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Court : Chennai

Decided On : Jan-17-1913

Reported in : 18Ind.Cas.257; (1913)24MLJ211

Judge : Miller and ;Sundara Aiyar, JJ.

Appellant : The Public Prosecutor

Respondent : Kannammal

Judgement :

Miller, J.

1. This appeal is from the acquittal by the Sessions Judge, on an appeal from a conviction by a Sub-Divisional Magistrate, of one Kannammal a dasi of Srivilliputtur. The conviction was had under Section 373 of the Indian Penal Code.

2. The evidence establishes beyond reasonable doubt the fact that the accused, Kannammal, adopted the daughter of Ramiah Pillai, her brother's son, the girl being at the time of the adoption below the age of 16 years. The girl and her father, no doubt, now deny the adoption, but the girl's evidence is not to be relied on, and her father's is entirely discounted by the fact that in 1909, on an occasion on which he had, so far as I can see, no reason to conceal the truth upon this question, he gave evidence to the effect that he had given his daughter in adoption to Kannammal: his explanation of this discrepancy is entirely unsatisfactory and

his evidence must be rejected as quite untrustworthy upon this point. The other evidence establishes the fact that the girl Kuppammal was received in the temple and obtained prasadam, as the daughter of Kannammal, that Kannammal alleged that she was her daughter, and that she lived in Kannammal's house and not with her father.

3. This I think is enough to prove that Kannammal, if she made no formal adoption accompanied by ceremonies, took possession of the girl from her father and took her to live with her; and that is sufficient to bring her within the section if the girl was under 16 and if the taking was with the intention that she should be employed or used for prostitution or with the knowledge that she was likely to be so employed or used.

4. The Sessions Judge is not satisfied as to the age of the girl Kuppammal, but to my mind the evidence relied on by the Magistrate is sufficient to prove that she was born in 1897 and was, therefore, under 12 years old when she received prasadam in the temple in December 1908: that is the finding of the Magistrate and no serious attempt was made before us to contest its correctness.

5. Now as to the intent or knowledge, we have evidence, to which I have referred, that Kuppammal received prasadam in December 1908: that is indisputable and it strongly corroborates the oral evidence that she was taken to the temple for dancing and singing.

6. I do not know that it is necessary to decide whether or not she was invested with a 'pottu' in private as alleged by prosecution witnesses Nos. 6 and 9; it is possible that she was not, and that the temple authorities would not now venture on any formal dedication of a minor to the dasi service. But I should hesitate to say that the evidence upon this point is false: it may very well be that it is deemed essential to have some dedication at or soon after the time of puberty and that it is not now thought safe to make such dedication public.

7. However that may be, leaving this evidence apart, and leaving apart also the evidence of the 10th and 11th witnesses, who allege that the girl was in fact prostituted, I think, for reasons which I shall explain, that there is sufficient

evidence to show that the accused knew that the girl was likely to be used for prostitution. But first I may observe that the defence evidence has been disbelieved by the Magistrate and is not referred to by the Sessions Judge: indeed the Sessions Judge holds that there is sufficient evidence to prove that the accused took possession of the girl. I see no reason to suppose that the defence evidence is true. Now, it being established that the minor was taken for singing and dancing in the temple and received prasadam as the daughter of Kannammal before she was 12 years old, it seems to me that we want nothing more to support the inference of guilty knowledge. That evidence of this kind is sufficient to raise a presumption of guilt under Section 372, Indian Penal Code, was held by Collins, C.J., and Wilkinson, J., in *Srinivasa v. Annasami* 15 M.P 41 and in *Srinivasa v. Annasami* 15 M.K 323. Collins, C.J., reiterated his opinion, though there was in that case, what we have not here, positive evidence that the temple dasis lived by prostitution. Parker, J., no doubt held in the same case that the evidence was insufficient, but he does not refer to *Srinivasa v. Annasami* 15 M.K 41 which had been decided some six months before, and in no case, to which we have been referred, has it been held that *Srinivasa v. Annasami* 15 M. 41 was wrongly decided.

8. I am, therefore, fortified by that decision in my view that the evidence in this case is sufficient to cast upon the accused the burden of showing the absence of a guilty intention or knowledge.

9. I do not think it was suggested on behalf of the accused that we ought to require in each case direct positive evidence as to the life of the dasis in the temple; it is rather for the accused to show that her temple is an exception to what is generally known to be the rule; and here no attempt has been made to show anything of the sort: the defence has tried to prove, on the other hand, that the girl had nothing to do with the temple service. The cases in which it has been held that adoptions made by dasis are not necessarily criminal are not of course authorities on Section 373 of the Indian Penal Code, but I may observe that the decision of this Court in *Venku v. Mahalinga* 11 M.K 393 did not in any way depend on the validity or invalidity, from the point of view of morals or the Indian Penal Code, of the appellant's adoption; the appeal was dismissed on the ground that the adoption of

one daughter in the life-time of a previously adopted daughter was not shown to be legal. And Muttusami Aiyar, J., does not in that case assert that prostitution is not a likely or even the most probable result of affiliation by a dasi: he says only that it is neither an essential condition, nor the necessary consequence of adopting that profession. If the learned Judge intended to decide that there is no presumption that an adoption of a minor by a dasi is criminal if made after the enactment of Section 373, Indian Penal Code, I find myself, with great respect to him, compelled to differ from him, and in the same way, I should find difficulty in accepting the dictum of the same learned Judge, in *Queen-Empress v. Ramanna* 12 M.k 273 that the taking of a minor girl in adoption by a dancing woman...is punishable as an offence only if the specific intent which makes the act criminal is established by cogent evidence, if I thought that that dictum means that evidence of the adoption and introduction of the minor into the temple as a dancer is not of itself sufficiently cogent evidence to support a conviction. In *Kamalakshi v. Ramaswami Chetti* 19 M.p 127 Subramania Aiyar, J., speaks of the notorious fact that women who are temple dancers generally lead the life of prostitutes' and Sadasiva Aiyar, J., has recently expressed an opinion, in *Guddati Reddi Obala v. Ganapati Kandanna* 23 M.L.J. 493; 12 M.L.T. 467; (1912) M.W.N. 1138; 17 Ind. Cas. 422 that the adoption of minors by dasis is illegal--an opinion which, I think, necessarily proceeds on a presumption that the adoptee will become a prostitute--and it does not appear that in *Srinivasa v. Annasami* 15 M.p 41 there was positive evidence that the dasis attached to the Tirukoshtiyur Devasthanam were leading a life of prostitution.

10. We have here then sufficient evidence to support the conviction by the Magistrate. It does not seem to have been suggested before him that the prosecution ought to prove that the accused knew that Kuppammal was likely to be used before she was 16 years of age for the purpose of prostitution, and perhaps I need only say on that point that the presumption may properly be extended to cover this contention also in the case of a girl who is adopted before puberty and taken into the temple for singing and dancing before she is twelve years old.

11. But I desire to guard myself against being taken to accept the view that prostitution before the age of 16 must necessarily have been in the mind of the acquirer of the minor at the time of acquisition. I am aware that this view has been taken in *The Deputy Legal Remembrancer v. Karuni Baistobi* 22 C.P 164 as being clearly the only proper interpretation of the language of Sections 372, 373, Indian Penal Code, and that a similar view was held by three learned Judges of the Allahabad High Court in *Queen-Empress v. Chanda* 18 A.P 24; (1895) A.W.N. 141 and in *Kamalakshi v. Ramasami Chetti* 19 M.K 127 the learned Judges seem to take it for granted that the intention to employ the minor during minority for the purpose of prostitution is an essential ingredient of the intention required by the sections. In none of these cases did the decision turn on this question, and I do not know of any case in which a conviction under Section 372 or 373, Indian Penal Code, has been set aside on the ground that the minor, though acquired or disposed of while under 16, was not intended to be used for the purpose of prostitution before she reached that age. Cases obviously within the mischief of the sections can easily be imagined when children may be bought or sold to be trained to a life of immorality without an intention to actually submit them to carnal intercourse during minority, and it seems to me at least doubtful whether an adequate context cannot be ascribed to the words 'such minor' in Section 372 or 373, Indian Penal Code, by making them simply the equivalent of such person', or 'he or she.' The view that all that is necessary in the interest of morality is to leave the minor a virgin till 16 years of age, so that she may then make her choice between prostitution and a decent life, seems to me to give too little weight to the probable effect of training and surroundings--and those who acquire possession of minors in order to prostitute them on their reaching the age of 16 may be trusted to see that their training and surroundings during minority are such as to assist the fulfillment of the intention.

12. In England, since the Criminal Law Amendment Act of 1885, it is an offence to procure or attempt to procure a woman or a girl to become a common prostitute (Section 2 of that Act) and I know of no reason why in this country we should go out of our way so to interpret the Indian Penal Code as to deprive girls of such protection as its provisions may, without straining them, appear to afford them.

13. I think we must set aside the acquittal and convict the accused Kannammal of an offence under Section 373, Indian Penal Code. I do not think the sentence when passed was excessive, but I am not sure that at this date, a year after the trial and after an intervening acquittal, it would not be unnecessarily severe if re-imposed.

14. I would sentence the accused to simple imprisonment for a month and a fine of 200 rupees, with simple imprisonment for one month in default.

Sundara Aiyar, J.

15. This is an appeal by Government against the judgment of the Sessions Court of Ramnad, acquitting the respondent Kannammal of an offence under Section 373 of the Indian Penal Code, in reversal of the judgment of the Sub-Divisional Magistrate of Satur, who convicted her of that offence. The respondent had a Kuthumiras office in a temple, at Srivilliputtur. She was admittedly an unmarried dasi attached to the temple, but she stated, and her story may be accepted for the purpose of this case, that for a long time and from about the year 1879, she was kept by a Government Official of some position and that she was not actually leading the life of a prostitute. The charge against her was that she adopted in 1907 one Kuppammal, her brother's daughter, who was a minor under 16 years, made her a dasi attached to the same temple and had pottu tied to her--a ceremony which is supposed to make marriage subsequently impossible to the girl so dedicated to the idol, and that she was bringing up the girl as a prostitute. These facts, the prosecution alleged, brought her within the purview of Section 373 of the Indian Penal Code. The Sub-Divisional Magistrate found it proved that the girl Kuppammal was taken in adoption by the respondent when she was less than 12 years of age, that she was taken to the temple, and that a plate containing fruits, flowers, saffron, a woman's cloth, pottu etc., were placed at the feet of the female deity and given back to Kuppammal, who was afterwards seen wearing the pottu by various people. He also found it proved that Kuppammal used to attend the temple along with the respondent and took part in the ceremonies of singing and dancing before the idol, which are performed by temple dasis and that she was on several occasions given prasathams or food-offerings along with the

respondent and other temple women. The Sub-Divisional Magistrate also believed the evidence of two witnesses who deposed that the respondent, acting as intermediary, gave over Kuppammal to them on specific occasions for the purpose of sexual intercourse. He was also of opinion that at the time of the prosecution, Kuppammal was under 16 years of age. He accordingly held that the respondent had obtained possession of Kuppammal under 16 years of age with the intention that she should be employed or used for the purpose of prostitution within the meaning of Section 373 of the Indian Penal Code.

16. On appeal, the Sessions Judge disbelieved the evidence given by the witnesses who spoke to a plate with fruits etc., and a pottu being placed at the feet of the goddess and subsequently handed over to Kuppammal. He was of opinion that there was sufficient evidence to prove that the respondent had taken possession of the girl, though the evidence of an actual ceremony of adoption was not satisfactory. He held that it was not proved that the girl was under 15 years of age, he considered that the prosecution failed to prove any intention on the respondent's part that the girl Kuppammal should be employed or used for the purpose of prostitution.

17. There can be no doubt that Kuppammal was, for all practical purposes, taken up by the respondent as her daughter, whether any formal ceremony of adoption was performed or not, and that the evidence for the defence that the girl was living with her own father and not in the respondent's house is absolutely false. The prosecution evidence on the point is supported by Exhibit B, a deposition given by Ramayya Pillai, the 8th witness for the prosecution and the girl's natural father, on a previous occasion, although in his present evidence he denied that he had given away Kuppammal in adoption to the respondent. Mr. Narasimha Aiyangar is, no doubt, right in his contention that Exhibit E cannot be taken as substantive evidence in this case to prove the fact of Kuppammal's adoption, but it goes a long way to destroy the defence evidence adduced to disprove the prosecution case,

18. I have equally no doubt that the girl was under 16 when she was taken charge of by the respondent. It is curious that both the lower Courts appear to have addressed themselves to the question of the girl's age at the time when this

prosecution was laid before the Sub-Divisional Magistrate, while the real question was whether she was not under 16 years when she was taken possession of by the respondent, which according to the prosecution was in the year 1907. In her deposition given on the 2nd December 1911, the girl stated that she was 17; if so, she could have been only 13 in 1907. Exhibit B, the birth and death register of the Srivilliputtur Municipality, shows that Kuppammal was born in February 1897. Again in Exhibit E, the girl's father stated in 1909 that she was then 12 years old. This shows that the present case for the defence is entirely false. Even the defence case, so far as I can see, does not go to the extent of alleging that the girl was above 16 when she was taken up by the respondent as her daughter. The remaining question is, whether there is sufficient evidence that the respondent, at the time of her taking possession of the minor, had the intention that the minor should be employed or used for the purpose of prostitution or knew it to be likely that she would be so employed or used.

19. I am not prepared to differ from the Sessions Judge that the evidence adduced by the prosecution for proving that a pottu was handed over at the temple in the presence of the goddess to Kuppammal is untrustworthy. The suggestion of the prosecution, when Kuppammal was examined as the first witness, was that the pottu was tied round her neck by the Archaka of the temple, that being apparently the usual procedure observed in the pottu tying ceremony. The 6th and 9th witnesses for the prosecution were examined nearly two weeks after Kuppammal gave her evidence. No suggestion was made to Kuppammal that she was taken to the presence of the goddess Andal with the plate containing fruits and other things and pottu. and that the plate was handed over to her after having been placed at the feet of the deity.

20. I also agree with the Sessions Judge in rejecting the evidence of the 10th and 11th witnesses, who speak to having had sexual intercourse with Kuppammal through the respondent's mediation; but it is, in my opinion, clearly proved that after the respondent adopted the girl, she introduced her to the temple officials as her daughter, made her take part in singing and dancing and claimed a share of the prasadam for the girl as one of the dasis attached to the temple. It appears that the temple dasis were not entitled to share of the prasadams as a matter of

right, but it used to be given to them when there was a surplus after distribution to those who had a right to receive it; but this fact is immaterial. The important point is that it was claimed by the respondent for the girl as properly payable to her as a temple dasi, and that it was given to the girl on that ground. On these facts, the question arises whether the respondent did not take or keep possession of the girl with the intention or knowledge referred to in Section 373, It is strenuously contended on her behalf that she herself had not lived the life of a prostitute for a long time and that it should not be assumed as against her that she had the guilty intention mentioned in the section with reference to the girl, that she was possessed of considerable property given to her by the man with whom she was long living as his concubine, and that there was no evidence that she had any other intention than that the girl should be the heir to her property. But the following facts must be taken to be proved against her. Although she may not have lived the life of a prostitute for a long time, she did not give up her office of temple dasi but continued to perform the duties attached to that office. She made the girl Kuppammal take part in the discharge of the duties attached to a temple dasi, namely, singing and dancing before the idol. She procured prasadam for the girl as for a temple dasi. She clearly intended that the girl should succeed to her share in the Kothumiras and discharge the duties of a temple dasi. The presumption arises in these circumstances that she intended that Kuppammal should, or at any rate that she knew it to be likely that Kuppammal would, lead the life of a temple dasi. It is utterly useless for the defence to ask the Court to shut its eyes to the fact that temple dasis most commonly lead the lives of prostitutes. There may of course be thoroughly virtuous women amongst them, but the question is what was the probable result of making the girl a temple dasi. It must certainly be taken to be that she would very probably lead the life of a prostitute, while discharging her duties in the temple as a dasi. Section 373 of the Indian Penal Code does not require that a minor taken possession of by an accused person would necessarily be employed or used for the purpose of prostitution. It is quite enough that such employment or use would be the probable result of the detention of the girl by the accused, even though she might not have intended the result. This was the view held in *Srinivasa v. Annasami* 15 M.K 41; in *Queen-Empress v. Tippa* 16 B.P 737 which followed *Srinivasa v. Annasami* 15 M.K 41 in *Srinivasa v. Annasami* 15 M.K

41 by Collins, C.J., in *Emperor v. Bhimde Pandu Deoli* 7 Bom. L.R. 563; 2 Cri. L.J. 500 in *Queen-Empress v. Papa Sani* 23 M.K 159 and apparently also in *Ex parte Padmavati* 5 M.H.C.R. 415. In *Queen-Empress v. Ramanna* 12 M.K 273 Parker, J., adopting the observation of Muttusami Aiyar, J., in *Venku v. Mahalinga* 11 M.K 393 that prostitution is not the essential condition or the necessary consequence of an adoption by a dancing girl but is an incident due to social influences, held that it was a question to be determined on the evidence and on the circumstances of each case whether the prosecution had made out a criminal intention. See also his judgment in *Srinivasa v. Annasami* 15 M.P 323. Muttusami Aiyar, J., also observed that, though the adopted parent may be a prostitute, the presumption of innocence must be rebutted by positive evidence. Both the learned Judges directed a re-hearing of the case before them in order that there might be a specific finding on the question of intention. With all deference to the learned Judges, it seems to me that the question is not whether the use of the girl for immoral purpose is the necessary consequence of her being taken possession of by the accused, but whether it is the probable result of it. I agree that, where a statute makes an act an offence only when coupled with a particular intent or knowledge of the probability of certain consequences ensuing, the prosecution is bound to prove the intent or the knowledge. But surely the intention or the knowledge may be presumed from the facts proved and the circumstances of the case. In the proceeding's of the Madras High Court dated the 11th April 1881, a Full Bench of this Court observed that 'where a certain result is, by common experience, shown to be the necessary or the natural result of a particular act, the Judge may presume on the part of the actor an intention to cause the result or a knowledge of its probability, as, for instance, where a man cuts the throat of another it may be presumed he intended to cause death, or when he gives him a violent blow on the head, it may be presumed he did so with the knowledge that it was likely to cause death.' The Court further observed that 'where the result is not the necessary or the natural consequence of the act, there must be evidence of the probability of the result and according to the degree of such probability it may be inferred that the actor had an intention to cause the result or the knowledge of the likelihood that it would ensue.' The Court was of opinion 'that the profligacy or the perverted moral sense of the mother increases the probability of the intention

to bring about a certain result and does not affect her knowledge that the result is the ordinary consequence of her act.' See Weir's Criminal Law, Volume 1, page 363, 4th Edition. I would add that with regard to notorious facts of the social life of any class in the community, it is not necessary for the Court to have actual positive evidence, and that Judges are entitled to make use of the knowledge which they, in conjunction with all others, possess of such facts. This view has been acted upon in the cases I have already referred to. See also Kamalakshi v. Ramasami Chetti 19 M.K 127. Section 114 of the Evidence Act gives statutory recognition to this principle. I may observe that in Queen-Empress v. Ramanna 12 M.P 273 there was nothing more proved against the accused than the fact that she, a temple dasi, had adopted a girl. But a great deal more has been proved in this case, and quite enough to justify the inference of guilty knowledge on the respondent's part. But it was argued in the course of the argument that the guilty intention or knowledge required by Section 373, Indian Penal Code, should have reference to the use of the girl while she is still a minor under 16 years of age. Does the language of the section warrant this contention? It requires that possession of the minor should be had by the accused 'with intent that such minor shall be employed or used for the purpose of prostitution or knowing it to be likely that such minor will be employed or used for any such purpose.' It will be observed that it does not require that the intention with respect to the employment or use of the minor for the purpose of prostitution should relate to her employment or use during her minority. The expression 'such minor' is intended to designate the person intended to be employed or used for immoral purposes and not the time when such employment or use is to take place. The object of the Statute was to prevent the taking possession of minors for the purpose of degrading them. Such degradation would take place whether the use of the minor for immoral purposes is intended to be made whilst she is still a minor or after she ceased to be one, Suppose a person makes it his trade to train minor girls between the ages of 14 and 16 for living immoral lives after they attain the age of 16 and takes possession of them for such purpose. It would be impossible to see how such conduct can be regarded as less fraught with mischief and danger to society than actually employing them for the purpose of prostitution while they are minors. It may be said that the girls would in such a case have the right to choose their own courses

of life after they have attained their 13th year; but this would in practice be of no more use to them than the option that a girl already prostituted before 16 also has of afterwards giving up her immoral life. The person that moulds the life of immature woman to immoral conduct is no less a pest to society than he that prostitutes them while they are minors. The words of the section are, undoubtedly, wide enough to cover cases where the immoral employment or use is not intended or contemplated to follow during the minority of a girl. I can see no reason for cutting down the effect of a beneficent statutory provision on the mere ground that the language is capable of a less wide interpretation. This would not necessarily make every adoption by an imbecile woman of a minor girl criminal. It is quite open to her to prove that she took such measures for safeguarding the girl's training during her minority as to rebut the presumption that she either intended or knew it to be likely that the girl would be employed for immoral purposes. But it will not be sufficient for her to show that, while placing the girl in immoral surroundings and under improper influences, she intended to keep her physically pure until her attainment of the age of 16 and then to give her a practically useless choice of adopting an honest course of life. Reliance was placed on the observations of Muttusami Aiyar, J., in *Queen-Empress v. Ramanna* 12 M.K 273 on behalf of the respondent. The learned Judge observed: 'if, on the other hand, the intention was that the girl should be employed as a prostitute whilst she continues to be a minor, the accused might then be liable'. In that case, however, the girl was only one year old at the time of her adoption, and the question that was really considered by the learned Judge was whether it was necessary in order to constitute an offence under Section 373 that there should be an intention to use the girl immediately for the purpose of prostitution. It was, of course, held that this was not necessary. Similar observations are to be found in *Queen-Empress v. Chanda* 18 A.P 24; *A.W.N. (1895) 141* but they were unnecessary for the decision of the case before the Court. In *the Deputy Legal Remembrancer v. Karuna Baistobi* 22 C.P 164 *Banerjee and Sale, JJ.*, adopted the view that the guilty intention or knowledge need not refer to the employment or use of the girl to be made immediately after possession is taken of her and disagreed with the Sessions Court which held that the intention or knowledge must relate to the present employment of the girl. The learned Judges referred to the observation of Muttusami Iyer, J., in *Queen-*

Empress v. Ramanna 12 M.P 273 with approval, but, with all deference, I doubt whether the case can be regarded as a considered judgment on the question whether it would be sufficient if the guilty intention or knowledge should relate to a time beyond the attainment by the girl of her 16th year. In my opinion, the language of the statute does not require the restricted interpretation placed upon it in the observations of Muttuswami Aiyar, J. Even if those observations should be regarded as correct, I am prepared to presume, having regard to the marital habits of people in this country and the age when girls are supposed to attain the age which makes them fit for sexual intercourse, that the respondent knew that it was likely that the girl Kuppammal would be employed for immoral purposes before she was 16 years of age. I would, therefore, reverse the Sessions Judge's order of acquittal, and convict the respondent Kannammal of an offence under Section 373 of the Indian Penal Code. I concur in the sentence proposed by my learned brother.

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