

In Re: Manicka Achari and anr.

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Court : Chennai

Decided On : Feb-11-1970

Reported in : AIR1970Mad491; 1970CriLJ1590; (1970)2MLJ380

Judge : K.N. Mudaliar, J.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 4(1) and 8

Appeal No. : Criminal Appeal No. 404 of 1968

Appellant : In Re: Manicka Achari and anr.

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : C.K. Venkatanarasimham, Adv. for ;B. Shanthakumar, Adv. and ;A.S. Natarajan, Adv.

Disposition : Appeal allowed

Judgement :

K.N. Mudaliar, J.

1. In this appeal accused 1 and 2 who are the appellants herein are at least entitled to the benefit of doubt on two grounds principally which will be set down by me presently. Briefly the facts are:

2. P.W. 1 employed as an Assistant Manager in Spens and Co., General Paters Road, was going along Buzullah Road, T. Nagar at about 5-40 p.m. He found accused 1 and 2 standing on the road in front of Thiru N. T. Rama Rao's bungalow. Accused 1 called him and pointing to accused 2 asked him if he liked her. Accused 2 was very attractively and glamorously dressed and made up. Accused 1 told P.W. 1 that if he paid him Rs. 25 he could have sexual intercourse with accused 2. P.W. 1 was taken aback, so he says. Accused 2 took his hand and spoke endearingly to him and asked him to pay her Rs. 25 and have sexual Intercourse with her. She also pointed out to a house nearby and told him that it was hers and pointed to the currency notes visible in his Terylene shirt pocket. He claims he was upset. He promised to come back in an hour and went away. According to his evidence, some passers by smiled. On his way, he saw a police van near the Vani mahal. P.W. 1 told P.W. 2 what had happened. P.W. 2 took Ex. P-I from him and then P.W. 1 took him to place. When accused 1 and 2 saw the police, they went inside. The police went in and accused 1 and 2 and P.W. 1 were taken to the police station.

3. P.W. 1 further says that the Assistant Commissioner P.W. 3 examined him at 6-30 p.m. He claims his office closed at 1-30 p.m. because of the Aruvatnimoovar festival. P.W. 1 makes it appear that this romantic adventure was result of his accidentally walking in the Bazululah Road on his return from Kodambakkam where he appears to have gone to see a friend. The entire incident occupied three minutes. P.W. 1 further says that there were two petty shops nearby. He also says that he had an idea of reporting to the police even before he saw the van. He saw the van in ten minutes of the incident. The van was in the petrol bunk near Vani Mahal. P.W. 1 wrote out Ex. P-I. The suggestion that P.W. 1 was perjuring himself for the reason that he wanted to avoid being brought to book by the inspector as a pimp was refuted by him. He admits that the inspector did not question the petty shop owners. Therefore no petty shop owner was examined.

4. P.W. 2 says that at about 5-55 p.m. P.W. 1 came to him and complained about his being solicited by accused 1 and 2. He corroborates the evidence of P.W. 1 in respect of Ex. P-I and also in regard to the apprehension of accused 1 and 2 who were brought to the Mambalam Police Station. He claims that he was on his

rounds under instructions from the Assistant Commissioner of Police (Vigilance) checking street solicitation. To him, it was suggested that P.W. 1 is a stock witness for the police or is a known pimp. He admits that he did not examine any nearby neighbours. He says that no one else complained about accused 1 and 2 before this incident.

5. P.W. 3 is the Assistant Commissioner, Vigilance. On 12-3-1968 he had authorised P.W. 2 to book cases under the Suppression of Immoral Traffic Act under Ex. P. 2. At about 7 p.m., he received Information that P.W. 2 had arrested accused 1 and 2 in T. Nagar. He says he proceeded to Mambalam Police Station, took up investigation and filed charge sheet against the accused after examining P.Ws. 1 and 2. In cross-examination P.W. 3 admits that he was in Mambalam Police Station from 5 p.m. In the light of this evidence, it is not possible to understand how P.W. 3 proceeded to Mambalam Police Station after receiving the information at 7 p.m. According to his own evidence, he was in Mambalam Police Station from 5 p.m. and when accused 1 and 2 and P.W. 1 were brought to the police station by P.W. 2, he ought to have known about their presence in the Mambalam Police Station probably even before 7 p.m. He admits he examined P.Ws. 1 and 2 and no one else. The investigation lasted till 10-30 p.m. on that date. It is suggested to P.W. 3 that he had accused 1 and 2 remanded for 15 days in order to harass them although his investigation was over by 10-30 p.m. on that date. At any rate, the material in cross-examination does not disclose what further investigation after 10-30 p.m. that night has revealed either in respect of the antecedents of the accused or their associates or their prior convictions etc.

6. P.W. 3 claims that he filed the charge-sheet against the accused. But, strangely, I find the Inspector of Police making the following endorsement on the charge-sheet in the following language wherein one reads the admission on the part of the accused that they have solicited the complainant on payment of hire charges of Rs. 25 for the night. This endorsement makes strange reading. The Inspector of Police ought to have known that after he recorded the complaint Ex. P-I, the so-called admission made to him is totally inadmissible in evidence. This betrays a certain amount of anxiety on the part of the Inspector of Police to fasten the so-called admission on the accused which is embodied as an endorsement in

continuation of Ex. P-I in the charge-sheet against accused 1 and 2.

7. The plea of the accused is a total denial. Accused 1 and 2 examined D.W. 1 for proving that the family, consisting of accused 1 and 2 and another son, make a total earning of Rs. 400 per mensem. D.W. 1 claims that he has been sending paddy and other articles besides. D.W. 1 filed in this court an affidavit swearing that accused Javanthi is living with him as his wife under his care and protection at No. 13 Ramalingam St., Coimbatore. There is another averment in the affidavit that D.W. 1 married the second accused on 13-9-1968 at Coimbatore. In order to test the averments in the affidavit filed by K. V. Kandaswami, D.W. 1, I summoned him and examined him before this court. He admits that he married the second accused on 13-9-1968 and that he and accused 2 are living as husband and wife.

8. The question that falls for determination is whether the prosecution has brought home the guilt against accused 1 for an offence under Section 4(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956. In this context, it is necessary to analyse Section 4(1) of the Act and also Section 2(e) and (f) and also Section 8 of the said Act. Section 8 starts with the heading 'seducing or soliciting for purposes of prostitution'. In Section 8(a) and (b) the significant words 'for the purpose of prostitution' would predicate the state of affairs, or a state of things anterior in point of time to the state of things embodied in Section 4. Section 2 reads as follows:

'Prostitute means female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind.'

Therefore the earnings of the prostitution are the resultant outcome of the state of things embodied in Section 8. Even accepting the entire prosecution evidence, the proof of the earnings of the prostitution of accused 2 is still lacking. There is the further ingredient which is not proved by the prosecution evidence, namely, that accused 1 knowingly lives wholly or in part on the earnings of the prostitution. The only evidence that emerges from the entire record is that D.W. 1 speaks to the fact all the three including accused's son are together earning Rs. 400. D.W. 1 further claims that he is sending Rs. 200 every month besides paddy and other articles. Excepting this tiny particle of evidence, the prosecution has not chosen to adduce

any evidence for the purpose of proof of accused 1 living wholly or in part on the earnings of the prostitution.

9. There is also another grave defect In the charge framed by the learned III Presidency Magistrate. The charge against accused 1 reads as follows--

'That you accused 1 on 12-3-1968 at about 5-40 p. m. at Bazullah Road, Thyagarayanagar. Madras, acted as pimp for Jayanthi (accused 2) by soliciting one Subramaniam for the purpose of having sexual intercourse with the said Jayanthi and that you were living either in whole or in part on the earning of such prostitution and that you thereby committed an offence punishable under Section 4(1) of the Suppression of Immoral Traffic in Women and Girls Act, and within my cognisance'.

Immediately It becomes clear that the above mentioned charge does not mention the significant Ingredient 'for hire' and the latter part of the charge mentions the earnings of such prostitution. In the absence of the words 'for hire' the charge is vitiated by a grave defect which goes to the very root of the matter for the essence of the offence is offering the body of accused 2 for promiscuous sexual intercourse for hire.

10. The learned Public Prosecutor has argued before me that in the light of the unsatisfactory evidence which fails to prove the other ingredients in Section 4(1) of the Act, it is unnecessary for me to go into the question whether this grave defect in the charge against accused 1 is an illegality or an irregularity and whether it is curable or whether it occasions failure of justice. I leave this at that

11. I hold that the offence under Section 4(1) of the said Act against accused 1 is not proved and accused 1 is acquitted.

12. So far as the case of accused 2 is concerned, the question which I have got to determine is whether it is safe to act on the testimony of P. W. 1 in the absence of some corroboration in regard to the solicitation made by accused 2 for the purpose of prostitution.

13. The prosecution claims that P. W. 1 meeting with this adventure in Bazlullah Road is rather fortuitous and that his meeting the van at Vani Mahal is another piece of accident. The date of authorisation. Ex. P.2, is 12-3-1968 and even the admission of P. W. 3 that he was in Mambalam police station till 5 p. m. is another coincidence and P. W. 3 continuing to remain at the Mambalam police station from 5 p. m. is another link in the chain of coincidences. I hesitate to find that these series of events would be the result of a combination or of fortuitous circumstance. I am left with an impression that the entire thing is the result of a prearranged plan. At any rate, the evidence does not necessarily negative the possible theory of a pre-planned deliberation on the part of P. Ws. 1. 2 and 3. Therefore, I am still left with the question whether I should act on the testimony of P. W. 1 in regard to the charge against accused 2. It was certainly open to the prosecution to have examined the petty shop owners in support of the testimony of P. W. 1 for the alleged incident is stated to have taken place even before the sun had set. Even P. W. 2 states that he did not examine any nearby neighbours. He does not give any convincing reasons why he did not choose to examine them. Even the investigation of P. W. 3 does not disclose the examination either of the shop owners or any nearby owners. In the absence of some other testimony lending assurance to the testimony of P. W. 1. I feel hesitant to act on the testimony of P. W. 1 alone.

14. I give the benefit of doubt to accused 2 and acquit her. The Criminal appeal is thus allowed.