

(1913) 03 MAD CK 0005
In the Madras High Court

In Re: Muthu Ibrahi and Others

Date of Decision : 17-03-1913

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 363

Citation : (1915) ILR (Mad) 567 : (1914) ILR (Mad) 567

Hon'ble Judges : Oldfield, J

Bench : Single Bench

Judgement

Oldfield, J.—The first and the fourth accused were convicted of an offence punishable u/s 363 and the second and the third accused of one

punishable under Sections 363 and 114, Indian Penal Code.

2. Objection is taken first to the finding that the fourth prosecution witness, the girl alleged to have been kidnapped, was aged less than sixteen.

There was evidence to justify the finding, which was purely one of fact, and I cannot interfere with it in revision.

3. It is urged that the fourth prosecution witness was not a minor and her mother, from whose keeping she was taken, was not her lawful guardian,

because she had admittedly attained puberty and her minority and her mother's guardianship ceased under Mahomedan Law, when she did so.

The fourth prosecution witness was unmarried, and her father was not living. There is therefore no question of any guardianship other than her

mother's, as lawful, and. it is necessary to deal only, with the question whether the fourth prosecution witness was still a minor. No doubt

according to Mahomedan Law the occurrence of puberty determines minority and the mother's right to custody. (Macnaughten's Principles of

Mahomadan Law, page 63). But for the present purpose regard must be had only to the definition of minority in Section 3, Act IX of 1875. For

no argument has been based and nothing turns in this case on the saving clause, Section 2, or its references to capacity to act in the matter of

marriage and to religious usage. In the cases cited, for instance, In the matter of Khatija Bibi (1870) 5 Beng. L.R. 557, the conflict was between

the claims of the mother and husband to the custody of the minor, and Section 2 was material. Here no such considerations arising, the finding in

favour of the fourth prosecution witness's minority for the purpose of this case is justified by the Statute Law; and her mother's guardianship and

right to custody of her person against the accused follow. This objection therefore fails.

4. It is then said that the offence punishable u/s 363 is not a continuing one, and that therefore the accused Nos. 2 and 3 who joined the accused

Nos. 1 and 4, only after the kidnapping had been completed, are not liable for abetment of it. It has not been shown that the point was taken in

either of the lower Courts. The question at what stage the offence was completed is one of fact and cannot be" raised here for the first time.

5. Though the accused's intention is not shown to have been immoral, the sentences are not excessive. The petition fails and is dismissed.