present the case upon expiry of the limitation.

The Appellate Court, Patan, by its order dated 2069/10/07 (corresponding to January 20, 2013), directed that the case files relating to the divorce and partition proceedings, as referenced in the findings of the initial judgment, be obtained from the concerned authorities and submitted before the court in accordance with the law.

The decision of the Appellate Court, Patan, dated 2069/12/18 (corresponding to 31 March 2013) reads as follows: Since it could not be established from the facts and evidence in the case file that the defendant, Meena Hassan, had knowingly entered into a second marriage, the decision of the Court of First Instance to acquit her cannot be deemed erroneous and is therefore upheld. However, it is established that the defendant, Manowar Hassan, committed the offence of bigamy by marrying Meena Hassan while his first wife was still alive. Accordingly, pursuant to Section 10 of the Marriage Act, he is sentenced to one year of imprisonment and a fine of Rs. 5,000. Therefore, the acquittal of Manowar Hassan by the Kathmandu District Court dated 2067/02/19 (corresponding to 2 June 2010) is erroneous and is hereby overruled, whereas the acquittal of Meena Hassan is upheld. Consequently, the appeal filed by the Government of Nepal cannot be entertained.

A petition for review had been filed before this court by Manowar Hassan which states the following: we, the defendants have completely denied in court that we were cohabiting as husband and wife and that neither the complainant nor any other individual have been able to testify with certainty that I, the petitioner had married a second wife and was living as husband and wife. A mere rumor or suspicion that a marriage was affected cannot form the basis of convicting someone of the offence of bigamy, an offence which affects social and economic status. Furthermore, after the complainant had filed a FIR (the FIR was filed on 2066/04/14 (corresponding to 29 July, 2009), a divorce and partition case was filed which does not state any allegation of bigamy. Provided, I the defendant had lawfully contracted a second marriage, the defendant Meena Hassan would have had to be recognized as a relative and would have been made a coparcener in the partition proceedings. However, the case relating to partition does not recognize Meena Hassan as a coparcener. It is evident from the case records attached with the case file that the statements given before the investigating officer were prepared in a manner favorable to the complainant, with additions and omissions at various places, without providing me an opportunity to see or read them. Moreover, no independent evidence exists in the case file to corroborate the statements made during the investigation. The complainant has failed to produce any concrete evidence establishing the offence against me. In the absence of solid and objective proof of bigamy, it is improper to convict me of this offence, which would create a marital relationship affecting my social and economic status. Therefore, the decision of the Patan Court of Appeal dated 2069/12/18 (corresponding to 31 March, 2012) is erroneous and therefore, the petitioner seeks a review of the case and seeks a leave for review and justice be served.

I, the petitioner, have consistently denied before the Court of First Instance that I committed bigamy, a position corroborated by the deposition of my witness, Bimala Devi Thapaliya, as well as the statements made in court by the other defendant, Manowar Hassan. There exists no basis to assert that I, an unmarried woman, engaged in bigamy by entering into a marital relationship, thereby causing any harm to my social reputation or altering my social and economic status. Had I lawfully married the defendant, Manowar Hassan, as a second wife, the complainant, Sabia Tanveer Hassan, would have disclosed this relationship and identified me as a second wife in the partition case she filed in the Kathmandu District Court. However, she failed to do so. Furthermore, the statements recorded before the investigating officer contains various alterations and interpolations. While the Appellate Court, Patan, upheld the Kathmandu District Court's decision acquitting me of the alleged offence, its finding that a marital relationship existed between the defendants, implying bigamy is erroneous. Accordingly, I, the defendant Meena Hassan, respectfully submit this review petition before this honorable court, seeking a review of the case, so that the matter may be re-examined and justice be duly served to the defendant.

An order was set aside by this Court on 2071/09/14 (corresponding to 29 December, 2014), which reads as follows: Although the defendant, Manowar Hassan, had earlier admitted before the investigating officer that he had entered into a second marriage with Meena Hassan, he completely denied committing any such offence while testifying before the Court. Similarly, the defendant, Meena Hassan, consistently maintained, both before the investigating officer and in Court, that she was unmarried and had not married Manowar Hassan. Among the witnesses produced by the complainant, the Government of Nepal, no one was able to testify that a marriage had occurred between the parties on the specified date, rendering their accounts mutually contradictory. Following the complainant's filing of a report alleging bigamy and the submission of a charge sheet, a partition case was filed in which Meena Hassan, alleged to be the second wife, was not identified as one of the coparceners. The partition case was subsequently withdrawn in accordance with Section 92 of the Court Proceedings (*Adalati Bandobasta*). In a criminal case where the defendants deny the commission of an offence, conviction must be based solely on direct evidence. However, the Appellate Court, Patan, reversed the decision of the Kathmandu District Court and imposed punishment based on contradictory witness statements and suspicion, rather than direct evidence. Accordingly, the decision of the Appellate Court, Patan, dated 2069/12/18 (corresponding to 31 March, 2013), is contrary to Sections 25, 2, and 54 of the Evidence Act, 2031, as well as Section 184(a) of the Court Proceedings (*Adalati Bandobasta*). In view of these legal errors, leave for review has been granted pursuant to Section 12(1)(a) of the Judicial Administration Act, 2048.

An order had been set aside by this court on 2071/11/06 (corresponding to 18 February, 2015) which reads as follows: the defendant Manowar Hassan who was alleged by the petitioner to have committed an offence of bigamy had been granted a leave review by an order of this court on 2071/09/14 (corresponding to 29 December, 2014). It is apparent that on the same basis of evidence the decision of the Appellate Court, Patan dated 2069/12/18 (corresponding to 31 March,

2013) contains legal errors and is contrary to Clause 3, 25 and 54 of the Evidence Act, 2031 and No. 184 (a) of the Court Proceedings (*Adalati Bandobasta*) and accordingly pursuant to Clause 12 (1) (a) of the Judicial Administration Act, 2048, a leave review has been granted and it is hereby ordered to proceed according to the rules.

Decision

In accordance with the rules, the present case was listed in the cause-list and submitted for hearing. Learned Senior Advocates, Mr. Yadunath Khanal and Mr. Premraj Subedi, on behalf of the appellant, defendant Manowar Hassan, submitted that the defendant's relationship with the complainant had been dissolved in accordance with Islamic religion and customs. They further argued that the defendant had never married Meena Hassan and that no evidence exists to substantiate the existence of any such marriage. The FIR itself is vague, and the statements recorded before the investigating officer appear suspicious, having been altered and interpolated at various points. They further contended that, even if Manowar Hassan had contracted a second marriage with Meena Hassan, the complainant, Sabia Tanveer Hassan, while filing a partition case against him, failed to recognize or identify Meena Hassan as a second wife. Accordingly, no concrete evidence exists to substantiate the alleged offence against the defendant, and they sought his acquittal. Similarly, Learned Advocates Ms. Meena Thapa Khadka and Ms. Manisha Basnet, on behalf of the other defendant, Meena Hassan, submitted that the defendant had not married Manowar Hassan and that no evidence exists to confirm the existence of such a marriage. They further argued that the defendant had consistently denied committing bigamy in her statements, a position corroborated by the deposition of her witness and the statements made by Manowar Hassan in court. In view of this evidence, the claim that the defendant entered into a marital relationship amounting to bigamy is unfounded. The learned advocates contended that the decision of the Appellate Court, Patan, to the extent that it establishes a marital relationship between the parties, is erroneous, and accordingly sought annulment of that decision and the acquittal of the defendant.

Learned Deputy Government Attorney, Mr. Lok Raj Parajuli, on behalf of the appellant, the Government of Nepal, submitted that a FIR had been filed naming the defendants and that the complainant had testified in court in support of the allegations contained therein. He further argued that the defendants had confessed to the alleged offence before the investigating officer, but that this evidence had not been properly considered, and therefore the decision to acquit the defendant, Meena Hassan, of the alleged offence was erroneous. He further contended that, under prevailing Nepalese law, where a second marriage is contracted without dissolving the relationship with the first wife, both parties are liable to punishment for bigamy. Accordingly, he argued that the decision of the Court of First Instance, which acquitted the defendants, should be set aside and that punishment should be imposed in accordance with the charge-sheet.

In view of the facts and arguments presented in the case, it is necessary to determine as to whether or not the decision of the Appellate Court, Patan, dated 2069/12/18 (corresponding to 31 March,

2013) is consistent with the law. Likewise, it is also necessary to consider as to whether or not the appellate contentions of the appellant/defendants are admissible and tenable.

2. Upon consideration of the matter, the complainant, Sabia Hassan, the first wife, submitted that, while she was physically and mentally sound, her husband, Manowar Hassan, committed the offence of bigamy by contracting a second marriage with Meena Hassan. On the basis of her FIR, the present case was initiated and investigated. Following the investigation, it was established that the defendant, Manowar Hassan, while having a first wife at home, married Meena Hassan, thereby committing the offence of bigamy. Accordingly, a charge-sheet was filed against the defendants under No. 9 of the Chapter of Marriage of the *Muluki Ain* (Country Code) and seeking punishment under No. 10 of the same Chapter. At the trial level, the defendants were acquitted of the alleged offence by the Kathmandu District Court on 2067/02/19 (corresponding to 23 May, 2010). An appeal petition against the decision had been filed by the plaintiff, the Government of Nepal. The Appellate Court, Patan, partially reversed the trial court's decision and on 2069/12/18 (corresponding to 31 March, 2013) and pursuant to No. 10 under the Chapter of Marriage, sentenced the defendant, Manowar Hassan, to one year of imprisonment and a fine of NPR 5,000, while acquitting the other defendant, Meena Hassan of the charges. Not concurring with the decision, both the defendants Manowar Hassan and Meena Hassan separately submitted petitions seeking leave for review before this court. Leave for review was granted to Manowar Hassan on 2071/09/14 (corresponding to 29 December, 2014) and to Meena Hassan on 2071/11/06 (corresponding to 18 February, 2015). Consequently, the present case has been brought before this bench for decision under the appellate proceedings.
3. At the outset, it is observed that the trial court's decision acquitting the defendant, Meena Hassan, of the alleged offence was affirmed by the Appellate Court. In the absence of any appeal by the plaintiff, the Government of Nepal, challenging this aspect of the appellate decision, no further consideration on this point is warranted.
4. Upon examining the appellate contentions of the appellant-defendants, it is observed that the appellant-defendant, Manowar Hassan, in his petition before this Court, has categorically denied that he contracted a marriage with Meena Hassan or cohabited with her as husband and wife. Furthermore, neither the complainant nor any other person could affirmatively establish that he had entered into a second marriage with Meena Hassan. A conviction for the offence of bigamy, which is of such a nature as to affect social and economic status, cannot rest solely on hearsay, suspicion, or conjecture. Had the defendant lawfully contracted a second marriage, it would have been necessary, in the context of the present case, to identify Meena Hassan as a relative and recognize her as a coparcener. It is also contented that Meena Hassan was not recognized as a coparcener in the partition case. Similarly, in her petition, the defendant Meena Hassan submitted that she had consistently denied committing the offence of bigamy in her statement before the trial court, a position corroborated by the deposition of her witness and the statements made by the co-defendant, Manowar Hassan, in court. Despite this, the

Appellate Court proceeded to find her guilty of bigamy, thereby establishing a marital relationship without any evidentiary basis, which adversely affects her social reputation and economic status. In these circumstances, the appeal petition of the defendant Meena Hassan contends that the Appellate Court's finding of a husband-wife relationship is erroneous, and she seeks that the said portion of the decision be set aside and that she be granted justice.

5. Considering the appellate petition of the appellant-defendant, Manowar Hassan, it is observed that, during his statement before the investigating officer, he admitted that, he had divorced (**Talaq**) his first wife, the complainant, in accordance with his religious practices and Islamic custom, and had subsequently contracted a second marriage with the other defendant, Meena Hassan, on 2066/04/01 (corresponding to 16 July, 2009) in Nepalgunj which was recorded in the proceedings (QA 8). However, in the same statement (QA 10), he also admitted that at the time of the second marriage, the divorce from his first wife had not been legally completed. During his testimony before the trial court, the defendant stated that, although he had divorced the complainant in the presence of the village community more than twelve years ago, he had not married Meena Hassan and therefore denied the alleged offence. However, in the same testimony (QA 8), he admitted that he had divorced the complainant in the village in the presence of the community. This record indicates that, under the prevailing law, a legal dissolution of the marital relationship with his first wife had not, in fact, been affected. The complainant has, in support of her FIR, submitted her testimony before the court asserting that the defendants had committed an offence of bigamy. While the defendant, Manowar Hassan, claims that he had divorced (**Talaq**) his first wife, the complainant, in accordance with his religious practice and Islamic custom, the record shows that no lawful dissolution of the marital relationship between the defendants and the complainant can be considered to have occurred and the contention that the marriage was terminated in accordance with the law cannot be held to be valid.
6. In this context, it is appropriate to examine the practices concerning dissolution of marriage under Islamic law (Sharia Law). Under Islamic law, a marital relationship may be dissolved either through non-judicial or judicial procedures. Judicial dissolution occurs by order of the court, whereas non-judicial dissolution may take place unilaterally by the husband, unilaterally by the wife, or by mutual consent of both spouses. Primarily, three forms of dissolution are recognized: **Talaq**, **Li'an**, and **Khula**. Talaq is considered an exclusive right of the husband within the Muslim community and may be exercised unilaterally. It can be practiced in both formal and informal ways. Talaq is recognized by both Sunni and Shia communities; however, among the Shia community, its exercise is generally more formal in nature¹. The Shia community does not recognize triple Talaq, and a prescribed waiting period (**Iddah**) is

¹ Lawal Mohammad Bani & Hamza A. Pate, Dissolution of Marriage (Divorce) under Islamic Law, 42 J.L. POL'y & Globalization 138 (2015).

observed, during which reconciliation between the spouses is possible². In the Muslim community, apart from *Talaq*, practices such as *Talaq-e-Tafweed*³ and *Li'an*⁴ allows the wife to initiate dissolution of marriage, while *Khula*⁵ and *Mubarat*⁶ permit dissolution by mutual consent of both spouses. The Supreme Court of India, in the case of *Shayara Bano vs. Union of India*⁷, declared triple talaq (*Talaq-e-Biddat*) to be unconstitutional and arbitrary. Following this decision, the Government of India enacted the *Muslim Women (Protection of Rights on Marriage) Act, 2019*, which declared *Talaq-e-Biddat* illegal and criminalized its practice, providing for penal consequences⁸.

7. In this regard, since the form of marital dissolution practiced within the Islamic community has not been accorded legal recognition under the prevailing laws of Nepal, and as a uniform legal framework applicable to all communities and religions is in force, it cannot be held that an individual is entitled to contract a second marriage on the basis of a divorce or dissolution effected solely in accordance with Islamic customs or traditions within the community or society. Moreover, as arbitrary forms of divorce, such as triple talaq, have been criminalized in several other countries, any such community-based or informal dissolution, not recognized by law, cannot be construed as a lawful basis to enter into a second marriage.

8. Therefore, based on the above-mentioned grounds and evidence, it was found that the defendant had committed the offense of bigamy, and accordingly, the Appellate Court, Patan rendered a

² Quaran, Chapter 65, Verse 4 “As for your women past the age of menstruation, in case you do not know, their waiting period is three months, and those who have not menstruated as well. As for those who are pregnant, their waiting period ends with delivery and whoever is mindful of Allah, He will make their matters easy for them.”

³ Maaïke Voorhoeve, Divorce. Historical Practice, the Oxford Encyclopedia of Islam and Women, Oxford: Oxford University Press (2013). [ISBN 978-0-19-976446-4](#) (In this provided, the husband breaches any conditions of the agreements prior to the marriage, the wife has the right to seek divorce)

⁴ Quran, Chapter 24, verse 4 “those who accuse chaste women ‘of adultery’ and fail to produce four witnesses, give them eighty lashes ‘each’. And do not ever accept any testimony from them—for they are indeed the rebellious” (In this, provided, the husband accuses the wife of immorality and adultery, thereby defaming her character, and such allegations are not proven the wife is entitled to seek dissolution of the marriage)

⁵ Abed Awad and Hany Mawla, Divorce. Legal Foundations, the Oxford Encyclopedia of Islam and Women. Oxford: Oxford University Press. [ISBN 978-0-19-976446-4](#) (In Khula, the husband offers a certain compensation to the wife for the dissolution of marriage, and when such an offer is accepted by the wife, the marriage is dissolved by mutual consent.)

⁶ Ibid Footnote 5 (In *Mubarat*, either the husband or the wife may initiate a proposal for dissolution of marriage, and when such a proposal is accepted by the other party, the dissolution of marriage is deemed to have taken place.)

⁷ *Shayara Bano vs. Union of India* (2017) 9 SCC 1

⁸ Section 3 of *Muslim Women (Protection of Rights on Marriage) Act, 2019* “Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal”.

Section 4 “Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine”.

Section 5 “Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate”

judgment on 2069/12/18 (March 31, 2013), sentencing the defendant to one year of imprisonment and a fine of Rs. 5,000. Although the said decision rendered by the Appellate Court, Patan, appears to be appropriate with respect to the appellant-defendant, it is relevant to refer to the legal provisions made by the National Penal Code, 2074, concerning the determination of punishment for such offenses. In this regard, Clause 175 (4) of the National Penal Code, 2074, provides that any person who commits or causes the commission of such an offense shall be liable to imprisonment for a term ranging from one to five years and a fine from ten thousand to fifty thousand rupees. Likewise, No. 10 of the Chapter on Marriage under the *Muluki Ain* (Country Code) prescribes the following: **“Provided, any man, while his wife is still alive or before the marital relationship has been legally dissolved, marries another woman or keeps another woman as his wife, he shall be punished with imprisonment for a term ranging from one to three years and a fine from five thousand to twenty-five thousand rupees. If the woman knowingly marries such a man or lives with him as his wife, she shall also be subjected to the same punishment.”** In this context, Clause 5 of the Criminal Offenses (Sentencing and Execution) Act, 2074 provides that **if, at the time of determining punishment for any offense, provided, the law prescribes a lesser punishment than that which was applicable at the time the offense was committed, the lesser punishment shall be imposed.** Likewise, Clause 39 (2) (b) of the Act relating to Amendment, Unification, Adjusting, and Repealing Some Nepal Laws, 2074 clearly stipulates that, **while imposing punishment in any criminal case filed under any law, the punishment shall be imposed in accordance with that law; however, if the punishment prescribed under such law is greater than that provided under the National Penal Code, the punishment shall be limited to the extent prescribed in the National Penal Code.** Thus, it is evident that the former Chapter on Marriage under the *Muluki Ain*, as well as the current National Penal Code, 2074, and other aforementioned laws, have recognized bigamy as an offense and have prescribed corresponding punishments for it. In this context, with reference to the aforesaid legal provisions, the judgment rendered by the Appellate Court, Patan, on 2069/12/18 (March 31, 2013), sentencing the defendant Manowar Hassan to one year of imprisonment and a fine of Rs. 5,000 in accordance with Section 10 of the then Chapter on Marriage of the *Muluki Ain*, cannot be deemed to be otherwise.

9. From the evidence adduced in the case file and the grounds discussed hereinabove, it stands established that the defendant, Manowar Hassan, had contracted a second marriage with the present appellant, Meena Hassan. Although the appellant, in her statement before the court, asserted that she had not married Manowar Hassan and that he was merely an acquaintance, her statement made before the investigating authority clearly reveals that she had admitted to marrying the said defendant, stating that the marriage had taken place after he had divorced his first wife. Since the appellant has failed to demonstrate that her statement before the investigating officer was otherwise or incorrect, her subsequent denial of the marital relationship cannot be deemed credible. In the absence of sufficient proof to establish that she did not marry the defendant, and considering that the finding of the Patan Appellate Court

holding that the appellant, Meena Hassan, had entered into a marital relationship with the defendant, thereby constituting the offense of bigamy, does not appear inconsistent with the evidence and facts on record, this Court finds no reason to interfere with the said finding. Accordingly, the appeal preferred by the appellant-defendant, seeking to set aside and reverse the relevant portion of the judgment rendered by the Patan Appellate Court, is found to be devoid of merit and unsustainable in law. Hence, this Bench does not concur with the pleadings of the appellant.

10. Accordingly, in view of the grounds and reasons cited above, the judgment rendered by the Appellate Court, Patan, on 2069/12/18 (March 31, 2013), sentencing the defendant Manowar Hassan to one year of imprisonment and a fine of Rs. 5,000, and acquitting the other defendant, Meena Hassan, of the charges, is found to be proper and justified. The appeals filed by the appellant-defendants, Manowar Hassan and Meena Hassan, are hereby dismissed. A certified electronic copy of this judgment shall be entered into the court's electronic system, the case file be removed from the registry and submitted in the Record Section in accordance with the established procedure.

Justice

Concurring with the above Opinion

Justice

Bench Officer: Manoj Baral/Laxmi Rana

Computer Operator: Prem Bahadur Thapa

Dated: Year 2079 of the Month of Chaitra Date 26 Day 1

(Corresponding to Year 2023 of the Month of April Date 9 Day 1)