



2025:CGHC:16304

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 172 of 2016

,

... Appellant

versus

State Of Chhattisgarh Through - P.S. City Kotwali, Distt. Dhamtari
Chhattisgarh , Chhattisgarh

... Respondent

For Appellant	:	Mr. Adil Minhaj, Advocate
For State	:	Mr. Jitendra Shrivastava, Deputy Govt. Advocate

(Hon'ble Shri Justice Arvind Kumar Verma, Judge)

Judgment on Board

07.04.2025

- The present criminal appeal filed under Section 374(2) of the Cr.P.C. has been preferred by the appellant being aggrieved by the impugned judgment dated 01.02.2016 passed in Sessions Trial No. 04/2015 by the learned Session Judge, District Dhamtari, whereby the appellant has been convicted under Section 497 of Indian Penal Code and sentenced 04 years of

rigorous imprisonment with fine of Rs. 100/- and in default of fine amount additional rigorous imprisonment for one month.

2. Brief facts of the case are such that on 10.01.2015 prosecutrix has lodged a report against the appellant alleging that six years ago the appellant has married her in a secret manner on the pretext that when her younger sister will get married at that time he will marry her again by following proper rituals and customs. But in her report she alleged that even after five years of their marriage the appellant used to avoid her. She stated that from time to time she used to visit the house of the appellant and the family members of the appellant were well conversant about their secret marriage. In those five years of marriage she got pregnant several times but every time appellant used to make her abort the child and asked her to give him one and a half year time to get married in front of his family. Later on she came to know that the appellant one and a half year ago has married to some other lady. Based upon the aforementioned allegation the report was lodged against the appellant for the offence punishable under Section 376 of the Indian Penal Code.

3. On completion of investigation, charge-sheet was filed against the appellant before the concerned Trial Court. Charges were framed against the appellant for the offence referred to above and he denied the charges leveled against him and sought trial.
4. Prosecution in order to prove her case examined as many as six witnesses. Statement of the accused appellant was also recorded under Section 313 of CrPC in which he denied all the incriminating evidences available against him, pleaded innocence and false implication. Initially the appellant was charged under Section 376 of the Indian Penal Code, later on, on trial the appellant has been convicted under Section 497 of the Indian Penal Code stating that section 376 of the IPC is not made out against the appellant rather Section 497 of IPC is made out. Hence he was convicted under Section 497 of IPC.
5. Learned counsel for the appellant submits that Trial Court has convicted the appellant under Section 497 of the Indian Penal Code which is illogical and perverse. Rather the case of the appellant falls under the purview of Section 376 of the Indian Penal Code. The judgment of the learned

trial court is wholly based on presumptions, surmises and flawed appreciation of the evidences. Hence he prays to set aside the impugned judgment dated 01.02.2016 passed in Sessions Trial No. 04/2015 by the learned Sessions Judge, Dhamtari and the appellant be acquitted in the interest of justice.

6. Per contra, learned counsel for the State submits that all the incriminating evidences are against the appellant and the case of the appellant wholly falls under the purview of Section 497 of the Indian Penal Code. Hence he opposes the prayer made by the learned counsel for the appellant.
7. I have heard learned counsel for the respective parties and perused the record with utmost circumspection.

8. Section 375 of the Indian Penal Code :-

A man is said to commit "rape" if he— (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the

vagina, anus, urethra of a woman or makes her to do so with him or any other person,

9. Section 497 in The Indian Penal Code, 1860

497. Adultery.—

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

10. On bare perusal of Section 497 of the Indian Penal Code which categorically defines that adultery is an offence which is committed by third person by committing sexual intercourse with the wife of another person without her consent or connivance. Upon this the only contention of the learned counsel for the appellant is that the appellant does not come under the purview of Section 497 of Indian Penal code, therefore, the case of the prosecution and its evidence has to be seen.
11. Prosecutrix in her FIR has stated that the appellant by way of alluring has committed sexual intercourse on the pretext of marriage. She stated that six years ago the appellant and she got married to each other in a secret manner as

the appellant told her after the marriage of her younger sister he will marry her as per the customs and rituals. But every time whenever she asks her to get married, he on the basis of some family issues use to avoid her. This went on for about five years after their secret marriage. She stated that the knowledge of their secret marriage was also known by his family members. During those years she got pregnant for five times. However, the appellant use to make her abort the child by some or the other means. Thereafter he stated that after one and a half year he will marry her, but some how she came to know that the appellant has married some other lady that too one and a half year back. And when she asked about this to him on a phone call, he admitted that he has got married to some other lady one and a half year back.

12. PW-01 Sanjay Shukla, the landlord in which the appellant and prosecutrix used to live after getting secretly married. PW-01 in his statement has stated that the prosecutrix and the appellant used to live in their house as a tenant since April, 2014. She and appellant has stated themselves as husband and wife. Along with them one boy child was also

there. One day he came to know that the prosecutrix was trying to commit suicide and on being asked she told him that the appellant is denying to get married to her. She has aborted several times. Upon this he tried to make the appellant understand that it is better to marry her as you both are living since long as husband and wife. But the appellant didn't understood and refused to get married to her.

13. PW-02, Shekhar Shinde who was the tenant of PW-01 and used to live beside the appellant and the prosecutrix in his statement has also stated the same things as PW-01. He confirmed the fact that the appellant and the prosecutrix used to live beside them as husband and wife and the prosecutrix told him that the appellant is refusing to marry her and she got pregnant several times upon which the appellant has made her abort each time against her will. Moreover she has come to know that he has married some lady one and a half year back and has not disclosed to her.
14. Thus by closely scrutinizing the facts and circumstances of the case, it is clear that in the present case the husband of the prosecutrix did not file any complaint

before the court. Section 497 of the Indian Penal Code is non-cognizable offence and the ingredients of Section 375 of IPC and Section 497 of IPC is entirely different. Trial court has acquitted the appellant under Section 376 of the Indian Penal Code however, convicted the appellant under Section 497 of the Indian Penal Code without being complaint made by the husband of the Prosecutrix before the competent court/Magistrate. While distinguishing between adultery and rape the following points of distinction should be borne in mind:

- a) Adultery can be committed only with a married woman, whose husband is alive, whereas rape can be committed on any woman, married or unmarried, whose husband is alive or dead or a divorced woman.
- b) In adultery, woman is willing and consenting partner but in rape sexual intercourse is committed by a man against her will or without her free consent.
- c) Adultery cannot be committed by a husband with his wife, but rape can be committed by a husband in certain circumstances.
- d) Adultery is an offence against marriage while rape is an offence against the person of a woman.
- e) In adultery, aggrieved party is the husband, while in rape, victim woman is the party aggrieved.

15. In the present case, aggrieved party that is the husband of the prosecutrix has not made complaint of adultery before the court, therefore, ingredients of section 497 of the Indian Penal Code has not been made out against the appellant.
16. It is also pertinent to mention her that Hon'ble Supreme Court in the matter of **Joseph Shine Vs. Union of India** [2018] 11 S.C.R. 765 has held that section 497 of the Indian Penal Code which criminalized adultery is unconstitutional. The Hon'ble Supreme Court has also held that it violated the Article 14, 15 and 21 of the Indian Constitution as this Section violates principles of equality before law by treating men and women differently, as only men could not be prosecuted for adultery.
17. Therefore, the conviction under Section 497 of the Indian Penal Code by the trial court to the appellant is bad in law, and hence the appellant is liable to be acquitted from the charge of Section 497 of IPC.
18. Conviction of appellant under Section 497 of the Indian Penal Code by the learned Sessions Judge, District

Dhamtari in Sessions Trial No. 04/2015 by impugned judgment dated 01.02.2016 is hereby set aside. The appellant is acquitted from the charges leveled against him by the trial court for the offence under Section 497 of the Indian Penal Code. Thus, the instant appeal is hereby **allowed**.

19. The appellant is reported to be in jail. He be released forthwith, if not needed in any other case.
20. Keeping in view the provisions of Section 437-A CrPC, the appellant is directed to furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of sum of Rs. 5,000/- with one reliable surety in the like amount before the court concerned which shall be effective for a period of six months along with an undertaking that in the even of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

21. The Trial Court Record (TCR) along with a copy of this judgment be sent back immediately to the trial concerned for compliance and necessary action.

sd/-

(Arvind Kumar Verma)

JUDGE

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