

(1933) 12 AHC CK 0033**Allahabad High Court****Case No:** None

Mohan Singh

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Dec. 13, 1933**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 199
- Penal Code, 1860 (IPC) - Section 366

Citation: AIR 1934 All 472 : 153 Ind. Cas. 697**Hon'ble Judges:** Niamat-Ullah, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Niamatullah, J.

This is an appeal by one Mohan Singh from his conviction and sentence of 9 months" rigorous imprisonment u/s 498, I.P.C. and a fine of Rs. 60. The appellant is a sepoy in an Indian Army and is resident of village Bisaudkote in the District of Almora. The case against him was that he and two others, Kunwar Singh and An Singh, had kidnapped or abducted Mt. Bbawani, wife of Guman Singh of village Bargala, about two miles from his own village. The offence is said to have been committed on the evening of 16th June 1932, during the temporary absence of Guman Singh, who on return did not find his wife at home and started a search. With the help of a few others he searched for his wife and appears to have learnt that Kunwar Singh, An Singh and Mohan Singh, the present appellant, had taken her away. He and his companions proceeded to Haldwani and thence to Bareilly. His party divided itself into several groups, each proceeding in a different direction in search of her. Bachu Singh (P. W. 7) and Dalap Singh (P.W. 8) met a Forest Guard and told him of their errand, requesting him to detain a woman whose description they gave and to inform them at a given address. About three days after the woman's disappearance the Forest Guard noticed a man and a woman in suspicious

circumstances. The woman represented herself to be the wife of Kishen Singh, said to be the brother of Kunwar Singh, and a constable posted at Bojpur. It does not appear that Kunwar Singh also made a misrepresentation as regards his own identity. The Forest Guard sent a telegram to the Station Master of Bojpur, where Kishen Singh, the supposed husband of Mt. Bhawani, was said to be posted. The Station Master replied that there was no constable of that name. Somehow Bachu Singh and Dalap Singh came to know of the communications which passed between the Forest Guard and the Station Master. They proceeded to Goolarboj, where the Forest Guard had detained Mt. Bhawani and Kunwar Singh. Baohu Singh and Dalap Singh informed Guman Singh, who arrived shortly afterwards, and made a report at the police station Haldwani on 24th June 1932.

2. It was alleged that Mt. Bhawani had been "abducted or kidnapped, together with ornaments worth Rs. 250", which were taken by Mohan Singh and An Singh. The report does not implicate Kunwar Singh, except so far that he accompanied her and was caught by the Forest Guard. The woman is described in the report as of 14 or 15. The offence alleged to have been committed by the persons concerned is Section 366, I.P.C. Subsequently a com-plaint was lodged by Guman Singh in the Court of the Sub-Divisional Magistrate of Barramandal, Almora, in which it was alleged that Mt. Bhawani had been forcibly taken away by the three accused persons with the object of making her the wife of Mohan Singh. It was also alleged that she was kept in the house of Mohan Singh for several days before she started towards Haldwani in the company of Kunwar Singh and An Singh and that Mohan Singh had agreed to join them subsequently at Katgodam. It is alleged that Mt. Bhawani was not a free agent in the earlier stages of this episode, but subsequently acquiesced in the suggestion of the accused to remain with them. After the usual enquiry the Magistrate committed the accused to the Court of Session. The only reason, which apparently induced the Magistrate to take that course, was that, according to Mt. Bhawani, she had been forcibly dragged from her husband's village. Her age was clearly about 20 years. The offence u/s 366 could have been committed only if the woman was removed from her husband's protection against her will. The learned Sessions Judge convicted all the three accused before him of an offence u/s 498, I.P.C. Kunwar Singh and An Singh separately appealed from jail. Their appeal was dismissed by a learned Judge of this Court. The present appeal is by Mohan Singh and has been argued at length by his learned advocate. His case differs from the case of the other two in that there was evidence against Kunwar Singh and An Singh establishing that they had enticed away Mt. Bhawani from her husband's village, apart from the testimony of Mt. Bhawani herself. As against Mohan Singh the case practically rests on the evidence of Mt. Bhawani, and if there is reason for disbelieving her evidence in its entirity, the conviction of the appellant cannot stand.

3. Before entering into the merits of the case I have to take notice of a question of law argued by the learned advocate for the appellant, which, if decided in favour of

the appellant, will not require consideration of the evidence bearing on his guilt or innocence. It was argued before me that the complaint of Guman Singh was one disclosing an offence u/s 366, I.P.C. and that the learned Sessions Judge had no jurisdiction to convict the accused of an offence u/s 498, I.P.C. in view of the mandatory provisions of Section 199, Criminal P.C. which provides that no Court shall take cognizance of an offence u/s 497 or Section 498, I.P.C. except on a complaint made by the husband of the woman, or in his absence, by some person who has care on his behalf at the time when the offence is committed. It was urged that where the husband complained of an offence u/s 366, I.P.C., and the Magistrate or the Judge found that the evidence did not warrant a conviction under that section, he is not justified in assuming that the complainant alternatively charged the accused of an offence u/s 498, and in convicting him of that offence. Reliance is placed on *Bangaru Asari v. Emperor* (1904) 27 Mad. 61, in which an accused person had been charged with an offence u/s 366, I.P.C. and the charge was subsequently amended to one u/s 498, I.P.C. of which the accused was convicted. The High Court of Madras set aside the conviction on the ground that, in the absence of a complaint by the husband of an offence u/s 498 the conviction was not maintainable. The husband had made a complaint, and it is argued that the case is clear authority for the proposition contended for in the present case. In my opinion it is easily distinguishable. The judgment is-brief, but in the facts of the case given by the editor it is noted that

a complaint had been preferred by the woman's husband, in general terms, in which he stated that his wife had been missed, that he searched for and found her in the backyard of the accused who subsequently brought the girl out and locked himself in his house. The complaint concluded by stating that the woman had informed the complainant that the accused had carried her into his house and gagged her mouth and confined her in a room and threatened to stab her if she cried out.

4. It should be observed that no allegation of facts which, if true, constituted an offence u/s 498, Criminal P.C. was made in the complaint in that case. In order to constitute an offence u/s 498, I.P.C. it is necessary to establish that the accused took or induced away a married woman, whom he knew or had reason to believe to be the wife of another person, from that man or from any person having the care of her on his behalf with intent that she may have illicit intercourse with any person. There was no suggestion of any of these facts in the, complaint filed in that case. Where a complaint has been filed by a husband, it is a question of construction in each case as to whether it amounts to a complaint of an offence u/s 498, I.P.C. If a petition contains an allegation of facts which, if proved by evidence, would constitute an offence u/s 498, such petition is clearly a complaint by the husband of an offence u/s 498, for which he desires the accused named by him to be prosecuted. The fact that there are other allegations in the petition which, by themselves or in conjunction with those relating to an offence u/s 498 constitute a

more serious offence, such as one u/s 366, will not make the complaint any the less a complaint u/s 498, I.P.C. The essence of the matter in such cases is that the husband complains of his wife being taken or enticed away from him, the knowledge and intention of the person accused being as required by the section. If force or fraud is also alleged, or if the woman is alleged to be below a certain age, such additional facts may render the accused liable for prosecution for other offences in addition to an offence u/s 498 or in place of it. If such additional facts are not established by evidence but the evidence brings home to the accused an offence u/s 498 the Court cannot refuse to convict the accused merely on the ground that the initial complaint did not mention Section 498 or that it purported to be in respect of an offence u/s 366.

5. The complaint in the case before me clearly alleges that Mt. Bhawani is the lawfully married wife of the complainant Guman Singh, that she had been taken or enticed away by the persons named in the complaint who, in carrying out their object, used force or fraud. The accused were also said to have misappropriated certain ornaments belonging to her. The age of the woman is stated to be about 14. Any adulterous intention on the part of the accused is not expressly alleged but the implication arising from the whole trend of the complaint is, clear enough. The test which may be applied in a case like this is 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 complaints fulfils all the requirements of a "complaint" u/s 498 I.P.C. In this case such remaining facts do fulfil those requirements. In this view I hold that the learned Sessions Judge was justified in treating the case as one disclosing an offence u/s 498, I.P.C. As regards the merits of the case, Mt. Bhawani has made conflicting statements as regards the circumstances, in which she left her husband's protection. His Lordship then considered the case on merits and concluded). Taking all the circumstances of the case, I do not think that the evidence of Mt. Bhawani can be implicitly accepted. It is not safe to convict the appellant on her evidence which receives no material corroboration from independent sources. The utmost that can be said is that there is a strong suspicion of the appellant's complicity in the elopement of Mt. Bhawani from her husband's house. In this view the appeal is accepted. The conviction and sentence passed by the learned Sessions Judge are set aside. The appellant shall be forth-with released. The fine, if paid shall be refunded.