

In Re: Devakumar and ors.

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Court : Chennai

Decided On : Sep-03-1970

Reported in : (1972)1MLJ200

Appellant : In Re: Devakumar and ors.

Judgement :

B.S. Somasundaram, J.

1. The first two appellants are brothers. The other two appellants are their sisters. They were residing at No. 2, Aheyapuram First Street, Kodambakkam, which is at a distance of 50 yards from the Nehru Nursery-School. The first two were prosecuted under Section 3 (1) and the other two under Section 7 (1) of the Suppression of Immoral Traffic in Women and Girls' Act. The prosecution arose in the following circumstances. P.W. 5, Thiru Pappa, the Assistant Commissioner-raw-Special Officer under the Suppression of Immoral Traffic Act had information that the appellants were running a brothel at their aforesaid residence. He made arrangements for a trap on the evening of 17th August, 1968. P.W. 4, a pawnbroker, residing in De Mello's Road, Perambur Barracks, was fixed as a decoy. M.O. 1 series (five 10 rupee currency notes) were entrusted to him with instructions to accompany the informant to the brothel house and to have sexual intercourse, after payment of the amount to one of the girls whom he might choose. P.W. 4 did it. The time was then 3 P.M. The informant introduced him to the first appellant, who was seated in a chair in the main hall. The latter demanded payment at the rate of Rs. 50 per hour for intercourse with any one of the prostitutes who were in that house. P.W. 4 agreed and handed over the amount to him. The first appellant asked the second appellant to fetch the girls. The other two appellants were brought from a room to the hall. On being invited by the first appellant to select any one of them, P.W. 4 chose the third appellant, accompanied her to the adjoining bedroom and bolted the door from inside. He had sexual intercourse with her. The informant proceeded to the playground at Trustpuram and told P.W. 5 and his party what all happened. With P.W. 1, a retired headmistress and others, P.W. 5 proceeded to this house and found the first two appellants and the fourth appellant seated in chairs in the hall. When questioned, the first appellant pointed out the bed-room. P.W. 5 knocked at the door and called P.W. 4 by name. The door was opened. The third appellant was found with skirt and blouse. P.W. 4 was practically naked. Both of them were found hurriedly dressing themselves up. P.W. 4 narrated the entire facts. P.W. 5 demanded the amount from the first appellant. The latter directed the second appellant to bring the money and hand it over to P.W. 5. He took P.W. 5 to the office room adjoining the bed-room and produced the currency notes (M.O. 1 series). They were seized under mahazar Exhibit P-2 and checked with regard to the serial numbers noted in Exhibit P-1. The appellants were arrested, taken to the Station and then put up for trial for the offences aforesaid. When questioned in Court they denied the several acts attributed to them and added that on that day one Inspector came to their and took them to the Station. D.W. 1 was examined by them for substantiating their version. P.W. 4, the decoy, deposed to his visit, his sexual intercourse with the third appellant and to the other facts. P.W. 1 and P.W. 5 stated about the entrustment of the amount, their visit to the house, their seeing P.W. 4 and the third appellant in the bed-room and to the subsequent recovery of M.O. 1 series. P.W. 2, Vadivelu, the brother of the house-owner deposed that the first appellant was a tenant paying a rent of Rs. 175 per month and to his having seen the

last two appellants in the house on one occasion when he visited the house. P.W. 3 who lives in the adjacent house stated that he occasionally used to observe some visitors to this house. He could not say anything about the purpose of those visits or the avocation of the appellants. The learned Magistrate acquitted the first two appellants under Section 3(1) of the Act. He convicted them under Section 4(1) and sentenced each to suffer rigorous imprisonment for six months and to pay a fine of Rs. 250 each. Under Section 7(2)(c) he further convicted and sentenced the first appellant to suffer rigorous imprisonment for three months with a fine of Rs. 200. He has however directed that these sentences should be concurrent. The 4th accused was acquitted and the 3rd appellant was convicted and sentenced under Section 7(1) of the Act to undergo rigorous imprisonment for three months. The appellants contend that these convictions are not correct.

2. Section 4(1) of the Act says that '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 with, imprisonment for a term which may extend to two years or with fine... ' Prostitution' as defined in Section 2(f) means 'the act of female offering her body for promiscuous sexual intercourse: for hire, whether in money or in kind', and 'prostitute' as denned in Section 2(e) means 'a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind.' Section

7(1) reads as follows:

Any woman or girl who carries on prostitution and the person with whom such prostitution is carried on, in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or District Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

3. Prostitution involves indiscriminate employment of a woman's body for hire. Obviously, it excludes intercourse which a person may have with a permanently kept concubine or with a woman without paying any consideration either in cash or in kind. For convicting a person for carrying on prostitution, there must be indiscriminate sexuality requiring more than one customer of the prostitute but a given case where there are circumstances which would legitimately lead to the inference that the person concerned has been indulging in sexual intercourse for money indiscriminately, a conviction can well be sustained on such evidence. As observed in *Ratnamala v. State* (1961) 2 M.L.J. 464, the entire scheme behind the Act is not the proof of a single incident of prostitution, or of the activities of a prostitute. Ramaswami, J. in G.A. No. 536 of 1959 has made certain constructive suggestions for the successful working of the Act. Lord Goddard in *Brannan v. Peck* (1948) 1 K.B. 68, deprecated the resort to traps on the part of authorities and stressed that besides this the evidence of a different character altogether can also be made available in such cases. For instance, 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 visitors, numbers of men visiting the premises, the hours of visit and the length of stay could all be made relevant in a case of this character.

4. Vadivelu, P.W. 2 the house-owner's brother has deposed that the tenancy which commenced on 14th July, 1960 stands in the name of the first appellant. During his occasional visits he used to see the first and second appellants and their mother in this house. One year ago he had seen the other appellants (3 and 4) in it. He has not said anything else. P.W. 3, Radhakrishnan, a neighbour has stated that occasionally he used to notice visitors to this house. But he has no idea of the purpose of these visits. He has further said that there is a name-board relating to some film-producing company displayed at the front portion of the building. He has added that he does not know the avocation of these appellants. P.W. 5, the Assistant Commissioner admits in his evidence that the third appellant is a film actress and that she has acted as a second heroine in a Malayalam picture. It was suggested to him that she was the proprietrix of a film concern under the name and style 'Sophia Films'. He has denied knowledge about it and he could not also recollect to his having seen any name board in the premises, but P.W. 3 says that there is such a board. Thus, there is not even a shred of

evidence to show that the house occupied by these appellants was a 'brothel' house within the ambit of Section 2(a) of the Act. Having regard to the definition of 'prostitution' under Section 2(f) of the Act, to entail a conviction under Section 7(1) of the Act the prosecution must strictly prove the legal ingredients constituting the offence. Section 7(1) of the Act is an unusual one which makes prostitution per se indictable, not merely against the woman who carries on prostitution but also the person with whom such prostitution is carried on. Hence, the mere presence of a woman in a premises where prostitution is carried on, however, much the moral conviction that she too must have been or was obviously available for prostitution, will not justify a legal conviction unless it is proved that she offered herself for prostitution. The evidence of the person who carried on prostitution will only be in the nature of evidence of an accomplice because his conduct is also within the mischief of Section 7(1) of the Act. Hence in order to sustain a conviction under Section 4(1) of the Act that the accused was living on the earnings of prostitution, the evidence of such an accomplice should be reliable, believable and should be corroborated - vide *In re B.T. Pani* (1965) 2 M.L.J. 316 : (1965) M.L.J. 316 : (1965) M.L.J. 714 : 78 L.W. 234

5. Thus as to what happened in the house and inside the bed-room we have in the case, only the evidence of P.W. 4 the decoy. He has deposed that he selected one of the two girls, that he paid the amount of Rs. 50 to the first appellant and that he had sexual intercourse with the third appellant. The third appellant is a cinema actress and it is in evidence that she has acted as a second heroine in a picture. There is also evidence to the effect that she is the proprietrix of 'Sophia Films'. P.W. 3 admits that there was a board exhibited in the house. She had filed a written statement before the learned Magistrate and in it she has stated that she had entered into an agreement with one Premji of Villupuram for financing her for the production of a film and that she had received an advance of Rs. 10,000 from him. She has further stated that when this Premji wanted to back out from the contract she had issued a notice to him on 8th May, 1968, and that on this score there was ill-feeling between them and that he has foisted this case against her. She has also filed along with the statement the notices received and issued by her. These notices do show the strained relationship between Premji and the third appellant, the former demanding back the amount of Rs. 10,000 advanced by him and the latter in turn claiming further amounts as per the contract. Sajjan Raj, P.W. 4, the pawnbroker claims to have visited the house of the third appellant on 17th August, 1968. We have to scrutinise his evidence in the above background. He resides in De Mello's Road which is in Perambur Barracks. He is a pawnbroker by profession. He had not given to the police his residential address. Still we see the Inspector contacting him at his house and making a request to him to be a decoy. He readily agrees and accompanies him to P.W. 5. He had not visited the house of a prostitute at any time before. When asked as to how he readily agreed to be a decoy he states that he felt that he was doing an act of service to the society. Ex facie his version that he gave his consent being prompted by a sense of civic consciousness is hardly credible. It looks as though he is a person interested in Premji. The suggestion that Premji was behind the prosecution has been put to P.W. 5. He has chosen to deny it. But from the several circumstances to which I shall presently advert to, it will be seen that P.W. 4 is a person set up by Premji. I have already adverted to the version relating to the casual meeting of P.W. 4 by the Inspector at his residence and to the conduct of P.W. 4 in readily agreeing to be a decoy. There are several contradictions between the evidence given by him and that of P.W. 5 and these contradictions give room for many misgivings. He now states that he had sexual intercourse with the third appellant only once. But before P.W. 5 he had said that he had two rounds. This is a matter which he cannot forget and this variance, apart from showing that he is not a witness of truth also shows that his version about his sexual intercourse itself could not be believed. He further states in his evidence that the third appellant and her sister were brought to the hall, that he had their blouses removed, that he examined the breasts and that he selected the third appellant, after such a scrutiny. This version also is extremely improbable. Obviously he has been made to give such evidence to show that there are more than one prostitute in this house so as to bring the matter within the ambit of the definition 'brothel' in the Act.

6. There is yet another circumstance which indicates such an anxiety on the part of the prosecution. The second appellant is the brother of the first appellant. He has been brought into the scene by making the first appellant direct him to bring the girls, by paying the amount to him and at a subsequent stage asking him to

take the amount and give it to P.W. 5. Obviously this has been done only to show that he falls within the purview of the definition of a person who aids or assists the running of a brothel. P.W. 4 admits that he did not wipe out the emission of semen either from the bed-sheets or from the clothes. P.W. 5 further admits that he did not send either P.W. 4 or the third appellant for medical examination. The report after medical examination would have afforded sufficient corroboration to the version of the decoy about the sexual intercourse. No such evidence is available in this case. P.W. 4 states that he went to the house in a taxi. P.W. 5 also says so. Yet none of them had noted even the number of the taxi. The evidence of the taxi driver to the effect that he actually took P.W. 4 to the appellant's house 011 that day would also afford some corroboration. Such evidence also has not been let in. P.W. 5 states that when he was about to leave the premises after the raid he noticed a group of persons outside. P.W. 3, Radhakrishnan as stated was one such person who was in this crowd. But P.W. 3 has not said anything about the visit of P.W. 4 or P.W. 5 to this house as deposed to by them. P.W. 5 further states in his chief examination that he gave to P.W. 4 five marked ten-rupee currency notes for payment. The M.O. 1 series currency notes are not marked ones. He also admits in cross-examination that they were not marked or initialled by him at the time of the entrustment. He slates that he merely noted the serial numbers. He had information in the first week of August that the appellants were running a brothel in this house. The services of P.W. 4, the decoy, were secured. They went to the house of P.W. 1 at T. Nagar. There was enough time and he could have obtained a warrant from the Magistrate for the search. This was not done. He states that it was P.W. 4 who opened the bed-room when he knocked and that the third appellant was on the bed. But P.W. 4 says that it was the third appellant who opened the door. Further, P.W. 4 states that M.O. 1 series were taken by the second appellant from inside the right side drawer of the table which was in the hall. But P.W. 5 states that the second appellant took him to the adjoining office room, took out M.O. series from the drawer and handed them over to him. In a matter like this, those contradictions cannot be brushed, aside and certainly they give room for many misgivings.

7. P.W. 1 Thirumati Sarojini Rao is a retired headmistress. She resides at Daniel Street, T. Nagar. She states that she saw the third appellant and P.W. 4 inside the bed-room, that the third appellant was then in her skirt and blouse and that P.W. 4 was dressing himself up. P.W. 4 is said to have narrated in detail everything that happened in the house both to P.W. 1 and P.W. 5. She states that P.W. 4 told them that two girls were shown to him, that he selected one from them, that he paid the amount to the first appellant, that P. W. 5, then questioned the 1st appellant: who pointed out the second appellant as the person to whom he had passed on the money, (hat the second appellant then took out the currency notes from the office room and that the serial numbers were checked up etc. P.W. I'S repeating these events in such detail looks extremely artificial and it leaves the impression that everything has been done so as to bring the matter within the provisions of the Act.

8. Thus, on the question that P.W. 4 had sexual intercourse with the third appellant, there is only the evidence of P.W. 4 who is found to be a person capable of telling lies. He had told the police that he had two rounds with the girl but now he says that he had only one. He did not remove the emission in the bed-sheet and P.W. 5 admits that he did not look for the presence of these symptoms either in the bed-sheet or in the clothes. The medical examination would. have certainly afforded sufficient corroboration and this was not done. P.W. 4's version that he visited the house only on that day also appears to be untrue. He had not gone to a brothel house at any time before. How he was secured as a decoy is also a matter which is shrouded in mystery. The third appellant has acted as a heroine in some film. There is also evidence to the effect that she is a proprietrix of a film concern. She had borrowed Rs. 10,000 from one Premji. The relationship between them has become strained. This was from May, 1968. P.W. 4's visit is said to be in August, 1968. There is considerable force in the suggestion that P.W. 4 has played the game at the instance of Premji by making P.W. 5 believe that the appellants were running a brothel. In any event, when the evidence of P.W. 4 is not accepted, there can be no conviction of any of these appellants for any of the offences for which they stand indicted. The matter admits of ample doubt at every stage. The appellants are entitled to the benefit of the same. The appeal is allowed and they are acquitted. Fine amounts if collected should be refunded. Bail bonds shall stand cancelled.

