

Present: De. Sampayo J.

REX *v.* ASIAUMMA.

66—D. C. (*Crim.*) Batticaloa, 2,699 B.

Marital compulsion—When wife is not responsible for her acts.

Marital compulsion is not specifically stated in our Penal Code as an exception to criminal liability on the part of a wife, but the principle of marital compulsion is not wholly absent. Under the English law the presumption, almost amounting to a conclusion of law, is that the wife is not a free agent, and is, therefore, exempt from liability; whereas under our law the wife, like any other person, is responsible for her acts, and can only free herself by proof that she was merely acting under the orders of her husband, and had no knowledge that she was committing a criminal offence.

THE facts appear from the judgment.

Grenier, C.C., for the appellant.

May 19, 1919. DE SAMPAYO J.—

In this case the Solicitor-General appeals from an order of acquittal. The accused, Asiaumma, appears to be the wife of a man against whom proceedings have been taken in respect of certain property stolen from a temple. I gather from the Police Court record, which has been sent up with the appeal, that the husband has been charged with the actual theft. The indictment charged her, under section 394 of the Penal Code, with having dishonestly retained a part of that property. She pleaded not guilty, and her counsel at once took the objection that a wife could not be convicted of receiving or retaining property stolen by her husband, and reference was made to English law on the subject. The District Judge upheld the objection and acquitted the accused. Under any view of the law I do not see how the case could be disposed of on this ground without evidence.

1919.

DE SAMPAYO
J.Res v.
Astaumma

Neither in the Indian Penal Code nor in our Penal Code is marital compulsion specifically stated as an exception to criminal liability on the part of a wife. In *Justinahamy v. Bastian*¹ Browne J. appears to have considered that, since by section 3 of the Penal Code the criminal law previously administered has been repealed, a married woman cannot plead coercion by the husband, but the case was, in fact, disposed of on its merits. It may be that such a defence cannot be set up as a pure matter of law, but I think that when a wife, who is, generally speaking, under the control of the husband, is charged with such an offence as the receipt or retention of stolen property, the circumstances under which she acted may be shown in order to negative the element of dishonesty, or even the personal act of receipt or retention itself. The English law appears to emphasize the legal identity of the husband and wife, and to regard the presumption of subjection of the wife to the husband as being so great that she is exempt from punishment in the case of certain offences. Thus, a wife cannot be convicted, as it is presumed that she acted under marital coercion (*R. v. Wardropper*²). But she may be convicted if there is evidence of her receiving stolen property independently of and apart from her husband (*R. v. Baines*³). The criminal law of India and Ceylon does not recognize the existence of a presumption in the same way, but I think the principle of marital compulsion is not wholly absent. Mayne's *Criminal Law of India*, section 529, while pointing out that a wife may be convicted of receiving stolen property from her husband, refers to *Reg. v. De Silva*,⁴ and says: "The Court might, of course, take the charitable view that the wife was merely acting under the orders of her husband, and had no knowledge that she was committing a criminal offence." The whole matter appears to me to resolve itself into a question of fact. The difference may, perhaps, be put in this way: under the English law the presumption, almost amounting to a conclusion of law, is that the wife is not a free agent, and is, therefore, exempt from liability; whereas under the system of the Penal Code the wife, like any other person, is responsible for her acts, and can only free herself by such proof as Bayne indicates.

The District Judge in this case was too precipitate in acquitting the accused, on the mere statement to him of the doctrine of the English law without having before him the basis of fact upon which the legal question can be determined. The order appealed from is set aside, and the case remitted to the District Court for trial in due course.

Set aside.

¹ (1898) 5 *Tamb.* 105.² (1860) 8 *Cox C. C.* 284.³ (1900) 69 *L. J. Q. B.* 681.⁴ *N. W. P.* 120.