

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

against

RAMANNA AND OTHERS.*

1889.
Feb. 15, 20.

Penal Code, ss. 372, 373—Code of Criminal Procedure, ss. 234 and 537—Obtaining a minor for prostitution—Dancing girl caste—Adoption—Misjoinder of charges—Immaterial irregularity.

A woman, being a member of the dancing girl caste, obtained possession of a minor girl and employed her for the purpose of prostitution; she subsequently obtained in adoption another minor girl from her parents, who belonged to the same caste. She and the parents of the second girl were charged together under ss. 372, 373 of the Penal Code. The charges related to both girls:

Held, (1) that the two charges should not have been tried together, but the irregularity committed in so trying them had caused no failure of justice;

(2) that ss. 372, 373 of the Penal Code may be applicable in a case where the minor concerned is a member of the dancing girl caste.

Per Muttusami Ayyar, J.—It would be no offence if the intention was that the girl should be brought up as a daughter, and that when she attains her age she should be allowed to select either to marry or follow the profession of her prostitute mother.

CASE of which the records were called for by the High Court under s. 435 of the Code of Criminal Procedure.

The first and second accused, who are members of the Bhogam or dancing girl caste, gave their daughter Ramabhai, while still a young child, in adoption to the fourth accused, who was a member of the same caste. The fourth accused had some years before obtained from a woman of another caste a girl named Dasari Narayanam, who was employed by her for the purpose of prostitution while still a minor.

The first, second, and the fourth accused were, respectively, convicted by the Additional Deputy Magistrate of Kistna in case No. 23 of 1888 of the offences of disposing of and obtaining possession of a minor with intent that such minor be employed for the purpose of prostitution, under ss. 372, 373 of the Penal Code. They appealed to the Sessions Court.

* Criminal Revision Case No. 720 of 1888.

QUEEN-
EMPERESS
v.
RAMANNA.

The Sessions Judge on appeal reversed the conviction of the first and second accused, holding that no offence had been proved with regard to Ramabhai; he, however, held that the fourth accused was guilty in respect of Dasari Narayanam, and confirmed her conviction. He dealt with the cases as follows:—

“The Magistrate ought not to have included in this trial the case concerning the minor Ramabhai. It has no connection whatever with the case of the first witness, and, moreover, the circumstances are different. On the merits I much doubt if a conviction can be upheld in the case of the minor Ramabhai. She is the daughter of the first and second accused, who are of the Bhogam or dancing class, and she was given in adoption to fourth accused, who is the aunt of the first accused. This may have been done in order that she might inherit the property of the fourth accused. It did not place the minor Ramabhai in a position worse than that which she occupied before this adoption. The child was of the Bhogam class both before and after the adoption. I understand that ss. 372 and 373 of the Penal Code are directed against a disposal of a minor which takes her from a position where she is not so liable to become a prostitute and places her in a position where she is more liable to become a prostitute. I do not consider that these sections can apply to adoptions among the dancing women class themselves, which do not alter for the worse the status of the child.

“Taking this view of the case, I reverse the conviction of the first and second accused, and of the fourth accused as far as the minor Ramabhai is concerned.

“It appears to me that the fourth accused is guilty under s. 372 of the Penal Code with regard to the girl Dasari Narayanam, who was obtained from a woman of another caste and was actually subjected to prostitution while still a minor, the fourth accused receiving the proceeds of this prostitution. This is altogether different from the transaction with regard to the second girl Ramabhai, who was given in adoption by one member of the dancing girl caste to another and who may be intended for marriage and not for prostitution. The question whether adoption in this class is necessarily immoral is fully discussed in the judgment of Muttusami Ayyar, J., in *Venku v. Mahalinga*(1). The

(1) I.L.R., 11 Mad., 393.

sentence on fourth accused of six months' simple imprisonment and a fine of Rs. 200, in default six weeks' further imprisonment, is confirmed."

QUEEN-
EMPRESS
v.
RAMANNA.

The *Acting Government Pleader* (*Subramania Ayyar*) for the Crown.

Shadagopachariyar for the accused.

The arguments adduced in this case appear sufficiently for the purpose of this report from the judgments of the Court (*Muttusami Ayyar* and *Parker, JJ.*).

PARKER, J.—The Deputy Magistrate was no doubt in error in trying the two charges together (s. 234, Criminal Procedure Code); but I do not think this irregularity has caused a failure of justice or that it has prejudiced the fourth accused.

The Sessions Judge has set aside the conviction on the ground that as the minor *Ramabhai* was of the dancing girl class before adoption, her adoption did not alter her status for the worse. The ground of decision does not appear to me to be sound in law.

Ramabhai was the legitimate daughter of parents who were married, though of the *Bhogam* caste, and the essence of the prosecution was not that she was adopted by the fourth accused, but that she was given by her parents and taken by the fourth accused with the intent that she should be employed or used for the purpose of prostitution. The child was of course too young to be immediately used for such purpose, but the allegation was that she was adopted by the fourth accused, herself a prostitute, who had quarrelled with another girl whom she had brought up to be a prostitute and whose earnings as a prostitute she had received, and that the intention of the fourth accused was to train up *Ramabhai* to follow the same course of life. It appears to me that if these allegations were found in the affirmative, the legal offence would be complete even though the age of the child prevented her immediate prostitution and allowed time for repentance.

In the testimony of prosecution witnesses Nos. 1, 2, 4, 5 and 7 there was legal evidence in support of the criminal intention, and the testimony of the defence witnesses that the adoption was for the purpose of the minor inheriting the fourth accused's property is not necessarily inconsistent with the allegation of the prosecution witnesses. It was for the Judge to weigh that evidence, but he had not done so.

QUEEN-
EMPRESS
v.
RAMANNA.

It has been held in *Venku v. Mahalinga*(1) that prostitution is not the essential condition or *necessary* consequence of an adoption by a dancing girl, but is an incident due to social influences. It is a question to be determined on the evidence and on the circumstances of this case whether the prosecution has made out the criminal intention or whether the Judge can come to the conclusion on the evidence that the adoption was merely made to secure to the fourth accused a person competent to perform her obsequies and to take her property.

The Judge has not recorded any finding upon the evidence. I would, therefore, set aside the acquittal and direct that the appeal be re-heard.

MUTTUSAMI AYYAR, J.—I am also of opinion that, though there was a misjoinder of charges, yet it was only an irregularity which did not result in failure of justice. I also think ss. 372 and 373 do not cease to be applicable, because the minor concerned is of the Bhogam or dancing girl caste. The act proved in the case before us is the giving and accepting of a minor, as it is said, in adoption. It is perfectly immaterial whether a second adoption during the lifetime of the first witness for the prosecution, who is said to have been first adopted, is valid, or whether it amounts to fosterage resulting in no jural relation. In order to support a conviction under s. 372 or 373, it would be sufficient to show that the girl was given and accepted with the intention mentioned therein. It is, however, necessary to bear in mind whilst coming to a finding as to the intention that, when an act is not *per se* criminal, the specific intent which renders it criminal must be established by cogent evidence. The minor Ramabhai is only a child of eight years of age, and the adoption took place three years ago. It is reasonable to infer that there was no intention at the time of adoption to employ her at once for purposes of prostitution. It would also be no offence if the intention was that the girl should be brought up as a daughter and that, when she attains her age, she should be allowed to elect either to marry or follow the profession of her prostitute mother. If, on the other hand, the intention was that the girl should be employed as a prostitute whilst she continues to be a minor, the accused might then be liable. Though the adoptive parent may be a prostitute,

(1) I.L.R., 11 Mad., 393.

yet she may have civil rights. In criminal cases the presumption of innocence must be displaced by positive evidence. As the evidence in this case was not specific in the sense indicated above, I doubted at first if we should at all interfere in revision. After reading Mr. Justice Parker's judgment, I see no objection to directing a re-hearing of the appeal in order that the Judge may come to a distinct finding with regard to the intention, and then dispose of the case, and I concur in the order proposed by Mr. Justice Parker.

QUEEN-
EMPRESS
v.
RAMANNA.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

SIVASANGU AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS,

v.

MINAL (PLAINTIFF), RESPONDENT.*

1888.
April 12, 13.
1889.
January 29.

Hindu law—Inheritance—Rule of inheritance affected by manner of life—Maraver prostitutes—Act XXI of 1850.

A married Maraver woman deserted her husband and lived in adultery with another man, to whom she bore four children. Of these children, the two daughters associated together leading the life of prostitutes, and the two sons separated themselves from their sisters and observed caste usage. The elder daughter died leaving property in land :

Held, that the sister succeeded to the deceased in preference to the brother.

SECOND APPEAL against the decree of S. Gopalachari, Subordinate Judge of Madura (East), in appeal suit No. 539 of 1886, reversing the decree of M. A. Tirumalachari, District Munsif of Dindigul, in original suit No. 596 of 1885.

Suit to redeem certain land mortgaged by one Kuppayi, deceased, to defendant No. 1. The plaintiff was the sister of the late Kuppayi, and claimed both under a will alleged to have been executed by the latter in her favor on 8th July 1881 and also as heir by Hindu law. Defendant No. 2, who was brought on to the record by an order of the District Munsif, denied the validity of the will and claimed to be a preferential heir to the deceased, being the son of her brother.

* Second Appeal No. 75 of 1887.