

Koraga Vs. the Queen

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Court : Chennai

Decided On : Apr-14-1883

Reported in : (1883)ILR6Mad374

Judge : Charles A. Turner, Kt., C.J. and ;Muttusami Ayyar, J.

Appellant : Koraga

Respondent : The Queen

Judgement :

Charles A. Turner, Kt., C.J.

1. We have considered the evidence recorded in this case, and are of opinion that it is not sufficient to prove that the cohabitation of a man and woman under the Alyasantana law constitutes such a marriage as is intended in those sections of the Penal Code which provide for the punishment of offences against the marriage right. That the Alyasantana law did not recognize such cohabitation as marriage appears to be shown by the circumstance that it founds upon it no rights of property or inheritance. The authority of the treatise attributed to Bhutalapandya has been seriously impugned.

2. The customary cohabitation of the sexes under Alyasantana law appears to us to do no more than create a casual relation, which the woman may terminate at her pleasure, subject, perhaps, to certain conventional restraints among the more respectable classes, such as a money payment and the control of relations, etc.,

which may be prescribed as a check upon capricious conduct. In the absence, however, of very clear evidence of custom, which, if well founded, must be a matter of general notoriety, we must adhere to the opinion expressed by this Court in *Subbu Hegada v. Tongu* 4 M.H.C.R. 196.

3. We set aside the conviction and the sentence referred to us, acquit the accused, and direct that the fine, if levied, be refunded.

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