
(1996) 04 MAD CK 0041
In the Madras High Court
Case No : Criminal Appeal No. 245 of 1988

Natarajan	Vs	APPELLANT
Ramanujam		RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 498

Citation : (1997) CriLJ 389

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : K. Selvarangan, for the Appellant;

Judgement

M. Karpagavinayagam, J.—This is an appeal filed by the appellant/complainant against the order of acquittal in C.C. 55 of 1986, dated 5-

2-1988 on the file of the Judicial Second Class Magistrate-III, Trichirapalli, acquitting the respondent Ramanujam accused in respect of the

offence u/s 498, Indian Penal Code.

2. On 18-3-1986 the appellant filed a complaint against the respondent with the following allegation. On 3-12-1961 the complainant P.W. 1,

married one Banumathy alias Janaki and out of that wedlock, two children were born. After his retirement, he was staying along with his wife and

two children. His daughter Geethapria (P.W. 2) is the student of R.S.K. School at Kailasapuram. P.W. 1's wife Banumathy used to come along

with his daughter Geethapria to school and the accused/respondent who was used to give N.C.C. Training in the School had developed illicit

intimacy with P.W. 1's wife. On 19-7-1985, when the complainant came to the house, he found that his wife was missing. He was informed by his

daughter Geethapriya P.W. 2 that in the morning the accused/respondent came and took Banumathy along with jewels and a suit case. Then he

tried to trace out Banumathy but she was not available, later he came to know from two other witnesses that the respondent/accused took

Banumathy to Trichy and that they were living together there.

3. During the trial, six witnesses were examined on the side of the appellant and six witnesses were examined on the side of the respondent and

Ex.P1 to P4 were marked.

4. After appraisal of the evidence, both oral and documentary, adduced on both sides, the learned Magistrate acquitted the accused in respect of

the above charge holding that the offence was not proved beyond doubt. Aggrieved by the judgment the appellant/complainant filed this appeal.

5. I head Mr. Selvarangan appearing for the appellant. But the respondent was not represented by any counsel. I have gone through the records.

The learned Magistrate has given various reasons for rejecting the evidence adduced by P.W. 1. He also discussed and appreciated the evidence

adduced by D.W. 1 and D.W. 2. Ultimately, he arrived at the above conclusion.

6. Section 498, Indian Penal Code provides :

Enticing or taking away or detaining with criminal intent a married woman, whoever takes or entices away any woman who is and whom he

knows or has reason to believe to be the wife of (sic) any person having the care of her on behalf of that man, with intent that she may have illicit

inter-course with any person, or conceals or detain with that intent any such woman, shall be punished with imprisonment of either description for a

term which may extend to two years or with fine or with both.

7. The main ingredients of the offence is taking or enticing away the wife from the husband by a person. So the prosecution has to necessarily

prove that the accused has taken the wife from her husband with the criminal intent. Of course the decided cases while interpreting the sections

would show that the wife's complicity is immaterial. But suppose the said Banumathy, the wife of P.W. 1 if eloped with the accused in collusion,

the section is not attracted. For this reason, the said Banumathy also must have been examined in this case, to prove the ingredients of the criminal

intent on the part of the accused while taking her. So non-examination of the material witness would highly affect the case of the prosecution.

8. In that view of the matter, I feel that the acquittal can be sustained not only on grounds mentioned in the judgment but also on the basis of above

referred reasons which I referred above. As such the appeal which has no merit, deserves to be dismissed. Accordingly the same is dismissed.

9. Appeal dismissed.