

**(1962) 10 OHC CK 0013**  
**In the Orissa High Court**  
**Case No : Criminal Appeal No. 43 of 1962**

Pothi Gollari

APPELLANT

Vs

Ghanni Mondal

RESPONDENT

**Date of Decision :** 31-10-1962

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 199  
Penal Code, 1860 (IPC) — Section 497

**Citation :** AIR 1963 Ori 60 : (1963) 29 CLT 482 : (1963) CriLJ 312

**Hon'ble Judges :** R.K. Das, J

**Bench :** Single Bench

**Advocate :** P.V.B. Rao, for the Appellant;

**Final Decision :** Dismissed

## Judgement

R.K. Das, J.—This is a complainant's appeal against an appellate order dated 13-11-61 passed by the Sessions Judge, Koraput, in Cri.

Appeal No. 31/61 acquitting the respondent of a charge u/s 497, I. P. C,

2. The complainant appellant had given his daughter Kamli in marriage to one Bhagaban Chandal about ten years ago. Sometime after the marriage

Bhagaban abandoned Kamli and married another wife. After this abandonment, when Kamli was living in her father's house the accused Ghanni

Mandal induced Kamli to live with him as his wife and committed intercourse with her making her pregnant. The complainant having come to know

about the pregnancy of his daughter, enquired from her and learnt that it was the accused who was responsible for her pregnancy. A punchayati

was convened where the accused admitted to have illicit intercourse with Kamali, but later on resiled from that position and refused to accept her

as his wife and give her any maintenance. Thereafter her father, the complainant

filed a complaint u/s 497 I. P. C. which however, was quashed by the High Court as leave to file the complaint u/s 497 was not taken in accordance with the provisions of Section 199 of the Code of Cr. P. C.

Subsequently the complainant after obtaining necessary leave filed the complaint against the accused u/s 497 I. P. C. and the accused was

convicted and sentenced to pay a fine of Rs. 100/- and in default to undergo R. I. for one month.

On appeal the learned Sessions Judge acquitted the accused holding that Bhagaban having abandoned his wife Kamli, it cannot be ruled out that he

connived at or consented to the accused having sexual intercourse with his wife. He also held that after such abandonment of Kamli by her

husband, the complainant cannot be said to have taken care of her daughter on behalf of her husband within the meaning of Section 199, Cri. P. C.

so as to entitle him to file the complaint.

3. The prosecution sought to prove its case through the evidence of P. W. 1 the appellant, his daughter P. W. 2 and some other villagers to prove

the illicit connection of the accused with P. W. 2. P. W. 2 herself has deposed that the accused committed sexual intercourse with her. According

to P. W. 6 the Sarpanch and P. W. 5 another villager, the accused admitted before them to have committed adultery with P. W. 2 and was

responsible for the pregnancy. Thus the evidence clearly supports the prosecution case that the accused committed adultery with P. W. 2.

4. It further appears from the evidence of P. W. 2 that her husband, Bhagaban left her about ten years ago and was living with his new wife and

did not care to take her back. It appears from the evidence of P. W. 1 that Bhagaban though lives in the same village did not care to depose in the

case, in other words he was completely indifferent to what happened to his wife. In view of this conduct of Bhagaban, the learned Sessions Judge

was of the view that the husband connived at or consented to the intercourse of his wife by the accused, as such he could not be held guilty u/s 497

I. P. C. No doubt, P. W. 2 had been abandoned by her husband, Bhagaban. But to constitute "connivance" something more than mere negligence

is necessary. Therefore, the learned Sessions Judge was not justified in drawing an inference of connivance from such conduct of Bhagaban.

5. The fate of the prosecution, however, depends upon another vital question.

There is clear evidence to show that the wife had been abandoned by her husband. The question arises whether in such a case the father was competent to file the present complaint. The provision of Section 199, Cri. P. C. is pertinent in this connection; and it runs thus :

No Court shall take cognizance of an offence u/s 497 or Section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed.

Thus, under the section the husband alone was competent to file the complaint for a charge u/s 497 and it is only when he is absent, the person who is in care of the woman on his behalf may file such complaint on behalf of the husband with a leave of the Court. In the present case, it is not the case of the prosecution that the husband was absent. On the other hand, the evidence shows that Bhagaban lives in the same village, but was not interested in filing the complaint, he having abandoned his wife. It is to be seen whether under such circumstances the father can be said to be person who had care of Kamli, his daughter, on, behalf of her husband or on his own behalf, and if he was competent to file the complaint.

6. Mr. Rao, learned counsel for the appellant, contended that the father is quite competent to file a complaint relied upon a decision reported in

AIR 1942 434 (Oudh) . In that case during the absence of the husband at his place of service the wife temporarily went to her father's house from

where she was enticed away. The husband's father however, lodged a complaint u/s 199 Cri. P. C. for an offence u/s 497, I. P. C. the validity of

which was challenged. The learned Judge held that the temporary absence of the wife at her father's place will not take away the right of the

husband's father to lodge a complaint. That case is clearly distinguishable. There the husband was admittedly absent and his wife was staying at her

husband's place under the care of her father-in-law, though she only temporarily absented herself at her father's house wherefrom she was enticed

away.

7. The other case relied upon was a case reported in AIR 1926 Sind 159, Sahibrai v. Emperor. That was also a case where the husband was

absent and the wife was in the care of the husband's nephew who filed a

complaint u/s 199 Cri. P. C. There the question arose whether any express delegation of trust by the husband to the person having care of the wife was necessary before the latter could be competent to file a valid

complaint and whether express leave of the Court to file the complaint was necessary. Their Lordships held that :

It is sufficient if he had the care of the woman on her husband's behalf during the latter's absence and in such a case the section does not require

for a valid complaint that the leave of the Court must expressly be given to the complainant.

Here also the husband was absent and the wife was staying in the husband's house under the care of the nephew and therefore he must be taken

to be in the care of the woman on behalf of her husband.

8. The other decision relied upon by Mr. Rao is a case reported in AIR 1917 Mad 220, Rathana Padayachi In re, where the husband did not

choose to complain, but the father did so. The question arose when the husband stood by, is the father competent to file such a complaint as only

in the absence of the husband any other person may do so. In the circumstances, his Lordship observed:

I. am prepared to concede that if the wife was under the care of her husband at the time of the offence, and the husband does not want that the

proceedings should be instituted, it is not open to a person whether he be the father or the brother, to institute a complaint.

This decision no doubt supports the case of the appellant to some extent. None of these decisions have dealt with the case of an abandonment of

the wife by the husband. A case of such abandonment was however found to have been dealt with in a case reported in Emperor Vs. Ramnarayan

Baburao Kapor, . In that case the accused was convicted u/s 498, I. P. C. for enticing a married woman who was discarded by her husband and

was staying with her brother who filed the complaint u/s 199, Cri. P. C. In setting aside the conviction on the ground that the complaint was not

validly made, their Lordships held that the complaint by brother was not competent u/s 199 as the brother was acting on his own behalf and not

under the authority of the husband. Therefore the conviction was held to be invalid.

It was held a complaint by the husband was an essential requirement which

cannot be dispensed with. If a criminal charge of adultery is to be preferred a formal complaint of the offence must be instituted in the manner provided u/s 199 Cr. P. C. It was further observed that the words "on behalf" of the husband cannot be said to be without any meaning. The object of Section 498 is to protect the right of the husband and to maintain the sacred relations of marriage but in some cases the husband may connive or consent to a sexual intercourse of his wife by any other person. That being the design of the law, the husband may as well choose not to file any complaint that would necessarily bring some amount of dishonour both for him and his wife, even though he may be aware of any instance of adultery of his wife. That being the position the provisions of Section 199, Cri. P. C. have to be strictly complied with. In this connection it may be noted that Section 345 Cr. P. C. (before the amendment of 1955) provided that husband alone can compound the offence u/s 497 or Section 498 and the authority was not given to any other person even though he might have filed a complaint with leave of the Court. In view of this position it must be held that in the present case neither the husband was absent nor the father had the care of the woman on behalf of the husband. The provisions of Section 199, Cri. P. C. have thus not been complied with. Even if the offence of adultery may be said to be proved on evidence, no conviction of the accused can be made on the basis of such an invalid complaint. In the result, the appeal has no merit and is dismissed.