

State Vs. Gaya and ors.

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Court : Mumbai

Decided On : Jun-26-1959

Reported in : (1959)61BOMLR1509; 1960CriLJ893

Judge : Kotwal, J.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 3(1)

Appeal No. : Criminal Ref. No. 9 of 1959

Appellant : State

Respondent : Gaya and ors.

Advocate for Def. : D.L. Jayawant, Adv.

Advocate for Pet/Ap. : N.L. Abhyankar, Special Govt. Pleader

Judgement :

ORDER

(1) This is a reference by the Sessions Judge, West Berar Division, Akola, recommending that a charge under section 3 of the Suppression of Immoral Traffic in Women and Girls Act 1956 (No. 104 of 1956), framed against the four opponents Gaya, Saru, Subhadra and Bani by the Sub-Divisional Magistrate, Akola, in Criminal Case No. 82 of 1958 should be quashed. The prosecution case

was that on the outskirts of Akola town near the temple of Kala Maroti there is a house of prostitution being run by one Janabai, accused No. 1, who is the mistress of one Brahmanand. On 20-8-1958 the Sub-Divisional Police Officer, City Division, Akola, decided to send a customer into this house. He was Sheikh Kasam. He was given five currency notes of Re. 1/- each in the presence of panchas and ordered to go to the brothel and have sexual intercourse with one of the girls in that brothel on payment. It was the prosecution case that accordingly Sheikh Kasam went to the brothel, talked to Janabai, accused No. 1, and asked for girl or woman for sexual intercourse. Accused No. 1 showed him four girls, the opponents before this Court, and Sheikh Kasam selected the opponents before this Court, and Sheikh Kasam selected the opponent Saru wife of Vikram. He agreed to pay R. 3/- which accused No.1 accepted. She then allowed Sheikh Kasam to have sexual intercourse with Saru in one of the rooms in the brothel. The Sub-Divisional Officer and the panchas were hiding themselves in the darkness round about the brothel waiting for Sheikh Kasam to come out. It was the prosecution case that Sheikh Kasam, after having sexual intercourse, came out of the brothel and lighted a cigarette which was a prearranged signal that he had done his job. Thereupon the police officers and the panchas raided the brothel and the house of the first accused. Three currency notes of Re. 1/- each were seized from the possession of the first accused and they were attached under a seizure memo.

(2) It was upon these facts that the four opponents along with Janabai were put up for trial before the Sub-Divisional Magistrate who framed charges under Section 3 of the Act against all of them.

(3) I am not concerned here with sub-section (2) of Section 3 of the Act but only with sub-section (1) thereof which runs as follows:

'Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may

extend to two thousand rupees'. The sub-section penalises the keeper or manager or the person who acts or assists in the keeping or managing of a brothel. It is clear that it is intended to hit at persons who establish and maintain houses of prostitution or act or assist in keeping or managing them. There is absolutely nothing in the complaint so far as the four opponents are concerned, from which it can be held that they were either keeping or managing or acting or assisting in the 'keeping or management' of a brothel. On the other hand, it appears that these four girls were the unfortunate victims and were the persons who were being used by those who kept or managed the brothel or acted or assisted in keeping or managing it.

(4) The Act was passed in pursuance of the International Convention signed at New York for the suppression of immoral traffic in women and girls. It was never intended that the women or girls used for such traffic should be liable to punishment. In this case the accused Janabai was alleged to be keeping or managing the brothel and was therefore rightly charged; but I am unable to see what was the offence which the four opponents had committed. I accept the reference and quash the charge framed against the four opponents by the Sub-Divisional Magistrate on 5-11-1958. The Magistrate will decide for himself whether or not to take action in respect of these girls under any of the other provisions of the Act. as to that I express no opinion.

(5) I cannot part with this case without a word as to the nature of the investigation undertaken by the police and by an officer of the rank of Sub-Divisional Police Officer. The averments in the challan itself are that the police officer asked Sheikh Kasam to go into the brothel, ask for a girl on payment, make payment and have sexual intercourse with her. It is further admitted that under the very auspices of the police, this Sheikh Kasam did enter the brothel and have sexual intercourse with the youngest of the four girls, namely, Saru wife of Vikram. While all this was happening under the guise of lawful investigation the Sub-Division Police Officer and the panchas stood in the darkness roundabout the brothel and after some time Sheikh Kasam came out and announced by a pre-arranged signal that he had sexual intercourse with the girl.

(6) To my mind, nothing can be more reprehensible than the conduct of this investigation. Under the very auspices of the officers charged with the duty of suppressing immoral traffic in women and girls, Sk. Kasam had sexual intercourse with Sari. Rather than suppress such traffic, the investigation encouraged it. If investigations under this Act are to proceed in this manner, in conceivable cases it will be difficult to determine whether a person was committing an offence under the Act or carrying on an investigation. Such investigations also will not have any salubrious effect upon the public mind and will not achieve the object for which the Act was passed. I think it my duty to bring the facts of this case to the notice of the State Government for such action as they may choose to take in regard to investigations under the Act.

(7) Reference accepted.

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