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"The deceased Lalloobhai had during his lifetime made a will, and appointed the three persons, who have signed the document in question, his trustees.

[329] "The ornaments mentioned in the document were also deposited with the defendant, and the first portion of the document was passed by the trustees when the defendant made over those ornaments to them. A postscript is added by which the trustees have agreed that the notes now in dispute should be returned by the defendant when the widow of the deceased made over to him a certain house in good condition.

"The defendant produces the document in support of his defence, which is to the effect that, until the house which he had made over to the deceased for use is given back to him, he cannot be called upon to deliver up the promissory notes, and applies to have the same stamped. He expresses his willingness to pay a stamp-duty provided for by sch. II, art. 11 of Act XVIII of 1869, and a penalty of Rs. 5 under s. 34 of Act I of 1879.

"The question is, whether I can receive the stamp-duty and the penalty, and if so, what amount of duty should be levied.

"My opinion is, that as the first portion of the document is of the nature of a discharge, chargeable with one-anna stamp-duty under art. 7 of the said schedule, I am not, under the first proviso of s. 34, authorized to admit the document in evidence, and to levy any duty thereon.

"The matters comprised in the two portions of the document are quite distinct; but as s. 34 expressly prohibits the levy of a duty and penalty on an instrument chargeable with one-anna stamp, s. 7 of the General Stamp Act would not apply. As, however, I feel a doubt on the point, and as the defendant chiefly relies on the document in question, I beg to submit the question for an authoritative decision."

The parties did not appear in person or by pleaders in the High Court.

PER CURIAM.

As the defendant seeks to make use of the latter part of the document in question for the purpose of proving that he is not bound to restore the notes until the house is given up to him in good order, the document requires, in the Court's opinion, a stamp of eight annas under art. 11 of sch. II, Act XVIII of 1869.

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[330] APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.

THE GOVERNMENT OF BOMBAY *v.* GANGA, WIFE OF GOSAVI.*

[29th January, 1880.]

Marriage—Conversion of a Hindu wife to Mahomedanism—Marriage with a Mahomedan.

The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband; she cannot, therefore, during his lifetime enter into any other valid marriage contract. Her going through the ceremony of *nika* with a Mahomedan is, consequently, an offence under s. 494 of the Indian Penal Code.

* Appeal No. 272 of 1879.

[F., 18 C. 264 (269); 30 M. 550=17 M.L.J. 476=2 M.L.T. 345=6 Cr. L.J. 338; (1914) M.W.N. 278 (280); R., 25 B. 644 (656); 9 M. 466 (470); 49 P.R. 1907=83 P.L.R. 1908=110 P.W.R. 1907; U.B.R. (1897-1901) 488 (490).]

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THE facts fully appear from the judgment of the Court.
Nanabhai Haridas, Government Pleader, appeared for the Government of Bombay.

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There was no appearance for the accused.

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JUDGMENT.

The judgment of the Court was delivered by

PINHEY, J.—The accused Ganga, being the wife of a Hindu named Gosavi, embraced the Mahomedan religion, and then married a Mahomedan named Kasim. She was tried before the Assistant Sessions Judge at Thana, Mr. C. E. G. Crawford, for marrying again during the lifetime of her first husband, an offence punishable under s. 494 of the Indian Penal Code, and, on conviction, was on the 18th July 1879 sentenced by the Assistant Sessions Judge, to three years' rigorous imprisonment. On appeal, the conviction and sentence recorded by the Assistant Sessions Judge, were, on the 29th August 1879, reversed by Sessions Judge at Thana, Mr. Coghlan, on the grounds that the reception of Ganga into the Mahomedan community *ipso facto* annulled her former marriage to a Hindu; that when she married her present husband Kasim, she was a Mahomedan, and she could not be both a Mahomedan and the wife of a Hindu; and that as a Mahomedan woman, married by Mahomedan law, she was entitled to marry Kasim, and committed no offence in doing so.

An appeal has been filed, on the part of Government, against the acquittal of Ganga by the Sessions Judge. The Government [331] Prosecutor, in arguing the appeal, has informed us, that it is not for the sake of punishing Ganga that Government have appealed against the acquittal recorded by the Sessions Judge, but because it is of great importance that the question at issue in this case should be authoritatively settled by a decision of this Court.

The question which we have to consider and determine is whether the conversion of a Hindu woman to Mahomedanism does operate so as to dissolve her marriage to the Hindu husband, with whom she has lived up to the time of her conversion to Mahomedanism.

We are of opinion that this question must be answered in the negative. There is not, so far as we are aware (and we believe we have looked into all the cases in any way bearing on the question), any authority whatever for holding the contrary.

The Sessions Judge does not rely on the authority of any decided case for the conclusion at which he has arrived; but his argument for arriving at the conclusion at which he did arrive is, in his own words, this:—

“What would have been Ganga's position if, after reception into the Mahomedan religious body, she had claimed domestic and marital rights from Gosavi? In answer to this question the Public Prosecutor has, as himself a Hindu and a Brahmin, answered, with authority, that she would have been utterly repudiated, and denied any privilege of bed or board.

“It follows, then, that the fact of her reception into the Mahomedan community *ipso facto* annuls her former Hindu marriage.”

But we do not consider the conclusion at which the Sessions Judge arrived, is the necessary result of Ganga having, *by her own act*, deprived

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herself of the right of claiming domestic and marital rights from Gosavi. If Ganga had simply committed adultery or eaten beef, she could not have claimed domestic and marital rights from Gosavi; but neither of these acts would be considered to operate as a divorce, because she had thereby destroyed her own right to claim domestic and marital rights. The reason, then, on which the District Judge bases his decision is, in itself, unsound.

[332] From the date of the decision of *Regina v. Karsan Goja* (1) our Courts have always upheld the rule of Hindu law as given by Mr. Thomas Strange in his work on Hindu Law (3rd ed., 1859, p. 52), that the right of divorce amongst Hindus is marital only, and in *Reg. v. Sambhu Raghu* (2) this Court refused to recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry, in the absence of the consent of the husband. In this case Gosavi, the husband of Ganga, has neither divorced Ganga, nor consented to her re-marriage.

Both the Assistant Sessions Judge and the Sessions Judge referred in their judgments to Act XXI of 1866. (*The Native Converts' Marriage Dissolution Act*). This Act does not apply to the present case, and has no direct bearing on it, as it applies only to converts to Christianity—and Ganga is supposed to have been converted, not to Christianity but to Mahomedanism; but we think the Assistant Sessions Judge is right in referring to this Act, as showing that Hindu law does not consider a marriage dissolved by apostasy: for, if apostasy under Hindu law operated as a divorce, Hindu converts to Christianity would not have needed the relief given to them by Act XXI of 1866.

For the above reasons we have no doubt that the Sessions Judge was in error in reversing the conviction and sentence recorded by the Assistant Sessions Judge in this case, and we must, therefore, reverse the order made by the Sessions Judge. The effect of doing this, will be to restore the sentence of three years' rigorous imprisonment passed by the Assistant Sessions Judge on the accused Ganga. The Government Pleader is not, however, instructed to support so severe a sentence as this; and, taking into consideration the fact that Ganga was in jail from the 18th July to the 29th August, and that she has been now out of jail five months, we reverse so much of the sentence passed against her by the Assistant Sessions Judge as may be in excess of six months from the date on which she may be again incarcerated—that is, she will be imprisoned for six months only after her re-apprehension.

Order accordingly.