

Emperor Vs. Shamsunderbai

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Court : Mumbai

Decided On : Jul-21-1920

Reported in : (1920)22BOMLR1234

Judge : Shah and ;Crump, JJ.

Appeal No. : Criminal Application for Revision No. 136 of 1920

Appellant : Emperor

Respondent : Shamsunderbai

Judgement :

Shah, J.

1. In this case, the accused was tried apparently in respect of a charge under Section 872, Indian Penal Code. But in the course of the trial the prosecution tried to prove that she was guilty under Section 373 of the Indian Penal Code. After the prosecution evidence was recorded the trial Magistrate considered the case with reference to Section 873, and discharged the accused. The present application has been made to this Court on behalf of the Government of Bombay for revising this order of discharge and for a further inquiry into this case. We have heard the arguments on both sides, and in view of the order which we propose to make, I do not desire to say anything as to the merits of the case.

2. It is necessary, however, to state the facts alleged on behalf of the Crown briefly in order to understand the point of law which has been argued and to appreciate the case for the Crown. The accused in this case, Shamsunderbai, is a brothel-keeper. A girl, Chandrabai, who used to stay with her husband, and who was about fifteen years old at the material time, was taken by two men to Shamsunderbai. At that time, the girl stayed with her for about three days. Chandrabai's husband and his relatives traced her at the house of the accused and at the time the girl was brought back to her husband's place. She stayed with her husband for about a week and again went back to the accused. On this second occasion, after a few days, it is said that, she commenced to lead the life of a prostitute under the protection and guidance of the accused. The case for the prosecution is that both when the girl was kept on the first occasion for about three days by the accused and on the second occasion when she was kept by the accused for about a month, the accused kept her with the intention of using her for the purpose of prostitution, and that the accused is guilty under Section 373, Indian Penal Code. The learned Magistrate has come to the conclusion that when the girl stayed with the accused on the first occasion the latter had no criminal intention, that when the girl went to the accused on the second occasion, she went to the accused of her own accord, that the accused did not obtain possession of the girl from a third person, and that, therefore, she committed no offence under Section 373, Indian Penal Code. The contention for the Crown before us is that the conduct of the girl should be taken as a whole in judging of the intention of the accused. It is urged that her stay with the accused on the first occasion when there was no act of prostitution committed by her and her going to the accused on the second occasion, when she did take to prostitution, should be taken together as showing that the accused obtained possession of the girl from the two persons and ultimately succeeded in carrying out her evil intention, which she entertained from the beginning. The learned Magistrate has dealt with the two occasions separately and it is urged for the Crown that in doing so the Magistrate has misappreciated the situation. As regards the stay of the girl on the second occasion, apart from her first visit to the accused, it is contended that it is not essential for the purpose of Section 373, Indian Penal Code that the possession of the minor should be obtained by the accused from a third person. It is quite

enough, it is urged, if in fact the accused obtains possession of the minor so as to have a sufficient control and power of disposal over her for the purpose of prostitution.

3. On the question of intention I do not desire to express any opinion beyond saying that a case for further inquiry is made out.

4. As regards the question of law upon which the Magistrate has come to a definite conclusion, I am of opinion that it is not requisite for the purpose of Section 373, Indian Penal Code, that the possession of the minor should be chained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for the purpose of prostitution. Dewan Bahadur Rao has relied upon *queen-empress v. Shaik Ali* (1870), 5 M.H.R. 473 particularly upon the judgment of Mr. Justice Holloway; but the view taken by the other two Judges in that case does not appear to me to support his contention. There are no words in the section as to the necessity of there being a third party, from whom possession of the minor is obtained. It is true that the words used indicate that there would ordinarily be a third party from whom the minor may be bought or hired, or her possession obtained by the person charged under Section 373, Indian Penal Code. But I do not see any sufficient reason to restrict the scope of the section by applying it only to those cases where there is a third party concerned, from whom the accused may be said to buy, hire or otherwise obtain possession of the minor. On this point, with respect, I prefer the view taken by Scotland C. J. in the said case. I agree that the possession should be such as would imply a sufficient control over the minor and not such temporary possession as was found in that case.

5. Therefore, apart from the connection between the two occasions on which the girl is said to have stayed with the accused, as regards her going to the accused on the second occasion, if the facts alleged are proved, I do not see any insuperable difficulty in the way of the prosecution on the interpretation of the section. On this ground also there is need for a further inquiry

6. I would, therefore, set aside the order of discharge and direct a further inquiry into the case, by the Chief Presidency Magistrate or by any Presidency Magistrate

other than Mr. Dastur, whom the Chief Presidency Magistrate may appoint.

Crump, J.

7. I concur.

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