



DHARAMDAS V. STATE OF HIMANCHAL PRADESH

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INTRODUCTION-

This case mainly deals under section 497 of Indian penal code, 1860 which defines adultery as “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.” In this case a joint petition has been filed by husband and wife on the ground of adultery, rape and abduction against an accused under section 497, 376 and 366 of Indian penal code, 1860. Thus the petition was accepted by the trial court. This was further appealed by respondent in additional court, where the court supported the above judgement. Both the trial court gave the decision against the accused man so he decided to file an appeal under Supreme Court, the apex body where the judge accepted the appeal and held the appellants innocent on the grounds that section 497 does not cover the petition filed jointly by the husband and wife.

FACTS OF THE CASE-

There were mainly two complainants i.e., Bal Krishan (husband) and Smt. Prem Dassi (his wife). The husband used to work at the

borders of the country and the wife used to live in Karsog district with her three children for the last five years. And after some time of loneliness of the woman a man (accused) used to frequently come to her home and he used to tell her that his husband works at the border and he can die anytime so he convinced her that she can make a relationship with that accused man. That man has also promised her that he will also marry her and will also take care of her three children. They also had a sexual intercourse. After few months when her husband returned home from the border on his holiday he got to know from the neighbors that his wife had an extra-marital affair on his back and the behaviour his wife was also very indifferent towards him. So he asked from her wife about that man. She confessed in front of her husband that yes this is true she was having an extra marital affair with another man and she also had a sexual intercourse with him. So both husband and wife had filed a case against that accused man under section 366, 376 and 497 of Indian penal code, 1860.

ISSUES-

- Whether the accused has committed adultery?
- Whether he should be punished under the crime of adultery under section 497 of Indian penal code?
- Whether he has committed rape under section 376 of Indian penal code?
- Whether section 366 has been committed or not?
- Whether the complaint can be filed jointly by the husband and wife or not?

**JUDGMENT-**

The complaint was initially filed under section 366, 376 and 497 of IPC. The trial court rejected the complaint made under section 366 and 376 and only the complaint made under section 497 was taken into consideration. The complaint under section 366 was rejected on the grounds that section 366 of IPC only talks about inducing a woman to compel her marriage or forced illicit relation but in this case there was no force involved. If the act was done forcefully, the wife must have shouted or cried but no voice was heard by any of the neighbour and witnesses. The complaint made under section 376 was also rejected on the grounds that section 376 only talks about punishment for rape which is done without consent. There were no such evidences available to proof that the wife has been raped. Also, the wife has changed her decision on cross examination. At first, she said that she has been compelled to have a sexual intercourse by an accused. The accused promised to marry her and said that her husband remains on border and can die at any time. Later on she changed her statement and said that she has been compelled to have a sexual intercourse on the point of knife. Both the courts held that the accused was not guilty under section 366 and 376 of IPC but was held guilty under section 497 of IPC and sentenced him with the fine of rupees 3000 or in case of default, imprisonment of 1 month.

The Supreme Court passed the judgment in favour of the accused man as the person can only be convicted of the offense of adultery only when husband alone files a case against the accused man as mentioned under section

497 of IPC but in this case the petition was filed jointly by husband and wife, it will not come under the purview of section 497 of IPC. If it is filed jointly it will violate the basic principle mentioned in section 198(2) of Code of criminal procedure and cannot be taken into consideration. Thus, the judgment of both the trial courts was quashed and accused was acquitted of the charges. Hence, the accused man was proven not guilty by the Supreme Court. The entire punishable amount was refunded to him and his bail bonds were also discharged.

