
(1976) 09 RAJ CK 0002
In the Rajasthan High Court
Case No : Criminal Appeal No. 507 of 1972

Niyamat Khan

APPELLANT

Vs

Gaffar Khan

RESPONDENT

Date of Decision : 01-09-1976

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 408, 497, 498

Citation : (1976) WLN 428

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Jain, J.—Complainant Niyamat Khan has filed this appeal against the acquittal of the respondent Gaffar Khan of the offences under Sections 497 and 498 I.P.C. directed by the learned Munsif Magistrate First Class, Ajmer City on June 30, 1972.

2. I have heard arguments and perused the record. The prosecution case was that Mst. Bashiran was the wife of the complainant Niyamat Khan. The accused enticed her away on 7-11-67 along with cash and ornaments, Niyamat Khan lodged a complaint u/s 380 and 498 I.P.C. but only a charge u/s 498 was framed of which the accused was acquitted on 30.4.59, because it was found that Mst. Bashiran was turned out of the house by the complainant and was living with her brother-in-law. The complainant filed another complaint on 11.4.67 u/s 497 and 498 I.P.C. against the accused alleging that the accused had detained Mst. Bashiran with the intent that he may have sexual intercourse with her. She was shown as the wife of the accused in electoral roll of the year 1967, and she had also child by him on 16.3.67 which established that the accused is having adulterous inter-course with her.

3. The plea of the accused was that Mst. Bashiran had been divorced by her husband. The learned Magistrate found that it was not proved that the

complainant divorced Mst. Bashiran. He however, held that the accused could not have committed adultery with Mst. Bashiran but for connivance on the part of the complainant. The learned Magistrate further held that the prosecution has not been able to prove that Mst. Bashiran was detained as a result of force or persuasion, or allurement, or blandishment proceeding from the accused as held by the Supreme Court in *Alamgir and Another Vs. The State of Bihar*, Indeed the complainant turned out Mst. Bashiran and himself married another girl Mst. Kheero. The learned Magistrate therefore, found that neither a case u/s 497, nor u/s 408 I.P.C. was made out.

4. The learned Counsel for the complainant submitted that u/s 497 I.P.C., every act of sexual intercourse amounts to adultery and the accused can be prosecuted for all such different acts. In the first complaint, he failed to prove his allegation about the adultery but now with the advent of the child of the unlawful union, it was conclusively established that there has been adulterous cohabitation between the two. The learned Counsel for the respondent, on the other hand, submitted that the courts have held it undesirable to prosecute the accused for successive acts. Moreover, connivance as held by the learned lower court has been fully established.

5. I have considered over the rival contentions. It will be noticed that the elopement took place in the year 1957. The first complaint resulted in acquittal on 30.4.1959. The husband then, came with the second complaint after a lapse of 8 years. The learned Counsel for the appellant argued that it was very difficult for the complainant to prove adultery and he could come to the court confidently only when an infallible proof was available which was provided by the birth of the child. This argument for such long delay is not stated in the complaint and has been made out by the learned Counsel for the first time at the time the appeal was being argued. I am inclined to uphold the findings of the learned trial court regarding connivance on the part of the husband. Magna PW. 4 has deposed that it was correct that Niyamat Khan turned Mst. Bashiran out and then married Mst. Kreeru. It is admitted by the complainant Niyamat PW. 1 that the dispute was placed before the Panchayat but the ornaments were not returned to him. His brother Shamauddin PW. 3 has deposed that the Panchayat of the whole village was called twice Abdul Simad Khan PW. 5 is the elder brother of the father of the complainant and he admitted that he had assembled the Panchayat but the accused did not permit Mst. Bashiran to come to the Panchayat, nor were the ornaments returned to them. Abdul Gaffar Khan PW. 6 admitted that there was custom of *nata* marriage in their community. Now, *Nata* is a customary form of marriage in which a married woman can marry any other man without any divorce and the former husband has a claim only to compensation which may be paid before or after the marriage. More than of one such disputes are settled through the village or caste Panchayats. In this case no complaint u/s 497 I.P.C. was made in the year 1957 and the second complaint u/s 497 & 498 was brought after a lapse of 8 years. The parties live in the same village and their houses are separated only by 500" or so. During all this period Mst. Bashiran lived with the

accused and also used to appear in the public. The complainant had turned Bashiran out and had also married another person. In these circumstances, if the learned Magistrate has inferred cruelty on the part of the husband, it appears to me to be extremely difficult and undesirable to reverse the finding while dealing with an appeal against acquittal.

6. Now, remains the question whether the accused has been detaining Met. Bashiran within the mischief of Section 498 I.P.C. The Supreme Court observed that mere keeping back a wife from her husband is detention u/s 498 I.P.C. Such keeping back may not be the result of force and may even be the result of persuasion, allurement and blandishment. The learned Magistrate was of the view that no such element was proved by the prosecution. It is true that in some cases it has been held that to keep any person's wife with the promise of marriage or upon the understanding that she will be married, was such allurement and persuasion. It was urged that similar was the case here. But I will not be inclined to reverse the finding of the learned trial court because after all such promise, persuasion or flattery are all, in this case, matters of presumption only; there being no direct evidence, and if the learned lower court has recorded a finding in favour of the accused, the appellate court has to be slow to disturb such a finding.

7. Considering all the circumstances of the case, I do not feel inclined to reverse the findings of the learned lower court. I therefore, dismiss the appeal.