

[ASSIZE COURT]

1950

*Present: Dias J.*

## THE KING v. ARUMUGAM

*S. C. 22—M. C. Chavakachcheri, 28,514*

*Hindu marriage—Dissolution—Decree of Court necessary—Wife's competency to testify against husband—Evidence Ordinance (Cap. 11), section 120.*

A Hindu customary marriage cannot be dissolved in any other way than by decree of a Court.

A wife married according to Hindu customary rites cannot be called as a witness for the prosecution against her husband by virtue of section 120 of the Evidence Ordinance.

**O**RDER made in the course of a trial before a Judge and Jury, in the Northern Circuit.

*Vincent Thamotheram, Crown Counsel, for the Attorney-General.*

*M. Balasunderam, with J. Rajaratnam, for the accused.*

February 27, 1950. DIAS J.—

Learned Crown Counsel in opening the case for the prosecution, in which the accused is charged with murder, stated that the deceased man was married to the ex-wife of the accused. Mr. Balasunderam for the defence has in the absence of the Jury argued that it is not competent for the prosecution to call this woman as a witness. Learned Crown Counsel has called one witness on this question of competency. S. Sithampary who is the father of the woman states that she was married to this accused according to Hindu customary rites many years ago. The usual customary ceremonial was observed. There was a public reception and thereafter the accused and the lady lived together as man and wife and were so received amongst their friends and relatives. S. Sithampary says that thereafter this union was dissolved. There was no action for divorce and there was no decree dissolving the marriage *a vinculo matrimonii*. What appears to have happened is that the lady left the accused and thereafter became the mistress of the deceased.

Now, marriage according to customary Hindu rites is lawful and is acknowledged to be a marriage by our law. Neither counsel has been able to cite any authority for the proposition that such a marriage can be dissolved in any way other than by decree of a Court. There is no proof that the union was dissolved. Therefore, applying the presumption of continuance, I think, the customary marriage continues and if that be so, the lady being the lawful spouse of the accused cannot under section 120 of the Evidence Ordinance be called as a witness for the prosecution. I therefore hold that the witness is incompetent to testify for the prosecution.

*Objection upheld.*