

Shyam Lal Vs. State

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Court : Allahabad

Decided On : Apr-26-1957

Reported in : AIR1958All76; 1958CriLJ11

Judge : Asthana, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4 and 199; [Indian Penal Code \(IPC\), 1860](#) - Sections 498

Appeal No. : Criminal Appeal No. 1351 of 1954

Appellant : Shyam Lal

Respondent : State

Advocate for Def. : J.R. Bhatt, Asstt. Govt. Adv.

Advocate for Pet/Ap. : B.S. Darbari, Adv.

Judgement :

Asthana, J.

1. The appellant Shiam Lal has been convicted under Section 498, I. P. C., by the learned Sessions Judge, Agra, and has been sentenced to one year's rigorous imprisonment.

2. It appears that Smt. Govindi was living with her husband Babu Lal and father-in-law Jiwa Ram in Mohalla Mohanpura, Police Station Rakabganj, in the district of Agra. The accused Shiam Lal was employed at the shop of Babu Lal. On the 12th January 1952, Babu Lal found that his wife with the younger daughter was missing from the house and that some ornaments and cash were also missing. He made a report about it at Police Station Rakabganj the same day at 3 o'clock in the afternoon and in that report he suspected the appellant Shiam Lal, Gopi Lal and Balwanta.

It was alleged in the report that Smt. Govindi had either been taken in connection with illicit intimacy or she herself had gone away with the accused. No witnesses were mentioned in the report and it was stated that their list shall be submitted in Court. Govindi was found in Court on the 7th April 1952, along with the accused. They wanted to take her away by force but were unsuccessful. She was brought by the brother of Babu Lal to his house. Her daughter, however, was taken away by the accused and it was on the 9th April 1952, that she was said to have been handed over to the complainant by the police to whom she had been taken by the Panchayat Committee Of Nagla Albatia.

Babu Lal filed a complaint on the 13th December 1952, in the Court of the City Magistrate, Agra, against seven persons under Ss. 364, 366, 376, 392 and 120. I. P. C. It was alleged in this complaint that Smt. Govindi was taken to the house of Rani Devi by Ram Bharose accused that the accused Shiam Lal, Gopi, Bhoji and Balwanta were present there from before, that they forcibly put her in a tonga and carried her away to Shahganj and she was detained there in the hut of Balwanta accused for four or five days.

It was, further, alleged that from there she was taken to Gwalior by Shiam Lal accused who kept her as his wife and committed rape on her several times, that Shiam Lal in conspiracy with the other accused wanted to sell her to a Jat and on the 7th April 1952, they brought Govindi to Court and wanted to have an application made and it was there that she was caught by Chokhey LaJ, brother of the complainant, who happened to be present in Court. It was, further, alleged in the report that the accused had also taken away several ornaments of Smt.

Govindi and Rs. 200 in cash which she had with her at the time.

3. The accused denied that they had abducted Smt. Govindi from the house of Smt. Ram Devi or that she was taken to the house of Smt. Ram Devi by Ram Bharose accused. Their case was that they had been falsely implicated on account of enmity. The accused Balwanta denied in his statement that Smt. Govindi was kept in her house by Shiam Lal accused. The accused Shiam Lal stated that he had been in the service of the complainant Babu Lal for some time, that he had not paid him his wages and when he demanded it from him he got him falsely implicated in this case.

4. The prosecution examined seven witnesses in support of the case. They are P.W. 1 Babu Lal, P.W. 2 Chokhey Lal, P.W. 3 Tej Singh, P.W. 4 Sunna Nath, P.W. 5 Smt. Govindi. P.W. 6 Sayid Ahmad, Constable and P.W. 7 Sukha. P.W. 1 Babu Lal is the complainant and husband of Smt. Govindi. He is not an eyewitness of the occurrence. He stated that Shiam Lal accused was in his service for about three months and used to go inside his house and had an opportunity of meeting Smt. Govindi.

He denied that any salary was due to the appellant or that he had falsely implicated him in the case on account of it. P.W. 2 Chokhey Lal is the brother of Babu Lal complainant. He is also not an eyewitness of the occurrence. His evidence is that he was informed by one Smt. Kasturi of his village that she had seen the accused Shiam Lal and Smt. Govindi in Court about three months after she had disappeared, that thereupon he and his sister Smt. Lachmi went to the Court and saw Smt. Govindi with the accused, that on seeing them they ran away, that they were chased but they could not be caught, that Smt. Govindi was left behind and was brought by him to the Police Station.

P.W. 3 Tej Singh and P.W. 4 Sunna Nath stated in their evidence that about 2-3/4 years ago in the afternoon at about 3-30 or 4 p.m., they saw a woman going with the accused in a tonga, they identified Smt. Govindi as that woman. P.W. 5 Smt. Govindi is the woman who is said to have been abducted by the accused. She stated in her evidence that she was forcibly put in a tonga by the accused Shiam Lal, Gopi and Balwanta and taken to Shahganj, that they got down there and went

to the hut of Balwanta accused, that Babu, son of Balwanta, was present there and that she was kept there for four or five days. She further stated that when she complained to them that she had been brought by them deceitfully they frightened her by showing a gadasa.

She further stated that she was then taken to Raja-ki-Mandi station and when she protested they threatened to kill her with knife, that from there she was taken to Gwalior where she was kept for two or three days and the accused. Shiam Lal committed rape on her. She next stated that she was kept at Gwalior for three months, that she mentioned the true facts to a woman neighbour and when Shiam Lal came to know of it he gave her a beating, that from Gwalior she was taken to Itora where she was kept for two days at the house of the brother-in-law of Shiam Lal, that then she was again brought to the hut of Balwanta and from there was taken to Courts for the purpose of obtaining her thumb-impression on some paper and she was caught there by Chokhey Lal, brother of her husband Babu Lal.

P.W. 7 Sukha is a resident of Itora. He stated that Shiam Lal's sister was married in his village, that he saw the accused Shiam Lal with a woman and a girl and he identified in Court Smt. Govindi as the woman whom he had seen with Shiam Lal. The accused Bhoji Ram examined one witness Nanak Ram Sharma, to prove his alibi. The rest of the accused did not produce any evidence.

5. The learned Sessions Judge on a consideration of the entire evidence was not inclined to believe the evidence of Chokhey Lal, Tej Singh and Sunna Nath. He partially believed the evidence of Smt. Govindi. He did not see any reason to disbelieve the evidence of P.W. 7 Sukha. He was of the opinion that Smt. Govindi had a liaison with the appellant Shiam Lal and had willingly gone away with him.

He did not believe the prosecution evidence that she had been forcibly abducted by the accused Shiam Lal and the other accused or that Shiam Lal had committed rape on her. He also disbelieved the prosecution evidence that there was any conspiracy between Shiam Lal and the other accused or that the accused had taken the ornaments and cash of Smt. Govindi and had thereby committed the offence under Section 392, I. P. C. Relying on part of the evidence of Smt. Govindi and on the evidence of Sukha he convicted Shiam Lal under Section 498, I. P. C.

He acquitted the remaining accused of the various charges which had been brought against them.

6. The first contention on behalf of appellant is that he could not have been convicted under Section 498, I. P. C., in absence of any complaint under that section by Babu Lal. Section 199, Cr. P. C. provides -

'No Court shall take cognisance of an offence under Section 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.'

'Complaint' is defined in Section 4 (h), Cr. P. C., and means the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer. It is, therefore, obvious from these sections that before a person can be convicted under Section 497 or Section 498 there should be a proper complaint against him by the husband of the woman Said to have been taken or enticed away.

It is also clear that the complaint should have been made to a Magistrate with a view to his taking cognisance of the offence, and that a report to the police does not amount to a complaint. The question which mainly arises for consideration in this case is whether Babu Lal had made any complaint as contemplated in Section 199, Cr. P. C. It was contended for the appellant that the complaint which was filed by Babu Lal was not under Section 497 or Section 498, I. P. C., but under Ss. 346, 366, 376, 392 and 120, I. P. C., and, as such, there was no proper complaint as contemplated in Section 199, Cr. P. C., and therefore the lower Court was not competent to take cognisance of the offence under Section 498, I. P. C., and convict the appellant.

The word 'complaint' as defined in Section 4 (h) does not show that it should also mention the sections under which it has been made. What is required to be stated in the complaint are the facts which would enable the Magistrate to take

cognisance of the offence under Section 498, I. P. C. Where the facts stated in the complaint make out a case under Section 497 or Section 498, I. P. C., and also offences under some other sections of the Code, it cannot be said that the complaint was not a proper complaint as contemplated in Section 199, Cr. P. C., and therefore no cognisance of such offence could be taken by the Magistrate.

7. The first case relied on by the learned counsel for the appellant in support of this contention was of *Tara Prosad Laha v. Emperor*, ILR 30 Cal 910 (FB) (A). It was held in this case that the word 'complaint' referred to in Section 199, Cr. P. C., meant a complaint as defined in Section 4, Clause (h), of that Code. It appears from a perusal of this case that there was no complaint at all by the husband of the woman. The case had been sent up by the police under Ss. 342, 352 and 354, I. P. C., and it was committed to the sessions and the learned Sessions Judge framed charges under Ss. 376, 497 and 498, I. P. C.

There is nothing in this decision that the complainant besides making allegations of certain facts should also mention that it is one under Section 497 or Section 498, I. P. C., and where such specific mention of the 'sections has not been made it could not be considered a proper complaint as contemplated by Section 199, Cr. P. C. The only point which' seems to have been decided in this Full Bench case is that the complaint referred to in Section 199, Cr. P. C., means a complaint as defined in Section 4 (h) of that Code and will not include a police report.

8. The next case is of *Bangaru Asari v. Emperor*, ILR 27 Mad 61 (B). In this case the accused was charged with kidnapping or abducting a woman under Section 366, I. P. C. The Sessions Judge was of the opinion that the prosecution had failed to prove either kidnapping or abduction and convicted the accused, on the evidence, of the offence under Section 498 and in doing so he purported to act under Section 238, Cr. P. C. The case was started on the complaint of the husband of the woman and it was alleged in the complaint that his wife had been missing, that he searched for and found her in the backyard of the accused who subsequently brought the girl out and locked himself in the house.

The complaint concluded by stating that the woman had informed the complainant that the accused had carried her into the house and gagged her mouth and

confined her in a room and threatened to stab her if she cried out. It was on these allegations that the accused was charged under Section 366, I. P. C. It was held by a Division Bench of the Court that what was contemplated by Section 199, Cr. P. C., was that the complaint should be made by the husband of an offence under Section 498 and not any complaint made by him. There is no doubt that the facts of this case are very similar to the facts of the case before me, but with due respect to the Judges who decided this case, I am not able to understand why it is necessary to mention in the complaint that it has been made under Section 498, I. P. C.

It is quite enough if the allegations in the complaint make out a case under Section 498, I. P. C. It is immaterial if besides that offence some other more serious offence is also made out on the allegations contained in the complaint. It is no doubt necessary that the allegations made in the complaint should make out a case under Section 498, I. P. C., if the whole or part of it is accepted to be correct. There is nothing in Section 4 (h), Cr. P. C., which lays down that the complaint should specifically mention the section under which it has been made.

9. The next case is *Haidar Ali v. Emperor* : AIR1940 All201 . It was held in this case that a person who was prosecuted under Ss. 366 and 376, I. P. C., could not be held to be guilty of having committed an offence under Section 498, I. P. C., if the offences with which he was charged were not established. In this case the accused were prosecuted as a result of a report made under Section 366A, I. P. C., by the husband of the woman in respect of whom the offence was said to have been committed, as required by Section 199, Cr. P. C. They were convicted under Section 498, I. P. C.

It was held that the conviction was bad and the appellants could not be convicted. This case is not of much help in deciding the point which is before me and which is whether the complaint under Section 4 (h), Cr. P. C., should specifically mention the section under which it has been made or the allegations in the complaint which constitute an offence under Section 498, I. P. C., are sufficient compliance of the provisions of Section 199, Cr. P. C. There is no doubt that a complaint as contemplated in Section 4 (h), Cr. P. C., is necessary for conviction under Section

498, I. P. C.

10. As against these decisions learned counsel for the State has relied on the following cases.

11. The first case is reported in Mohan Singh v. Emperor : AIR1934 All472 . It was held in this case that where complaint had been filed by a husband it was a question of construction in each case as to whether it amounted to a complaint of an offence under Section 498, I. P. C., and if the petition contained allegations of facts which if proved by evidence would constitute an offence under Section 498, I. P. C., such petition was clearly a complaint by the husband of an offence under Section 498, I. P. C., and the mere fact that there were other allegations in the petition which by themselves, or in conjunction with those relating to an offence under Section 498, constituted a more serious offence such as one under Section 366, I. P. C., that would not make the complaint any less a complaint under Section 498.

It was further held that the test which might be applied in a case like this was whether, if the allegation of the use of force or fraud, misappropriation of ornaments and of the woman's age be eliminated, the remaining part of the complaint fulfilled all the requirements of a complaint under Section 498 even though the complaint originally was filed under Section 366. In this case the offence alleged to have been committed by the accused was under Section 366, I. P. C., and the learned Sessions Judge on a consideration of the evidence found that the offence under Section 498, I. P. C., had only been made out and he, therefore, convicted the accused of this offence and acquitted him of the charge under Section 366, I. P. C. It was held that the decision was correct and there was no illegality.

12. In Sain v. Emperor, AIR 1934 Lah 945 (E), it was held that if a complaint made by the husband described in its heading as one under Ss. 366 and 368 fulfilled all the requirements of a complaint under Section 497 and clearly made an accusation of an offence under that section, then if the adultery complained of was proved, a conviction under that section would not be illegal on the ground that there had been no complaint as required by Section 199, Cr. P. C.

It was further held that for purposes of Section 199, Cr. P. C., the complaint need not specify precisely the section under which the accused was to be charged so long as it set forth matter which, if proved, would warrant a conviction, and a desire was expressed that the accused might be punished for what he had done.

13. In *Brahma Datt v. Emperor*, AIR 1921 Avadh 149 (2) (F), it was held that all that the law required was that there should be a complaint by the husband in respect of the facts constituting the offences, that it would not be said that there was no such complaint merely because the husband also alleged certain additional facts which he was unable to prove, and which, if proved, would have amounted to a graver offence.

It was further held that the complainant need not state precisely the section of the Code under which the accused should be charged and it was sufficient that he laid before the Magistrate matter which if proved would be sufficient to establish an offence under that section.

14. On a consideration of the above authorities I am of opinion that for a conviction under Section 498, I. P. C., it is necessary that there should be a proper complaint by the husband as required under Section 199, Cr. P. C., but it is not necessary that the complaint should specify also the section under which it has been made. What is necessary under Section 4 (h), Cr. P. C., is only this much that the complaint should mention the allegations which if proved would constitute an offence under Section 498, I. P. C.

15. Coming now to the facts of the case, I find that the only evidence which has been relied on by the learned Sessions Judge in convicting the appellant under Section 498, I. P. C., is that of Smt. Govindi and Sukha. The rest of the evidence has not been accepted by the learned Sessions Judge. The question which, therefore, arises for consideration is how far the evidence of these two witnesses should be accepted and be considered sufficient for the conviction of the appellant.

It has been contended on behalf of the appellant that the evidence of Smt. Govindi has been disbelieved by the lower Court in respect of the other accused and also

in respect of the manner in which she is alleged to have been taken from the house of Smt. Ram Devi where she was said to have been taken by Ram Bharose accused. It was also contended that the learned Sessions Judge did not believe her evidence that she was forcibly carried away by the accused or that at any stage she was threatened with knife by any of the accused.

On the contrary he was of the opinion that Smt. Govindi was a consenting party and willingly went away with Shiam Lal who was an employee of her husband Babu Lal. In view of the fact that the evidence of Smt. Govindi has been substantially disbelieved by the learned Sessions Judge. I do not think that it is safe to rely on her evidence. As regards Sukha it was contended that he was not named either in the first information report or in the complaint which was made by Babu Lal about one year later after the recovery of Smt. Govindi.

It is no doubt true that he is not cited as one of the witnesses in the complaint. There are some witnesses mentioned in the complaint but Sukha is not mentioned there. The evidence of Sukha is that he had met Shiam Lal with a woman and a girl in his village Iora. It appears from his evidence that he did not know who this woman was. In spite of this fact he deposed that he had mentioned seeing the woman with Shiam Lal to some persons of the village of Babu Lal. There does not appear any reason as to why he should have mentioned this fact to the residents of Babu Lal's village when, he did not know whether the woman whom he had seen with Shiam Lal belonged to Babu Lal's village.

Before the committing Magistrate this witness had stated that he did not mention this fact to any other person and that he did not know Babu Lal. He did not mention in his statement before the committing Magistrate that he had mentioned the fact to some persons of Babu Lal's village. In view of the fact that Sukha (P.W. 7) was not mentioned as one of the witnesses in the complaint or in the first information report, and also in view of the fact that he did not know who the woman with Shiam Lal was, his statement that he mentioned this fact to some persons of Babu Lal's village does not appear to be correct. The only other evidence on the point is of Chokhey Lal, brother of Babu Lal complainant.

His evidence has not been considered reliable by the learned Sessions Judge. According to the evidence of this witness the accused had come to the Court with Smt. Govindi and on seeing him they ran away and there was some sort of. scuffle between them and Smt. Govindi as they wanted to forcibly take her away with them. The occurrence if it did take place must have been seen by several persons who must have been present in the Court and no satisfactory reason was given as to why no independent witness was examined by the prosecution in support of it.

16. On a consideration of the entire evidence I am of opinion that the case against the appellant has not been satisfactorily proved beyond reasonable doubt and he should be given the benefit of doubt.

17. This appeal is, therefore, allowed and the conviction and sentence of the appellant under Section 498, I. P. C. is set aside. As he is on bail he need not surrender; his bail bonds are discharged.

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