

P.K. Unni Kumar Vs. the State

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Court : Chennai

Decided On : Apr-24-1973

Reported in : 1974CriLJ377

Judge : K.N. Mudaliyar, J.

Appellant : P.K. Unni Kumar

Respondent : The State

Judgement :

ORDER

K.N. Mudaliyar, J.

1. The petitioner seeks to question the correctness or propriety of the order of Court of Session, Chingleput, confirming the convictions of the petitioner for offences under Section 3 (1). Section 4 (1), Section 5 (1)(a). Section 6 (1) and Section 7 (2)(b) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956) and the varying terms of imprisonment awarded against the petitioner.

2. P. W. 7. K. P. Ramachandran, is the Deputy Superintendent of Police. St. Thomas Mount, and a Special Officer under the aforesaid Act He appears to have received information on 20-7-1970 that the accused-petitioner is conducting a brothel in his house at No. B, Second Lane, M, K. N. Road. Alandur. At about 8-30

p. m. P. W. 7 received a specific information that a teen seed girl had been brought by the accused petitioner and was kept in the aforesaid premises for the purpose of prostitution.

3. P. W. 1. Jayaraman. is a Councillor of the Alandur Municipality, P. W. 2. Selvaraj, is a resident of Adamabaki kam he is a milk vendor. On 20-7-1970, at about 8-30 p. m. P. Ws. 1 and 2 engaged themselves in a conversation and were proceeding alone the road by the side of St. Thomas Road. A Police Constable beckoned them and took them to the Police Station stating that they were wanted by the Deputy Superintendent of Police. (P. W. 7).

4. P. W. 7 happened to be in the room of the Inspector of Police, alone with other Police officials : he save a five rupee currency note. M. O. T. to P. W. 1 of the presence of Selvaraj (P. W. 2) and another, after writing his signature on the same and prepared a mahazar Ex. P. 1, attested by P. W. 2 and another, P. W. 7 then sent P. W. 1 to the house of the accused-petitioner in No. 5, Second Lane, M. K. N. Road, Alandur with some instructions and directions. As there would be delay in obtaining a warrant for search of the premises from the Magistrate concerned. P. W. 7 sent Ex. P. 3 the Sub-Divisional Magistrate of Poonamallee intimating his intention to conduct a search of the house bearing Door No. 5. Second Lane. M, K. N. Road. Alandur under Section 15 of the Central Act 404 of 1956. as information had been laid before him that the accused-petitioner, Unni Nair, was running a brothel therein.

5. P. W. 1. after receiving M. O. I the five rupee currency note, from P. W.7 went, in the meantime, to the said Door No. 5 Second Lane. M. K. N. Road, Alandur. at about 9. p. m. and found the accused petitioner inside the house sitting in the drawing room. P. W. 1 asked the accused-petitioner whether any girl was available for the purpose of prostitution. The accused-petitioner told him that a girl was available for Rs. 15/-. P. W. 1 told him that he had only Rs. 5/-. The accused petitioner received the five rupee currency note, M. O. 1 and placed it in-side the pocket of his terylene shirt and showed P. W. 1 a girl whose name he mentioned as Tirupurasundari alias Latha alias Vijaya, P. W. 1 took the girl inside a room in that house and had sexual intercourse with her. The door of the room had been

left slightly ajar by P. W. 1 when he took the girl into that room to have carnal knowledge of her.

6. At about 9-15 P. M. P. W. 7 who had sent P. W. 1 into the house of the accused-petitioner, went to the place with his men. With Bose and P.W. 2, P. W. 7 entered the house of the accused petitioner at 9-30 p. m. The accused-petitioner was then sitting in the drawing room. In the room, on the northern side, the door was kept closed without being locked, P. W. 7 pushed open the door and found P. W. 1 and the girl Tirupurasundari in a compromising position. P. W. 7 then accosted the accused-petitioner and seized from his shirt pocket M. O. 1 the five rupee currency note under the house search list Ex. P-2 which was attested by P. W. 2 and another. He arrested the accused-petitioner and the girl Tripurasundari. The house of the accused is situate near a hospital : in fact, the hospital is behind the house, P. W. 7 then took the accused-petitioner and Tirupurasundari to the Police Station and registered a case, and, after investigation, filed the charge-sheet.

7. The plea of the accused is one of denial substantially.

8. Accepting the evidence of P. Ws. T, 2. and 7 principally, and the other evidence adduced by the prosecution, the learned Sub-Divisional Magistrate. Poonamallee. convicted the accused-petitioner of the offences already noticed by me. The learned Sessions Judge confirmed the convictions of the accused-petitioner.

9. In order to determine whether the evidence adduced is sufficient to bring home the guilt to the accused for the offences of which he has been convicted. It is necessary to examine the text and terms of Section 3 of Act 104 of 1958.

10. Section 2 (a) states:

'brothel' includes 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.

Section 2 (e) states-

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

Section 2 (f) states:

'Prostitution' means the act of a female offering her body for promiscuous sexual intercourse for hire whether in money or in kind.' Section 3(1) reads-Any Person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

An examination of the definition of 'brothel' would undoubtedly require the satisfaction of the ingredient of the place being used for 'purposes' of prostitution. A solitary instance of prostitution committed within any house or room or place would not, in my opinion, satisfy the ingredient of Section 2 (a). This Court held in *Dhanalakshimi. In re 1972 MLW Cri. 122* what constitutes 'brothel'. I have held as follows:

It emerges clearly from the evidence adduced by the prosecution that there was only one girl in the premises and the prosecution proved only one act of prostitution with that girl. The place inhabited by the accused is a place used once for the purpose of prostitution and therefore the house of the accused cannot be treated as a 'brothel' kept by the accused appellant.

In this case, there was only one girl to the premises, and at best a single instance of prostitution is proved. But, there is no surrounding circumstance sufficient to establish that the premises was being used as a 'brothel' and that the person alleged, viz., the accused was so keeping it. A perusal of the definition of the word 'brothel' would clearly indicate that the place must be used for purposes of prostitution for the said of another person, or for the mutual gain of two or more prostitutes. The phrase 'for purposes of prostitution' postulates plurality of

instances of prostitution.

A single instance would not suffice for satisfaction of or compliance with the ingredient of purposes.' The phrase 'for purposes of prostitution' in the definition of 'brothel' in Section 2 (a) can be contradistinguished from the deliberate use of the word 'purpose' in Section 5 (1)(a). Sections 5(1)(b), 6 (3). 8 (a) and 8 (b) of the Act.

11. In the light of this legal position the only evidence is that of P. W. 1 who claims to have had sexual intercourse with the girl Thirupurasundari. There is absolutely no evidence adduced by the prosecution corroborating the act of sexual intercourse of P. W. 1 with the girl Thiru-purasundari. The prosecution did not seize any clothing of either the girl or P. W. 1 for the examination of seminal stains in order to furnish corroboration of the evidence of P. W. 1. Such a piece of corroborative evidence is totally lacking. Undoubtedly P. W. 1 is a partisan witness : and Courts are bound to look for some corroboration in general outline, albeit not in material particulars, in order to make sure that the evidence of P. W. 1 is true in respect of his sexual intercourse with the girl. Assuming his evidence is believable, which I hold is not. a solitary instance of prostitution, does not make the house in question a 'brothel' within the meaning of Section 2 (a) of the Act. It is true there is some evidence of P. W. 3 who speaks of a certain amount of activity in and near this house in question, where certain girls are brought in or sent out along with others. That kind of evidence, as given out by P. W. 3 is too vague, general and nebulous, and cannot be used in support of the proof of the ingredients of the word 'brothel' as defined in Section 2 (a) of the Act. Therefore, I am inclined to find that the ingredients of Section 3 (1) are not made out by prosecution.

12. Section 4 (1) reads thus;

Any person over the age of eighteen 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 which may extend to one thousand rupees, or with both.

The prosecution is bound to prove, In my view, the important ingredient contained in the phrase 'the earnings of the Prostitution'. I have already expressed my view in the earlier part of this Judgment that the prosecution has failed to adduce any corroborative testimony supporting the evidence of P. W. 1 in regard to the act of promiscuous sexual intercourse for hire. No bedding was seized nor the clothings of P. W. 1 and the girl were, for examination as to presence of seminal stains, nor even the girl was examined to support the vital part of the evidence of P. W. 1. Therefore I hold that the evidence of P. W, 1 that he had carnal knowledge of the girl Tirupurasundari does not inspire confidence in the credibility or the reliability of his evidence, particularly in the absence of proof of the presence of seminal stains. It is true that

P. W. 7 spoke about his finding P. W. 1 and the girl Tirupurasundari in a compromising position at about 9.30 p.m. It is the prosecution evidence that P. W. 1 went to the house of the accused at 9 p. m. Accepting the testimony of P. W, 1 that he entered into the room with the girl Tirupurasundari at about 9 a. m. it does not command my credence to believe that this amorous couple would have left the door slightly ajar and open, as they were engaged in indulging in sexual intercourse. To say that the Deputy Superintendent of Police (P. W. 1) found them in a compromising position is to believe the impossible. For, in my view, after a lapse of nearly half an hour it cannot be stated that P. W. 1 was still engaged in the sexual act with the girl unless he be a super man of extraordinary manly masculine strength. This part of the evidence of P. W. 7 is open to doubt. I hold that the prosecution has failed to Prove the offence under Section 4 (1) of the Act against the accused-petitioner.

13. Section 5 (1)(a) reads-

Any person who procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees.

In view of the language of Section 5 (1)(a), I am bound to look for some evidence in 'support of the accused procuring or attempting to procure the girl by name

Tirupurasundari. Even accepting the evidence adduced by the prosecution at its face value, I find not even a particle of evidence in support of the proof of the elements of Section 5 (1)(a). I find that the offence under Section 5 (1)(a) is not proved against the accused-petitioner.

14. In regard to Section 6 (1)(a)-

Any person who detains any woman or girl, whether with or without her consent...in any brothel...

I insist on the prosecution adducing some evidence for proving detention of Tirupurasundari without her consent. I am of the view that the word 'with' is totally in apposite in Section 6 (1). Detention ought to be without the consent of the woman. The two words 'detains' and 'with her consent' are contradictions in terms. There is absolutely no evidence adduced by the prosecution to prove that the detention of Tirupurasundari by the accused petitioner in the premises in question was without her consent I find that the offence under Section 6 (1)(a) of the Act is not proved against the accused-petitioner.

15. Section 7 (2)(b) states-

Any Person who being the tenant lessee, occupier or person in charge of any premises referred to in Sub-section (1) knowingly permits the same or any part thereof to be used for prostitution....

Applying the same reasoning as was done in regard to the alleged offence under Section 3 (1) of the Act and in view of the fact that the ingredient found in Section 7 (2)(b), viz.. 'used for prostitution' is lacking particularly when there is no circumstantial proof as to presence of seminal stains resulting from the sexual intercourse of P. W. 1 with the girl. I hold that the offence under Section 7 (2)(b) of the Act is not made out against the accused-petitioner.

16. The criminal revision case is allowed. The convictions of the petitioner for offences under Section 3 (1). Section 4 (1), Section 5 (1)(a). Section 6 (1) and Section 7 (2)(b) of Central Act 104 of 1956. are quashed and the sentences are set aside. The accused is acquitted of all the offences. The fines, if any Paid, are

directed to be refunded to the petitioner-accused.

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