

Shaik Ramjan Vs. State

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Court : Andhra Pradesh

Decided On : Dec-22-1998

Reported in : 1999(1)ALD740; 1999(1)ALD(Cri)606; 1999(1)ALT291; 1999CriLJ2161

Judge : Bilal Nazki, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 365, 366-A and 372; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 16 and 313

Appeal No. : Crl. A No. 1695 of 1997

Appellant : Shaik Ramjan

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mrs. N (P) Anjana Devi, Adv.

Judgement :

1. There were four accused in Crime No. 13 of 1993 registered under Section 366A and 372 IPC. Two accused, being A3 and A4 were absconding, the charge was split and A1 and A2 were tried after committal. They were tried by Assislant Sessions Judge, Eluru. A1 was convicted for the offence under Section 366A IPC and sentenced to rigorous imprisonment of ten years with fine of Rs.200/-, in

default of payment of fine she had to suffer further simple imprisonment for three months. She was also convicted for the offence under Section 372 IPC and sentenced to rigorous imprisonment of ten years with fine of Rs.200/- and in default of payment of fine she was sentenced to suffer simple imprisonment for three months. A2 was acquitted.

2. Heard the learned Counsel for the appellant as well as they learned Public Prosecutor and the record was examined.

3. The Prosecution levelled the following allegations against the accused:

The de facto complainant Afzalunnisa alias Puthli Begum is the mother of the victim Shaik Ashia, she is resident of Tangellamudi, Eluru town. A1 is also resident of the same area. A2 is resident of Nawahpet, Eluru and he is working as N.M.R. in Telephones Department of Eluru. A3 and A4 are residents of Bombay and are running a prostitution home at Bombay. The victim Ashia used to participate in dramas. Having come to know that Ashia was fond of acting in dramas, A1 and A2 planned to procure her and send her at Bombay to a brothel. In pursuance of their design A1 and A2 approached Ashia, promised her that she would be given a chance to work in dramas in Vijayawada city then took her to Bombay and sold her away to a brothel house run by A3 and A4 for an amount of Rs.8,000/- for the purpose of being used as a prostitute. Ashia was tortured there and was forced to take up the profession of prostitution and entertain customers sent by A3 and A4. The brothel house was run by A3 and A4 in 14th lane, Kamatipura, Bombay. During her stay at the brothel the said victim sought the help of a tea vendor by name Laxman Shinde who used to supply tea to the brothels in Kamatipura area. She also gave certain letters to him for being posted to her husband Rajasekhar who was resident of Tangellamudi, Eluru. When Rajasekhar received the letters he informed the matter to the defacto complainant who is mother of the victim. Thereafter, the defacto complainant gave a complaint to the Assistant Sub-Inspector of Police of Eluru II Town Police Station who registered a case in Crime No.13 of 1993 on 12th January, 1993. The Police party on the basis of the information in the letter, led by M.A. Shareef, Assistant Sub-Inspector of Police of Eluru II Town Police Station, proceeded to Bombay on 25th January, 1993. They

contacted Laxman Shinde who had written the letters to Rajasekhar, the husband of the victim, said Laxman Shinde gave some information to the police and the police party proceeded to the brothel house run by A3 and A4, the victim was spotted out and liberated from the house at 7.00 p.m. on 28th January, 1993. She was brought back to Eluru on 30th January, 1993. M.J.V. Bhaskar, Sub-Inspector of Police, Eluru II Town Police Station recorded the statement of the victim girl on 30th January, 1993 and on the basis of the statement of the girl the case was registered now in terms of Section 366A and 372 IPC and an altered FIR was issued. In the first instance on the complaint of the defacto complainant the FIR was registered as missing report. During the course of investigation A1 and A2 were arrested on 31st January, 1993. The victim was sent to the Government Hospital, Eluru for examination. She was also referred to the Professor, Forensic Medicine, Rangaraya Medical College, Kakinada for age determination who certified that the victim's age would be between 17 and 18 years on the date of examination by him. Accused 3 and 4 could not be arrested and the charge sheet was filed. Charges were drawn against Accused 1 and 2 under Section 366A and 372 IPC. Seven witnesses were examined by the prosecution. After the evidence was taken, statement of the accused under Section 313 Cr.PC was recorded who denied the allegations. No defence was led.

4. PW2 is the key witness who is the victim and who according to the prosecution was between age of 17 and 18 years on the date she was examined by the Doctor. She states in her statement that, she was married to one Rajasekhar of Eluru about one year prior to the date of offence. She further stated that she lived with her husband for 7 to 8 months, on one occasion, she states that, her husband beat her so she left him and went to her parents. She further stated that she was participating in dramas as an actress. She stated that she knew A1, but she did not know A2. She further stated that she had seen A2 for the first time in the Court. She further stated that, about three years back during the month of Ramjan at about 4.00 p.m. A1 came to her house and told her that a drama programme was being organised at Vijayawada and she could participate in the drama for one month. She promised a heavy remuneration, therefore she agreed for it. The next day, at about 6.00 a.m. A1 came to her house and took her to Railway Station, they boarded the train at 7.00 a.m. She was under the impression that she was

going to Vijayawada but when the train passed Vijayawada, she asked A1 why did not they get down, she was told that they will get down at the next station. At about sun setting time she again asked A1 as to where they were to get down from the train and she was told that they were going to Bombay and on the next date at about 12.00 noon they got down at Bombay Railway Station. A1 took her to a brothel house located in Kamatipura area in Bombay city. According to the witness she was left in the brothel and was told by A1 and she will return in few minutes after taking a bath, but A1 did not return. After she was left in the brothel, many women who were there, informed the witness that she had arrived in a brothel and now she had to act according to the directions of Bhimabai and Susheelabai, A4 and A3 respectively. On the same day, at about 4.00 p.m., she was told by those ladies that she had been purchased by A3 and A4 and that A1 would not return back. At 6.00 p.m. Bhimabai approached the witness and asked her to oblige by entertaining her customers through prostitution which the witness refused. Bhimabai thereon beat the witness and tortured her for two days. She further states that for ten days she was tortured and was made to sleep underneath a cot on bare floor. On the tenth day the ladies present in the brothel house told her that since she did not oblige A3 and A4 they were planning to sell her to some other brothel house. Those ladies advised the witness to start the prostitution or else she would have to suffer much more torture in another brothel house. She was also threatened that if she did not oblige it could even result in her killing. She stated that, after hearing those ladies and due to fear she obliged Accused 3 and 4 and started the prostitution. One person aged about 35 to 40 years by name Ramsing was supplying tea to the brothel house. He knew Telugu. She further submits that she led the life of prostitute for about one year till she was rescued by the Police. The other prostitutes in the home were terribly afraid of A3 and A4 and they were not allowed to write any letters. Therefore, the witness states that she requested Ramsing to write a letter to her husband's address at Eluru. Ramsing was residing outside the brothel house and was supplying tea in the mornings and evenings. He obliged the witness and wrote a letter to her mother at her husband's address at Eluru. A few day thereafter Ramsing told her that her mother had requested him to bring her to Eluru but the witness did not trust Ramsing with a fear that he may also sell her in some other brothel. Then she gave a photograph

of herself to Ramsing and asked him to write another letter with the photograph so that her husband and mother would believe Ramsing. Accordingly Ramsing wrote another letter alongwith photo to her mother on her husband's address. According to her, the letter was addressed to her husband's address because he was known in the locality and she believed that the letter would be delivered to him. Subsequently, she stated that, Assistant Sub-Inspector of Police and three constables and one lady constable came to the brothel of A3 and A4 and brought her to Eluru. After returning from Bombay she confirmed that her statements were recorded by the Police. As regards the statement of the witness with regard to A2 the witness was declared hostile. She was also cross examined by the Public Prosecutor. In her cross examination she stated that she was 19 years of age but she added that she did not know her exact age as she was an illiterate person. Her statement was recorded on 20th February, 1997. She stated that A1 was doing the business of selling the sarees in the street and in that way she became acquainted with A1. She denied the suggestion that she had gone to Bombay on her own accord and nobody compelled or cheated her. She also denied that A1 did not sold her to A3 and A4 at Bombay. She also denied that she is giving false evidence. She also denied the suggestion that she used to purchase sarees from A1 on credit basis and when A1 demanded the credit amount she foisted the case against her. She also stated that, in her child-hood she had studied for a few months in Urdu medium school and had never gone to Government school.

5. The mother of the victim Shaik Putni Begam who is PW1 stated that she knew A1. She also stated that A2 was not known to her. She stated that the victim PW2 was her eldest daughter. She further stated that, on the date of the incident her daughter was aged 17 or 18 years and by that day she was married to one Rajasekhar of Eluru. She further stated that before her daughter left the home she did not tell her anything. When she was missing she had started search for her and after two months of disappearance her son-in-law had received a letter in Hindi from Bombay, this letter had been got written by her daughter. She states that she got the letter read by somebody which was in Hindi and in that letter it was stated that her daughter had been subjected to torture and harassment and she had been detained in a brothel at Bombay. After receiving the letter she went to the Police Station and gave a complaint to the Police. She also identified the

complaint given by her. About 15 or 20 days thereafter, she states that, her daughter was brought back by the Police. Nothing much was said in the cross-examination.

6. PW3 Dr. K. Lakshmi who examined the petitioner stated that the victim had been subjected to intercourse number of times. Two scars were found on the person of PW2 which could have been caused during the struggle but could not give the age of the scars as they were old.

7. K. Rajasekhar, the husband of the victim is PW4. He stated that he neither knew A1 nor A2 but he identified the letters and accepted that they were received by him and were given to PW1.

8. PW5 is the Asst. Professor of Forensic Medicine in Rangaraya Medical College, Kakinada to whom the victim was referred for ascertaining the age of the victim. He stated that he examined the victim on 2nd February, 1993. On general examination he found the girl normal. On general physical and radiological examination he framed an opinion that the age of the victim was between 17 and 18 years. On dental examination he found 32 teeth in the mouth of PW2. The opinion was given by the Doctor vide his certificate which was exhibited as Ex.P6. This certificate was issued by him on 4-2-1993.

9. PW6 is one M.A. Shareef who was A.S.I at the relevant point of time. He had been A.S.I in Bluru II Town P.S. from 13-3-1992 to 31-1-1993. He stated that on 12-1-1993 PW1 came to the Police Station and gave Ex.P3 which was a complaint and it was registered as Crime No. 13 of 1993. In this, it had been complained that the girl i.e.. the victim was missing. Statement of PW1 who gave this complaint was recorded in the Police Station. He also proceeded to the house of PW1 and met Shaik Farid, father of the victim, the younger sister of the victim and some other persons. He examined all of them and recorded their statements under Section 16 Cr.P.C. On 25th January, 1993 he states that he went to Bombay, on instructions from his Officers, alongwith certain other Police Officials. He states that they reached Bombay on 28th January, 1993 and they met Lakshman Shinde on that day who took them to brothel house located in Kamatipura area, Bombay city. The brothel was being run by Accused Nos.3 and 4. The Lakshman Shinde

identified the victim girl Asia Begum. On being asked the victim stated that her name was Asia Begum and that she had been brought from Eluru by A1 and A2 on the promise that they would give her money for participation in dramas. She states that she was deceived, she believed them and accompanied them. PW6 then corroborated the story which the victim has narrated. In cross-examination he said that PW1 did not accompany them to Bombay. He also denied the suggestion that PW1 herself had taken the victim to Bombay and admitted her to brothel house. He also denied that PW1 was actually responsible for sending PW2 to Bombay. He further stated that he did not report to local Police at Bombay but he took PW2 along with him to Bombay Railway station. He however stated that he did not make any efforts to arrest A3 and A4. He denied that he had taken PW1 and A4 to the Police Station in Bombay and subsequently released A4 on some consideration.

10. PW7 is M.J.V. Bhaskar Rao who was the Sub-Inspector of Police at the relevant point of time. He stated that on 25th January, 1993 he took up the investigation in the case from PW6 and sent police party to Bombay headed by PW6. He stated that the case was registered by PW6 on complaint given by PW1. On 30th January, 1993 the police party brought PW2 from Bombay and produced her before him and he recorded the statement of PW2. He also stated that PW2 was sent to the Government Hospital, Eluru for examination and issuing certificate and he also stated that on 31st January, 1993 the victim was sent to the Professor, forensic Science Medicine, Rangaraya Medical College, Kakinada for determination of age. He stated that he arrested A1 and A2 on the same day. He also examined Dr. K. Lakshmi, PW3. He stated that Lakshmana Shinde was not examined as the summons could not be delivered to him.

11. In the light of the evidence the appellant states that the prosecution has not been able to prove the allegations levelled against her. It has also been stated at the Bar that the prosecution has failed to establish that the victim was below 18 years of age on the date of occurrence. The oral evidence shows that the age of the victim had not been recorded anywhere, however Radiologist was of the firm view that the victim had been between 17 and 18 years on the date she was examined by the Doctor. So, if she was between 17 and 18 years on the date

when she was examined that is many months after occurrence, it can safely be said that the victim had been below 18 years on the date of occurrence. It has been stated that, since the appellant was convicted on the basis of an opinion of the Doctor there was a chance of error and according to the expert's view like Modi an error of three years is possible.

12. There is ample evidence given by PW1, 2, 6 and 7 leaving no room for doubt that the victim was taken away under a deceit and then sold to a brothel house at Bombay. It is pointed out that PW2 had referred to one Remising who was asked by her to write letters to her mother but the Investigating Officer submitted that they had contacted one Laxman Shinde and this affects the whole prosecution story. Although there is some confusion about the names, but the despatch of letters and the receipt of letters has been established, even the letters have been proved during the prosecution. For these reasons, I am of the view that it is established that the victim was taken away after making her believe that she had to participate in a drama and then sold at Bombay to a brothel house where she was forced to take up prostitution.

13. Another serious objection taken by the appellant is with regard to the age of the victim. PW1 in her report to the Police stated the age of the victim as about 18 years. This complaint had been made about two months after the occurrence. Although PW2 admitted in her statement before the Court that she had gone to the school but stated that the school was not in existence now. The Prosecuting Officer did not state that any effort was made for getting the school record pertaining to the age of the victim. PW1 in her statement has also stated that the victim was married to one Rajasekhar when she was about 16 to 17 years. She also stated in her statement that she was 50 years and she gave birth to the victim when she was 20 years of age. If the age of the PW1 who is mother of the victim is taken as 50 years according to her statement, as she herself stated that she gave birth to the victim at the age of 20 years the victim's age comes to 30 years. The PW2 who is victim herself stated in her cross examination that her marriage was performed with her husband when she was aged about 19 years but she added that she does not know the exact age as she was an illiterate. She further stated that she lived with her husband for one year. Although there are certain

contradictions in the statements of PW1 and PW2 but one has to keep in mind that the victim was an illiterate person and her mother was also an illiterate person. The radiology examination was done by the Doctor only after three months of occurrence. His finding is that the victim had 32 teeth. In these circumstances one cannot safely conclude that the victim was minor on the date of occurrence. Therefore, the conviction has to be set aside for the offences under Section 366A and 372 IPC, because, before convicting a person under Sections 366A and 372 IPC it has to be conclusively proved that the victim was below 18 years of age on the date of occurrence. But, this is a strange case where it has been proved that the victim was abducted and then sold to a brothel house where she was used for the purpose of prostitution but the accused cannot be convicted under Section 366A or 372 IPC. There is no specific provision in IPC which makes kidnapping or abduction for the purpose of sale as a prostitute an offence if the subject is above 18 years of age. However, in my view the requirements of justice would be met if recourse is taken to Section 365.

Section 365 of IPC lays down:

'365. Kidnapping or abducting with intent secretly and wrongfully of confine person :-Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

14. Although the victim was kept in a brothel for the purpose of prostitution, since it cannot be safely said that the victim was a minor, the accused cannot be punished for the offence under Section 366A or 372 of IPC, but at the same time, one can safely say that the victim had been abducted and had been secretly and wrongfully confined. Therefore, the ingredients of Section 365 are satisfied.

15. For the reasons above, while setting aside the conviction and sentence under Section 366A and 372 IPC, I convict the appellant-accused for the offence under Section 365 IPC and sentence her to undergo five years rigorous imprisonment and to pay a fine of Rs.200/-, in default of payment of fine she shall undergo further imprisonment of six months. Lesser sentence than maximum prescribed is

given keeping in view that the accused is a lady and has two minor children.

16. Before departing with the case, I would like to observe that it is a novel situation that if a person above the age of 18 years is abducted and sold to a brothel house and used as a prostitute, there is no specific offence in the Indian Penal Code and one has to take recourse to Section 365 which in a way is a lesser offence and carries a lesser punishment than Section 366A and 372. It is for the competent Legislature to address itself to such a situation.

17. The Appeal is accordingly disposed of.

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