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Reg. v. Jaili Bhavin.

*Dedication to temple Minor girl-Shej ceremony-Disposing of minor girl for purposes of prostitution-Ind. Pen Code, S. c. 372.*

*Held*, that the dedication of a minor girl under the age of 16 years to the service of a Hindu temple, by the performance of the *shej* ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing it, to be likely that she would be used for the purpose of prostitution, within the meaning of Sec. 372 of the Indian Penal Code.

The appellant in this case was, with five others, under Sec. 372 of the Indian Penal Code, convicted on the 10th of May 1869, by R. H. Hunter Session Judge at Ratnagiri, and sentenced to suffer one day's simple imprisonment and to pay a fine of one hundred rupees, for having disposed of a minor girl, named Sundri, knowing it to be likely that such minor would be employed or used for the purpose of prostitution.

The facts of the case appear from the judgment of the Session Judge:

"It appears that about seven or eight years ago a Bhandari prostitute gave birth to a girl, and not knowing how to support the child, took it to Jaili (Prisoner No. 1), who has ever since maintained the child, and apparently adopted her as her own daughter. About the 20th of February last she performed the *shej* ceremony upon the girl. This *shej* ceremony is described to be a kind of marriage ceremony in the Bhavin caste, to which Jaili belongs, whereby the girl becomes devoted for life to the temple in which the ceremony is performed. This custom is confined to the Malwan taluka, and Sawantwari and Goa territories. It is thus described by one of the witnesses, 'A *khungira*, or knife, is put on the ground before the idol, and the girl who is to undergo the ceremony puts a garland on the knife. her mother then puts rice on the girl's forehead, and the officiating priest then weds the girl to the knife, just as if he were to unite her to a boy in marriage, by reciting the *mantras*, while a curtain is held between the girl and the knife' The girl thus becomes a Bhavin, and dedicated to the service of

the temple, and cannot marry again and subsists generally by prostitution after attaining maturity. Although there is nothing in this dedication to the service of *Devi* (from which the word Bhavin is supposed to be derived) incompatible with innocence, there is no doubt, from current phrases in the language, that the popular notion about the loose life of the Bhavin is entirely in accordance with the whole of the evidence recorded in this case, that Bhavins are commonly prostitutes. No doubt their name has arisen from their creed, and their chief duty is to perform menial services in the temple to which they belong; but the remuneration attached to this service is too small to enable them to subsist without resorting to other occupations, and unfortunately the peculiar circumstances of their position have induced them generally to become prostitutes. It seems that none but Bhavins are allowed to perform certain services in the temple; that alienation of revenue have been continued by the State for the support of these services; that the right to these alienations is inherited by those daughters of a Bhavin who have qualified as Bhavins themselves; and the above described *shej* ceremony is an indispensable qualification.

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“It follows that, be the ostensible object what it may, whether it be to train up girls for the performance of the required services, or whether it be to secure for their heirs a share of the property assigned to the temple, directly these Bhavin mothers dedicate their daughters by performing the *shej* ceremony over them they enchain them to an occupation which almost always inevitably leads to a life of prostitution. The evidence, partly consisting of the admissions of the prisoners themselves, establishes this fact so clearly that it may almost be assumed that all who took part in the performance of this ceremony on the girl Sundri must have been well aware that, in all probability, Sundri in course of time, by reason of this dedication, will become a prostitute. The evidence does not suffice to show that Sundri could not have been admitted after she had grown to years of discretion, though there is a general unanimity that this ceremony is performed upon girls between five and ten years.

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old. This, however, is important only in estimating the criminality of the offence, for whether adults are competent or not, the law distinctly prohibits a minor from being disposed in any way whatever, with the knowledge that such minor will in all probability, and in consequence of such disposition, be employed for any immoral purpose.

“All the prisoners co-operated with the intention of aiding in the performance of this ceremony, and being present there are liable as principals, under Sec. 114 of the Code. In passing sentence I bear in mind that though the law has been seven years in operation in this district, it has never yet been apparently enforced; that though the ceremony which has in the minds of those who took part in it operated to consign the child Sundri to a wretched and degraded course of life, yet they who performed it were acting in conformity with a long-established usage, and one which had indirectly received the sanction of the the ruling power. It would be hard therefore, to enforce this first lesson by a penalty of imprisonment. I will therefore award but a nominal imprisonment and a moderate fine, which may suffice to teach these people the wisdom and necessity of abandoning a demoralizing custom.”

From the conviction and sentence of the Session Judge Jaili appealed to the High Court.

The appeal was argued before Warden and Lloyd, JJ., on the 27th of September 1869.

*Shantaram Narayan* for the prisoner:—The only question here is whether the voluntary dedication of a minor girl under the age of sixteen to the service of a temple, and having the *shej* ceremony performed over her, is a disposal of such girl for the purpose of prostitution. It is submitted that it is not. There is nothing in the ceremony itself, which is of an immoral nature, and the purpose of the ceremony is to enable the girl to perform certain menial office in the temple, and to entitle her to certain property. It may be that such girls as these usually become prostitutes, and that they are not permitted to marry; but the most that the

appellant can be said to have done is to have placed the girl in a position that will expose her to temptation when she grows up, and the section seems to contemplate only the case of disposing of a girl, knowing that she will become a prostitute under the age of sixteen years. The prior words in the section further show that the words "otherwise disposing of" mean disposing of her to some third person. Here there is no third person to whom the girl is alienated. She is dedicated to the idol, and not sold to the priests. That this is the meaning of the section is conclusively shown by comparing it with the section immediately following, which is as it were the supplement of it. Correlative to the words "whoever sells or lets to hire" in Sec. 372 are the words in Sec. 373 "whoever buys or hires," and correlative to the words "otherwise disposes of" in Sec. 372 are the words in Sec. 373 "otherwise obtains possession of." By the general words of Sec. 372, which are manifestly intended to protect minors against advantage being taken of their youth and inexperience, the Legislature could not have intended covertly to render illegal an act in itself innocent, sanctioned by long usage, recognised by the Government itself in setting apart provision for these girls, and approved by the general religious sentiments of the Hindu community.

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There was no giving up of the child in this case. The appellant retained her in her possession.

*Dhirajlal Mathuradas* (Government Pleader) was heard in support of the conviction.

*Cur. adv. vult.*

On the 30th September the judgment of the Court was delivered by.

LLOYD J.:—The Session Judge in the grounds of his decision has very clearly set forth the circumstances connected with this case, and the facts described by him are undisputed by counsel for the appellant, who has argued that this conviction is not good in law, because a child dedicated to a temple as a Bhavin need not necessarily lead a life of prostitution, and also because the appellant,

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Jaili, when dedicating her adopted child Sundri, did not relinquish her own guardianship of the child, and give possession of her to any one else.

According to the language of that section of the Indian Penal Code under which Jaili has been convicted, it is however sufficient, if, when dedicating Sundri to the temple she knew it to be likely that the child would be used for the purpose of prostitution, and the evidence on this point is far too strong to admit of a doubt; besides which, her own admissions, when under examination before the Magistrate, are a complete bar to any plea of ignorance on that score being set up.

With regard to the second point urged before us, we are of opinion that it is not essential that Jaili should have given up present possession of the child in order to render herself amenable to the law quoted. By her dedication to the temple Sundri was doomed to be a Bhavin, and in all likelihood a prostitute for life, and we hold, therefore, that this was a disposal of the child, which by the law in question is made a penal offence.

*Petition rejected.*

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Reg. v. Nantamram Uttamram.

*Public servant—Ind. Penal Code, Sec. 21—Crim. Proc. Code, Sec. 422—Appeal—Review of evidence.*

An engineer who receives and pays to others municipal moneys is a public servant within the meaning of Sec. 21 cl. 10 of the Indian Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.

When an Appellate Court, under Sec. 422 of the Code of Criminal Procedure, directs a Court of first instance to take additional evidence, an appeal on the merits to the High Court is not thereby given.

The prisoner was tried before A. D. Carey, Magistrate, F. P. at Surat, on a charge framed under Sections 161 and 116 of the Indian Penal Code, of abetting the acceptance by a public servant of a gratification other than legal remuneration in respect of an official act, and being convicted, was sentenced to suffer rigorous imprisonment for one year,