

APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.

1880

January 29.

THE GOVERNMENT OF BOMBAY v. GANGA, WIFE OF GOSA'VI.*

Marriage—Conversion of a Hindu wife to Mahomedanism—Marriage with a Mahomedan.

The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband; she cannot, therefore, during his life-time enter into any other valid marriage contract. Her going through the ceremony of *niká* with a Mahomedan is, consequently, an offence under section 494 of the Indian Penal Code.

THE facts fully appear from the judgment of the Court.

Nánábhái Háridás, Government Pleader, appeared for the Government of Bombay.

There was no appearance for the accused.

The judgment of the Court was delivered by

PINHEY, J.—The accused Ganga, being the wife of a Hindu named Gosávi, embraced the Mahomedan religion, and then married a Mahomedan named Kásim. She was tried before the Assistant Session Judge at Thána, Mr. C. E. G. Crawford, for marrying again during the life-time of her first husband, an offence punishable under section 494 of the Indian Penal Code, and, on conviction, was on the 18th July 1879 sentenced by the Assistant Sessions Judge, to three-years' rigorous imprisonment.

On appeal, the conviction and sentence recorded by the Assistant Session Judge, were, on the 29th August 1879, reversed by the Sessions Judge at Thána, Mr. Coghlan, on the grounds that the reception of Ganga into the Mahomedan community *ipso facto* annulled her former marriage to a Hindu; that when she married her present husband Kásim, she was a Mahomedan, and she could not be both a Mahomedan and the wife of a Hindu; and that as a Mahomedan woman, married by Mahomedan law, she was entitled to marry Kásim, and committed no offence in doing so.

An appeal has been filed, on the part of Government, against the acquittal of Ganga by the Session Judge. The Government

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Prosecutor, in arguing the appeal, has informed us, that it is not for the sake of punishing Ganga that Government have appealed against the acquittal recorded by the Sessions Judge, but because it is of great importance that the question at issue in this case should be authoritatively settled by a decision of this Court.

The question which we have to consider and determine is whether the conversion of a Hindu woman to Mahomedanism does operate so as to dissolve her marriage to the Hindu husband, with whom she has lived up to the time of her conversion to Mahomedanism.

We are of opinion that this question must be answered in the negative. There is not, so far as we are aware, (and we believe we have looked into all the cases in any way bearing on the question,) any authority whatever for holding the contrary.

The Sessions Judge does not rely on the authority of any decided case for the conclusion at which he has arrived; but his argument for arriving at the conclusion at which he did arrive is, in his own words, this:—

“What would have been Ganga’s position if, after reception into the Mahomedan religious body, she had claimed domestic and marital rights from Gosávi? In answer to this question the Public Prosecutor has, as himself a Hindu and a Bráhmin, answered, with authority, that she would have been utterly repudiated, and denied any privilege of bed or board.

“It follows, then, that the fact of her reception into the Mahomedan community *ipso facto* annuls her former Hindu marriage.”

But we do not consider the conclusion at which the Sessions Judge arrived, is the necessary result of Ganga having, *by her own act*, deprived herself of the right of claiming domestic and marital rights from Gosávi. If Ganga had simply committed adultery, or eaten beef, she could not have claimed domestic and marital rights from Gosávi; but neither of these acts would be considered to operate as a divorce, because she had thereby destroyed her own right to claim domestic and marital rights. The reason, then, on which the District Judge bases his decision is, in itself, unsound.

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From the date of the decision of *Regina v. Karsan Gojá*⁽¹⁾ our Courts have always upheld the rule of Hindu law as given by Mr. Thomas Strange in his work on Hindu Law (3rd ed., 1859, p. 52), that the right of divorce amongst Hindus is marital only, and in *Reg. v. Sambhu Raghu*⁽²⁾ this Court refused to recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry, in the absence of the consent of the husband. In this case Gosávi, the husband of Ganga, has neither divorced Ganga, nor consented to her re-marriage.

Both the Assistant Sessions Judge and the Sessions Judge referred in their judgments to Act XXI of 1866 (The Native Converts' Marriage Dissolution Act). This Act does not apply to the present case, and has no direct bearing on it, as it applies only to converts to Christianity—and Gangá is supposed to have been converted, not to Christianity but to Mahomedanism; but we think the Assistant Sessions Judge is right in referring to this Act, as showing that Hindu law does not consider a marriage dissolved by apostasy; for, if apostasy under Hindu law operated as a divorce, Hindu converts to Christianity would not have needed the relief given to them by Act XXI of 1866.

For the above reasons we have no doubt that the Sessions Judge was in error in reversing the conviction and sentence recorded by the Assistant Session Judge in this case, and we must, therefore, reverse the order made by the Sessions Judge. The effect of doing this, will be to restore the sentence of three-years' rigorous imprisonment passed by the Assistant Sessions Judge on the accused Ganga. The Government Pleader is not, however, instructed to support so severe a sentence as this; and, taking into consideration the fact that Ganga was in jail from the 18th July to the 29th August, and that she has been now out of jail five months, we reverse so much of the sentence passed against her by the Assistant Sessions Judge as may be in excess of six months from the date on which she may be again incarcerated—that is, she will be imprisoned for six months only after her re-apprehension.

Order accordingly.

(1) 2 Bom. H. C. Rep., 117.

(2) Ind. L. R., 1 Bom. 347.