

Adikanda Samal

Vs

Madhabananda Nayak

Criminal Appeal No. 22 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

24.01.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave, the appellant has been convicted under Section 498 of the Indian Penal Code and sentenced to six months' rigorous imprisonment suo motu in exercise of revisional jurisdiction. It appears that the appellant was the first cousin of DW 2 Hemalata. Hemalata was married to the complainant Madhabananda Nayak and according to the prosecution itself, the appellant himself had taken an active part in bringing about this marriage. It is also not disputed that the accused was living in the house adjacent to that of father-in-law of Hemalata. It appears that the complainant, Madhabananda Nayak was studying in a school of Bhadrak and his wife was staying with the father of the complainant in the village. On April 26, 1970 CW 1 Hemalata went to the appellant's house and after staying there for some time proceeded to her father's house. The reason for leaving the house of father-in-law given by Hemalata was that she was being ill-treated by him, and there were serious disputes over the cooking of the food on which she was rebuked by the father-in-law. The father-in-law of Hemalata informed the complainant, who came to the village and went to the house of the appellant to get back his wife. But Hemalata refused to accompany him. It appears that the relations between the wife and the husband were quite cordial but their relationship had been marred by a somewhat defiant attitude taken by the father-in-law who does not appear to be favourably inclined towards his daughter-in-law. There is absolutely no evidence on the record to show that the appellant had at any time resisted or obstructed Hemalata from accompanying her husband or going to the house of her husband. The evidence only shows that Hemalata just refused to go to the house of her husband. In these circumstances, therefore, it is not possible for us to hold that there was any legal evidence, either direct or circumstantial, from which an inference could be drawn that the appellant had enticed away Hemalata for the purpose of having illicit intercourse with her. That this was not so is further reinforced by the near relationship that the appellant had with Hemalata. According to the DW 1 the appellant was his nephew and therefore the appellant was the first cousin of Hemalata and to expect first cousin to harbour evil designs against his sister appears to be inherently improbable in the facts and circumstances of the case. CW 1 Hemalata was examined as a witness and she has given a complete narration of the circumstances under which she was compelled to leave the house of her husband and refused to go to him. She had clearly said that the appellant had absolutely no hand in her parting company with her husband or refusing to live with him. In these circumstances, therefore, we find that the essential ingredients for an offence under Section 498 are not proved in this case. Neither it has been proved nor it has been shown that the enticement was for purposes of having illicit intercourse. Even in the complaint which was filed by the husband, no circumstance was mentioned from which an inference of illicit intercourse with the appellant could be drawn.

2. This is rather an unfortunate case where a married couple had to part company because of an unfriendly attitude of the father-in-law, who should have treated his daughter-in-law with parental love and affection particularly when her husband was not living in the house. We would, however, hope and trust the good sense prevails both on Hemalata and her husband so that they may start living together because domestic quarrels in the house being a normal feature of the day this should not be allowed to come in the way of a holy union between the husband and the wife. We also hope that the father-in-law of Hemalata would now bestow upon her his fatherly love and show due consideration to her sentiments so as to avoid any future confrontation.

3. For the reasons given above, we allow this appeal, set aside the conviction and sentence imposed on the appellant and acquit him of the charge framed against him. The appellant will now be discharged from the bail bonds.

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