

## REG. V. MANOHAR RA'JI.

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Feb. 22.*Adultery—Remarriage—Nátrá.*

Where a prisoner accused of adultery sets up in defence a *Nátrá*, contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is, whether or not the accused *honestly believed*, at the time of contracting the *Nátrá*, that the woman was the wife of another man.

THE prisoner was convicted, on the 5th of November 1867; under Sec. 497 of the Indian Penal Code, of the offence of adultery, and sentenced to rigorous imprisonment for one month and one day. The facts of the case, and the grounds of the conviction, appear from the judgment recorded by S. H. Phillpotts, Acting Senior Assistant Judge of Broach:—

“In this case the accused is charged with adultery, in that, in the lifetime of Bechar, Bái Lakshmi’s husband, he, well knowing that Bái Lakshmi’s husband was alive, and that he did not connive or consent to it, had sexual intercourse with Bái Lakshmi.

“That Bechar did not connive at it, appears plain, because this present complaint has been instituted, and because he has twice complained in the Civil Courts, and once in the Criminal Court, before instituting these proceedings. The accused, however, contended that he consented, and said that he took money for his wife in lieu of a decree. The circumstances were these:—

“Bechar sued in the Munsif’s Court of Jambúsar to recover possession of his wife; but as, with the exception of the Mahomedans, no other people’s wives can be given into their possession, his wife was not given him, but Rs. 240 were awarded to him as damages. From this decision he did not appeal; but from that it cannot be said that his marriage was annulled. He did all that was in his power to do.

“On the part of the defendant the sexual intercourse, and the knowledge that the woman, Lakshmi, had been married to Bechar, are admitted. The accused only urges that he imagined that the marriage had been annulled by Bechar’s

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taking the money ; but this is a mistake of law, by which no man can be held excused (Act XLV. of 1860, Sec. 76), though it may be a reason for mitigation of punishment.

“The remaining defence of the accused is that he acted according to the universal custom of his caste (Leowa Kunbi) ; but I do not consider this custom sufficiently proved. The only evidence that has been given is that the married females of that caste are in the habit of eloping with other men, and that sometimes their husbands condone the bigamy. Even if the custom contended for were proved, this Court is bound by the decision of the High Court in the cases of *Reg. v. Bai Rupá* and *Reg. v. Karsan Gojá (a)*, in which, though a similar custom was proved to exist among the Talapda Kolís, the High Court decided that, as the custom was a vicious one, and entirely opposed to the Hindú law, it was only a reason for mitigation of punishment, and that a person who was otherwise guilty under Sec. 497 could not be relieved by it.

“As the accused has already paid the amount of the decree, and as there is no strict rule among this people, as amongst the Bráhmans and Baniás, I give him as lenient a sentence as will not deprive him of the right of appeal.”

From the conviction and sentence of the Session Court the prisoner appealed.

The appeal was argued before COUCH, C.J., and NEWTON, J.

*Nánábhái Haridás*, for the prisoner :—The intent of the prisoner, which in this, as in almost all other criminal cases, must be proved, depends on whether at the time of contracting *nátrá* with Lakshmí he believed he was doing right or wrong. The inference which any jury would draw from the facts here is, that he believed he had a right to contract *nátrá* with Lakshmí. In the case relied upon by the Judge, a different conclusion might be drawn.

[COUCH, C.J. :—The report of Karsan Gojá's case misled the Judge who tried this case. The first question sent down for trial there was, whether the accused honestly believed that

the woman was not, at the time of the remarriage, the wife of another man; and this was found against him.]

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*Reid* (*Amicus Curie*) mentioned the cases of *Reg. v. Bálu*, *Bághu* (b) and *Reg. v. Hasan Sulémán* (c).

*Dhirajlál Mathurádás*, for the prosecution:—The suit filed by the prosecutor was decided in 1861. That was to recover his wife, or obtain damages for her detention. The *nátrá* was contracted in 1862, but the money was not paid under the decree until 1866; consequently at the time of the *nátrá* the prisoner could not have considered that Lakshmi was in a position to remarry.

PER CURIAM:—After the decree had given an option to the woman to return to her husband or to pay him money, she remarried. It cannot, therefore, be held that the accused and the woman did not believe that the latter was at liberty to remarry. We cannot uphold the conviction of adultery.

The Senior Assistant Session Judge was, as already observed, misled by the report of the case of *Karsan Gojá* (d).

*Conviction and sentence reversed.*

(b) *Coram* COUCH, J. (2nd Criminal Sessions, 1863.)

*Reid* for the prosecution.

*Barton* for the prisoner.

The prisoner was charged with having committed adultery with Lakshmi, the wife of Gangáram Krishnáppá.

On the part of the prisoner it was proved that he had contracted *nátrá* with Lakshmi, and though she had not obtained a divorce from her husband, yet he had refused to receive her into his house at the intercession of the caste.

The *nátrá* was subsequently performed in the presence of several members of her caste.

*Reid* contended that the caste had no right to dissolve the first marriage.

One of the questions put to the jury by the learned Judge was, whether the accused believed that the woman at the remarriage still continued to be the wife of her former husband.

The jury acquitted the prisoner.

(c) *Coram* COUCH, J. (2nd Criminal Sessions, 1865.)

*Reid* for the prisoner, who was charged with adultery, and who had contracted *niká*, with Amunabibi, the wife of the prosecutor.

The question there left to the jury was, "did the prisoner in good faith believe that he was at liberty to marry Amunabibi?"

*Verdict—Not Guilty.* •

(d) *Vide* corrected report of that case, 2 Bom. H. C. Rep. 117 (2nd Ed.).