

1904.
June 21.

CADIRAVELU v. SUPPAIYA.

P. C., Trincomalee, 1,979.

Beating of tom-toms—Ordinance No. 16 of 1865, s. 90—Prosecution against person who caused tom-toms to be beaten—Penal Code, ss. 38, 102, 107.

Under section 90 of Ordinance No. 16 of 1865 and sections 38, 102 and 107 of the Penal Code a person who being present causes tom-toms to be beaten without a license is liable to the penalty provided in section 90 of the Ordinance No. 16 of 1865.

The mere possession of a license to do any of the acts mentioned in section 90 of the Ordinance No. 16 of 1865 will not protect a person from proceedings taken against him under the Penal Code for doing those acts.

The license merely protects him from prosecution under section 90.

THE appellant, who was the manager of a Hindu temple, personally supervised, though he did not take part in, the beating of tom-toms, which under his orders continued until 11 o'clock at night. He was convicted under section 90 of Ordinance No. 16 of 1865. He appealed.

H. A. Jayawardene, for appellant.—The accused is not liable, as he did not beat the tom-tom. *Bell v. Senanayaka*, 7 N. L. R. 126; *Jansz v. Endoris*, 9 S. C. C. 204.

Rāmanāthan, S.-G., for respondent.—If section 90 of Ordinance No. 16 of 1865 be read with sections 38, 102, and 107 of the Penal Code this case is clearly punishable under section 90 of the Ordinance No. 16 of 1865. It has been decided by the Full Court in *Jansz v. Endoris*, 9 S. C. C. 204, that if a person is present and personally directs that to be done which the law prohibits, he is a principal in the first degree.

Cur. adv. vult.

21st June, 1904. MONCREIFF, A.C.J.—

The appellant was charged with "beating tom-toms at Marayavalli Pullayar temple in the night so as to disturb the repose of the inhabitants without having obtained a license from the proper authority"—an offence punishable under Ordinance No. 16 of 1865, section 90. The tom-toming continued until 11 o'clock at night. At first it did not appear who the appellant was, or whether he was present in the temple when the tom-toming took place. Now I learn that he is styled the manager of the temple, that he was present directing, and that he admitted

to constable Suppiah that he had ordered the tom-toming. He had no license so to disturb the repose of the inhabitants. At the argument Mr. Jayawardene, for the appellant, quoted *Bell v. Senanayaka*, 7 N. L. R. 126, but apparently the only question raised before the Chief Justice in that case was whether the owner of a plumbago store whose servants on his instructions, but in his absence, create a noise by coopering barrels at night, is liable to be proceeded against under this section as a principal on a charge of disturbing the repose of the inhabitants without a license. Clearly he is not. I am bound on that point by the decision of the Full Court in 9 S. C. C. 204.

1904.
June 21.
MONROE, J.,
A.C.J.

The following propositions which I gather from the authorities in the Penal Code will, I think, make this matter clear:—

1. The mere possession of a license to do any of the acts mentioned in section 90 of Ordinance No. 16 of 1865 will not protect a person from proceedings taken against him under the Penal Code for doing those acts. The license merely protects him from prosecution under the section (1 N. L. R. 179).

2. I am bound by the Full Court's decision referred to, to hold that a person who, not having a license to do so, has caused tom-toms to be beaten cannot be charged as a principal under this section with beating tom-toms if he was absent at the time of beating. The principal offence is beating tom-toms, not causing tom-toms to be beaten.

3. A person who instigates the beating of tom-toms without a license or intentionally aids or of course causes by any act or illegal omission the beating, is at least an abettor of the offence within the meaning of chapter V. of the Penal Code. He may be charged under section 102 of the Penal Code with abetting the commission of the offence, and punished with the punishment provided for the offence itself. He is, moreover liable upon a charge of beating tom-toms without a license to be convicted as an abettor. (See sections 182 and 183 of the Criminal Procedure Code.) Reference to section 38 of the Penal Code shows that the word "offence" used in sections 100—103, 105, and 107—113 of the Code (which relate to abetment) denotes a thing punishable in Ceylon under any law other than the Code as well as a thing punishable under the Code. An offence which is charged under section 90 of No. 16 of 1865 is therefore subject to the law of abetment as set out in the above sections of the Penal Code.

4. If a person who has not personally taken part in the commission of the offence, for example the accused in this case, who did not himself beat the tom-toms, but has instigated or caused others to commit it, or has aided them in the commission

1904. of it, is present when the offence is committed, he is by the terms
June 21. of section 107 of the Penal Code deemed to have committed the
MONORREFF, offence itself.

A.C.J.

The appellant was present in the temple when the beating of tom-toms complained of took place, and admitted that it took place under his orders. He is, therefore, in accordance with section 107 of the Penal Code, deemed to have committed the offence itself, and was rightly convicted. The conviction is affirmed.
