

Ranjana Pathak Vs. State, Through Public Prosecutor

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Court : Mumbai Goa

Decided On : Jan-22-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Appeal No.1 of 2011

Appellant : Ranjana Pathak

Respondent : State, Through Public Prosecutor

Judgement :

The appeal is filed against judgment and order of Special Case No.26/2006 which was pending before the President, Children's Court for the State of Goa at Panaji. The appellant is convicted and sentenced for offences punishable under Section 323 and 342 of Indian Penal Code. She is also convicted and sentenced for offences punishable under Section 4(1), 5(1)(d) of Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'PITA'). The maximum sentence of imprisonment given to the appellant is 7 years under PITA. She is also directed to pay compensation of Rs.50,000/- to the victim girl under the provisions of PITA. Both the sides are heard.

2. In short, the facts leading to the institution of the appeal can be stated as follows:

The prosecutrix is a Bangladeshi national. At the relevant time, she was aged about 14 years. One Parveen alias Aarti hails from the village of prosecutrix from

Bangladesh. Jitendra alias Jitu is the husband of Aarti. Aarti, her brother and father used to visit the house of the parents of the prosecutrix. They were insisting the father of the prosecutrix to send his daughter to Dubai for work and they were representing that there was opportunity to make good income. Ultimately, the father of prosecutrix consented to send the prosecutrix to Dubai. He made the arrangement of money for preparation of records like passport, etc. and this amount was given by the father of prosecutrix to relatives of Aarti. In November, 2004, the aforesaid persons took prosecutrix from the custody of her father. They somehow crossed the border of Bangladesh and entered West Bengal, India without valid papers. From Hawra, the prosecutrix was taken to Mumbai by train. Jitu played major role in taking the prosecutrix across the border. After reaching India, Jitu gave instructions to prosecutrix and two other similar girls who were brought to India from Bangladesh, not to disclose their real name and address. He gave caution to them and said that in case of disclosure of real information it may not become possible to them to return to Bangladesh. They were given names of Hindus from India. When the prosecutrix reached to Mumbai, she noticed that Aarti had already reached Mumbai. Jitu and Aarti purchased clothes for these girls and they did some work on these girls like colouring their hair, bleaching their body, etc. The two other girls were sent to Bangalore and the prosecutrix was taken to the room of one Rekha from Mira road, Mumbai. The prosecutrix was kept there for few days and she was told that they were finding job for her. The prosecutrix is educated up to 8th standard and as it was new country for her, she could not make any guess about the intention of these persons.

3. After few days, Aarti sent prosecutrix to Ahmadabad, Gujarat with Rekha and Anju. Aarti was taken to the lodge of one Mukesh. There attempt was made to force the prosecutrix to allow one man to have sexual intercourse. The prosecutrix started crying and she refused for doing so. This man asked Mukesh to take the prosecutrix away and thus the first attempt of these persons failed. These persons gave severe beating to prosecutrix. Anju also took part in giving her beatings. They stopped supplying food to prosecutrix and they gave threats to starve her. They insisted that she should work as a prostitute for them. Aarti reached Ahmadabad in the meantime.

4. On the next day, the prosecutrix was again taken to the lodge of Mukesh. On this occasion, the prosecutrix was confined in a room with customer. This customer raped the prosecutrix and for doing so Aarti and Anju helped the customer. The prosecutrix had bleeding through her private part. The amount of Rs.50,000/- was taken from the customer by these persons and representation was made to the said man that prosecutrix was virgin. As the bleeding did not stop, the prosecutrix was taken to Mumbai and there some medical treatment was given to her. After recovery of prosecutrix from aforesaid injury, she was again taken to Ahmadabad. This time Anju took her to Ahmadabad. She was directly taken to the residential place of Ranjana (appellant). In the flat of Ranjana, Anju stayed with prosecutrix for few days. They obtained room on rent basis and Anju shifted there with prosecutrix. On one day prosecutrix used mobile handset of Anju when she was not there and contacted her uncle and she disclosed how she and her family was deceived. Anju realised that the prosecutrix had used her mobile hand set and she became angry with her.

5. On one day, Anju took prosecutrix to the flat of appellant where one male customer had already arrived. There Anju and accused tried to force the prosecutrix to sleep with the customer but prosecutrix refused. Accused and Anju assaulted prosecutrix on that night. Prosecutrix was refusing to work as a prostitute. On the next morning, the prosecutrix was again taken to the place of accused. The same customer was waiting there. On this occasion, the said customer used force and raped the prosecutrix. This customer gave Rs.4,000/- to Anju and accused and out of this amount accused took her share of Rs.1,000/-. On other occasion Anju forced prosecutrix to entertain another customer in the rented premisses and collected Rs.5,000/- from the said customer.

6. The prosecutrix was again taken to the house of the accused. On this occasion the expected customer did not turn up. After sometime college going boy came to the house of the accused. They were confined in one room. When the prosecutrix told that she was forced to work as prostitute, the boy did not abuse her. The accused however collected money from this boy.

7. On the following day of the last incident, Anju left Ahmadabad for Mumbai as she wanted to bring one more girl to Ahmadabad. While leaving, Anju gave instructions to the prosecutrix to work as per directions of Ranjana. The accused expected the prosecutrix to work there as a prostitute. On the following day, the prosecutrix attempted to contact parents from one STD booth and then son and daughter of accused gave severe beating to her. Accused also gave beating to her. Due to the beating, prosecutrix sustained bleeding injury to her mouth.

8. Anju then returned from Mumbai with one more girl. Anju took prosecutrix to Gandhigram, Gujarat, where one Manoj was running a brothel. At this place, Manoj forced prosecutrix to work as a prostitute. The prosecutrix requested the wife of Manoj to help her and when she told her that she was not willingly doing such work, the wife of Manoj helped her and she convinced Manoj not to use prosecutrix as a prostitute.

9. Manoj then sent prosecutrix to Mumbai. With the hope that Bappi will help her in returning to Bangladesh, the prosecutrix contacted him. But, Bappi contacted Anju. Prosecutrix then contacted Rekha. This was done prior to leaving for Mumbai from Gandhigram. In Mumbai Rekha collected prosecutrix from railway station and she took prosecutrix to one Prabha, a resident of Thane. Prabha promised to find a job for prosecutrix in Goa and she gave promise that she would see that prosecutrix earns at least Rs.30,000/- per month. As the prosecutrix wanted to return to Bangladesh, she went to Goa for making money. One more male person was there in the company of Prabha. The prosecutrix and two more girls were kept in one room situated on the backside of hotel by name 'Konkan'. After 2 to 3 days Prabha asked prosecutrix to go with customers and work as prostitute. When prosecutrix refused to do so, she was forcibly made to sit in a car where three male persons were sitting. These persons took her to a room and there, one of them raped her. They took prosecutrix to one hotel where these persons made inquiry of availability of room. The hotel manager refused to give room to these persons. There was some quarrel between hotel manager and these three persons. One of the persons did some mischievous act and was beaten by the persons from the hotel. Others ran away to escape but the prosecutrix and the third man were detained in the premises of the hotel where the incident took place.

The hotel Manager called police.

10. After arrival of police, the prosecutrix gave false information to them as per the instructions given to her by Jitu. Then she took police to Prabha where she was residing. After seeing police Prabha ran away. The prosecutrix was then kept in Apna Ghar. In this place one NGO collected information from prosecutrix and this information was supplied to police.

11. On the basis of information given by the prosecutrix, police traced most of the aforesaid persons, who were involved in the sex racket. These persons included the persons who had brought the prosecutrix from Bangladesh, who had forced her to work as prostitute at aforesaid places. Three separate charge sheets were filed by police as per the information supplied against different groups from different places. In the present case, charge was framed against the accused for aforesaid offences and also for offence punishable under Section 366 of the Indian Penal Code and Section 8 of Goa Children's Act. The three cases viz. special case no.23/5, 24/5 and 17/6 were tried simultaneously. Common evidence was recorded in all the three cases of most of the witnesses. In view of the nature of the offence and the evidence given by the prosecutrix, it can be said that the Court could have joined the charges. In the present case, the record of cross-examination of Medical Officer, who ascertained the age of the prosecutrix is not tagged but such cross-examination is available in other case. It appears that due to mistake, cross-examination is not attached in the present case. This Court has perused such evidence also.

12. In the Trial Court, the accused, appellant took the defence that the prosecutrix had stayed in her house as a guest for few days, but the accused denied that she had forced the prosecutrix to work as a prostitute. The Trial Court has believed the prosecutrix. The Trial Court has held that at the relevant time, the age of prosecutrix was less than 16 years. In view of the nature of the allegations made against the present accused, the defence taken by the present accused and the offences for which the conviction is given the discussion of that part of evidence which is as against the accused only is sufficient in this case.

13. The learned Counsel for the appellant argued the point of jurisdiction. She submitted that there is a probability that the prosecutrix has completed 18 years of age as the medical officer has given evidence that the age of prosecutrix was 16 (+) plus minus six months. She submitted that the possibility of the error is of two years. Under Section 30 of Goa Children's Act, 2003, Children's Court is created and the Children's Court gets jurisdiction only when the offence is committed against child as defined under this Act. Under this Act, a 'child' is a person who has not completed 18 years of age. Under the provisions of Section 4 and 5 of PITA, more severe punishment is provided when the victim is a child or minor. In view of these circumstances, this Court holds that the evidence in respect of the age of the prosecutrix needs to be considered first.

14. The recording of evidence of the prosecutrix was started on 9/07/2007 and on that day the prosecutrix gave her age as 16 years. The evidence of the prosecutrix and her father shows that the prosecutrix was taken out of the custody of her father in November, 2004. The evidence as a whole of a prosecutrix shows that within few months, less than 4 months of crossing of the border, she was taken to Ahmadabad two times and on the second occasion the offence was committed by the accused against her. On the second occasion, the prosecutrix had stayed in Ahmadabad for a period of about one month. Thus, as per the evidence of prosecutrix she had crossed the age of 14 years but she had not crossed the age of 15 years at the relevant time.

15. Mohamad N. Mollah/PW-4, the father of prosecutrix has given evidence in chief that the prosecutrix was very young and minor when Aarti alias Parveen took her from his custody by saying that she is taking her to Dubai. He has given specific date 29/11/2004 as the date of leaving Bangladesh. His evidence shows that the prosecutrix called him on two occasions, first within few days after leaving his house and then after few months. His evidence shows that when he last contacted the prosecutrix, the prosecutrix was in the custody of police. The record shows that in April, 2005 the prosecutrix was taken in custody in Goa by police. Thus, the incident in question took place within 4 to 5 months of leaving Bangladesh by prosecutrix.

16. The father of prosecutrix was put to extensive cross-examination. It is brought on the record that the elder daughter of PW-4 was studying in tenth standard in November, 2004. After this daughter, one son was born but the son died and after that the prosecutrix was born. The evidence shows that prosecutrix had appeared for examination of eighth standard. The evidence shows that prosecutrix had failed in the examination of fifth standard. His evidence shows that he has no knowledge about the age which is required to be completed for giving admission in school in Bangladesh. He tried to say that they send children to school when their children start walking and talking. During cross-examination, it is specifically stated by him that the prosecutrix was born in the year 1990. From this evidence it can be said that as per the versions of prosecutrix and her father, the age of the prosecutrix was between 14 and 15 years.

17. Dr. Andre Fernandes/PW-9 has given evidence that he examined the prosecutrix on 14/07/2005 to ascertain the age. His evidence shows that he examined the prosecutrix both clinically and radiologically. He has given evidence that on the basis of examination he came to the conclusion that on the date of examination, the age of the prosecutrix was 16 years, plus minus 6 months. This witness was also put to extensive cross-examination, but nothing could be brought on record to create doubt about the evidence. The report of the medical examination is at Exhibit 56 and the record prepared by him is at Exhibit 57. The crime was registered after many months after the examination of the prosecutrix. Hence, there was no reason to create false record. In view of aforesaid evidence, this Court holds that at the relevant time the age of the prosecutrix was less than 16 years.

18. The learned Public Prosecutor relied on the case reported as 2013 ALL MR (Cri.) 3929 in the case of Mahesh V/s. State of Maharashtra on the point of determination of the age. This Court has made some observations which are as under :

13. 'Age' as ingredient of both the aforesaid offences is required to be proved beyond reasonable doubt. This 'proved' under section-3 of Evidence Act need to be proved like any other fact in criminal case. Oral evidence as to the age may

always be available in such a case. Where a person gives evidence on oath, the Court is expected to start with presumption that he has spoken the truth. Only because in a case like present one, when there is oral evidence on age and it is given by the interested witnesses like mother or father, the Court is expected to look for corroboration. Corroboration need not be only of expert evidence. Corroboration may be of circumstances which may be different for each case. The opinion of doctor on clinical or radiological examination cannot be accepted straight way as a legal proof. The margin of error is of two years on either side even when the age is ascertained on the basis of radiological examination. [Reliance placed on AIR 1982 SUPREME COURT 1297 [Jaya Mala V/s. Home Secretary, Government of Jammu and Kashmir and Ors.]. It is only medical opinion and other evidence including oral evidence cannot be discarded only because the medical evidence is in conflict with the oral evidence. Further, the medical evidence cannot stand against entries made in birth register, which are properly authenticated. Entry made in birth register has presumptive value in view of section 17(2) of Birth and Death Registration Act, 1969 and this position of law needs to be kept in mind, when there is conflict between medical evidence and the other evidence.

19. In the present case, as there is corroboration of medical evidence to the oral evidence of prosecutrix and her father, this Court holds that prosecution has proved that the prosecutrix had not crossed 16 years of age.

20. The prosecutrix has given evidence against the appellant that she was taken to the house of appellant accused by one Anju, another women involved in the sex racket. Her evidence shows that she stayed in the house of accused with Anju for 5 to 6 days and then separate room was taken on rent basis by Anju and there Anju started leaving with prosecutrix. The prosecutrix has given evidence that in this room they stayed for about 20 to 25 days. Her evidence shows that on one day, Anju took her to the house of accused in the evening time and there Anju and appellant insisted that prosecutrix should entertain a male customer and allow him to have sexual intercourse with her. The prosecutrix has deposed that when she refused, Anju assaulted her. Prosecutrix has deposed that when she started crying, the male customer asked these two women to remove the prosecutrix out

of the room.

21. The prosecutrix has given evidence that on the next morning, Anju again took prosecutrix to the house of accused. She had deposed that customer of the previous day was already present in the house of the accused and on that day she was locked and confined in a room of the house of the accused. She has deposed that on this occasion, the said customer virtually raped her and force was used by him. She has deposed that, she saw that when the customer was leaving the house of the accused, the customer gave money to accused and Anju. In chief examination prosecutrix has deposed that Anju had disclosed to her that customer had given Rs.4,000/- and out of that amount of Rs.1,000/- was given to the accused by Anju, and the remaining amount was with Anju. In the cross-examination it is brought on record that amount of Rs.4,000/- was handed over by the customer to both the accused and Anju and accused had kept Rs.1,000/- for herself.

22. The prosecutrix has given evidence that on other occasion Anju had invited the customer to the rented room itself and there prosecutrix was compelled to work as a prostitute. On that occasion the money was taken by Anju.

23. The prosecutrix has given evidence that on one more occasion she was taken to the house of accused by Anju where customer was expected to come. She has deposed that expected customer did not turn up, but after sometime a college boy came there. She has deposed that when she disclosed that she was not willingly working as a prostitute, the boy did not abuse her and gave some money to her. She has deposed that from the boy money was collected by accused.

24. The prosecutrix has given evidence that on the following day of the aforesaid incident Anju left for Mumbai and while leaving for Mumbai Anju left prosecutrix in the custody of Ranjana. She has deposed that when she was sent outside to find customer with daughter of Ranjana, she tried to contact her parents by using STD booth. She has deposed that severe beating was given by the son and daughter of Ranjana to her when they came to know that she tried to contact her parents from STD booth. She has deposed that after learning about the incident Ranjana also gave her severe beating. She has deposed that in the house of Ranjana, she was

locked and confined. She has given evidence that Anju had given instructions to do the job as per the instructions given by Ranjana and Ranjana was asking the prosecutrix to work as a prostitute. The evidence of prosecutrix shows that she had seen one more sex worker in the house of Ranjana.

25. The aforesaid evidence remained un-shattered during extensive cross-examination of the prosecutrix. The cross-examination virtually runs into almost 30 pages. The fact that prosecutrix is from other country, she was hardly aged about 16 years and she was subjected to cross-examine on many days should be kept in mind while appreciating the evidence of the prosecutrix. However, nothing could be brought on record to create doubt about the version given by the Prosecutrix.

26. The learned Counsel for the appellant submitted that when the search of the house of the accused was taken, nothing incriminating was found and so the prosecutrix cannot be believed. This submission is not acceptable. There is a clear probability that after learning about the registration of the case everybody including the accused became alert and necessary steps were taken. After few months of taking the prosecutrix by police in the custody, the case was registered and one NGO was required to collect information from the prosecutrix. The evidence shows that it is the prosecutrix who supplied information against the accused to the police and it is prosecutrix who took police to the residential place of the accused. In any case, at the place of such business hardly such article is kept which can be called as incriminating in nature. There is evidence of one Venicia Cardozo/PW-5 and Police Officer/PW-6 to the effect that it is the prosecutrix who had taken the police to the place of residence of the accused. Most of the accused were traced on the basis of information given by the prosecutrix. In the Court, prosecutrix identified the accused.

27. When the accused has admitted in a statement given under Section-313 of the Criminal Procedure Code that prosecutrix had stayed in her house though as a guest for few days, it was necessary for the accused to give reasons and particulars of the same. The prosecutrix is a foreign national and she was not having valid papers for coming to India. The evidence on record shows that prior to those days the prosecutrix was not known to the accused. The woman who had

brought the prosecutrix to the residential place of accused was involved in the sex racket. This Court is deciding the appeal filed by the said accused-Anju today. Thus, the admission given by the accused that prosecutrix stayed in her house for few days gives corroboration to the version of the prosecutrix.

28. The evidence of father of prosecutrix shows that prosecutrix had contacted him on 3 to 4 occasions. He has deposed that prosecutrix had disclosed that she was compelled to work as a prosecutrix. This evidence also gives corroboration. In view of the age of the prosecutrix, which is proved by prosecution there was no question of considering the consent of the prosecutrix.

29. There is a medical evidence of two doctors to prove that sexual intercourse was taken with the prosecutrix. She was aged about less than 16 years at relevant time and at the time of medical examination and so the medical evidence gives corroboration to the version of prosecutrix.

30. Prosecutrix has given evidence that accused had given beating to her, accused had confined her at the residential place of the accused, accused had abused and given threats to prosecutrix to work as a prostitute and the accused had accepted money which was earned by supplying the prosecutrix as a prostitute to the customer. There is also the presumption under Section-4 of PITA against the appellant when there are circumstances like present one. It needs to be presumed that the accused was leaving on the earnings of the prostitution.

31. Reliance was placed by learned Public Prosecutor on some reported cases. In the case reported as 2009 ALL MR (Cri.) 1690 in the case of Shakila Gulam Rasul Mukhi V/s. State of Maharashtra, this Court in similar circumstances observed that the circumstance that nothing incriminating was found in the house of the accused during house search cannot create doubt about the version of the prosecutrix and the medical evidence if it gives support to the version of the prosecutrix and there is no reason to disbelieve the prosecutrix in such a case. In the case reported as 2010 ALL MR (Cri.) 1234 in the case of Smt. Narmada Govind Kamble V/s. State of Maharashtra, this Court has discussed the circumstance like giving of some false information including the false information of age by prosecutrix like she was major immediately after raid effected by police and held that it cannot come in the

way of prosecution and on that basis the subsequent version, the evidence given in the Court cannot be discarded. In the case reported as 2002 (5) SCC 745 in the case of State of Rajasthan V/s. Om Prakash, the Apex Court has laid down that the conviction can be based on sole testimony of the prosecutrix in sex offence case. The Apex Court has discussed the evidence of child witness and the manner of appreciation of child witness. In the present case, the age of the prosecutrix was certainly more than 14 years and she faced the test of cross-examination successfully. Those propositions cannot be disputed. In view of the facts and circumstances of this case, this Court holds that the prosecution has proved all the aforesaid offences for which there is conviction and sentence against the appellant.

32. One more point like point of local jurisdiction was argued by the learned Counsel for the appellant. Learned Public Prosecutor drew the attention of this Court to the provisions of Section 5(3) of PITA and Section 178(d) of Criminal Procedure Code. These provisions run as under:

5. Procuring, inducing or taking person for the sake of prostitution

(3) An offence under this section shall be triable,

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or

(b) in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

178. Place of inquiry or trial

(a) when it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas

33. The wording of these sections and the facts of the present case are sufficient to show that the Court from Goa where the prosecutrix was taken in custody, had the jurisdiction. Though there was no charge for offence for conspiracy, the evidence of prosecutrix shows that before trafficking her, there was a plan to use her as a prostitute. Such offence, sex racket involves many persons and the business is done by using modus operandi which is situated for such purpose. In such case, it is noticed that girls are shifted from place to place by the persons involved in the racket. At every place different persons run the brothel house and the girls are kept rotating from place to place. Thus, the persons involved in this business have links with each other though they are working at different, remote places of India. In view of the facts of the case, it needs to be presumed that the offence was a continuing one and provisions of Section 178(b to d) are applicable.

34. The Trial Court has given minimum penalty provided by the provisions of PITA in the case. This Court holds that on the point of sentence also there is no room for interfering. The Trial Court has rightly directed the appellant to give compensation to prosecutrix. Only to make money, the girls like the prosecutrix are exploited by the sex rackets and in such case the Courts are expected to ask the accused to pay compensation to the victim. Thus, there is no reason to interfere on the point of penalty also. In the result, the appeal stands dismissed. The bail bond stands cancelled. Conviction order to be issued against the appellant by the Trial Court for sending her to jail for serving the remaining sentence.

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