

Dalip Singh Vs. Rex

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Court : Allahabad

Decided On : Jul-23-1948

Reported in : AIR1949All237

Appellant : Dalip Singh

Respondent : Rex

Judgement :

Agarwala, J.

1. Lal Singh, Dalip Singh, Hayat Singh and Gopal Singh were prosecuted for having abducted Mt. Chanchari with intent to compel her or knowing it to be likely that she would be forced or seduced to illicit intercourse; Dalip Singh was further prosecuted for having taken her away and detaining her at his house at Bhainskhal with a like intent; Hayat Singh was further prosecuted for having robbed Alam Singh of Rs. 120. The offences mentioned in the charge against them were under Sections 366 and 498, Penal Code, in the case of all and Section 392, Penal Code, in the case of Hayat Singh only. All these accused have been acquitted by the learned Sessions Judge of offences under Section 366, Penal Code, Hayat Singh has been acquitted of the offence under Section 392, Penal Code. All the accused except Dalip Singh, have been acquitted of the offence under Section 498, Penal Code. Dalip Singh alone has been convicted for an offence under Section 498, Penal Code, and sentenced to one year's rigorous

imprisonment. Dalip Singh has come up in appeal to this Court.

2. The prosecution story was as follows : Mt. Chanchari, prosecution witness 2, is a young Bhotiya woman aged about 20. She was married several years ago to one Inder Singh. While Inder Singh was carrying on a shop at Joshi-math his family used to live at village Bhagoli in the district of Garhwal. About the middle of Phagun, 1945, Inder Singh's mother sent her sister's son Alam Singh along with Alam Singh's son and Mt. Chanchari and a daughter-in-law of Alam Singh, a deaf and dumb woman called Mt. Lati, and two other children to a village of the name of Garur to buy salt and gur. These persons camped at a place called Kulaun in Almora district on their way to Garur. The party was camping in one of the huts about half a mile from the village. The women were inside the hut and Alam Singh and pack animals were outside. Hayat Singh accused came over to the hut with a gun in his hands and asked Alam Singh whether they had certain woollen articles, such as Thulmas, Chutkas and Gudmas for sale. Alam Singh replied that they had not got those articles. Thereafter at about midnight 10 or 12 men descended on the hut where Alam Singh and party were staying. Some of them held Alam Singh, who was outside the hut, and some of them carried off Mt. Chanchari and Mt. Lati by force. They, however, released Mt. Lati soon after as she was not attractive at all and was deaf and dumb, and was considered not worth the trouble of a forcible abduction. They, however, took away Mt. Chanchari, a woman of prepossessing appearance, Hayat Singh also took the opportunity of robbing Alam Singh of a sum of Rs. 120. Alam Singh went a little distance after the miscreants, but had to return back on being threatend by them. Then Alam Singh returned to Garhwal without going to Garur and in due course Inder Singh was informed at Joshimath of what had happened. The four accused were among the 10 or 12 men who had taken part in the incident. According to Mt. Chanchari the four accused and one Chintua carried her between them to a place called Gana Mungari. There Dalip Singh disposed of the others by giving them Rs. 100. That night Mt. Chanchari stopped at Gana Mungari at the house of one Mohan Singh and Dalip Singh stopped in another house in the same village. Mt. Chanchari stopped there for two nights and Dalip Singh promised' to provide her with food and clothes. The next day they moved on to Kapkot and there Dalip Singh made the woman change the clothes which she had been wearing and gave her a chadar and a petticoat to

wear. From there Dalip Singh took her to Shyamadhura and from that place to his house in Bhainskhal.

3. Upon Inder Singh making a report to the police, the police arrived at Bhainskhal on 27th March. There Mt. Chanchari was found in the house of Dalip Singh with Dalip Singh; there was no one else in the house. Dalip Singh was arrested and later the other accused were also arrested; and then they were prosecuted as stated above. Mt. Chanchari, Alam Singh. Padam Singh and Gaje Singh, the four eye-witnesses, were produced by the prosecution in support of its case. The other witnesses produced were more or less formal or proved attendant circumstances. Of these four witnesses, Gaje Singh did not identify any of the accused. His evidence was, therefore, practically useless. As the other three accused have been acquitted I need not consider their case.

4. Dalip Singh appellant admitted that Mt. Chanchari was recovered from his house at Bhainskhal on 27th March 1945, but he alleged that he had not carried her away to that place from Kulaun. He said that he had met Mt. Chanchari in Gana Mungari where he had gone to collect his dues, about a mile away from the abadi, and that thereafter he had gone to the house of Mohan Singh where he was afterwards joined by her, and that she told him that one of her sisters-in-law had gone to Johar last year and that she also wanted to go there. Both of them stopped at Mohan Singh's house as there was a Katha of Satyanarain. The next day was the sacred thread ceremony of his (Mohan Singh's) son. He said to Mt. Chanchari that day that if she wanted to go to her sister-in-law she could go with him. Mt. Chanchari asked him to find out her sister-in-law and take her there as he was a resident of Johar. Next day he went to Kapkot and Mt. Chanchari went with him. He made a search for the sister-in-law of Mt. Chanchari but no trace of her could be found. He further said that he had then told Mt. Chanchari that her deorani could not be traced out and had asked her whether she wanted to return or not. She told him that she did not want to go back, and that she would make a search for her deorani for some Says more; that the following day he had gone to Shyamadhura, and that nothing could be heard of the deorani of Mt. Chanchari at that place; that the following day he went to his house at Bhainskhal, that on the third day he had sent men at various places in search of the deorani of Mt.

Chanchari; that it was learnt from a man that the deorani of Mt. Chanchari was in Bichala Danpur Mauza Churia Dhara, and that when he was arranging to send Mt. Chanchari there, the police arrived and arrested him. His case further was that Mt. Chanchari was not a married woman at all, that she had been married to one Kala, brother of Inder Singh, that Kala had died and that she was never re-married to Inder Singh, and that therefore, no offence under Section 498, Penal Code, could have been committed. No witness was produced by Dalip Singh in defence. The learned Sessions Judge examined Mohan Singh, at whose house admittedly Mt. Chanchari had stayed for two days, as a court witness. Mohan Singh stated that there was a Katha of Satyanarain going on in his house, that both Dalip Singh and Mt. Chanchari had stopped in the village, that while Mt. Chanchari had stopped at his house, Dalip Singh stayed in some other house, and that Mt. Chanchari did not raise any alarm or attempt to escape though she might easily have done so. He further stated that Mt. Chanchari told the boys in the village that she had come from Garhwal and that her husband was dead.

5. The assessors were of opinion that none of the accused was guilty under Section 366, Penal Code, and that Hayat Singh was not guilty' under Section 392, Penal Code. They were further of opinion that Mt. Chanchari went with Dalip Singh of her own free will although she must have been given some enticement by Dalip Singh and theft, therefore, Dalip Singh was guilty under Section 498 Penal Code.

6. The learned Sessions Judge found that the story about the raid at the place where Alam Singh and party were putting up and of the forcible abduction of Mt. Chanchari and Mt. Lati or of the robbing of Alam Singh of a sum of Rs. 120 was doubtful and not satisfactorily established. He further found that Mt. Chanchari went away with, and was living with, Dalip Singh willingly but he found that Dalip Singh must have taken her. away by some allurement. He further found that Mt. Chanchari was first married to Kala, brother of Inder Singh, and after Kala's death she was living with Inder Singh as his wife, and that she must be deemed to be the wife of Inder Singh. He, therefore, convicted. Dalip Singh for an offence under Section 498, Penal Code.

7. Now Section 498, Penal Code, runs as follows:

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.

It is clear that four things have to be proved in order to sustain a charge under this Section

(1) that the woman in relation to whom the crime was committed was the wife of another man;

(2) that she was taken or enticed away or concealed or detained from (a) that man, or (b) any person having a care of her on behalf of that man;

(3) knowledge or reason to believe that she was a wife; and

(4) such taking, enticing, concealing or detaining was with intent that she may have illicit intercourse with any person. Now the evidence to prove that Mt. Chanchari was the wife of Inder Singh consists of the statements of Inder Singh and Mt. Chanchari. Inder Singh denied the very existence of his brother Kala. This was clearly false as appears from a copy of the Phant of the village-Ex. D-I. This shows that Inder Singh had a brother of the name of Kala. The learned Sessions Judge says that Inder Singh has lied on this point. The 'Phant' also shows that the wife of Kala came to Inder Singh. The learned Sessions Judge says that this wife of Kala must have been Mt. Chanchari. It is, therefore, established that Mt. Chanchari was the widow of Kala. Mt. Chanchari also denies the fact of her marriage with Kala. She is, therefore, as much lying as Inder Singh and none of them can be said to be reliable. Both of them, Inder Singh and Mt. Chanchari, declare that they were married and bride price of Rs. 400 or Rs. 450 was given. They say that anchal was formed and pheris (rounds) were gone through and that subsequently there was a ceremony of durgun. In the Magistrate's Court Mt. Chanehari said that it was a Kanyadan marriage. In the Sessions Court, both these witnesses said that it was not a Kanyadan marriage. In a Kanyadan

marriage bride is given as a gift by the father or the guardian to the bridegroom, as the very word Kanyadan (gift of a damsel) connotes and there is no question of a payment of the price for the bride. There is no independent evidence about the marriage ceremonies deposed to by Inder Singh and Mt. Chanchari. I, therefore, hold that the performance of marriage ceremonies has not been established.

8. It is, however, in evidence that Inder Singh and Mt. Chanchari lived as husband and wife after the death of Kala. This fact seems to have been recognised not only by the brother-hood to which these persons belonged but by the officials concerned also as in the 'Phant' of the village, as I have already noted, a mention was made of the fact that the wife of Kala came to Inder Singh. This entry in the Phant is a clear indication of the fact that Inder Singh got the property of Kala and married his widow. If it were a mere illicit cohabitation between Inder Singh and Mt. Chanchari, there was no reason why this fact should have been mentioned in the Phant. The very fact that an entry of this kind was made in the Phant shows that everybody concerned recognised that Mt. Chanchari was now the wife of Inder Singh. The question then is, can the marriage of Inder Singh with Mt. Chanchari be held to be established in these circumstances? I am clearly of opinion that it can be.

9. According to the law of England, where a man and a woman are proved to have lived together as man and wife the law will presume, unless the contrary be clearly established, that they were living together in consequence of a valid marriage and not in state of concubinage. Sir Barnes Peacock, in delivering the judgment of the Judicial Committee in *Sastry Valider Aronegary and his wife v. Sembecutty Vaigalie and Ors.* (1881) 6 A.C. p. 364 applied this principle to the case of persons governed by the Roman-Dutch law in Ceylon. His Lordship observed as follows

In the case of *Piers v. Piers* (1849) 2 HLC 331 it was laid down by the House of Lords that the presumption of marriage arising from cohabitation with habit and repute can only be rebutted by the clearest and most satisfactory evidence. The Lord Chancellor said : 'I have not found that the rule of law is anywhere laid down more to my satisfaction than it is by Lord Lyndhurst in the case of *Morris v. Davies* (1837) 5 Cl & Fin 163 as determined in this House. It is not precisely the same

presumption as exists in the present case; but the principle is strictly applicable to the presumption which we are considering. He says : - 'The presumption of law is not lightly to be repelled. It is not to be broken in upon. or shaken by a mere balance of probability. The evidence for the purpose of repelling it must be strong, distinct, satisfactory, and conclusive.' No doubt every case must vary as to how far the evidence may be considered as satisfactory and conclusive; but he lays down this rule, that the presumption must prevail unless it is most satisfactorily repelled by the evidence in the cause appearing conclusive to those who have to decide open that question'.

In *De Thoren v. Attorney-General* (1876) 1 A.C. 686 Lord Cairns, then Lord Chancellor, stated that the presumption of marriage is much stronger than the presumption raised with regard to other facts; and he referred to the *Breadalbane*, case L.R. 2 H.L.S.C. 269, in which it was held that the presumption was one which not only might, but ought, to be drawn from cohabitation with habit and repute, although the cohabitation commenced with a ceremony which was not only invalid by reason of real husband of the woman being alive at the time, but was known by both parties to be invalid.

10. The same rule has been held to apply in India: *Mohabbat Ali v. Mahamed Ibrahim* A.I.R. (16) 1929 P.C. 135; *Indar Singh v. Thakar Singh* A.I.R. (8) 1921 Lah. 20. It is true that the presumption of marriage from cohabitation cannot be raised when the persons concerned could not have married at all according to the law applicable to them: *Campbell v. Campbell* L.E. 1 H.L. S.C. 182; *Gulab Chand v. Bhayalal* . Nor can this presumption be raised when it was known that cohabitation originated in mere concubinage: *Mt. Indi v. Jaimal Singh* A.I.R. (14) 1927 Lah. 48. But no such difficulty arises in the present case. '

11. I am aware that the rule, that marriage may be presumed from a long period of cohabitation, is generally applied in deciding civil cases and is not applied in deciding criminal cases. In criminal cases where a charge against an accused depends upon proof of the validity of marriage, the marriage must be strictly established. Lord Mansfield in delivering the judgment of the King's Bench Division in *Morris v. Millier* (1767) 98 E.R. p. 73 expressed the opinion that marriage by

cohabitation, repute and acknowledgment may be proved in all cases except (i) in cases of prosecutions for bigamy; and (ii) in cases of actions for criminal conversation with the plaintiff's wife. An action for criminal conversation is considered to be a sort of criminal action. The reason given by His Lordship was that in these two classes of cases proof of marriage should not be made to depend upon the mere reputation of a marriage, which arises from the conduct, or declarations, of the plaintiff himself. In this Court also a similar view has been taken. In *Empress of India v. Kallu* 5 All. 233 it was held that for an offence of adultery strict proof of marriage was required, and even the admission of the accused on the point was not regarded as sufficient to enable the Court to convict him. It was remarked that some proof of the performance of the ceremonies should have been produced in that case. In *Queen Empress v. Dal Singh* 20 ALL. 166 Edge C.J. and Burkitt J., held that the mere statements of the complainant and the woman were not sufficient. Some better evidence of the marriage should have been given. This view was followed by Knox J., in *Buddhu and Anr. v. Emperor* A.I.R. (7) 1920 ALL. 175.

12. While it is true that in criminal cases marriage cannot be proved by mere proof of cohabitation or mere statements of the man and woman, and that some better evidence must be given, it is not to be assumed that marriage can only be presumed by the proof of the performance of marriage ceremonies. No hard and fast rule can be laid down as to what evidence will suffice to prove a valid marriage. In the case of a first marriage proof of ceremonies would, generally, be necessary. The same may perhaps be also said of a second marriage or re-marriage when it is between strangers, but the same may not be said of a re-marriage between a widow and the widow's deceased husband's brother. For ought I know, no particular ceremonies may be required for the validity of such a re-marriage beyond the fact that the brother's widow has begun to live with her husband's brother as his wife and that this fact has been recognised by the brotherhood as constituting a valid marriage. In the *Digest of Customary Law* by Sir W. H. Rattigan, so far as the law prevailing in the Punjab is concerned, it is stated in para. 75 at p. 315, (Edn. 11) 'A 'Karewa' marriage with the brother or some other male relative of the deceased husband requires no religious ceremonies, and confers all the rights of a valid marriage.' In a case of this kind,

proof of cohabitation for a number of years as husband and wife and its recognition as a; valid marriage by the brotherhood or the officials concerned, would be sufficient proof of marriage even for the purposes of a criminal case. In the present case, the entry in the 'Phant' of the village, in the absence of any evidence to the contrary, is to my mind, a sure proof of the fact that Mt. Chanchari had been re-married to Inder Singh.

13. The next question is whether it has been proved that Mt. Chanchari was taken or entitled away or concealed or detained from her husband or any person having care of her on behalf of her husband. Once the prosecution story that there was a raid on Alam Singh and party and that Mt. Chanchari was abducted by force was discarded no satisfactory proof was left on the record to prove 'how Dalip Singh enticed away Mst. Chanchari. That Mst. Chanchari went with Dalip Singh of her own accord appears from her conduct at Ganga Mangari. There she stayed for two days at the house of Mohan Singh. Dalip Singh was staying in some other house. It is quite possible that after meeting Dalip Singh, Mst. Chanchari decided to go with him and live with him. Mst. Chanchari no doubt says that Dalip Singh told her that he would give her good clothes and ornaments, but Mst. Chanchari is not a witness of truth and I cannot place implicit reliance upon her sole testimony and convict the accused on its basis. I am, therefore, of opinion that there is no reliable evidence on the record to show that the accused did in fact entice away Mst. Chanchari. Again, it is not proved that Dalip Singh knew that Mat. Chanchari was the wife of Inder Singh. Mohan Singh stated that at his place Mst. Chanchari had given out that her husband was dead. She learned Sessions Judge says that she might have made this statement in order to give an excuse for her arrival in the village. However', that may be, there is no satisfactory evidence on the record to prove that Dalip Singh knew that she was a re-married woman and not a widow.

14. For all these reasons, I think that the guilt of the accused has not been satisfactorily established and I must give him the benefit of doubt. I, therefore, allow this appeal and set aside the conviction and sentence passed by the learned Sessions Judge. The accused is on bail. He need not surrender to his bail.