

**Queen-empress Vs. Chanda**

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**SooperKanoon Citation :** [sooperkanoon.com/454500](http://sooperkanoon.com/454500)

**Court :** Allahabad

**Decided On :** Dec-31-1969

**Reported in :** (1896)ILR18All24

**Judge :** Knox,; Banerji and; Aikman, JJ.

**Appellant :** Queen-empress

**Respondent :** Chanda

**Judgement :**

Knox, Banerji and Aikman, JJ.

1. Musammat Chanda was convicted by Kamta Prasad, a Magistrate of the first class, of an offence under Section 373 of the Indian Penal Code, and sentenced to rigorous imprisonment for one-year. On appeal to the Court of the Sessions Judge of Bijnor-Budaun the conviction and sentence were maintained.

2. Application is now made to this Court that in exercise of its powers of revision it will reverse the finding and sentence on the ground that:

(1) There has been no act on the part of Chanda amounting to buying, hiring or otherwise obtaining possession.

(2) There was no distinct arrangement between the petitioner and Gopia, the father of Musammat Dhanni, that Dhanni was to be brought up for prostitution.

(3) That no act of the petitioner has been proved which would bring her case within the purview of Section 373, Indian Penal Code.

3. We may at once say that before an offence under Section 373 can be established it must be proved (1) that a minor under sixteen years of age was bought, hired or otherwise obtained possession of by the accused, and, (2) that the minor was bought, hired or otherwise obtained possession of by the accused with the intent that the same minor while under sixteen years of age shall be employed or used for the purposes of prostitution, or with the knowledge that it was likely that the said minor while still under the age of sixteen will be employed or used for an unlawful and immoral purpose.

4. The learned Public Prosecutor contended that such a construction would be unduly limiting the meaning of Section 373. But we cannot overlook the force of the expression 'such minor' which is twice repeated in the section. The word 'such' in our opinion refers back to the words 'under the age of sixteen years,' and must be interpreted wherever it occurs in the section as equivalent to those words. The construction we place upon the words is the construction placed upon them by the Calcutta High Court in *The Deputy Legal Remembrancer v. Karuna Baistobi* I.L.R. 22 Cal. 164. As was pointed out by the learned Judges in the case just cited, at p. 172,--'in order to constitute an offence under Section 373, Indian Penal Code, there must be the buying of a minor girl under the age of sixteen years with intent that such minor shall be employed for the purpose of prostitution or with the knowledge or likelihood that she shall be so employed while yet a minor under the age of sixteen. The offence will not be constituted if, notwithstanding the existence of such intention or guilty knowledge, the employment that is intended or known to be likely is to take place after the completion of the sixteenth year by the minor.'

5. In the case before us the girl Dhanni, who describes herself as seventeen years of age, and who says that she developed into a woman two years ago, deposes that according to the universal practice among the caste to which she belongs (the Naik Rajputs of Kumaun) when a man marries a woman she lives in pardah, but the daughters of the man and woman sing and dance, and when they arrive at the age of puberty (umr par pahunchtin hain), prostitute. Dhanni's elder sister has

followed this practice, and Dhanni's own father Gopia took her while still a girl from her home in the hills to the house of the accused (her aunt), who admitted that she too has followed the practice above described.

6. The evidence given by Dhanni is corroborated by Lali, the sister, and by Moti, an aunt of the girl and sister to the accused. Moti adds that Chanda, the accused, 'retained Dhanni to make a prostitute of her. Dhanni's father left her here for the same purpose;' and Lali, in a supplementary deposition given on the 5th of September 1894, says that 'all the girls that come from the hills first sing and dance, and when arrived at the age of puberty (jab apni umr par atin hain) prostitute. For this same object Dhanni's father left Dhanni with Cbanda.'

7. All that these witnesses say is corroborated by Chanda in the examinations which from time to time were addressed to her during the course of the trial. Thus on the 4th of September, she said: 'If a daughter of the Naik Rajputs has no prostitute relation, she goes out of the house on coming to age and turns a prostitute. If she have a relation a prostitute in the plains or on the hills, her parents send her to that relation; she learns singing and playing, and when she grows up she becomes a prostitute.' Again, on the 5th of September, she said that 'Dhanni's father left Dhanni with her that she might learn singing and playing, and when arriving at the age of maturity (jawan) follow the profession of prostitute.'

8. The medical evidence in the case is to the effect that the Civil Surgeon thinks Dhanni about 16 years of age. Girls become of puberty at any age from 11 to 19, and there is no possible means of giving more than a guess of the actual age of the girl. She, the Civil Surgeon adds, is certainly not above 25.

9. We have it then established by the evidence that the accused did receive Dhanni from her father with the intent that she should follow the practice of the caste and be used as a prostitute as soon as she attained maturity. We have it in evidence that girls in India attain maturity at any time between the ages of 11 and 19, and Dhanni herself says that in her own case she attained maturity when she was 15 years of age.

10. It is, however, contended on her behalf that there is evidence to show that Dhanni did not as a fact commence prostitution until after she had reached upon the age of 16, and that even then she entered upon this course against the will and advice of the accused.

11. The exact age, however, at which Dhanni entered upon a course of prostitution is in our opinion immaterial. An offence under Section 373, Indian Penal Code, would be, and is, complete as soon as the buying, &c., by the accused and the guilty knowledge or intent on the part of the accused are proved, though the person bought may not enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all.

12. The mere fact that the accused dissuaded or tried to dissuade the girl from entering upon prostitution while still so young for fear lest her voice as a singer should be spoiled will not remove Chanda's act from the category of an offence under Section 373. The offence was complete and perfected when she took Dhanni over from her father years ago.

13. The accused does not prove that her intent or knowledge was other than would reasonably be presumed from the evidence given as to the practice prevalent among Naik Rajputs, and as to the object with which Dhanni, Lali and Moti all say the girl was left with the accused.

14. There was a feeble attempt made to contend that the expressions 'umr par ana,' 'jawan,' and 'baligh' refer to an age far above sixteen. We know of no authority for any such construction. The natural meaning of the word is the arriving at what is known as the age of puberty, and we must take the words in their natural and ordinary sense.

15. None of the reasons advanced as grounds for interfering are established, and the sentence is certainly not too severe.

16. We accordingly dismiss the application and direct that the record be returned.

17. If Musammat Chanda is on bail she must surrender and undergo the remaining term of imprisonment to which she was sentenced.

