

In Re: John and ors.

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Court : Chennai

Decided On : Apr-19-1965

Reported in : 1966CriLJ551

Judge : Ramakrishnan, J.

Appellant : In Re: John and ors.

Judgement :

Ramakrishnan, J.

1. The learned Second Presidency Magistrate, G. T. Madras convicted and sentenced three persons as follows:

2. Accused 1 to 3 were convicted under Section 3(1) of the Suppression of Immoral Traffic in Women and Girls Act 1956 for the offence of keeping a brothel at a premises in C. p. Ram swami Iyer Road, Millipore, Madras. Each of them was sentenced to R. I. for one year. Accused 3 was further charged under Section 3(2) (a) of the Act, for having allowed accused 1 and 2 to use the upstairs portion of the said premises as a brothel, convicted and sentenced to R. I. for one year, to run concurrently with the sentence on the first charge. They have appealed against the convictions and sentences.

3. The facts of the prosecution case are briefly the following. Accused 2, Sayeeda, is the wife of accused 3. Accused 1 is their servant. P. W. 1 who is a broker in the

sale and purchase of sheep and goats, was stopped near the Wellington Talkies at about 9-30 a.m. on the day of occurrence (14-7-1963) by a stranger who apparently acted as a pimp. After persuading P. W. 1 that he could have sexual intercourse with an attractive girl, the aforesaid stranger took P. W. 1 in a taxi to the premises in C. P. Ram swami Iyer Road, where accused 2 and 3 were living at that time. Accused 3 was absent. P. W. 1 met at the foot of the staircase of the house, the servant, accused 1, who was informed by the pimp about the purpose for which P. W. 1 had arrived there. Accused 1 demanded Rs. 150 but P. W. 1 was prepared to offer only Rs. 100, While some bargaining was going on in this manner accused 2 appeared and said that it would suffice if Rs. 100 was given as offered by P. W. 1. Then accused 1 received Rs. 100 from P. W. 1 and handed it over to accused 2 who paid Rs. 20 to the pimp for his trouble and then she and P. W. 1 climbed the staircase and had intercourse on a verandah in the up stair room. Accused 2 kept the sum of Rs. 80 given by P. W. 1 folded under her pillow at that time. Just at this juncture P. W. 5 the Assistant Commissioner of Police, Vigilance, along with other Policemen and P. W. 2 arrived at the scene and surprised the couple while they were arranging their dresses. On the arrival of the police, accused 1 the servant called out accused 2 from downstairs by her name. On the demand of P. W. 5, accused 2 produced Rs. 80 given by P. W. 1.

4. How the police arrived at the scene is explained by P. W. 2 and P. W. 5. P. W. 5 stated that at about 10-30 a.m. on 14-7-1963 when he was near Eldams Road, with a party of policemen he got information about the visit of a stranger to the premises in question in C. P. Ram swami Iyer Road, half an hour previously for the purpose of sexual intercourse with a girl there and on this information he proceeded to make a raid and secured the help of P. W. 2 who was going in that locality at that time. P. W. 2 is an employee of Messrs. Indian Oxygen Ltd. Tondiarpet. P. W. 5 made a record of his information in Ex, P. 3 before making a search of the premises. He also stated that he approached a lady in the neighborhood to assist him in the search and she declined. This reference to a lady for assisting at the search is made apparently in view of Section 15 of the Act, which enjoins the necessity of a woman witness in cases, where the police have to search a premises without a warrant on suspicion that an offence under the Act had been committed therein with reference to a woman or girl. There was also the

evidence given by P. W. 4 who claims to be the brother of accused 2 that accused 2 was married to accused 3 sometime previously and that the couple had moved from place to place. Accused 2 had complained to P. W. 4, that accused 3 was compelling her to sell her body for promiscuous intercourse and he was making a living in that way. P. W. 4 had also deposed that he and his other relation had actually been in the premises where accused 2 and 3 were living and had seen this unauthorized activity going on. A suggestion was made in the cross-examination of P. W. 4 that he had asked accused 2 for some money previously and that she had refused it and that on this account he was inimical towards accused 2.

5. Accused made a flat denial of the entire occurrence. Accused 3 stated that on the date of occurrence he was at Bangalore, that he was an income-tax assessee and he has got some business of his own insurance and other activities and that he was not keeping a brothel. Accused 1 claimed to be only a servant. The accused examined a Sub-Inspector of Police as D. W. 2, but his evidence has nothing to do with the present incident. There was also another formal witness, P. W. 1, who was summoned to produce some records but that witness's evidence also has got nothing to do with the present occurrence.

6. So far as the offence about the premises being used for the purpose of a brothel by accused 1 to 3 is concerned, if we leave aside the evidence of P. W. 4, for a minute, there is only the evidence that on 14-7-1963, a woman living in the premises in question, namely, accused 2, had committed an act of prostitution with a stranger for money with the assistance of her servant, accused 1. For the inference that accused 3 was living on the earnings of his wife by hiring her body for promiscuous intercourse, the prosecution has to rely on the evidence of P. W. 4. P. W. 4's evidence on this point cannot be considered very satisfactory. His version is that in spite of his being aware of the reprehensible conduct of accused 3 in making his wife to prostitute herself against her will, he and his relations persisted in their visits to the house of accused 2 and 3 and that at times the objectionable activities of accused 2 and 3 were conducted almost under their nose. This version appears to me to be too artificial and unnatural to be accepted. Reference was made in the course of his evidence to certain prior complaints by

his father to the police regarding the prostitution of accused 2 with the connivance of her husband for making a living thereby. But no copies of these complaints have been produced. It is possible that P. W. 4 suspected that something was wrong with his sister and her husband but the circumstances under which he claims to have seen them, appear to be too fanciful to be believed. If P. W. 4's evidence cannot be accepted, there are no other proper grounds for holding that the premises in question were used by the three accused persons for running a brothel. The definition of 'brothel' implies that the premises must have been used for the purpose of prostitution for the gain of another person or for the mutual gain of two or more persons. There is also evidence here of two prostitutes having worked for their mutual gain in these premises. Unless there is satisfactory evidence that accused 2's prostitution was for (the gain of accused 3, her husband, there cannot be a finding that the premises in question was used as a brothel.

7. Therefore, the conviction of accused 3 cannot be sustained on the basis of the evidence now on record. He is found not guilty and acquitted.

8. So far as accused 2 is concerned, again leaving the evidence of P. W. 4, out of account as being interested and artificial, the rest of the evidence only leads to the inference that she committed an act of prostitution by giving her body for hire to P. W. 1 who had been brought to the premises by a pimp. She received Rs. 100 from P. W. 1 and the pimp got Rs. 20 out of it for his services. As one English decision tersely puts it, the term 'keeping a brothel' will not apply where one woman receives a number of men; vide *Strath v. Fox* on 1956 1 QB 67. The definition of a 'brothel' in the Indian Act does not make any departure from this test. Therefore, accused 2 cannot be convicted of the offence under Section 3(1) of the Act. Her conviction is also set aside.

9. So far as accused 1 is concerned, there is ample evidence to show that, though he is the servant of accused 2, he actively abetted the act of prostitution by accused 2. under Section 4(l) of the Act 'Any person over the age of 18 years, who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable....' Under Section 4(2) if a person is proved to have

exercised influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution, he shall be presumed to be living on the earnings of prostitution. Here, accused 1 on the arrival of P. W. 1 negotiated the terms of the prostitution of accused 2. He received money from P. W. 1 and gave it to accused 2. Though, he has been charged only under Section 3(1) of the Act, he can be convicted on the proved facts under Section 4(1) in this case which is a lesser offence. Two unreported judgments of this Court in C. A. No. 663 of 1960 (Mad) and 667 of 1962 (Mad) have laid down a similar view that even if the charge be under Section 3(1) of the Act, a conviction can be had on the same facts for an offence under Section 4(1) of the Act. Therefore, accused 1 is found guilty under Section 4(1) of the Act and he is convicted there-I under. He appears to be a first offender. He is a paid servant of A. 2 and he seems to have been wholly under the influence of his employer, accused 2 in the case. These are circumstances which justify resort to an order under Section 10 of the Act in his case. I therefore direct that accused 1 be released on probation of good conduct on executing a bond in a sum of Rs. 300 with two sureties each in a like sum to appear and receive sentence when called upon during a period of one year from today and in the meantime be of good behavior and keep the peace.

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