

In Re: Ratnamala and anr.

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Court : Chennai

Decided On : Jan-11-1961

Reported in : AIR1962Mad31

Judge : Anantanarayanan, J.

Acts : Women and Girls Act, 1956 - Sections 2, 3, 3(1), 7, 8, 15(1) and 15(6)

Appeal No. : Criminal App. Nos. 207 and 322 of 1960

Appellant : In Re: Ratnamala and anr.

Advocate for Pet/Ap. : C.K. Venkatanarasimhan, Adv. for ;K. Ayyappan, Adv. ;and Public Prosecutor

Judgement :

(1) These are related appeals from the judgment of the learned Illrd Presidency Magistrate, Madras in C. C. No. 6640 of 1959 on his file. The learned magistrate convicted one B. S. Babu (accused 1) and his sister Ratnamala (accused 3) under S. 3 (1) of the Suppression of Immoral Traffic in Women and Girls Act (Central Act 104 of 1956), and sentenced each to suffer rigorous imprisonment for one year and also to pay a fine of Rs. 10, in default to suffer rigorous imprisonment for one week.

(2) Certain questions of considerable importance, both with regard to the implementation of certain provisions of this Act, and with regard to the entire technique adopted by the authorities in enforcing this piece of legislation, have

arisen in these appeals. I propose to deal with them at some length, for they are certainly questions of importance to the citizen as well as the State. But, before doing so, I shall briefly set out the facts which the prosecution has claimed to have established by the evidence. I shall later advert to certain aspects of the testimony in greater detail, but a broad outline of the facts will be essential as an introduction to the questions actually argued before me.

(3) The Assistant Commissioner of Police Vigilance (P. W. 4) had information from an undisclosed source that the two appellants and their mother were keeping and maintaining a brothel in the upstairs portion of No. 22 Poes Road, Teynampet. The landlady Gowri Ammal (P. W. 3) has been examined in the case, and she states that she lives in the ground floor with her family, and that the upstairs portion has been divided into three tenements, one of which was occupied by the appellants. It is of some significance in this case that the daughter of P. W. 3 is a foster-child that she had another foster-child who was sent by the authorities to the Seva Sadan, Madras, and that P. W. 3 herself was fined Rs. 50 in a proceeding under the Suppression of Immoral Traffic Act. Having received this information P. W. 4 made certain enquiries and verified its truth. Later, on the evening of 9-10-1959, he arranged for a trap with one G. Radhakrishnan (P. W. 1) as a decoy, and it is here sufficient to state that P. W. 1 is a Nursing Orderly in the Indian Medical Hospital, who probably had prior contacts with the police. P. W. 4 also arranged with one Mani (P. W. 2) and a lady to accompany him as Mahazar, witnesses. In the presence of these witnesses, P. W. 4 entrusted four currency notes of Rs. 10 denomination each to P. W. 1, after noting the numbers.

In pursuance of the plan P. W. 1 went with an informant to the upstairs portion of the house where the brothel was being carried on. Here they met B. S. Babu (accused 1) and the mother, acquitted in the case. The informant talked with both those persons, and it was arranged that P. W. 1 should pay Rs. 40, and have sexual intercourse with Ratnamala (accused 3) P. W. 1. Actually paid Rs. 40 to the mother (second accused in the case) and she gave it to accused 1, who put it in a trunk. There was a bed room behind a thatti partition, and this was arranged for the purpose of prostitution. The informant took P. W. 1 to this portion, and left him there.

(4) Ratnamala (accused 3) was in the bed room and P. W. 1 states that himself and accused 3 then had sexual intercourse. Within a quarter hour or 20 minutes, P. W. 4 (the Assistant Commissioner) came there along with Mani (P. W. 2) and the lady witness. P. W. 4 opened the thatti door, and saw P. W. 1 and Ratnamala (accused 3) lying together in a state of almost total undress. Seeing the police party, the two got up and began arranging their clothes. Upon the demand of P. W. 4, the currency notes were taken out of the trunk by Babu (accused 1) and handed over. The numbers of these notes were verified with the numbers previously noted in a mahazar (Ex. P. 1) and found to tally. The seizure list (Ex. P. 2) was prepared. The actual notes were marked during the trial as M. W. 1 to 4. It is on the broad basis of these facts that both the present appellants have been convicted.

(5) The Suppression of Immoral Traffic in Women and Girls Act (Central Act 104 of 1956) supersedes, as far as this State is concerned, the Madras Suppression of Immoral Traffic Act, V of 1930, the text of which differs from the Central Act in certain respects. The Central Act states in its preamble that it was enacted to provide for the suppression of immoral traffic in women and girls

"in pursuance of the International Convention signed at New York on the 9th of May 1950."

This feature was also noted and commented upon by a single Judge of the Bombay High Court (at Nagpur) in *State v. Gaya*, AIR 1960 Bom 289 to which decision I shall have occasion to refer later. For our present purpose, it is sufficient to note that, though the text of the convention is unfortunately not available, it is clear enough that the purpose of the enactment was to inhibit or abolish commercialised vice, namely, the traffic in women and girls, for purposes of prostitution, as an organised means of living. The idea was not to render prostitution per se a criminal offence or to punish a woman merely because she prostitutes herself. In C. A. No. 536 of 1959, *K. E. Adam v. State*, Ramaswami, J., has reviewed the available literature upon this subject, in an extensive manner. After making a historical survey, the learned Judge proceeded to observe that legislation, by itself, was almost powerless to eradicate this evil, and added.

"nor have all the social and administrative resources of modern civilisation availed to exercise an effective control."

I desire to emphasise that a careful scrutiny of the Central Act 104 of 1956 clearly reveals that the Act was aimed at the suppression of commercialised vice, and not at the penalisation of the individual prostitute, or of prostitution in itself. This is of some importance in considering the case against the appellant Ratnamala (accused 3).

(6) Section 3 (1) of Central Act 104 of 1956 runs as follows :-

"Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable....."

The learned Public Prosecutor has rightly emphasised that this wording is different from the text of the corresponding S. 5 (1) in Madras Act V of 1930, which was to the effect that

"Any person who keeps or manages or acts or assists in the management of a brothel shall be punished....."

The Central Act deliberately includes the words

"or acts or assists in the keeping or management of"

thus implying at least a faint shade of distinction between 'keeping' and 'management'. "Brothel" is defined under S. 2 (a) as including

"any house, room or place or any portion of any house, room or place which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes."

The last part of the definition is certainly significant. It implies for her own livelihood, without another prostitute, or some other person being involved in the maintenance of such premises, her residence will not amount to a "brothel".

There cannot be any clearer indication of the purpose of the Act, which is to strike down commercialised vice, not to make the unfortunate prostitute, herself often a victim of economic pressures and social maladjustment, a criminal under the law. "Prostitute" is defined under S. 2 (e) as

"a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind."

The word "promiscuous" in this context clearly implies "indiscriminate" as the learned magistrate has pointed out, following the unreported decisions of Somasundaram, J., in Crl. R. C. No. 231 of 1959 and C. A. No. 424 of 1959. Ramaswami, J., in C. A. No. 536 of 1959, earlier referred to, as cited with approval an observation by Beaumont C. J., in an unreported case, to the effect that

"prostitution involves a more or less indiscriminate employment of the woman's body for hire I do not say that it is a universal definition, and I do not suggest that a prostitute is bound to be entirely indiscriminate and to accept the first customer who offers her price like cabman on the rank. But I certainly think that prostitution involves more than intercourse with the man."

The point here is that, as the definition is framed, this plural and indiscriminate sexuality will be a matter of inference from the facts; it is certainly not necessary that the evidence of more than one customer of the prostitute should be adduced.

We may now pass on to other section of the Act, which reinforce the view that it is the suppression of commercialised vice which is aimed at, not the abolition of prostitutes and prostitution. For instance, S. 4 lays down the punishment for persons living on the earnings of prostitution, other than the prostitute herself, and S. 4 (2) raises certain presumptions, which are expressly made inapplicable to the case of a son or a daughter of a prostitute below the age of 18 years. Sec. 5 deals with the procuring or inducement, or the taking of women or girls for prostitution, and S. 6 similarly deals with the detention of a woman or girl in the brothel. Ss. 7 and 8 are of particular significance. Sec. 7 makes punishable the practice of prostitution in or in the vicinity of certain public places, such as places of public religious worship, educational institutions, hospitals and nursing homes etc. This

is an illuminating provision, throwing light upon the intentions of the legislature. This provision, undoubtedly, inhibits the woman herself from the practice of her profession in contravention of its terms, and, so that extent, renders prostitution a penal offence. Similarly, Sec. 8 deals with seduction or solicitation for prostitution by words, gestures of wilful exposure of person in a public place. Again the intention is clear that it is the practice of prostitution in a particular manner, which offends social decencies, which is sought to be penalised. Sec. 14 renders offences under the Act cognizable, and S. 15, which is particularly important in the present case, deals with the powers of the Special Police Officer to enter certain premises and make a search police officer must record his reasons for such urgent search, and under S. 15 (2) of the Act, he must be accompanied by two respectable inhabitants of the locality, one of whom at least must be a woman. The observations of Ramaswami, J., in C. A.536 of 1959 already referred to, are here highly sufficient, though they do not refer to these provisions of the Central Act. The learned Judge said :

"A search warrant shall be applied for. It is quite true that, in abnormal circumstances, in anticipation, a search may be made. But normally such a contingency would not arise because running a brothel, as just mentioned before, postulates a certain continuity.....The failure to take out search warrants would be viewed with a certain amount of care by the magistrates, and the magistrates must always find out and record in detail why such warrants were not obtained."

Before proceeding to the actual arguments addressed before me, I also desire to refer to AIR 1960 Bom 289, previously cited. This was a trap case, with the present prostitution, if not almost identical. The conviction was under S. 3 (1) of the Central Act 104 of 1956, and the learned Judge made the following observations, which are highly pertinent :

"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.....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. Kasom had sexual intercourse with Saru. Rather than suppress than 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."

(7) Learned counsel for the appellants (Sri C. K. Venkatanarasimham) advanced the following contentions. Firstly, he claims that, taking the facts as established, the conviction of Ratnamala, accused 3, the young girl who prostituted herself on the occasion in question, is quite illegal and opposed to the entire scheme of the Act. Secondly, he contends that upon the established facts, it could not even be argued that the brother, accused 1, could be presumed to have assisted in the "keeping" or "management" of the brothel. It is strenuously contended that the few facts elicited in the examination of the witnesses are quite insufficient to warrant any such inference. The definition of "brothel" certainly implies some continuity of maintenance of the premises as Ramaswami J., emphasised; even if the word "habitually", which occurs in S. 4 (a) of Madras Act V of 1930, is not to be found in S. 2 (a) of the Central Act, it is clear enough that the word "used" implies some continuity of maintenance, and not merely that the premises in question formed a setting for an individual or isolated act of prostitution. It is contended that, instead of adducing evidence of that kind, the prosecution in the present case has again adopted the technique, so frequently deprecated by courts, of using a trap and a decoy like P. W. 1. Finally, the manner in which the raid was carried out has been the subject of adverse comment, as infringing the liberties of the individual, it is contended that even a prostitute has certain rights, and that the powers under S. 15 (1) of the Act should not be utilised in such a manner as to involve a flagrant violation of those rights.

(8) These arguments appear to me to be very important, and to merit careful consideration. I have considered them carefully, and I shall now proceed to state my conclusions, together with the grounds therefor.

(9) I have no doubt that Ratnamala, accused 3, was wrongly convicted in this case, taking the facts as established. I think it is indisputable that the entire scheme of the Act is not such as to render the prostitute herself criminally liable, for the mere act of prostitution. It is noteworthy that the only exception are Secs. 7 and 8 already referred to, and neither section has been invoked with regard to the present facts. The learned Public Prosecutor concedes this, but points out that the word "keeping" occurring in S. 3 (1) of the Central Act, implies that even the prostitute, by her prostitution, may be assisting in the "keeping" of the brothel., if not in its management or maintenance. But I have no doubt that this was not the intention of the legislature. Had that been so, nothing would have been easier than to make the prostitute strictly liable for any act of prostitution, carried on in premises which could be inferred to be a brothel. On the contrary, it is significant that "keeping" though distinct from "management" has to be construed ejusdem generis with that latter word, and, in the "Law Lexicon" (Ramanatha Iyer 1940) the very "to keep" is said to include the sense of "to conduct or manage, to have the control and management of". There is absolutely nothing in the evidence which would justify the inference that accused 3, Ratnamala, was liable for this offence. The entire record merely establishes that she, a young girl of about 19, was either the victim of circumstances, or of her own predispositions, to the extent of wilfully prostituting herself upon the occasion for hire, with the decoy witness, P. W. 1. There is absolutely nothing else against her. In my view, she is clearly entitled to acquittal, and her appeal must therefore be allowed. She is acquitted accordingly and will be released forthwith. Her fine, if paid, will be refunded.

(10) I now come to the case of the brother, accused 1. Here, upon a careful scrutiny of the evidence. I am convinced that, through the facts relate to this particular incident, in the main, they are such as to warrant the inference that this adult brother was rightly held to be liable under S. 3 (1). Learned counsel, Sri C. K. Venkatanarasimham, points out that, the informant has not been examined. It may be that, for several reasons, the prosecution deemed it inexpedient to do so, and likely to have untoward consequences upon the further implementation of the provisions of the Act. But Radhakrishnan, P. W. 1, the decoy witness is very clear that the informant talked with both the appellant and the mother, accused 2, and arranged with them that P. W. 1 should have intercourse with Ratnamala for hire of

Rs. 40. In cross examination P. W. 1 admitted that he himself did not talk with this appellant, accused 1, but he was present when the contract was fixed up, as between the informer on the one hand and accused 1 and the mother on the other. Again, when P. W. 1 paid the marked notes (Rs. 40) to accused 2, she handed over the notes to accused 1, who put the money in the trunk. Further, it is very clear from the evidence of Gowrammal, P. W. 3 that she herself was fined in a case under the Suppression of Immoral Traffic Act, and that one of her so-called foster children had been taken away to Seva Sadan by the authorities. Admittedly, the mother, accused 2, had returned from Bangalore only five or six days earlier, and this appellant, accused 1, P. W. 4 states that accused 1 opened the trunk, and produced M. O. 1 to 4 from between two books in the trunk or box. The circumstances are such as to justify the inference (1) that the place was being used as a brothel, though the prosecution evidence is restricted to one incident of prostitution and (2) that accused 1 was assisting in the conduct of the brothel.

(11) The appeal of this accused must therefore be dismissed. And his conviction and sentence, which is the minimum period of imprisonment for one year that could be imposed under the law, and a small fine, are confirmed.

(12) I cannot part with this appeal without making certain observations upon another grave aspect, namely, the manner in which the entire raid was carried out by the special police officer, and in general terms, the technique that seems to be employed in these cases. So long as the civic consciousness of citizens is so far low that the evidence of private persons, who have visited such premises is not forthcoming, the use of a trap and of a decoy witness, however, repeatedly deprecated by courts may be an inevitable evil. Nevertheless, it is vital to realise that the entire scheme behind the Act is not the proof of a single incident of prostitution, or of the activities of a prostitute. The Act closely follows the English laws upon the subject, and it is noteworthy that in Archbold's Criminal Pleading and Practice 1954 Edn, the form of indictment for keeping a bawdy-house under the Common law (Ch 18 page 1406) runs :

"and on other dates between that date and the date of"

emphasising the continuity of maintenance of a house of ill-fame as the essential ingredient. It is unfortunate that certain constructive suggestions advanced by Ramaswami, J in C. A. No. 536 of 1959 appear to have been ignored. The learned Judge was aware that traps may be unavoidable, but he pointed out, after citing the observations of Lord Goddard in *Brannan v. Peek*, 1948-1 K. B. 68, depreciating the resort to traps on the part of authorities, that evidence of a different character altogether could also be made available in such cases. Arrangements could be made for maintaining direct observations on the premises, and evidence of such observations could be offered. The history of the tenancy, the particulars of the individual letters, the numbers of men visiting the premises, the hours of visits and the length of stay, could all be made relevant in a case of this character. I must further observe that, so long as the trap is mainly relied upon, it is open to the criticism that the authorities are thereby abetting the very evil, the discontinuance of which is the policy behind the Act.

(13) I hope that, in future at least, even if traps are resorted to this evidence may form but a part of segment of the evidence offered for prosecution; other evidence of visits by different persons on different dates, and similar suspicious circumstances should also be adduced, to strengthen the impression or inference of the continuous use of the place as a brothel; and that, finally, the powers of officers acting under S. 15 (1) will be exercised with great care and caution. As observed by the Supreme Court in *State of Rajasthan v. Rahman*, , where the law requires that reasons should be recorded in writing, a search made without such record is illegal. Again, the prosecution must always adduce the evidence of such record during the trial, and not merely leave it to the officer to state that the reasons were recorded.

(14) In the present case, the record shows a further consideration of interest and significance., as it affects the rights of the individual. The learned Public Prosecutor does not dispute that even a prostitute is entitled to the protection of her person; certainly, she is as much entitled to protection as the most respectable women, for instance, with regard to such offences as indecent assault or rape. Under S. 509 I. P. C., the intrusion upon the privacy of a woman with an intention to insult her modesty, is an offence. No doubt, as the learned Public Prosecutor

argues, in S. 15 (6) of the Central Act 104 of 1956, the special police officer is exempted from liability in any civil or criminal proceeding, in respect of anything lawfully done for the purpose of the search. But I am quite unable to agree that this exemption could be utilised to conduct a search, in disregard of elementary decencies, even if they be decencies relating to a prostitute, in the manner disclosed, and most unfortunately disclosed by the record in this case. Here, we have an instance of the officer, accompanied by witnesses, proceeding into the bedroom of a young girl and pushing open a closed door without even the civility of a knock or the warning to her to prepare for the intrusion. Such conduct would be quite inexcusable, unless the officer thereby hopes to gather the evidence which is essential for proof of any charge. But, since prostitution is not an offence, I am really quite unable to see how the officer and party were justified in thus bursting into the bedroom of a girl and surprising P. W. 1 and the third accused together in a state of undress.

There can be no doubt that such conduct implies an outrage on the modesty of the girl; and I must reiterate that the modesty of a prostitute is entitled to equal protection, with that of any other woman. The technique of such raids must be totally altered; otherwise, grave abuses of the law might enter into the very attempt to enforce the law. I put it to the learned Public Prosecutor whether the officer would similarly think himself justified, in proceeding into a bathroom, where a young girl suspected to be a prostitute was having a bath, in the hope of finding incriminating evidence; the learned Public Prosecutor was compelled to concede that, as raids were conducted at present, such an incident could conceivably occur. The implementation of this Act will hence become an evil, unless it is not merely accompanied by tact and delicacy, but regard is also paid to the true spirit of the legislation, and the technique of implementation is revolutionised, giving a very subordinate part, if part need be given to it at all, to the unfortunate practice of designing traps and using decoy witnesses. I further direct that a copy of this judgment be forwarded to the authorities of the State Government for such action as they might deem fit to take in this matter.