

[IN THE COURT OF CRIMINAL APPEAL]

1957 *Present*:.. Basnayake, C.J. (President), Weerasooriya, J., and Sinnetaimby, J.

THE QUEEN *v.* E. N. ASSEN MOHIDEEN

Appeal No. 5 of 1957 with Application No. 5 of 1957

S. C. 17—M. C. Colombo, 24,083/A

Evidence Ordinance—Section 120—Married woman—Marriage subsequently annulled—Competency to testify against former husband.

In criminal proceedings for violence inflicted on a person other than the accused's wife, a witness who was the wife of the accused at the time of the non-summary inquiry is competent to give evidence for the prosecution at the trial if, prior to the date of the trial, she obtained an order of nullity in respect of her marriage with the accused.

APPPEAL, with application for leave to appeal, against a conviction in a trial before the Supreme Court.

K. Charavanamuttu (Assigned), for Accused-Appellant.

A. C. Alles, Acting Deputy Solicitor-General, with *P. Colin-Thome*, Crown Counsel, for Attorney-General.

February 25, 1957. BASNAYAKE, C.J.—

The only point that arises for decision in this appeal is whether the evidence of the witness Rahuma Beebi was rightly admitted at the trial of this case. This witness was the wife of the appellant at the time she was examined in the Magistrate's Court at the preliminary inquiry under Chapter XVII of the Criminal Procedure Code. When she was called to give evidence for the prosecution at the trial she was not his wife as she had obtained an order of nullity in respect of her marriage with the appellant. It would appear that Rahuma Beebi's marriage with the accused was registered on 10th March 1955. On 12th July 1955 an application was made by her to the Kathi Court for an order of nullity, on the ground that her marriage had been registered under duress and before she had attained puberty. Summons was issued on 18th July. On 20th July the parties were present and the Kathi tried to bring about a reconciliation and as he failed to do so he fixed the case for 25th August 1955. On that day the Kathi again tried to bring about a reconciliation which he failed and he fixed the case for 11th September 1955. On that day too the Kathi made a further attempt at reconciliation but as he was unsuccessful he put off the case for 2nd October. Attempt at reconciliation having again failed he postponed the case for 16th October. On that day the applicant applied for a postponement on the ground that it was the month in which the Prophet Mohamed's birthday occurred and

the case was postponed to 27th October and on that day to 24th November 1955, on which day the case was partly heard and the hearing was adjourned till 18th December 1955. On 12th December 1955 the appellant murdered Rahuma Beebi's mother. The decree for nullity of the marriage was not entered till 18th March 1956.

Section 120 of the Evidence Ordinance provides that the wife of an accused is competent to give evidence only if called by him except where he is accused of using violence on her. In the instant case Rahuma Beebi was not the appellant's wife on 3rd January 1957, the date of the trial, and her evidence was rightly admitted. The fact that her marriage had not been dissolved at the time she was examined in the Magistrate's Court does not in our view render her evidence inadmissible at the trial when the bar against her competency as a witness no longer existed. The effect of a decree of nullity of marriage is that the marriage is regarded as never having taken place.

The appeal is therefore dismissed and the application refused.

Appeal dismissed.

