

Emperor Vs. Nazir Khan

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Court : Allahabad

Decided On : Sep-24-1913

Reported in : (1914)ILR36All1

Judge : Ryves, J.

Appellant : Emperor

Respondent : Nazir Khan

Judgement :

Ryves, J.

1. Nazir Khan was convicted of an offence under Section 498 of the Indian Penal Code and sentenced to four months' rigorous imprisonment. On appeal the conviction was maintained. The application in revision to this Court w grounded on three main contentions.

(1) Because, the actual marriage of the complainant and the woman Sirtajan not being attempted to be strictly proved by evidence, the conviction under Section 498 is illegal.

(2) Because under the present section the marriage cannot be presumed from the mere fact of cohabitation.

(3) Because in any case, the woman having clearly stated that she had been divorced by Haidar Khan, unless the contrary has been proved, no conviction under the section can stand.

2. My attention has been called to the following rulings in support of the Arab ground. *Empress v. Pitambur Singh* (1879) I. L. R. 5 Calc. 566. In that case Garth, C.J., delivering the judgment of the Full Bench, said that 'the fact of the marriage must be strictly proved in the regular way'. That ruling was followed by this Court in *Empress of India v. Kallu* (1882) I. L. R. 5 All. 233. in which the evidence to prove the marriage was set out and was held to be insufficient. The next case referred to was *Queen Empress v. Santok Singh* Weekly Notes 1898 p. 186. In that case also the whole of the evidence with reference to the marriage is set out, and there too it was held to be insufficient. The next case cited was *Queen Empress v. Dal Singh* (1897) I. L. R. 20 All. 222 166. There a Division Bench of this Court held that, 'the court should require some better evidence of the marriage than the mere statement of the complainant and the woman.'

3. What I think was meant in all these cases is that, as the fact and the legality of the marriage are material elements in a case under Section, 498, they must be proved as strictly as any other material facts, as for instance the enticing away of a woman with the intention mentioned in the section. I do not think these rulings lay down that the fact of the marriage can be proved only in some particular way. This case is much more like the case of *Queen Empress v. Subbarayan* (1882) I. L. R. 9 Mad. 9 and I entirely agree with the observations of the Judges who decided that case. As pointed out in that case,' even a marriage in England may be proved by any person who was actually present and saw the ceremony performed it is not necessary to prove its registration or the licence or publication of the banns.'

4. In the present case I find on going through the record that the complainant was not asked one word throughout a lengthy cross-examination about his marriage with the woman Sirtajan.

5. In the opening words of the judgment of the Magistrate it is stated: 'It is common ground that Musammat Siratajan was the duly married wife of Haidar Khan.' Musammat Sirtajan was called, she deposed to her marriage to the complainant,

and no question was asked her in cross-examination. It is true that she stated in a subsequent cross-examination 'when my husband turned me out, he told me---I divorce you, go out.' In re-examination she said: 'He told me this inside the house.' Karim Bakhsh, the father of Musammat Sirtajan, was called, and he also proved the marriage, giving details. The whole object of calling him was to prove the marriage, and no other question was put to him in examination in chief and he was not cross-examined on the point. Similarly, Abdul Karim, the father of the complainant, was called, and he also proved the marriage: no question was put to him in cross-examination on the point. Under these circumstances, I fail to see how the first ground can be supported. There is unrebutted evidence in this case of the woman, the husband and their parents describing the marriage in detail. I think, therefore, in this case the fact and legality of the marriage have been satisfactorily proved.

6. The second ground taken does not arise.

7. The third ground I think really comes within the rule of the cases quoted by me, and the vague statement of the woman that she had been divorced, unsupported by any evidence, is quite insufficient to establish the fact that she had been divorced. No such suggestion was made during the cross-examination of the prosecution witness: it was only after the charge was framed and Musammat Sirtajan was called for further cross-examination that she made this statement. I may point out that these points were not taken in the court below. In any event it seems to me that it has been abundantly and satisfactorily proved that Musammat Sirtajan was the wife of the complainant. The result is that I reject this application.

8. It is not clear from those papers whether the applicant has served the four months' rigorous imprisonment to which he was sentenced. If he has not, he must surrender to his bail and serve out the unexpired portion of his sentence.