
(2007) 04 AP CK 0083

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 727 of 2003

Singana Naga Nooka Chakrarao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

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

Citation : (2007) 2 ALD(Cri) 334 : (2007) 2 ALT(Cri) 323 : (2007) 2 APLJ 145 : (2007) CriLJ 3466 : (2007) 4 RCR(Criminal) 831

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Ch. Dhanamjaya, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Bilal Nazki, J.—Heard learned Counsel for the parties. The petitioner-accused was tried for offences under Sections 497 and 498 of IPC. The trial Court convicted him under both the offences and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs. 500/- i/d. to suffer simple imprisonment for one month for the offence u/s 497 of IPC and simple imprisonment for three months and to pay a fine of Rs. 300/- i/d. to suffer S.I. for one month for the offence u/s 498 of IPC.

2. The appellate Court acquitted him of the offence u/s 497 of IPC, but confirmed the conviction and sentence u/s 498 of IPC.

3. Before coming to the arguments at the bar and before appreciating the controversy, it is necessary to have a look at the ingredients of Sections 497 and 498 of IPC.

497. Adultery.- 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.

498. Enticing or taking away or detained 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 any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains 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.

4. From bare perusal of these sections, it becomes clear that adultery is necessary even in the case of offence u/s 498 of IPC. Adultery is defined u/s 497, IPC to mean 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. u/s 498, IPC enticing or taking away a married woman with criminal intent is an offence. Enticing or taking away somebody's wife for the purpose other than mentioned in Section 498, IPC does not constitute an offence. Therefore in order to bring home guilt of a person u/s 498, IPC, the prosecution has to prove that a married woman was enticed or taken away who was and whom he knew or had reason to believe that she was the wife of another man with an intention that she might have illicit intercourse with any person. So enticing or taking away somebody's wife knowing that she was somebody's wife is not sufficient to constitute an offence u/s 498, IPC. The woman should be enticed or taken away for the purpose of making her have illicit intercourse with another person. Since in the present case the Sessions Judge has come to the conclusion that there is no evidence suggesting that the accused had any sexual relationship with the wife of P.W. 1, there was no reason for the Sessions Judge to convict the petitioner/accused u/s 498, IPC. The findings of the Sessions Judge are at para 21 of his judgment,

21. It is very difficult to get a direct evidence of adultery, as such type of acts are performed with utmost secrecy. Direct evidence of proof of adultery is very rare. Adultery can be established by circumstantial evidence, for which the present evidence is not sufficient to establish the actual sexual intercourse between the accused and Y. Krupavathi.

5. Even the trial Court, while convicting the accused, had not stated that all the ingredients of Section 498, IPC were made out. In para 19 the trial Court said.

19. The evidence of prosecution is also very much clear about enticing away Krupavathi by the accused and that the evidence also shows that the accused was already married and that Krupavathi is not his wife and she is the wife of P.W. 1. The evidence of prosecution clinchingly proves that Krupavathi was enticed away by the accused in the absence of her husband P.W. 1 who is the person to take care and custody of his wife Krupavathi and that accused did (sic)

illicit life with Krupavathi.

6. For these reasons, the revision is allowed, conviction and sentence are set aside, the petitioner/accused is acquitted. Bail bonds are discharged.