

**(1994) 09 MP CK 0060**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No. 1010 of 1986**

Bharatlal Deolal Lodhi

APPELLANT

Vs

Top Singh Somaru Lodhi

RESPONDENT

**Date of Decision : 30-09-1994**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 468  
Penal Code, 1860 (IPC) — Section 497

**Citation : (1995) 40 MPLJ 1050 : (1995) MPLJ 1050**

**Hon'ble Judges : D.P.S. Chouhan, J**

**Bench : Single Bench**

**Advocate : Umesh Trivedi, for the Appellant; None, for the Respondent**

**Final Decision : Dismissed**

## Judgement

D.P.S. Chouhan, J.

Appellant Bharatlal resident of village Padmi was employed as Chowkidar in village Oughat Khapri from where he used to come to his home on every Sunday. Rambai was his wife. They were wedded 10 years earlier and also had a child of about 7 years. It was on 17th February, 1980 that when Bharatlal came to his house he did not find his wife there. Then he waited for sometime and made enquiry in the village but could not get any clue. It was from Dayaram (P.W.3) he came to know that his wife had gone to village Tikarwada along with accused Top Singh, who was working as Peon in the Panchayat Office in that village. Complainant Bharatlal thereafter went to that village and enquired from Top Singh about his wife. At this, Top Singh told him that his wife is living with him and he has kept her as his wife and there is no question of sending her with him. He thereafter returned back and went to the police station to lodge a report but his report was not recorded. The police asked him to come after sometime and on 25th March, 1980 Top Singh was called by the Police. After that the complainant was repeatedly visiting the police station but nothing came out. He having received frustration about inaction on the part of the police filed a

complaint. Criminal Case No. 602/80 was registered against accused Top Singh. After taking action u/s 202, Criminal Procedure Code Top Singh was summoned and the case proceeded.

The trial Court recorded a conviction of accused u/s 497, Indian Penal Code and sentenced him to undergo R.I. for one year together with a fine of Rs. 700/-; in default of payment of fine further R.I. for six months vide judgment and order dated 5-11-1982.

Accused Top Singh thereafter preferred an appeal numbered as Criminal Appeal No. 77/82 before the Sessions Court which was allowed on 30-5-1985 and acquittal was recorded.

The case was initiated on a complaint and the present appeal was filed by the complainant under sub-section (4) of Section 378, Criminal Procedure Code. The appeal was admitted after granting leave to appeal as required under the law.

The lower appellate Court allowed the appeal on two considerations. Firstly that the delay in filing the complaint has not been satisfactorily explained by the complainant. Secondly, the consent or connivance on the part of the complainant was established.

Cause list is revised. Heard the learned counsel for the appellant-complainant. Learned counsel for the respondent-accused is not present.

Learned counsel for the appellant made two-fold submissions. Firstly, that the view taken by the lower appellate Court regarding delay in filing the complaint is erroneous inasmuch as the delay has been explained, both in the complaint as well as in the statement of Bharatlal (P.W.I). Secondly, it was not a case of consent or connivance on the part of the complainant-appellant, and the view taken by the lower appellate Court is erroneous in law.

It may be noticed that for filing a complaint no limitation is provided except as provided u/s 468, Criminal Procedure Code.

For offence u/s 497, Indian Penal Code the sentence of imprisonment as provided is 5 years and in view of this, the provision of Section 468, Criminal Procedure Code would not be attracted. Learned counsel for the appellant further submitted that the explanation for delay is not based on any statutory provision, but is based only on the principle of natural justice, though the party should have approached the Court for redress at the earliest. In the present case, the appellant complainant was a Chowkidar working in different village Oughat Khapri and he came to his native village on 17-1-1980 on which date he did not find his wife there. He made enquiry and waited for her arrival as she might have gone to any of his relations. Thereafter he went to Dayaram (P.W.3), who told him that he saw his wife going with Top Singh to village Tikarwada. The complainant thereafter visited accused Top Singh and asked him about his wife. Top Singh told the complainant that his wife is with him and he is keeping her as his wife and there is no question of sending her back. At this, the appellant went

to the police station to lodge the report but no report was recorded and oral assurance was given to the appellant that the accused will be called and subsequently on 13-3-1980 the wife of the appellant Smt. Ramabai returned to her matrimonial home and narrated the whole of the story to her husband that she went there on the persuasion of Top Singh that he got a job for her in the Panchayat Office in village Tikarwada. Since the Panchayat Office was closed he took her to his house where he kept her and committed sexual intercourse without her consent and under a threat of fear. After this on 14-3-1980 the complainant along with his wife had gone to the police station to lodge a report as earlier the police did not record the report and again asked him to come next time when his wife would be medically got examined. Thereafter he time and again went to the police station along with his wife but nothing was done and ultimately he had filed a complaint on 5-4-1980.

Learned counsel for the appellant submitted that the delay in filing the complaint is properly explained. On the question of delay, the learned lower Appellate Court relied upon a decision of the Supreme Court in Khedu Mohton and Others Vs. State of Bihar, In that case the delay was of 8 days and the explanation given by the complainant in that case was that he laid information about the occurrence before the police on the date of the occurrence itself; he was expecting the police to take up the investigation; as the police did not take up the investigation, he filed the complaint on 27-11-1961. This explanation was rejected by the 1st Appellate Court. In that case the report was lodged to the police but that was not summoned nor proved. In the present case, the position is not so. Here no F.I.R. was recorded by the police and as such the case relied on is of no avail in the present case. In the facts and circumstances it would be presumed that the delay was satisfactorily explained.

The next question is of consent and connivance. The consent and connivance are the requirements of law u/s 497, Indian Penal Code. Section 497, Indian Penal Code is as extracted below :-

"497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

The another ruling referred to by the lower appellate Court is N.S.R. Mudaliar v. M.S.V. Mudaliar AIR 1970 SC 1840. This citation is wrong. On page 1840 there is no case. At page 1839 there is case of N.S.R. Mudaliar v. M.S.V. Mudaliar AIR 1970 SC 1840 and that case is related to the Trusts Act and has nothing to do with the criminal proceedings or lodging the complaint or consent and connivance for the purpose of Section 497, Indian Penal Code. For consent and connivance, the lower appellate Court relied on Shyam Prasad v. Munna Anakalha

v. Chouthmal 1962 J LJ SN 230 and the case relates to Payment of Wages Act. Thus the citation of the case is not correct. However, the question for consideration is whether for offence u/s 497, Indian Penal Code, the consent or connivance should be anterior to the commission of the crime or posterior to the commission of the crime. A criminal liability cannot accrue ex post facto. The Lower Appellate Court relied on it that only in the complaint the complainant has not written that he gave no consent and was not in connivance for the offence for which he filed the complaint.

The consent or connivance is to be proved and is not to be pleaded as complaint is not to be treated as a plaint. From the evidence it is clear that the appellant did not give any consent either to his wife or to the accused for the commission of the offence. The facts on the record establish that there was no consent or connivance on the part of the appellant. The fact that Panchayat took place and demand of Rs. 2,000/- was made in the Panchayat has no relevance in the context. The Panchayat is subsequent to the commission of the offence and that cannot fall in the category of "consent or connivance."

The offence is compoundable and in the facts and circumstances of the case relying on the factum of the Panchayat and demand of money of Rs. 2,000/- by itself goes to exhibit that the offence was done by the accused. In the interest of justice I am not inclined to interfere with the decision of the lower appellate Court though the reasonings given were not correct.

The appeal is accordingly dismissed.