

was not justifiable under the circumstances, and must, therefore, be reversed. The cases must go back to the lower appellate court for decision on the points which it has not decided.

We accordingly allow these two applications for revision, set aside the order passed by the court below, and send back both the cases to it with directions that it should hear the parties as regards the other questions involved in the case and then decide the applications according to law. The applicants will get their costs in this Court from the judgment-debtor. Costs in the court below will abide the result of the case.

Applications allowed.

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

MRS. M. J. WALTER (ACCUSED-APPLICANT) *v.* KING-
EMPEROR (COMPLAINANT-OPPOSITE PARTY)*

1934
February, 6

Special Marriage Act (III of 1872), sections 1 and 21—Indian Penal Code (Act XLV of 1860), section 199—Section 21, Special Marriage Act, requirements of—Party to marriage declaring that she did not profess Christian religion—No evidence that when she made the declaration she knew or had reason to believe that it was false—Prosecution under section 21, whether good—Burden of proving that declaration was false.

The offence contemplated in section 21 of the Special Marriage Act (III of 1872), only deals with the declaration of a profession of want of belief in the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion at the time when the declaration is made. A person may be born to parents professing one of these religions and may even have been practising the tenets of one of them up to the time of his marriage, but if at the time when he contracts a marriage under the Special Marriage Act (III of 1872) he makes a declaration that he does not profess any of these religions, then it cannot be said against him that, because he was born into the Christian, Jewish, Hindu,

*Criminal Revision No. 142 of 1933, against the order of Ch. Akbar Husain, I.C.S., Sessions Judge of Lucknow, dated the 28th of October, 1933.

1934

MRS. M. J.
WALTER
v.
KING-
EMPEROR

Muhammadan, Parsi, Buddhist, Sikh, or Jain religion and had not formally renounced any of these religions before he made his declaration, he is guilty of an offence under section 199 of the Indian Penal Code.

Where, therefore, there is no evidence adduced on behalf of the prosecution to show that when the accused made her declaration that she did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion, she was making any declaration which she knew to be false or believed to be false or did not believe to be true, she cannot be convicted under section 21 of the Special Marriage Act read with section 199 of the Indian Penal Code.

In re Ganendra Nath Ray (1), *Bhagwan Kuar v. J. C. Bose* (2), *Vidyagavri Hargovandas Narottamdas v. Naraindas Kashidas Mugatwala* (3), and *Queen-Empress v. Robinson* (4), referred to.

Where a party to a marriage is prosecuted under section 21 of the Special Marriage Act the burden of proving that the statement was false and that the deponent knew or had reason to believe that it was false lies upon the prosecution.

Mr. K. P. Misra holding brief of Dr. J. N. Misra, for the applicant.

The Assistant Government Advocate (Mr. H. K. Ghosh), for the Crown.

NANAVUTTY, J.:—This is an application for revision against a judgment of the learned Sessions Judge of Lucknow upholding the judgment of Syed Mohammad Zakir, Sub-divisional Officer of Lucknow, convicting the applicant, Mrs. Marie Josephine Walter, of an offence under section 199 of the Indian Penal Code read with section 21 of the Special Marriage Act (III of 1872), and binding her over under section 562 of the Code of Criminal Procedure to keep the peace and to be of good behaviour for a period of one year by furnishing a personal bond in Rs.200 and a surety for the like amount.

The case for the prosecution is briefly as follows: Mrs. Marie Josephine Walter, a widow residing with her adoptive father, Mr. Antonio in Lucknow, wanted to

(1) (1922) I.L.R., 49 Cal., 1969.

(3) (1928) A.I.R., Bom., 74.

(2) (1903) I.L.R., 31 Cal., 11.

(4) (1894) I.L.R., 16 All., 212.

marry one Mr. Bertram Alphonso Andrews. They arranged for their marriage under the Special Marriage Act of 1872 through the Registrar of Marriages, one Mr. S. C. Bose. The usual form of declaration required to be made by the bride under section 1 of the Special Marriage Act (III of 1872) is given in the Second Schedule to that Act and is as follows:

1934
 MRS. M. J.
 WALTER
 v.
 KING-
 EMPEROR

Nanavutty,
J.

"I, *CD*, hereby declare as follows:

"(1) I am at the present time unmarried.

(2) I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion.

(3) I have completed my age of 14 years.

(4) I am not related to *AB* (the bridegroom) in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the *AB* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal.

(And when the bride has not completed her age of 21 years, unless she is a widow.)

(5) The consent of *MN*, my father (or guardian, as the case may be), has been given to a marriage between myself and *AB* and has not been revoked.

(6) I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) *CD* (the bride)."

Such a declaration was made by the applicant, Mrs. Marie Josephine Walter, on the 11th of August, 1931, before the Registrar of Marriages for the district of Lucknow.

The charge against the applicant is that her declaration, that she did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion, was false and that she either knew or believed

1934
 MRS. M. J.
 WALTER
 v.
 KING-
 EMPEROR

it to be false or did not believe it to be true, and that, therefore, she was liable to be punished under section 199 of the Indian Penal Code as laid down in section 21 of the Special Marriage Act (III of 1872).

Nanavatty,
J.

On behalf of the prosecution in support of the charge brought against the applicant were examined Mr. Bertram Alphonso Andrews and the Rev. Father Stephen of the Roman Catholic Church at Cawnpore. In her defence Mrs. Walter examined Mr. C. C. Bose, a medical practitioner of Lucknow, Mr. McKinnon McGuire, Mr. P. Flynn, and Mr. C. L. Antonio.

As regards the first witness on behalf of the prosecution Mr. Andrews, it is clear that his evidence is not entitled to any weight as against the applicant, because he stands in the position of an accomplice of the applicant, if it be deemed that she has committed an offence under section 199 of the Indian Penal Code. Even if his evidence be accepted at its face value, all that he deposes is that he never married Mrs. Walter, nor did he ever go to the Registrar of Marriages to get himself married to her under the Special Marriage Act, and that, so far as his knowledge goes, Mrs. Walter professes the Roman Catholic form of the Christian Religion. He has also deposed that he believed Mrs. Walter to be a Christian because she used to attend church and because she bears a Christian name and because in one of her letters to him she expressed her willingness to marry the witness in his church. It is clear that the evidence of this witness is absolutely worthless, and does not prove that Mrs. Walter made a false statement in her declaration when she stated that she did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion. As regards the evidence of the Rev. Father Stephen, all that he has deposed is that he looked upon Mrs. Walter as a Christian, because she was baptised as such, and that as long as he was in Lucknow so far as his knowledge and belief went Mrs. Walter participated in the services that took place in the Roman

Catholic Church in Lucknow. This evidence, even if it is believed to be true, does not prove the charge of making a false declaration brought against the applicant Mrs. Walter.

The learned Sessions Judge has argued that even if a man or woman were not to adhere strictly to his or her religion, he or she must yet be deemed to profess the religion which he or she has been appearing to profess. I confess I do not follow this reasoning at all. Apostasy or change of religion or a declaration that one does not profess any of the known or revealed religions of the world is not *per se* a criminal offence, and it seems to me that the offence contemplated in section 21 of the Special Marriage Act (III of 1872), only deals with the declaration of a profession of want of belief in the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion at the time when the declaration was made. A person may be born to parents professing one of these religions and may even have been practising the tenets of one of them up to the time of his marriage, but if at the time when he contracts a marriage under the Special Marriage Act (III of 1872) he makes a declaration that he does not profess any of these religions, then it cannot be said against him that, because he was born into the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion and had not formally renounced any of these religions before he made his declaration, he is guilty of an offence under section 199 of the Indian Penal Code.

In re Ganendra Nath Ray (1) a learned Judge of the Calcutta High Court had occasion to consider a declaration made under Act III of 1872, and he came to the conclusion that it could not be taken as an abjuration for all purposes of Hinduism, but merely as a statement for the purposes of the Act itself, namely Act III of 1872, and he observed as follows: "I understand that the object of the Act was to assist those who, having

1934

MRS. M. J.
WALTER
v.
KING-
EMPEROR

Nanavutti,
J.

1934

MRS. M. J.
WALTER
v.
KING-
EMPEROR

adopted Brahmoism, felt scruples at being married under Hindu rites some of which were repugnant to them, and who, therefore, desired some means of going through a form of marriage which would be legal and binding other than that prescribed by orthodox Hinduism."

Nanavutti,
J.

In *Bhagwan Kuar v. J. C. Bose* (1) it was held by their Lordships of the Privy Council that a Hindu by becoming a Brahmo did not necessarily cease to belong to the community in which he was born.

Similarly, in *Vidyagavri Hargovandas Narottamdas v. Naraindas Kashidas Mugatwala* (2) it was held by a learned Judge of the Bombay High Court that the declaration required by the Special Marriage Act of 1872 did not amount to an abjuration for all purposes of the personal law of the declarant, but merely as a statement for the purposes of the Act itself, and so questions as to succession and rights to property had to be determined by or under no law other than the personal law of the parties, as the mere declaration under the Act did not amount to a renunciation of the personal law.

Again, in *Queen-Empress v. Robinson* (3) two learned Judges of the Allahabad High Court, Mr. Justice Tyrrel and Mr. Justice Blair, held that the declaration required to be made under section 18 of Act XV of 1872 was merely a declaration as to belief only of the person making it and further in order to entail the penal consequences provided for by section 66 of the said Act such declaration should be made intentionally. The present case is not under Act XV of 1872, but is under the Special Marriage Act (III of 1872), but the *ratio decidendi* of the ruling quoted above may well be applied to the declaration made in the present case. In the case above cited an Englishman and a member of the Church of England desired to marry the sister of his deceased wife, and with a view to procuring the

(1) (1903) I.L.R., 31 Cal., 11. (2) (1928) A.I.R., Bom., 74.
(3) (1894) I.L.R., 16 All., 212.

solemnization of the intended marriage he filed a sworn declaration to the effect that, to the best of his belief, there was no let or impediment to bar or hinder the said marriage. He was prosecuted, for an offence under section 193 of the Indian Penal Code read with section 66 of Act XV of 1872, and his defence was that he was not aware, when he made the declaration, that any such affinity as undoubtedly existed between him and the sister of his deceased wife constituted an impediment within the meaning of section 18 of Act XV of 1872 so as to debar or hinder the said marriage. The order of acquittal passed in that case by the Joint Magistrate of Benares was upheld by the High Court and the appeal of the Local Government against the order of acquittal was dismissed.

1934

MRS. M. J.
WALTER
v.
KING-
EMPEROR

Nanavutty,
J.

In the present case there is no evidence adduced on behalf of the Crown to show that when the applicant, Mrs. Marie Josephine Walter, made her declaration on the 11th of August, 1931, that she did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion, she was making any declaration which she knew to be false or believed to be false or did not believe to be true. The burden of proving that the statement was false and that the deponent knew or had reason to believe that it was false lay heavily upon the prosecution, and in the present case the prosecution has entirely failed to discharge that burden. The reasoning of the lower courts proceeds on pure assumption and upon irrelevant matter which has absolutely no bearing on the question whether the applicant did in fact make a false declaration and whether she knew or believed it to be false at the time that she was making it.

I accordingly allow this application for revision, set aside the conviction of the applicant for an offence under section 199 of the Indian Penal Code, read with section 21 of the Special Marriage Act (III of 1872), and cancel the bond and surety taken from her under section 562 of the Code of Criminal Procedure.

Application allowed.