

**Bashir Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/770791](http://sooperkanoon.com/770791)

**Court :** Rajasthan

**Decided On :** Aug-31-1987

**Reported in :** 1987WLN(UC)635

**Judge :** Narendra Mohan Kasliwal, J.

**Appeal No. :** S.B. Cr. Revision No. 67 of 1987

**Appellant :** Bashir

**Respondent :** State of Rajasthan

**Disposition :** Revision allowed

**Judgement :**

**Narendra Mohan Kasliwal, J.**

1. This revision by the accused Bashir is directed against his conviction under Section 497 IPC and sentence of six months' simple imprisonment and a fine of Rs. 200/- and in default of payment of fine to further undergo simple imprisonment for two months.

2. Prosecution story in brief is that Mst. Hamida was a legally married wife of Mohammed PW 1 resident of village Milwada, Tehsil Jhalra-patan. The parties were married some where in the year 1970 in village Dhanoda. When Mohammed went to bring his wife Hamida then the accused Bashir told that Hamida was no

more his (Mohammed's) wife and also told that Hamida was now his (Bashir's) wife. A complaint was thus lodged against Bashir & Hamida for offences under Sections 497 & 494, IPC. The learned Judicial Magistrate, Jhalawar by his judgment dated July 7, 1981, convicted Hamida under Section 494 IPC and sentenced to 9 months' simple imprisonment and a fine of Rs. 200/- while accused Bashir was convicted under Section 497, IPC and the learned Sessions Judge, Jhalawar, allowed the appeal of Hamida but and sentenced to 6 months' S.I. and a fine of Rs. 200/-. Both the accused persons filed an appeal maintained the conviction and sentence of Bashir. In these circumstances. Bashir has now filed the present revision before this Court.

3. I have heard Mr. Syed Manzoor Ali for the accused-petitioner and Mr. L.K. Sharma Public Prosecutor for the State.

4. So far as the charge levelled against Hamida that she was married to Bashir, learned Sessions Judge himself has disbelieved the prosecution evidence. While acquitting Hamida learned Sessions Judge has observed that burden lay on the prosecution to prove a lawful marriage of Hamida with Bashir. Mohammed complainant in this regard stated that he had heard that Bashir had taken Nikah with Hamida. In the cross-examination Mohammed admitted that Nikah had not taken place in his presence and he had only heard. He was unable to tell as to who was Kazi, who had performed the ceremony of Nikah. He was unable to tell as to when the Nikah had taken place between Bashir and Hamida. So far as the other prosecution witnesses are concerned, they only stated that when truy had gone with Mohammed to bring Hamida then Hamida had told that she had taken Nikah with Bashir. Thus, the learned Sessions Judge from the above evidence held that the prosecution had not produced a single witness in whose presence Nikah has taken place between Bashir and Hamida nor any fixed tims or place of such Nikah was told by the prosecution witnesses.

5. Learned Sessions Judge thereafter considered the evidence of PW 2 Abdul, PW 3 Abdul Qadir, PW 5 Mangi Lal and PW 6 Gabba and held that Bashir was guilty of offence of adultery under Section 497 IPC. Mr. Manzoor Ali learned Counsel for the accused-petitioner submitted that the witnesses PW 2 Abdul, PW

3 Abdul Quadir, PW 5 Mangi Lal & PW 6 Gabba, all were residents of different villages and no witness has been produced of village Dhanoda where Bashir was living. It was submitted that so far as PW 6 Gabba is concerned he is father of PW 1 Mohammed and is a highly interested witness. Even Gabba admitted in the cross-examination that he did not go inside the house of Bashir and it was only his surmises or conjectures that a girl born to Hamida was on account of illicit relationship of Bashir and Hamida. It was also argued that so far the other witnesses. Abdul Kadir and Mangi Lal are concerned, none of these witnesses have said a single word that they had ever seen Bashir and Hamida in the circumstances leading to an inference of husband and wife. None of these witnesses had deposed a single word that they ever remained inside the house of Bashir and on that account they were in a position to see Bashir and Hamida living as husband and wife.

6. I have gone through the statements of all the prosecution witnesses. As already mentioned above the learned Sessions Judge himself has disbelieved the prosecution story as regards the marriage of Bashir with Hamida. When this part of the story of the prosecution that Bashir and Hamida were married is disbelieved a heavy burden lies on the prosecution to prove that Bashir having known Hamida to be married wife of Mohammed committed sexual intercourse with her and thus committed the offence of adultery. Admittedly there is no direct evidence produced by the prosecution. It is right that no direct evidence can be produced for such an act but still the burden lies on the prosecution to bring circumstantial evidence which may be of such nature so as to convince the court beyond reasonable doubt or no other inference beyond guilt may be deducible from such circumstantial evidence. PW 2 Abdul, PW 3 Abdul Qadir and PW Mangi Lal are concerned, they are not the residents of village Dhanoda and they were only casual visitors of village Dhanoda as some of their relations were living in that village. A perusal of their statements only go to show that they had seen Hamida in the house of Bashir and on that basis they want to infer that Hamida was living as wife of Bashir. Their statements are not based on any personal knowledge regarding the relationship of Bashir and Hamida living as husband and wife but is based on such information conveyed to them by Hamida herself. Even if for a moment, it may be believed that these witnesses had seen Hamida during this period in the house of Bashir this

circumstance alone cannot lead to an inference that Bashir had committed any offence of adultery with Hamida.

7. The other circumstance on which learned Public Prosecutor has placed reliance is that some children were born to Hamida during this period when she was seen living with Bashir. As a proposition of law when marriage between Hamida and Bashir is not proved and admittedly there was no Talak or dissolution of marriage between Mohammed and Hamida any child born during lawful wedlock would be considered as lawful child of Mohammed. Even Mohammed in his cross-examination has admitted that Hamida had no child. Thus, the statement of Mohammed himself is contradictory to the statements of his father Gabba PW 6, who had tried to give a statement that there was a daughter born to Hamida during this period and such daughter was of Bashir. So far as Mangi Lal PW 5 is concerned, he is resident of village Ratlai and though he gave a casual statement in examination-in-chief that Hamida was carrying a child but in the same breath he stated that whether such child was born or not he did not know. In the cross-examination Mangi Lal PW 5 clearly admitted that neither Bashir nor Hamida told him anything in this regard. He further stated that it was only his conjecture. So far as PW 2 Abdul and PW 3 Abdul Qadir are concerned they have not said a single word about any child who was given birth by Hamida. Admittedly, no witness has been produced of village Dhanoda to prove the offence of adultery against Bashir. From a perusal of the statements of the above prosecution witnesses it cannot be held proved that Bashir was guilty of committing an offence of adultery with Hamida. The learned Sessions Judge did not read the statements of these witnesses in their entirety and drew the inference only on the basis of surmises and conjectures.

8. In the result this revision is allowed, the judgment of learned Sessions Judge, Jhalawar, dated February 8, 1983 is set aside and the accused petitioner Bashir is acquitted of the offence under Section 497 IPC. Bashir is already on bail as such he need not surrender to the bail bonds and the bail bonds filed by him are discharged.