1876. October 16.

REG. v. HULAGU.

The High Court has already ruled (High Court Proceedings, 24th January 1873) that a conviction based solely upon the evidence of a co-prisoner is bad in law.

The conviction of the second prisoner is accordingly annulled. The Magistrate will forthwith discharge the second prisoner from custody.

Ordered accordingly.

APPELLATE CRIMINAL.

Before Sir W. Morgan, C.J., and Mr. Justice Innes.

1876. July 18.

REG: v. ARUNA'CHELLAM AND 2 OTHERS. (1)

Indian Penal Code, Sec. 372.

To constitute an offence under Section 372 of the Indian Penal Code it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person.

THIS was an appeal against the sentences of the Session Court of Madura in Calendar Case No. 26 of 1876. The 1st prisoner, Arunáchellam, was charged, under Section 372 of the Indian Penal Code (2), with having disposed of his daughter under the age of 16 years, knowing it to be likely that she would be employed for the purpose of prostitution, and the 2nd and 3rd prisoners were charged with abetting the commission of the said offence. The Assessors found the prisoners guilty of the offences charged, and the Session Judge, concurring with the Assessors, sentenced the 1st prisoner to six hours' simple imprisonment and to pay a fine of fifty-one Rupees, the 2nd and 3rd prisoners to the same imprisonment and to fines of five Rupees and one Rupee respectively.

The Calendar of the Session Judge, P. P. Hutchins, gives the following statement of facts and reasons for the sentences passed:—

(1) Criminal Appeal No. 198 of 1876.

(2) Section 372 of the Indian Penal Code is as follows:—"Whoever sells, lets to hire, or otherwise disposes of any minor under the age of 16 years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

1876. July 18.

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"In this case 1st prisoner presented an application for the enrolment of his daughter as a dancing girl of the great pagoda at Madura. He stated her age to be 13, and it has throughout been admitted that she is under 16. She attained puberty a month or two after her enrolment. Her father is the servant of a dancing girl, the 2nd prisoner, who has been teaching the minor dancing for some 5 years. Her father and herself lived in 2nd prisoner's house and after the ceremony returned there. The evidence shows that 2nd prisoner brought the girl to the pagoda; probably she dressed her also, but that is not admitted, and I wish only to state admitted facts; that both 1st and 2nd prisoners were present when the Bottu was tied and other ceremonies of the dedication performed; that 3rd prisoner as Battar of the temple was the person who actually tied the Bottu, which is equivalent to the Tali of an ordinary marriage, and denotes that the Dási is wedded to the idol. There is the usual evidence that dancing girls live by prostitution, though occasionally being kept by the same man for a year or more; but the fact being admitted, it was not necessary to multiply witnesses upon this point.

I took a special verdict from the Assessors. It runs as follows:—"We find that Kistnammál is under 16; that 1st prisoner, her father, got her made into a Dási by the tying of the Bottu; that Dásis universally get their living by prostitution; that her father knew she was likely to be employed for prostitution; that she was likely to become a prostitute before she attained the age of 16; and that her father knew that."

"We also find that 2nd prisoner abetted the above acts, and that 3rd prisoner also abetted them."

In that verdict I entirely concur.

As to the law, I have held in a former case that there must have been a disposal tantamount to a transfer of possession or control over the minor's person to constitute an offence under this section, but the Bombay High Court have held the contrary (1), and I consider myself bound by their decision on any points of statutory construction not inconsistent with the decision of the Madras High Court. I have, therefore, convicted, but my former judgment has doubtless been accepted by these people as declaratory of the law,

(1) 6 Bom. H. C. Reps., C. C. 60.

1876. July 18.

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and has led them to believe their acts innocent. The case, therefore, only calls for a nominal sentence."

The prisoners appealed to the High Court on the ground that the conviction was contrary to law.

The appeal came on for hearing on the 18th of July 1876, when Mr. *Tarrant* appeared for the prisoners and contended that the conviction was wrong, as a disposal tantamount to a transfer of possession or control over the minor's person should be shown in order to constitute an offence under Section 272.

The High Court affirmed the convictions.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kindersley.

NELLAIKUMARU CHETTI (PLAINTIFF), SPECIAL APPELLANT, *v.* MARAKATHAMMAL (DEFENDANT), SPECIAL RESPONDENT. (1).

1876. September 22.

Widow—Grant of money in lieu of maintenance—Right of disposal.

Where a sum of money was given to a widow, without restriction, in lieu of maintenance, by her deceased husband's family. *Held* that it became absolutely hers, and that she could dispose by will of landed property acquired by means of it.

PLAINTIFF, as the undivided nephew of one Subramanian Chetti (deceased), sued to recover certain landed property acquired by Muttachi, widow of the said Subramanian, and which at the death of the said Muttachi had been taken possession of by her niece, the defendant, under a will alleged to have been executed by Muttachi. It was admitted on both sides that Muttachi was given a sum of money in quit of her maintenance on the death of her husband, that the donor was plaintiff's father, the undivided brother of Subramanian, and that the property in question had been purchased by Muttachi with the money so given her.

The Subordinate Court held in Regular Appeal, in reversal of the original decree, that the money having been given without restriction to the widow for her maintenance, it should be classed as stridhanam, and that being so, property acquired by means of it became absolutely that of the widow, and could be disposed of by her by will.

(1) Special Appeal No. 604 of 1876 against the decree of A. Annusámi, Subordinate Judge of Tinnevelly, dated 26th February 1876, reversing the decree of Mahalingier, District Munsif of Ambasumudram, dated 31st July 1875.