SUBBUSWAMI GOUNDAN v. KAMAKSHI AMMAL.

husband. As we have already expressed the view that she is not unwilling to return to her husband, much of the force of this argument is lost. But it is quite clear from *Abraham* v. *Mahtabo*(1) that, even if a minor does consent and remains in the custody of those who are charged with illegally detaining her, that does not matter, but the persons who keep her even with her consent are to be held to have illegally detained her, if a person who is better entitled in law to have the custody of that person desires to have that custody. That was a case under section 552 of the Criminal Procedure Code, but we think that the reasons given for deciding the case in that way are equally applicable to the facts of this case.

Under these circumstances, we find that the petitioner is entitled to have the order he asks for. We direct the respondents to hand over the minor wife to his custody. The wife will be handed over now in Court to her husband.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Horace Owen Compton Beasley, Chief Justice, and Mr. Justice Cornish.

1929, August 1.

SAMI KARUPPA TEVAN (2ND ACCUSED), APPELLANT.*

Criminal Tribes Act (VI of 1924), sec. 23 (1) (b)—Long interval of time between accused coming out of prison after serving last sentence and commission of offence—If a "special reason" to the contrary" with in meaning of section.

Under the Criminal Tribes Act (VI of 1924), the fact that there has been a long interval of time, between the accused person coming out of prison after serving his last sentence and

(1) (1889) I.L.R., 16 Calc., 487.

* Criminal Appeal No. 107 of 1927.

the commission of the offence, would be a "special reason to the contrary" within the meaning of section 23 (1) (*b*) of the Act, so as to entitle a Court to impose on the accused a lesser sentence than transportation for life.

In re Mayandi Thevan, (1926) I.L.R., 50 Mad., 474, referred to.

APPEAL against the order of the Court of Session of the Madura Division in Case No. 110 of the Calendar for 1928.

No one appeared for the appellant.

Public Prosecutor (*L. H. Bewes*) for the Crown.

The JUDGMENT of the Court was delivered by

BEASLEY, C.J.—There were three accused in Sessions Case No. 110 of 1928 in the Sessions Court at Madura, and they were charged with house-breaking by night and theft in a building, punishable under sections 457 and 380, I.P.C. The second accused was charged in addition with liability to enhanced punishment under section 75, I.P.C., and section 23 (1) (*b*) of Act VI of 1924. The case was tried by the Sessions Judge sitting with a jury, and they unanimously found the first accused not guilty of any offence, and the second and third accused guilty under sections 457 and 380, I.P.C. The first accused was acquitted; the third accused was sentenced to six months' rigorous imprisonment as the offence was not a very serious one, having regard to the value of the stolen property. The second accused, the appellant here, was sentenced to transportation for life: that was, in the view of the learned Sessions Judge, the only sentence which could be passed upon him, because he had been previously convicted on two occasions, and the section says that, where the accused is found guilty of a certain offence specified in the Act, and he has had two previous convictions, he is to be sentenced to transportation for life, unless there are special reasons to the

KARUPPA TEVAN, *In re.*

BEASLEY, C.J.

contrary. The learned Sessions Judge was not able to find any special reasons to the contrary. The question as to what are such special reasons as would entitle the Court to award a lesser sentence than that specified by the section, namely, transportation for life, has been considered by a Bench of this Court in *In re Mayandi Thevan*(1). In that case, the offence of which the accused was charged was not one of a serious nature, and the trial Judge sentenced him to eighteen months' rigorous imprisonment. He had, however, overlooked the fact that he was a member of a criminal tribe, and the case came up before that Bench for enhancement of the sentence. The Bench found themselves in a position of difficulty, because they were unable to do anything else but enhance the sentence to one of transportation for life, as there had been two previous convictions against the accused; and in considering what the words "special reasons to the contrary" which occur in that section mean, they held that the mere fact that the offence is not of a serious nature cannot form a special reason to the contrary in reducing the sentence, and such a special reason must be something apart from the nature of the offence, such as youth, age, illness or sex. It cannot be supposed that the Bench, in stating what the special reasons are, intended to deal exhaustively with them. There may be other reasons, and we think that one special reason would be the interval of time which has elapsed between the accused person coming out of prison after serving his last sentence and the commission of the offence. Circumstances such as those are always taken into consideration by English Courts in awarding sentences; and where the accused has not been convicted for some

(1) (1926) I.L.R., 50 Mad., 474.

years, that fact has usually been taken into consideration in passing upon him a lesser sentence than would ordinarily be passed upon a previously convicted person. In this case, the previous convictions were (1) for the offence of dacoity and (2) for dacoity with attempt to cause grievous hurt, which of course is a far more serious offence. In respect of the first offence, he was sentenced to five years' rigorous imprisonment in February 1911, and in respect of the second offence, he was sentenced to seven years' rigorous imprisonment in March 1911. Presumably these were convictions at separate trials, and we must assume that the sentences must have been served consecutively. Therefore in March 1911 the accused had to serve sentences amounting to twelve years' rigorous imprisonment. That would take him to 1923, but he would have earned a considerable remission of sentence and presumably would have been discharged from prison in about 1920. He would, therefore, have been seven or eight years without being convicted of any offence, and we feel that this is a matter which we ought to consider favourably in construing the section, and should hold that it is a special reason for awarding him a lesser sentence than that specified in the section, namely, transportation for life. Upholding the conviction, we reduce the sentence to one of seven years' rigorous imprisonment.

BEASLEY, C.J.

B.C.S.