1963 *Present:* Basnayake, C.J., Abeyesundere, J., and G. P. A. Silva, J.

A. E. REID, Appellant, *and* THE ATTORNEY-GENERAL, Respondent

S. C. 15/1962—D. C. (Crim.) Colombo, 2090/N

Bigamy—Marriage (general)—Second marriage contracted by husband after conversion to Islam—Second wife also a convert to Islam—Validity of the second marriage—Marriage Registration Ordinance, ss. 18, 64—Muslim Marriage and Divorce Act—Kandyan Marriage and Divorce Act, s. 6—Penal Code, s. 362 B.

A man who has contracted a marriage under the Marriage Registration Ordinance does not commit bigamy if, while his marriage is subsisting, he embraces Islam and marries under the Muslim Marriage and Divorce Act a woman who has also embraced Islam.

The appellant, when he was a Roman Catholic, married his first wife on 18th September, 1933, under the Marriage Registration Ordinance. While his wife was still living he married again under the Muslim Marriage and Divorce Act. He and his second wife became converts to Islam on 13th June, 1959, and registered their marriage under the Muslim Marriage and Divorce Act on 16th July, 1959.

Held, that, although the proximity of the date of the second marriage to the date of conversion gave room for the suspicion that the change of faith was with a view to overcoming the provisions of section 18 of the Marriage Registration Ordinance, the second marriage was valid. Accordingly, the appellant could not be convicted of bigamy under section 362 of the Penal Code.

APPEAL from a judgment of the District Court, Colombo. This case was reserved by Tambiah, J. (G. P. A. Silva, J., agreeing), in the following terms, for hearing by a fuller Court :—

"In this case an important question of law arises. The accused appellant, it is admitted, was married to Edna Margaret Fredrica Reid *nee* De Witt under the provisions of the Marriages (General) Registration Ordinance No. 19 of 1907 and while this marriage was subsisting he married Fatima Pansy Reid under the Muslim Law after he had become a Muslim. The question is whether he committed bigamy after he became a Muslim in contracting a second marriage while the first marriage contracted under the Marriages (General) Registration Ordinance was still subsisting. This question depends on the interpretation this Court has to place on Section 18 of the General Marriages Ordinance. In *Haji Mohamed v. Benedict*[1] the converse position arose. In this case a married man who became a Muslim at the time of the marriage and married a second time while the earlier marriage was subsisting is said to have committed an offence under Section 362 (B) of the Penal Code. In view of the various important points involved in this case my brother and I agree that this is a matter that should be heard by a fuller bench.

[1] *(1961) 63 N. L. R. 505.*

2—R 11534—1,355 (8/63)

We have no power to refer it to a fuller bench. Therefore we bring this matter to the notice of His Lordship the Chief Justice for him to refer it to a fuller Court, if he thinks it fit to do so."

C. S. Barr Kumarakulasinghe, with *S. Kanagaratnam* and *C. W. Perera*, for Accused-Appellant.

Vincent T. Thamotheram, Deputy Solicitor-General, with *G. P. S. de Silva*, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 11, 1963. BASNAYAKE, C.J.—

The question for decision on this appeal is whether a man who has contracted a marriage under the Marriage Registration Ordinance commits bigamy if, while his marriage is subsisting, he embraces Islam and marries under the Muslim Marriage and Divorce Act a woman who has also embraced Islam.

Briefly the facts are as follows:—The appellant Allen Ellington Reid *alias* Ibrahim Reid was convicted of bigamy, an offence punishable under section 362 (B) of the Penal Code, in that, while his lawful wife Edna Margaret Fredrica De Witt was living, he married Fatima Pansy. He has been sentenced to undergo a term of three months' rigorous imprisonment.

The appellant who was a Roman Catholic married at St. Mary's Church, Badulla, on 18th September 1933 Edna Margaret Fredrica Reid *nee* De Witt. They had eight children of whom six died. While that marriage was subsisting the appellant on 16th July 1959 married Fatima Pansy Von Haght at the Muslim Registrar's Office at No. 2/6 Saunders Court, Colombo. Her maiden name was Pansy Mary Clair Von Haght and she first married Vincent de Kauwe who divorced her on 7th November, 1958. At the time of his second marriage the appellant and his second wife had become persons professing Islam. They had been converted by the Muslim priest at the Vekanda Mosque on 13th June 1959. On their conversion the appellant was named Ibrahim and his second wife Fatima. The appellant gave evidence admitting the above facts. Section 362 (B) of the Penal Code with the breach of which the appellant has been indicted and found guilty reads—

> "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

In the instant case the appellant had a wife living. Therefore the first element of the penal provision is satisfied. The second element is also satisfied because he contracted a second marriage. The third

element is that the second marriage should be void by reason of its taking place during the life of the first husband or wife. Is the third element satisfied ? Learned Deputy Solicitor-General maintained that section 18 of the Marriage Registration Ordinance applied and that until the appellant divorced his wife or she died he was not free to contract a valid marriage as his first marriage was registered under that Ordinance. The section on which he relies reads—

> " No marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void."

The section declares that no " marriage " shall be valid where there is a prior " subsisting marriage ". Now what is a marriage for the purpose of section 18. That expression is defined in section 64 and it means— " any marriage, save and except marriages contracted under and by virtue of the Kandyan Marriage Ordinance 1870 or the Kandyan Marriage and Divorce Act, and except marriages contracted between persons professing Islam." There is nothing in the context of section 18 which renders the definition inapplicable. That section has therefore no application to marriages contracted under the Kandyan Marriage Ordinance 1870, the Kandyan Marriage and Divorce Act, and marriages " contracted between persons professing Islam ". Although Kandyan marriages are excluded from the definition and therefore from the ambit of section 18, a Kandyan is not free to marry a second time while the first marriage is subsisting as section 6 of the Kandyan Marriage and Divorce Act declares invalid a second marriage under the Act where the spouse of the previous marriage is alive and the marriage is subsisting. Now the appellant's second marriage was registered under the Muslim Marriage and Divorce Act. Although that Act is not specially mentioned in the definition, marriages contracted by persons professing Islam are excepted. Persons professing Islam can now marry only under the Muslim Marriage and Divorce Act. So that marriages under that Act are not marriages within the definition of the expression " marriage " in the Marriage Registration Ordinance.

In the instant case Ameer, the Muslim Priest at Vekanda Mosque has testified to the fact that he converted to Islam both the appellant and his second wife on 13th June 1959, and that on 16th July 1959 he registered their marriage which according to the notice given to the Quazi of the area under the Muslim Marriage and Divorce Act was a Notice of Intention to contract a second or subsequent marriage. The proximity of the date of the second marriage to the date of conversion gives room for the suspicion that the change of faith was with a view to overcoming the provisions of section 18 of the Marriage Registration Ordinance. But that circumstance does not affect the validity of the second marriage.

The evidence of the Quazi and the priest who registered the marriage indicates that the requirements of the Act as to registration of the marriage have been observed and that they were satisfied that the parties were persons professing Islam.

The appellant is therefore not guilty of bigamy. We quash the conviction and sentence, and acquit him.

ABEYESUNDERE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Appeal allowed.