

NAGPUR HIGH COURT

Gul Mohammad

Vs

Emperor

(Sen, J.)

17.05.1946

ORDER

Sen, J.

1. Gul Mohammad was convicted under Sections 342 and 497, Penal Code, and sentenced to six months' rigorous imprisonment on each count on 4-10-1945 in criminal case No. 211 of 1945, by the Magistrate, First Class, Hoshangabad. The sentences were to run concurrently. The convictions and sentences were upheld by the Additional Sessions Judge, Hoshangabad, on 9-11-1945 in criminal Appeal No. 120 of 1945. The revision application was filed on 15-11-1945 against the appellate order and the applicant was ordered to be released on bail on that date. The application was admitted for hearing parties on 30-1-1946. The Crown is not represented though notice of the hearing of the application was given.

2. The prosecution case may be briefly stated thus: Mt. Gindia is a daughter of Motilal (P.W. 2) and Mt. Mulia (P.W. 3), who are residents of Hoshangabad. Gindia was married about the year 1940 to Babulal (P.W. 1) resident of Joshipur, Bhopal State, which was on the other side of the Narbada. Gindia attained puberty after her marriage and the marriage was consummated. They lived together as husband and wife for nearly three years and a half at Joshipur. In Baisakh (April-May of 1944) Gindia came to Hoshangabad on the occasion of the marriage of her cousin, daughter of her uncle, and stayed at her parents' place in Mohalla Balaganj. Gul Mohammad the accused also resides in that Mohalla and was a close neighbour of her father, Motilal, who is a police constable. On 12-5-1944, at about 10 A.M. when Gindia and her mother, Mulia, were returning from a bath in the Narbada, they were decoyed by the accused on the false pretext that they were required for taking baskets from his house and they would be paid their wages and were taken to Jumerati Mohalla, where they were kept locked inside a room. Under threat they were compelled to go to the Police Station House to make a report about their conversion to Islam and were taken subsequently to a mosque for conversion. After their conversion they were married; Gindia was married to Gul Mohammad and her mother was married to Badruddin (also called Badri.) After marriage they were forced to live in the house of the accused. During the

period Gindia lived in the house of Gul Mohammad, he had sexual intercourse with her.

3. Reports were made to the police by Motilal (P.W. 2) and Babulal (P.W. 1) about the incident but no action was taken. Babulal therefore, filed a complaint on 26-9-1944 against the accused under Sections 342, 497 and 498, Penal Code, and he has duly explained the delay in making the report. Gindia was rescued on 7-6-1945 from the custody of the accused under a warrant issued by the Magistrate on 26-5-1945. The prosecution examined six witnesses. Gindia and her husband Babulal and her parents Motilal (P.W. 2) and Mulai (P.W. 3) deposed to the fact that Gindia was married to Babulal and that at the time of the marriage Gul Mohammad was a next door neighbour of Motilal, her father. This evidence was accepted by the learned Magistrate who held the marriage duly proved. This finding was affirmed by the first appellate Court and has not been challenged before me in revision.

4. The contention of the learned Counsel for the accused was that the complainant had no right to lodge a complaint under Section 497, Penal Code, against the accused as he had ceased to be her husband at the time of the filing of the complaint. Two reasons were urged in support of this contention. The first was that divorce is permitted by the custom of the caste to which the complainant belonged and that he had divorced his wife Gindia according to custom. There is no evidence of divorce. In his cross-examination after the charge Babulal stated that there was a document to which he and his father-in-law were parties. Under that document he was to get ₹ 150 from his father-in-law whether Gindia returned or not. The document was not filed in the case and the witness stated that he was prepared to file it, but was not in a position to produce it on 23-7-1945, the day he was cross-examined as the river Narbada was in flood. The witness was not asked to produce the document subsequently in Court. The date of the document is not known. The oral evidence does not prove that there was a divorce. In the absence of any evidence of divorce, it must be held that the marriage tie was not dissolved and that Babulal remained the husband of Gindia notwithstanding the agreement that he was to receive ₹ 150 from his father-in-law. The second point urged was that by the conversion of Gindia to Muhammadanism the marriage tie was dissolved and that Babulal ceased to be her husband. The conversion of a Hindu wife to Muhammadanism does not ipso facto dissolve her marriage with her husband; she cannot during his lifetime enter into a valid contract of marriage with another person: Vide *Government of Bombay v. Ganga¹ Ram Kumari, In the matter of² Mt. Nandi v. Emperor³* and *cri. Mt. Chandabai v. Emperor⁴* dated 26-4-1946 decided by Pollock J. In some cases it has been held that a marriage of a Hindu wife is dissolved after her conversion to Islam if she presents Islam to her husband and he fails to accept it and she obtains a decree of a Court for dissolution of marriage: *Mt. Ayesha Bibi v. Subodh Ch. Chakravarty⁵ Ram Kumari, In the matter of⁶* This view has been dissented from in *Sayeda Khatoon v. M. Obadiah⁷* where it was held that a marriage solemnized in India according to one personal law cannot be dissolved according to another personal law, simply because one of the parties has changed his or her religion. It is unnecessary for the purpose of this case to decide whether the view taken in *Mt. Ayesha Bibi v.*

Subodh Ch. Chakravarty 49 C.W.N. 439(SUPRA) is correct. In the present case it has not been proved that after conversion Gindia presented Islam to her husband, that he refused to embrace

¹(80) 4 Bom. 330

³ A.I.R. 1920 Lah. 379

⁵49 C.W.N. 439

²(91) 18 Cal. 264

⁴ Criminal Revn. No. 349 of 1945

⁶(91) 18 Cal. 264

⁷49 C.W.N. 745

Islam and that she obtained a decree of a Court for dissolution of marriage. As her marriage was not dissolved, she continued to be the wife of Babulal.

5. The defence of the accused was one of denial. It was not his case that he had sexual intercourse with Gindia as he believed her to be his wife married to him according to the Muhammadan law. It has been amply proved from the evidence on the record that Gul Mohammad was a close neighbour of Motilal and they lived in the same Mohalla, namely, Balaganj. The father and the husband of Gindia had demanded the custody of Gindia from the accused and he had refused to hand her over to them on the ground that she had embraced Islam and was his wife. The accused had reason to believe that Gindia was the married wife of Babulal, and if the accused had intercourse with her, he committed an offence under Section 497, Penal Code.

6. Pannalal (P.W. 4.) and Amarchand (P.W. 5) deposed that Gindia was in the house of the accused from Miti Jeth Badi 5, Samvat 2001 (i.e., 12-0-1944). These witnesses also prove that Babulal and Motilal approached the accused to recover the girl, but he refused to hand her over to them on the ground that she had been converted to Islam. Gindia (P.W. 6) stated that she was confined by Gul Mohammad in his house against her wish for about one year till she was rescued from his custody on 7-6-1945 under a warrant of the Magistrate and the accused had intercourse with her during this period against her, wish, that she was enceinte and that the accused was responsible for her pregnancy. Her evidence has been corroborated in material particulars by other evidence in the case. She has been believed by both the Courts, and I do not see any ground for interfering in revision with the appreciation of the evidence by the two Courts and the findings arrived at. The learned Counsel for the applicant suggested in the course of the argument that at the most the case was one of elopement and sexual intercourse of the applicant was with the consent of Gindia. This was not the defence of the accused and nothing has been brought out from the prosecution witnesses to support this theory. As the marriage of Gindia with Babulal had not been dissolved, sexual intercourse by the accused with her whether with or without her consent was an offence under Section 497, Penal Code. The conviction of the accused under Section 497 of the Code is justified and is upheld.

7. Both the Courts below have held that Gindia was taken on false pretence and was confined in the house of the accused against her will. There is ample evidence to support the finding. Gindia and Mulia, her mother, have deposed to the circumstances in which they were taken and confined in the house of the accused. Motilal, the father of the girl, demanded the custody of Gindia from Gul Mohammad who refused to restore her to him on the ground that she had embraced Islam. Babulal also demanded his wife back and the accused refused to comply on the ground that

Gindia was the wife of the accused. Their evidence is supported by the evidence of Pannalal (P.W. 4) and Amarchand (P.W. 5). The conviction of the applicant under Section 342, Penal Code, was justified on the evidence on the record and I do not see any reason to interfere with that conviction in revision.

8. The learned Counsel for the applicant contended that on the facts alleged or proved the offence under Section 366 of the Code was made out, which was triable by the Court of Session, and as the trial was not by the Court of Session the Court had no jurisdiction to try the case, and that the accused has been prejudiced as he had not the benefit of a trial before a competent Court. The complaint was under Section 342, Penal Code, and the accused was tried for the commission of that offence which was triable by the learned Magistrate who heard and decided the case. The trial of the accused for an offence under Section 342 of the Code was not vitiated for want of jurisdiction. There has been no prejudice to the accused and the conviction is not liable to be set aside on the ground urged.

9. The last ground urged was about sentence. Considering the circumstances in which the offences were committed a sentence of six months' rigorous imprisonment was not excessive. Gindia was taken to the house of the accused on false pretence and was detained unlawfully in his house against her wish and in spite of her protests. Gindia lived with her husband for about three years and a half, and it has not been brought out that their relations were unhappy or that she was mal-treated by her husband, Babulal, and that she embraced Islam and married Gul Mohammad in order to escape from the tyranny of her husband.

10. The application is accordingly dismissed. The accused must now surrender and serve out the remainder of his sentence.

Application dismissed.