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Salt Lake City v. Sammia B. Perkins : Brief of Plaintiff and Respondent

Utah Supreme Court

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

SALT LAKE CITY, a municipal
corporation,

Plaintiff and Respondent,

— vs. —

SAMMIA B. PERKINS,

Defendant and Appellant.

FILED
APR 14 1952

Clark, Supreme Court, Utah

**BRIEF OF PLAINTIFF AND RESPONDENT
SALT LAKE CITY CORPORATION**

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INDEX

	Page
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	4
ARGUMENT:	5
POINT I. THIS COURT DOES NOT HAVE JURIS- DICTION TO HEAR THIS MATTER ON APPEAL	5
POINT II. THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE VERDICT.....	6
POINT III. THERE IS NO PRESUMPTION UN- DER UTAH LAW THAT A MARRIED WOMAN, WHILE COMMITTING A CRIME, IS ACTING UNDER THE COMMAND, COERCION OR IN- FLUENCE OF HER HUSBAND.....	7
CONCLUSION	13

CASES CITED

Crandall v. Woods, 8 Cal. (136) 143.....	12
Dalton v. People, 68 Colo. 44, 189 P. 34.....	11
Gill v. McKinney, 140 Tenn. 559, 205 S.W. 416.....	9
Katz v. Walkinshaw, 1903, 141 Cal. 116, 122, 123, 70 P. 663, 74 P. 766, 767, 64 L.R.A. 236, 99 Am. St. Rep. 35....	12
King v. City of Owensboro, 218 S.W. 297.....	9
Morton v. State, 209 S.W. 644.....	10
People v. Statley, 206 P. 2d 76.....	12
State v. Carpenter, 176 P. 2d 919.....	11
State v. Hendricks, 32 Kan. 559, 4 P. 1050.....	10
State v. Renslow, 230 N.W. 316.....	10
Wampler v. Norton, 134 Va. 606, 113 S.E. 733.....	10

STATUTES CITED

Section 20-3-5, Utah Code Annotated, 1943.....	5
Sections 40-2-1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, U.C.A. '43.....	8
Section 103-1-40, sub-section (8), U.C.A. 1943.....	3
Rule 72(a), Utah Rules of Civil Procedure.....	6

AUTHORITIES CITED

4 A.L.R. 279	12
71 A.L.R. 1123	12

IN THE SUPREME COURT of the STATE OF UTAH

SALT LAKE CITY, a municipal
corporation,

Plaintiff and Respondent,

— vs. —

SAMMIA B. PERKINS,

Defendant and Appellant.

Case No. 7814

BRIEF OF PLAINTIFF AND RESPONDENT SALT LAKE CITY CORPORATION

STATEMENT OF FACTS

The Defendant, SAMMIA B. PERKINS, was convicted by a jury in the City Court for operating a disorderly house in violation of Section 4816 of the Revised Ordinances of Salt Lake City, Utah, 1944, and from this conviction she appealed to the Third Judicial District Court where, after a trial de novo, she was again convicted of the same offense by jury. From this conviction the said Defendant appeals to this court.

The facts substantially developed by the evidence of said case are as follows :

That the City Commission and Police Department of Salt Lake City had received complaints concerning the operation of a rooming house located at 747 South Second East in Salt Lake City (R. 32, 33). Pursuant thereto periodic checks were made of said premises by the Police Department of Salt Lake City. It was found that a mixed group of both white and colored minors were frequenting this place at late hours of the night and that music was played in said place that could be heard for a distance of fifty to seventy-five feet therefrom (R. 6, 7 and 8). That the said home contained many whiskey bottles and glasses from which whiskey had been drunk (R. 10 and 11). That on or about May 12, 1951, the Police Department conducted a raid of said premises and that two police officers observed the Defendant beckon to a white and colored man who approached her on the front porch. After some conversation, the Defendant motioned these two men to a side door (R. 18, 19). That the police officers went to the rear of this home, and, looking through the window, observed a white man and a colored woman in the act of sexual relations (R. 19, 20). That a further examination of this house disclosed many whiskey bottles and glasses (R. 22, 23). That the Defendant and her children were present that night, but that her husband was not (R. 24). This course of conduct had continued over a long period of time and had disturbed the neighbors (R. 44, 45, 46 and 48). That the Defendant and her husband jointly purchased and operated this home (R. 53, 54). However, he worked separate and apart from the home so that the Defendant actively con-

ducted the business of running the home. The Defendant's husband was not home at the time of the raid on May 12, 1951 (R. 62). The Defendant told the officers that he had left for work (R. 76, 77). At the conclusion of the testimony the Defendant's counsel requested two instructions. The Court denied the first requested instruction (R. 15), the Defendant's second requested instruction being as follows:

“DEFENDANT’S REQUEST NO 2

You are instructed that under the law of this state, a married woman is not capable of committing a crime, where the punishment is less than death, or treason, while acting under the threats, command or coercion of her husband, and in this respect you are instructed that if you believe from the evidence, that the defendant was a married woman, living with her husband on the 12th day of May, 1951, and committed any of the offenses charged in the (three) complaints under the command, influence, coercion or threats of her husband, then, and in that event, it is your duty to acquit her on each charge.

You are further instructed that if you have a reasonable doubt as to whether or not she was so acting under such influence of her husband, you should acquit her.”

The said Defendant's second requested instruction was given substantially by the Court as its Instruction No. 9 (R. 101, 102) as follows:

“No. 9: You are further instructed that under the law of this state a married woman is not

capable of committing a crime such as the ones charged against this defendant while she is acting under the threats, command, or coercion of her husband; and in this respect you are instructed that if you believe from the evidence that the defendant was a married woman, living with her husband, on the 12th day of May, 1951, and committed any of the offenses charged against her while under the command, influence, coercion, or threats of her husband, then and in that event it is your duty to acquit her of these charges or of the charge which you believe that she committed while acting under her husband's threats, commands, coercion, or influence. You are further instructed that if you have a reasonable doubt as to whether or not she was so acting, you ought to acquit her. In other words, she does not have the burden of convincing you by even a preponderance of the evidence that she was acting under the influence of her husband. In order for you to find her guilty, you must find that she was not under the influence, and if you find she was, you must acquit her, or if you have a reasonable doubt as to whether or not she was under his influence, you must acquit her."

After the verdict, the Defendant filed a Motion in Arrest of Judgment (R. 114) and a Motion For a New Trial (R. 115), which motions were denied.

STATEMENT OF POINTS

POINT I.

THIS COURT DOES NOT HAVE JURISDICTION TO HEAR THIS MATTER ON APPEAL.

POINT II.

THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE VERDICT.

POINT III.

THERE IS NO PRESUMPTION UNDER UTAH LAW THAT A MARRIED WOMAN, WHILE COMMITTING A CRIME, IS ACTING UNDER THE COMMAND, COERCION OR INFLUENCE OF HER HUSBAND.

ARGUMENT

POINT I.

THIS COURT DOES NOT HAVE JURISDICTION TO HEAR THIS MATTER ON APPEAL.

Sec. 20-3-5, Utah Code Annotated, 1943, provides as follows:

“Appeals shall lie from the final judgments of justices of the peace in civil and criminal cases to the district courts, on both questions of law and fact, with such limitations and restrictions as are or may be provided by law; and the decisions of the district courts on such appeals shall be final, except in cases involving the validity or constitutionality of a statute; and appeals shall also lie to the district courts from the final judgments of the city courts, and from the final judgments of the juvenile courts, except where a direct appeal to the supreme court is expressly provided for.”

Rule 72(a) of the Utah Rules of Civil Procedure provide as follows:

“(a) From Final Judgments. An appeal may be taken to the Supreme Court from all final judgments, in accordance with these rules; provided, that in actions originating in city courts and in justices’ courts, the decision of the district court on appeal shall be final, except: (1) In cases involving the validity or constitutionality of a statute or ordinance; and (2) In actions originating in city courts in which the amount in controversy exceeds \$100.00, exclusive of costs.”

The Appellant herein does not anywhere question the validity or constitutionality of any City ordinance or State statute. The above statutes and rules specifically provide that the decisions of the District Court on such matters as the one herein contained shall be final unless there is involved a question of the validity or constitutionality of an ordinance or statute. Nowhere in Appellant’s brief does she charge the invalidity or unconstitutionality of either a City ordinance or State statute in the matter in question, but, to the contrary, she merely claims a misinterpretation of a question of law by the District Court concerning a presumption established by common law and since changed in Utah by a change of circumstances and statutes.

POINT II.

THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE VERDICT.

My statement herein contained and the transcript of the testimony taken at the time of trial is overwhelming and without contradiction to the effect that the house

in question was used by Defendant over a long period of time as a disorderly house and to the continual and persistent disturbance of the immediate neighbors, and Defendant, in her brief, at pages 9 and 10 thereof, admits that the evidence discloses a course of conduct existing over a period of several months prior to the date of arrest on May 12, 1951, which constituted disorderly conduct by both colored and white people, young and old, resorting to said place and drinking intoxicating liquor and conducting themselves in a boisterous and immoral way.

POINT III.

THERE IS NO PRESUMPTION UNDER UTAH LAW THAT A MARRIED WOMAN, WHILE COMMITTING A CRIME, IS ACTING UNDER THE COMMAND, COERCION OR INFLUENCE OF HER HUSBAND.

The only point made by Appellant on which there can be any argument is whether or not, under Utah law, the common law presumption still exists to the effect that a married woman is not liable for crime excepting murder and treason committed in the presence of her husband. I first wish to call to the Court's attention Appellant's requested instruction on this point which is herein set forth in full in the Statement of Facts and the actual instruction given by the trial court which is also set forth in full herein in the Statement of Facts, which instruction, as given, is even more favorable to the Defendant than the one requested. It is my opinion and judgment that the trial court went much further than the law requires in the instruction submitted to the jury and by

which they were bound in their deliberation. Some few states still follow the old common law rule that a married woman is not liable for a crime committed in the presence of her husband since under the common law it was presumed that she acted under constraint from him. However, Utah, as has the majority of the states, enacted statutes which modify greatly the common law. Section 103-1-40, sub-section (8) reads as follows:

“103-1-40. Who Are Capable of Committing Crime.

All persons are capable of committing crimes, except those belonging to the following classes:

(8) Married women, unless the crime is punishable with death, acting under the threats, command or coercion of their husbands.”

It will be noted that this statute constitutes a substantial departure from the provision of the common law wherein it was there provided that a married woman was not liable for crime excepting murder and treason committed in the presence of her husband. It is therefore the Respondent's position that it is incumbent upon the Defendant to show by competent evidence that her act was committed because of or under the threats, command or coercion of her husband. It should also be noted that Sections 40-2-1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Utah Code Annotated, 1943, specifically emancipate women in the State of Utah and that the old common law theory that a husband and wife are one for all purposes is forever in the State of Utah dissolved and completely abolished and abandoned.

The courts in various jurisdictions base their decisions on various theories. It is interesting to note that in Tennessee the courts base their decision that the wife is no longer under the disability of coverture. I refer to the case of *Gill v. McKinney*, 140 Tenn. 559, 205 S.W. 416, wherein the court said:

“This supposed duress of the wife by the fact of marriage, like all other doctrines, built upon the legal identity of husband and wife, must depend upon the disability of the wife by virtue of marriage. The policy of this state is completely changed so that married women are no longer under the disability of coverture and are completely emancipated.”

There is then the Kentucky rule that the statute providing that a wife holds and owns all of her separate estate and may contract destroys the common law presumption. In the case of *King v. City of Owensboro*, 218 S.W. 297, it was contended that the court should have given an instruction that if the defendant sold the liquor in the presence of her husband, the law presumes that she acted in obedience to his command and under his coercion and that they should find her not guilty. The court said:

“The rule is a harsh one at best, and with the progress of civilization and the changes by wise modern legislation of the relation between husband and wife as to the right of property and personal control by the husband, it would seem absurd in this enlightened age to regard the wife as a mere machine made to labor and to talk as

the husband directs and to make him liable on that ground for her torts when not committed by his direction or procurement."

and concluded by saying:

"We therefore conclude that there is no longer a presumption that a married woman who commits a crime conjointly with or in the presence of her husband acts under his coercion, and it follows that the court's failure to instruct the jury to that effect was not in error."

Also, see *State v. Hendricks*, 32 Kan. 559, 4 P. 1050.

For a discussion of the rule under the modern married woman's acts see *Morton v. State*, 209 S.W. 644, where it was held that the rule of the common law no longer exists and a married woman is responsible for her crimes as if a *femme sole*.

In the case of *Wampler v. Norton*, 134 Va. 606, 113 S.E. 733, the court declared in reference to a charge of keeping ardent spirits for sale:

"that the defendant cannot excuse herself from guilt upon this or any other sort of criminal charge merely by showing the marriage and pleading a consequent technical coercion by her husband. Thus, for example, when they are living together in a house kept for immoral purposes, she cannot successfully defend a prosecution therefor on the ground that the law presumes her to be acting under his control."

In the case of *State v. Renslow*, an Iowa case, 230 N.W. 316, the court held that the rule of presumptive

coercion did not apply to the act of a married woman in receiving stolen property from her husband. The court said :

“that under the statutes of Iowa, where practically all of the disabilities and disadvantages of coverture are removed and a woman stands in the eyes of the law with practically all of the rights, duties and privileges of a femme sole, we see no reason for the further application of this rule in this state.”

In the case of *Dalton v. People*, 68 Colo. 44, 189 P. 34, the court said :

“There were two reasons on which the common law rule was based. First, that man and wife are one, and that one cannot conspire. Second, that the husband is presumed to control the wife.”

and further concluded :

“that both these propositions have been abandoned and also the legislation in respect to the marital relation. The law of this state requires the coercion by the husband to be proved.”

In the case of *State v. Carpenter*, an Idaho case, reported in 176 P. 2d 919, the court held that it was not in error in failing to give an instruction of the common law rule where a wife was convicted of giving hacksaw blades to her husband in jail to aid him to escape, stating that the common law had been changed by statute.

A case directly in point is the case of *People v. Statley*, a California case reported in 206 P. 2d 76. The California Statute is identical with the Utah Statute. In that case the court quotes from *Katz v. Walkinshaw*, 1903, 141 Cal. 116, 122, 123, 70 P. 663, 74 P. 766, 767, 64 L.R.A. 236, 99 Am. St. Rep. 35 as follows:

“* * * In *Crandall v. Woods*, 8 Cal. (136), 143 the court approved the following rule * * *

“‘It is contrary to the spirit of the common law itself to apply a rule founded on a particular reason to a case where that reason utterly fails.’
* * *

“The true doctrine is that the common law by its own principles adapts itself to varying conditions, and modifies its own rules so as to serve the ends of justice under the different circumstances—* * *

“‘When the reason or a rule ceases, so should the rule itself.

“‘It is a well-settled rule that the law varies with the varying reasons on which it is founded. This is expressed by the maxim, “*Cessante ratione, cessat ipsa lex.*” This means that no law can survive the reasons on which it is founded. It needs no statute to change it; it abrogates itself. If the reasons on which a law rests are overborne, by opposing reasons, which, in the progress of society, gain controlling force, the old law, though still good as an abstract principle, and good in its application to some circumstances, must cease to apply or be a controlling principle to the new circumstances.’”

For two good annotations, it is suggested the court review 4 A.L.R. 279 and 71 A.L.R. 1123.

CONCLUSION

That the Appellant's appeal be dismissed and that the same be remanded with instructions to carry out the sentence heretofore imposed by the District Court.

Respectfully submitted,

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