

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Telang.

QUEEN-EMPRESS v. TIPPA.*

1892.

March 10.

Indian Penal Code (Act XLV of 1860), Sec. 372—Dedication of a minor to the service of a temple with the knowledge that she was likely to be used for immoral purposes.

The accused dedicated his minor daughter, five or six years of age, to the service of a temple as a dancing girl. The evidence showed that dancing girls attached to a temple, as a rule, led immoral lives.

Held, that these facts were sufficient to constitute an offence under section 372 of the Indian Penal Code.

APPEAL by the Local Government against an order of acquittal passed by Krishnaráo P. Joshi, First Class Magistrate of Kánara, in the case of *Queen-Empress v. Tippá and others*.

The accused Tippá and two others were charged, under section 372 of the Indian Penal Code, with dedicating a minor girl to the service of a temple, knowing that the minor, when grown up, was likely to be used for the purpose of prostitution.

The trying Magistrate acquitted the accused for the reasons stated below:—

“Complainant Manjasani, who is avowedly an enemy of the accused, states that some 7 years ago she saw the minor Manji, daughter of accused No. 1, then 3 or 4 years old, in the temple of Madhukeshwar at Banwasi with dancing rings tied to her anklets, accused Patti waved the lamp, and accused Annya played on the drum; she was not present at the dedication ceremony, and every girl having dancing rings on always leads the life of a prostitute; tying dancing rings is equivalent to a marriage with the temple image; Manji has not yet attained puberty; after puberty a bodice is put on the girl and a *mangal sūtra* (*tali*) is tied round her neck, and this completes the *Shej* ceremony.

“Witness Nangand speaks to having seen Manji dance in the streets of Banwási with a temple procession. Ganpatibhat states

* Criminal Appeal, No. 2 of 1892.

1892.

QUEEN-
EMPERESS
v.
TIPPÁ,

that Manji dances in the temple; he does not know if Manji passed through the *Shej* ceremony, and whether those who undergo the ceremony are prohibited by caste rules from contracting a marriage. Devabhat says that, 6 or 7 years ago, one day when he was in Madhukeshwar temple he saw there Manji and Tippá, and that the latter told him that he had enrolled his daughter in the service of the temple. Witness Basha states that he does not know if the *Shej* ceremony has been performed on Manji, but that he has seen her dance in the temple. Rámabhat does not know what the *Shej* ceremony is, but has seen Manji dance in the temple. Rámdiksit deposes to seeing Manji dancing. Bhavánishankar deposes to having seen Tippá and Yellambhat, who is dead, taking part in the *Shej* ceremony of Manji. Durgi states that she did not witness the *Shej* ceremony of Manji, but she saw Manji waving the lamp, Patti standing by her, and Annya playing on the drum, and accused Tippá being present at the time in the temple; that after the *Shej*, marriage is prohibited; in her caste (Kabir) a girl can serve in the temple without the *Shej* ceremony. Anantbhat deposes to having seen Manji draped in trousers, and rice and cocoanuts having been placed on a plantain leaf; he did not see anything else; he gives his opinion that *Shej* prohibits marriage in the future. Kristapa states that he saw rice and cocoanuts on a plantain leaf in the temple, the three accused and Manji simply standing by; he did not see anything further; in his opinion those who have had to pass through the *Shej* ceremony must lead immoral lives, inasmuch as they cannot be allowed to marry. Anayabhat, who says that he has witnessed three or four *Shej* ceremonies, gives the following account of the initiation of Manji:—

“At about 10 A. M. Tippá brought Manji to the temple. Yellambhat then worshipped the image of Ganpati. In a plantain-leaf Tippá placed rice, cocoanut, a *sári*, a pair of trousers and bells. Manji was then made to sit in a circle of rice, *gandh* was then applied to Manji's forehead. She was then dressed in trousers; then she danced and sang. Afterwards Manji was dressed, probably by Patti, in a *sári*. Manji and Patti waved the lamp round the image. Then the party went round the temple with the lamp. I saw this much only.

1892.

 QUEEN-
EMPERESS
V.
TIPPÁ.

“This witness also states that the girl, who has the *Shej* ceremony on, generally becomes a prostitute. Putt Joshi produces the account books of the temple. In the cash book for *Fasli* 1293, there is a credit on 14th December of annas eight on account of *nazar* from Tippá for enrolling his daughter in the service of the temple in the capacity of a dancing girl, after performing *Kasha* ceremony. In the books for 1294 and 1295 there are entries of payments to Manji for service as dancing girl.

“This is all the evidence adduced on behalf of the prosecution. Without going into discrepancies in the statements of the several witnesses, I cannot find anything in their evidence to show that accused Patti and Annya took any active part in the ceremony, whatever it was, performed on Manji. It is not even alleged that they assisted Tippá in any way. Against Annya there is virtually nothing. Patti is alleged to have been present in the temple and to have waved a lamp. These facts, if true, cannot be considered sufficient to charge her with abetting Tippá. And hence I discharged Patti and Annya on 13th ultimo, under section 253 of the Code of Criminal Procedure.

“As regards Tippá the evidence of Anayabhat, coupled with the entries in the temple books, goes to show that he got some sort of ceremony performed on Manji, and that ever since she has been in the service of the temple as a dancing girl. There is evidence to show that dancing girls, as a rule, lead immoral lives. All this is sufficient to put Tippá on his defence.

“In his statement Tippá denies having performed any ceremony on Manji, but admits she occasionally dances, and is paid from temple funds.

“I will now go through the evidence for the defence. Devbhat and Madlingbhat state that no ceremony whatever was performed on Manji, and that it is not necessary to pass through any ceremonial before beginning to dance, and Ranulki, Jani and Persi, who are prostitutes, did dance in the temple without going through any ceremony. Ganapayganda, Gurapa and Patti state that a girl can dance with or without any ceremonial, which, if performed, consists of offering cocoanuts to the temple and then tying dancing bells to the anklets of the girl; this does not

1892.

QUEEN-
EMPERESS
v.
TIPPA.

prohibit marriage, but if after puberty the bodice is put on and a *tali* is tied round the neck, the girl is considered to have been married to the image (Deity) in the temple, and then only marriage with a human being is prohibited by social rules; as instances two daughters (now dead) of one Rajasani and Advi are named to show that they, before puberty, went through certain usual ceremonies, but after attaining puberty they contracted marriages. The defence, in order to show that this is usual in this district, has produced a copy of the judgment of Mr. Todd, the Magistrate, First Class, dated 11th September, 1885, in *Imperatrix v. Rukmini* and another. Here Mr. Todd says: 'It is clearly shown by the evidence of all the women of the caste that among Kánarese dancing girls, to whom the woman Lacha belongs, it is not the custom to perform the *Shej* ceremony on girls of the age of Chandu. The ceremony, if performed at all, being performed after the girl attains puberty.' The practice found by Mr. Todd accords with the evidence of the witnesses for the defence. At the request of the prosecution I summoned Annya and his wife Advi to clear up the matter—whether Advi had some ceremony performed on her; whether she used to dance in the temple, and whether after attaining puberty she was legally married to Annya. Advi on solemn affirmation states that she went through some ceremony while a child, and used to dance in the temple; after attaining womanhood she ceased dancing and was married to Annya. The evidence of Annya is to the same effect.

"The *Shej* ceremony noticed in *Reg. v. Jaili*⁽¹⁾ differs from the ceremony performed in the Kánarese districts, but the essential point in both seems, that there should be something like the *mangalsutra (tali)* or garland placed round the neck of the girl or round the object with which she is considered to have been married. In the Karnátak the tying of the *tali (bottu)* is an essential feature of the *Shej* ceremony: *vide Reg. v. Arunchellam*⁽²⁾. For the prosecution it is admitted that Manji has not yet attained puberty, and the *tali* not having been tied, the *Shej* ceremony cannot be said to have been performed on her. Since there could be marriages among the dancing-girl class, Manji

(1) 6 Beng. H. C. Rep., 69 Cr. Ca.

(2) I. L. R., 1 Mad., 164.

can at any time get herself married if on attaining puberty the *tali* ceremony is not performed on her. The evidence of the witnesses for the defence and that of Annya and Advi, who were called by the prosecution, clearly shows that dancing in a temple before puberty is no bar to the marriage of any girl of the dancing class.

“ On a consideration of all the circumstances of the case I have come to the conclusion that the *Shej* ceremony was not performed on Manji, and that Tippá by allowing her to dance in the temple did not commit any offence punishable under section 372 of the Indian Penal Code. And now I direct the acquittal of accused Tippá—section 258 of the Criminal Procedure Code.”

Against this order of acquittal the Government of Bombay appealed to the High Court.

Náráyan Ganesh Chandávarkar for complainant.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, for the Crown:—The minor, Manji, was formally enrolled in the service of the temple as a dancing girl. The *Káshi* ceremony was performed on her. The accused took a prominent part in this ceremony. He was fully aware that dancing girls generally led a life of prostitution. It is true that on attaining majority they sometimes marry rather than lead an immoral life. But such cases are exceptions to the general rule. Looking, then, to the conduct of the dancing girls as a class, it must be presumed that, in dedicating the minor to the service of the temple, the accused knew that she was likely to be used for immoral purposes. His act, therefore, falls under section 372 of the Penal Code.

Shámráo Vithal for the accused:—The mere enrolment of the minor in the service of the temple cannot be an offence under section 372 of the Penal Code. Nor does the fact that other dancing girls similarly enrolled lead immoral lives, affect the question. The evidence in the case shows that until the *Shej* ceremony is performed, dancing girls are at liberty to marry. And that ceremony is not performed till a girl attains puberty. Till then one cannot say whether a dancing girl will lead an immoral life. Till then she may be said to have a *Locus peni-*

1892.

 QUEEN-
EMPERESS
v.
TIPPÁ.

1892.
 QUEEN-
 EMPRESS
 v.
 TIPPA.

tentia. If she marries, no offence is committed by the mere act of enrolling her as a temple servant. I contend, therefore, that until the *Shej* ceremony is performed, no presumption can be made of a guilty intention, or of a guilty knowledge, such as is essential to constitute an offence under section 372 of the Indian Penal Code. Refers to *Queen-Empress v. Rámánna*⁽¹⁾; *Khubchand v. Berám*⁽²⁾.

Ráo Sáheb *Vásudev J. Kirtikar* in reply :—The performance of the *Shej* ceremony is immaterial. The requirements of section 372 of the Penal Code are satisfied if it be shown that the accused knew that the minor was *likely* to be used for immoral purposes—*Srinivása v. Annásámi*⁽³⁾.

JARDINE, J. :—The Magistrate found that the accused Tippa got some sort of ceremony performed on his daughter Manji at the temple at Banwási, and that ever since then she has been in the service of the temple as a dancing girl. There is evidence, he says, that dancing girls, as a rule, lead immoral lives; and that this is the case is not disputed by Mr. Shánráo, who appears for the accused. The evidence, in our opinion, shows that the accused applied to the officials of the temple to get Manji, then a girl of five or six years of age, enrolled as a dancing girl; that she was enrolled accordingly, taking the place of Tippa's mother; that a ceremony, called by the witnesses the *Káshi* ceremony, was performed on Manji, rice and plantains being used, and Manji invested with trousers, and that at the end of the ceremony Manji danced and sang, and waved a lamp before the idol. In this ceremony the accused took a prominent part, being present with the girl. She has since remained a dancing girl of the temple, and has, as the books show, sometimes received payments for dancing there. There is abundant evidence that dancing girls usually become prostitutes, although it may doubtless happen that some of them marry either before or after they have begun a life of prostitution. The above facts appear to us to bring the present case within the ruling in *Reg. v. Jaili B́havin*⁽⁴⁾ and are very similar to those in the recent case of *Srinivása v.*

(1) I. L. R., 12 Mad., 273.

(3) I. L. R., 15 Mad., 41.

(2) I. L. R., 13 Bom., 150.

(4) 6 Bom. H. C. Rep., 60 Cr. Ca.

Annáśámi⁽¹⁾. We find that the accused disposed of the minor girl "knowing it to be likely that she would be employed for the purpose of prostitution," and is thus guilty within the words and meaning of section 372 of the Indian Penal Code. The Magistrate, Mr. Krishnáráo P. Joshi, who acquitted the accused, appears to have been actuated by the consideration that the ceremony performed was not a final dedication to a life of prostitution, and not, in the notions of the people, a barrier to marriage, such as another ceremony which takes place after puberty accomplishes. This last differs from the *Káshi* ceremony, and appears to consist in the tying of a 'táli' round the neck. We think it was an error to hold that the possibility that Manji might get married took the facts out of the somewhat wide words of the section, which, as pointed out by Mr. Justice Muttuswámi Iyer in *Venku v. Mahálinga*⁽²⁾, is intended to protect the chastity of minors, and to prevent minors being disposed of by other persons in such a way as to put them in a life of prostitution. The latest Madras case shows that, in the opinion of the learned Judges there, the prosecution is not obliged to prove any particular ceremony. We now on this appeal, which is made by the Government of Bombay, reverse the order of acquittal, and convict the accused Tippá of the offence punishable under section 372 of the Indian Penal Code. The learned Government Pleader does not press for a severe sentence; and, bearing in mind that the law does not appear to have been well understood, that this case has been pending a long time, and that the offence occurred several years ago, we think a lenient sentence will suffice. We sentence the accused to one month's rigorous imprisonment.

1862.

 QUEEN-
EMPERESS
v.
TIPPÁ.

Order of acquittal reversed.

I. L. R., 15 Mad., 41.

I. L. R., 11 Mad., at p 402.

