
AIR 1937 Bom 186 : (1937) 39 BOMLR 61

Bombay High Court

Case No: Criminal Appeal No. 59 of 1926

Emperor

APPELLANT

Vs

Ramnarayan Baburao
Kapur

RESPONDENT

Date of Decision: Oct. 6, 1936

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 177, 199
- Penal Code, 1860 (IPC) - Section 497, 498

Citation: AIR 1937 Bom 186 : (1937) 39 BOMLR 61

Hon'ble Judges: Sen, J; Broomfield, J

Bench: Division Bench

Judgement

Broomfield, J.

The appellant in this case, Ramnarayan Baburao Kapur, has been convicted of offences under Sections 498 and 497 of the Indian Penal Code in respect of Ranganayaki, the wife of R. Shrinivas Raghavan, and has been sentenced for each offence to rigorous imprisonment for three months and a fine of Rs. 500. The charges were, firstly, that between January 23, 1935, and January 31, 1935, at Bombay he took or enticed away Ranganayaki whom he knew to be a married woman from her brother who had the care of her on behalf of her husband with the intent specified in Section 498; secondly, that between January 31, 1935, and February 15, 1935, he detained her at Bombay with the same intent, and, thirdly, that between the dates he committed adultery with her at Bombay.

2. The case took a year to dispose of in the Magistrate's Court and the record is very bulky. I shall endeavour to be as brief as possible, but it will be necessary to set out the facts at some little length. Ranganayaki was born on September 28, 1916. Her father, who is an advocate of the Madras High Court, lives at Chetpet, a suburb of Madras. On July 14, 1932, the girl was married to R. Shrinivas Raghavan, she being at that time

under sixteen years of age. She had not attained puberty. However, she went to her husband's house, and the period between the marriage and September 13, 1932, i.e., about two months, was spent by her partly at her husband's house and partly with her parents. The longest period she stayed in her husband's house was about a month. Ranganayaki says that the marriage was not consummated. From the very beginning there were quarrels and the relations between them seem to have been most uncomfortable. Ranganayaki was finally turned out by her mother-in-law on September 13, and after that she never went back to her husband's house.

3. It appears that the marriage was a failure from the first. Ranganayaki blames her husband to some extent and also his mother. She may have had reasons for her complaints. It appears that her husband's mother is suffering from leprosy and Ranganayaki's father has admitted that she treated the girl harshly; also that she had her son, Ranganayaki's husband, completely under her thumb. On the other hand of course it may have been partly Ranganayaki's fault, or it may have been simply a case of complete incompatibility. The fact remains and it is perfectly clear that it was an unsuccessful marriage and there was no love lost between them.

4. At the beginning of December, 1932, Ranganayaki and her two sisters were all abducted by somebody called Doss when they were on their way to school and were taken to Cuddalore and Pondicherry from which place they were rescued by their father and brother. Ranganayaki's story is that they went away with this man because they were not treated well at home. After that the girl was sent to a sort of boarding school with her sister, and in June, 1933, she came back to live in her father's house at Chetpet. In October of that year or a little before the accused rented a house next door. He got into business touch with Ranganayaki's father and in a very short time he became very friendly with Ranganayaki. In November when her father and elder brother were away from home Ranganayaki went off with the accused to Bangalore and stayed with him for live days. She was then brought back by her father. The accused was not prosecuted at that time because, as Ranganayaki's father says, he wanted to avoid a scandal. Soon after this Ranganayaki's brother opened a box belonging to her and found some love letters written to her by the accused. In consequence of this she was taken away to Mambalam and various other places. On February 15, 1934, a complaint was made to the Commissioner of Police, Madras, that the accused was trying to take the girl away. In the same month Ranganayaki's father-in-law, i.e. her husband's father, died and she was taken to her husband's house to pay a visit of condolence. There are conflicting accounts of what happened on that occasion : Ranganayaki says that as soon as they got to the house her husband pushed them out again; her father denies that there was any unpleasantness between them and the husband, although he admits that the mother-in-law refused to see Ranganayaki.

5. In May, 1934, Ranganayaki was taken to a place called Pallavaram, twelve miles from Madras, and she was afterwards sent to Vellore. She came back to Chetpet in June, 1934. In July, 1934, her husband married again. All this time her education was being

continued. Private tutors were employed by her father and she was working for the Matriculation Examination. At the end of 1934 her father's suspicions were aroused by seeing her maid servant talking to the servant of the accused. So he forced open a box belonging to her and found a number of letters written by the accused and a photograph of him. These letters showed that they were planning to escape for the purpose of getting married on or about January 4. Ranganayaki was locked up, however, and that was prevented. But on January 23, 1935, when the girl's father was absent from the house and her brother, the complainant, was having his lunch, she seized the opportunity of escaping and went away with the accused in a motor car and then took an aeroplane and flew to Bangalore. She was found with the accused in Bombay on February 14. They were staying in a flat in Lamington Road. On February 15 a complaint of an offence u/s 498 was made by the brother.

6. The defence, to put it in a nutshell, is that Ranganayaki was discarded by her husband and unhappy at home and she and the accused are lovers and agreed to elope together. Ranganayaki fully supports the accused in this story.

7. We have come to the conclusion that the conviction of the accused is quite unsustainable for several reasons.

8. The first point is as to the validity of the complaint. It is laid down in Section 199 of the Criminal Procedure Code that no Court shall take cognizance of an offence u/s 497 or Section 498 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 the care of such woman on his behalf at the time when such offence was committed. There is some difficulty as to the meaning of the words "in his absence" in this section. One view, which has been accepted by the Magistrate, is that the words mean "when the husband is not staying in the same house as the wife at the time of the offence." There is some authority for this view though not in any case reported in the authorised reports. Another view, suggested by the learned Government Pleader, is that the words only mean "if the husband is absent at the time of the complaint." For that view I think there is no authority. A third view, contended for by Mr. O'Gorman, learned Counsel for the appellant, is that the husband cannot be regarded as absent within the meaning of the section unless he is not available to make the complaint. In the present case there was nothing to prevent the husband making the complaint except that he was not asked or did not care to do so. There is no direct authority for this view either. Mr. O'Gorman has relied on some observations of Sir Lawrence Jenkins C.J. in Chhotalai ILR (1900) 25 Bom. 151 : 2 Bom. L.R. 605, F.B. Nathabhai as to the intention of the Legislature to reserve the right to complain to the husband in such cases. It is not necessary I think to attempt an exhaustive definition of the meaning of these words. We think that if the prosecution had succeeded in making out its case that the complainant had the husband's authority to take care of Ranganayaki on his behalf, so that the complainant stood in the place of the husband for the time being, while the husband was residing quite independently in another part of the town, it would have been difficult to say that the requirements of

Section 199 were not satisfied. We should have been prepared to hold in that case that the husband was absent within the meaning of the section.

9. But as a matter of fact we are quite unable to accept the prosecution case in that respect. The evidence of the complainant's father on this point is as follows :

After September, 1932, she did not go back to her husband's place. Her husband subsequently sent word that she could stay with us safely as he was unable to make arrangements for her stay all of a sudden in a separate place. Her husband was living in a rented house where there was not sufficient accommodation. It was for this reason I said that I and my son had the care of Ranganayaki on behalf of her husband. This message was sent through S.P.S. Raghavan, uncle of her husband. He personally came and saw me. He came and told me that I and my son should "take charge of my daughter Ranganayaki on behalf of her husband as her husband did not relish her staying with him (i.e. the uncle) who had offered a temporary residence for her. Subsequently her husband sent word that Ranganayaki should stay with him (apparently that means the uncle again) along with his mother.

The witness has also stated that when he was away from home he used to leave the complainant in charge. The husband's uncle referred to in this evidence has not been called as a witness. The evidence of the father and that of the complainant, which carries the matter no further, is quite insufficient by itself to show any sort of delegation of the husband's authority to either of them. It is quite clear that within a short time of the marriage the husband ceased to care for Ranganayaki, if he ever had done so, and gave her up as a bad job. The few letters he wrote to her in the early days of the marriage show very little affection or patience, and after October, 1932, he never wrote at all either to her or to her father. He never came near the house, never inquired after her, never sent her any presents. He was not consulted about her being educated and coached for Matriculation. It seems that he did not approve of higher education for women and had told her father so. When Ranganayaki went off with the accused, the husband was not consulted about taking proceedings. He was not even informed of the affair by the complainant or his father. As far as the evidence goes, he has never taken the slightest interest in the present case.

10. It is quite true that Ranganayaki admitted when she was first brought before the Magistrate that she was under the protection of her father and brother in Madras. No doubt she was under their protection and care, but that is not enough. It has to be shown that they had the care of her on behalf of her husband. The learned Magistrate is quite right in saying that express delegation is not necessary. But the words "on his behalf" must be given some meaning. It is not enough that a person should take care of the wife instead of the husband because the husband will not take care of her and there is no one else to do it. Here the husband had obviously washed his hands of the girl, for the time being at any rate, and having nowhere else to go she went to her parents' house. What happened was simply that her father and brother treated her as though she were still

subject to the paternal authority or, to the authority of the senior members of, the Hindu joint family. (The complainant, I may say, is only a few years older than Ranganayaki herself). I daresay that both of them did their duty according to their lights and they did what they thought was best for the girl. But the fact remains that they were acting on their own authority or assumed authority and not by the authority or on behalf of the husband. That being so, the complaint is not competent u/s 199 and that in itself is sufficient to invalidate the conviction.

11. In addition, however, it is an essential ingredient of the offence u/s 498 that the person concerned shall have been taken or enticed from a person having the care of her on behalf of the husband, and that fact not having been established, the conviction under count No. 1 of the charge cannot be sustained.

12. The next point is that the taking and the enticing, if there was any, obviously took place in Madras and the Magistrate in Bombay had no jurisdiction to try these offences. It is laid down in Section 177 of the Code that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. It has been repeatedly held in cases u/s 361 of the Indian Penal Code (where the same words are used) that the "taking" in these cases is not a continuing offence but is complete as soon as the person concerned is out of the keeping or control of the guardian. The same applies to enticing also. No doubt enticing in itself may be a continuous process, but enticing from a particular person cannot be so, i.e., it cannot continue after that person's control has ceased. The word "ordinarily" in Section 177 means "except where provided otherwise in the Code" : see [Emperor Vs. Goverdhan Ridkaran](#), . There are no special provisions as to the trial of offences u/s 498. Clause (4) of Section 181 only applies to kidnapping and abduction.

13. As a matter of fact, speaking for myself, I doubt if there is any satisfactory and sufficient evidence that there was any enticing in this case. Ranganayaki says in her evidence ½

I informed the accused that I was discarded by my husband. At my suggestion the accused sought the advice of a lawyer as I was anxious to marry him. The accused was also anxious to marry me. I had fixed January 4, 1935, to leave with the accused. It was fixed at my suggestion. The subsequent change to January 23, 1935, was also at my suggestion. I was anxious to leave Madras as I did not like Madras. It was my love and affection for the accused that made me go with the accused and not the ornaments, money and diamond rings which he offered me.

No doubt Ranganayaki may be infatuated with the accused and her evidence to some extent is suspect for that reason. It is quite possible also, as the learned Government Pleader suggests, that the accused may have deceived her in many ways. But considering the whole history of the affair as it appears in evidence, I cannot see any reason to doubt that the two were in love with one another and the elopement was a joint

adventure in which the motive force was mutual affection and not any enticement by the accused.

14. So far as the second count of the charge is concerned, failure to prove that the complainant had the care of Ranganayaki on behalf of, her husband would not be material. But the question here is whether there really was anything that amounts to detention. The meaning of the word "detains" in Section 498 has been recently discussed in *Emperor v. Mahiji Fula* ILR (1933) 58 Bom. 88 : Bom. L.R. 1046. It was pointed out there that the word has its ordinary meaning of "keeping back". There may be various ways of keeping back. It need not necessarily be by a physical force, but the use of the word does require that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman, and it cannot properly be said that a man detains a woman if she has no desire to leave and on the contrary wishes to stay with him. It seems to me in this case that it cannot be said in any sense that Ranganayaki was kept back by the accused either from her husband or from the complainant. She has no more use for her husband than he has for her and she was evidently most unhappy at home. When she was examined by the Magistrate in the preliminary proceedings on March 4, 1935, she said^{1/2}

It is not true that I am unlawfully and illegally detained. It is not true that my life is in danger. My liberty is not in any way fettered. I am a free agent and I am able to do what I like. I am about eighteen years and five months old. I have sufficient means of my own here and I am able to look after myself. I do not want to go out of Bombay. I shall appear in Court whenever required. I do not want to go to my father or to my brother.

I think that neither force nor persuasion was at all necessary to keep her with the accused. She was a free agent as she says and stayed with him because she wished to do so. It would be impossible to say that the accused detained her unless the word is to be taken to mean no more than maintain or harbour, which I think cannot be the case.

15. Lastly, coming to the charge of adultery, it appears that there was no legal complaint of this offence. What was alleged in the complaint was that Ranga-nayaki was putting up with the accused, that he proposed to elope with her and marry her, that her life was likely to be ruined and that it was dangerous to allow her to remain with the accused and absolutely necessary to rescue her before it was too late. Nowhere was it stated that adultery had been committed. Nor was any statement made to that effect in any of the preliminary proceedings. The case was registered as one u/s 498 and there is nothing to show that it was treated by anybody as anything else until the recording of certain evidence in the course of the actual trial. The learned Magistrate's view is that if a petition contains an allegation of facts which if proved by evidence would constitute a particular offence, then it may be regarded as a complaint of that offence. That may be so. But the necessary averments must be present. It is not enough to say, as the complainant did say in his complaint, that the girl was putting up with the accused and in danger of being ruined and so on. Thus even on the footing that the complainant was competent to make

the complaint at all, there is in fact no complaint of the offence of adultery, and it was illegal to convict the accused of it.

16. The learned Government Pleader referred us to a case in *Jatra Shekh v. Reazat Shekh* ILR (1892) Cal. 483 as authority for the proposition that the Court has power to frame a charge of an offence u/s 497 or 498 even without a complaint by the husband. The Calcutta High Court, however, took a different view in a later case, *Chemtm Garo v. Emperor* ILR (1902) Cal. 415 and this High Court in (1) *Emperor v. Imankhan* ILR (1906) 31 Bom. 218 : 9 Bom. L.R. 148 and (2) [Emperor Vs. Imankhan Rasulkhan](#), has also taken the view that a complaint by the husband is an essential requirement which cannot be dispensed with. If a criminal charge of adultery is to be preferred a formal complaint of that offence must be instituted in the manner provided by law, and if it is not, the requirements of Section 199 of the Code will not have been satisfied. The point is also made clear by Clause 3 of Section 238.

17. For these reasons the appeal must be allowed and the convictions and sentences of the accused set aside. The bail bonds are cancelled.