

In Re: Dhanalakshmi

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Court : Chennai

Decided On : Jan-25-1972

Reported in : 1974CriLJ61

Judge : K.N. Mudaliyar, J.

Appellant : In Re: Dhanalakshmi

Judgement :

K.N. Mudaliyar, J.

1. This is an appeal arising from the conviction of the appellant Dhanalakshmi for an offence under Section 3 (1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956).

2. P. W. 3 is the Assistant Commissioner of Police, Vigilance, Madras and the Special Officer to detect cases under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956). He has reliable information that the accused is keeping a brothel having prostitutes in her house by collecting hire charges at the rate of Rs. 50 for having sexual intercourse with the prostitute at premises No. 39 North Road West C. I. T. Nagar, Saidapet, Madras.

3. On 13-10-1969, his informant told him that the brothel keeper, viz., the accused was ready to receive the visitor. P. W. 3 proposed to conduct the raid of the brothel. Necessary arrangements were made. One Dhanasekaran, P. W. 1,

working as a helper in Simpson Group Co., was asked to be a decoy witness in the forthcoming brothel raid. One Inspector explained in detail about the brothel raid and the part to be played by P. W. 1. P. W. 1 gave his consent. Thambusami, P. W. 2 and Mrs. Sebastian the other witnesses were in the vigilance office. P. W. 3 met the decoy and P. W. 2 and Mrs. Sebastian. The informant was introduced to the witnesses. The Assistant Commissioner of Police, P. W. 3 explained in detail as to how to conduct a brothel raid and asked for their co-operation. They all consented. Then P. W. 3 gave five ten rupee currency notes, M. O. 1 series to P. W. 1 under an entrustment mahazar Exhibit P-1 prepared by him wherein the numbers of the currency notes were noted, duly attested by P. W. 1, P. W. 2 and Mrs. Sebastian. This was at 3-30 p. m. P. W. 3 instructed P. W. 1 to accompany the informant to the premises No. 39 North Road West C. I. T. Nagar, Saidapet, Madras. He asked P. W. 1 to fix up the engagement and pay the amount to the accused, take the prostitute girl to the bed room and have sexual intercourse with her and remain there till the door of the bed room would be tapped by calling out his name. After this, they all left the vigilance office and reached the Saidapet Court compound.

From there the informant and the decoy, P. W. 1, were despatched to the brothel house at 4.05 p. m. The decoy P. W. 1 and the informant went in a taxi to the premises No. 39 North Road, West C. I, T. Nagar, Saidapet. The accused was found sitting in the hall of the downstairs portion of the building. The informant introduced P. W. 1 to the accused and told her about the purpose of their visit. The accused told them that she had one girl by name Mahalakshmi and demanded Rs. 50 for having sexual intercourse with the girl. P. W. 1 wanted to see the girl. The accused called the girl and showed her to P. W. 1 and the informant. The girl also told P. W. 1 that Rs. 50 was to be paid in order to have sexual intercourse with her. So saying the prostitute girl Mahalakshmi took P. W. 1 inside the house so that P. W. 1 could see her before fixing the deal. She removed her blouse and showed her breast to him. P. W. 1 gave her Rs. 50 which was given to him by the Assistant Commissioner of Police, P. W. 3 and the girl, in turn handed it over to the accused. The accused took that money and kept it in an almirah. She told the prostitute girl to take P. W. 1 to the bed room and the girl took P. W. 1 to the bed room. Meanwhile, the informant left the premises. The girl bolted the bed room

from inside. P. W. 1 and the girl undressed themselves and P. W. 1 had sexual intercourse with her once and they were talking in the bed room. He was with his underwear and the girl was with her skirt.

The informant went and told the Assistant Commissioner of Police, Vigilance, that P. W. 1 the decoy witness had been accommodated in the house of the accused. P. W. 3 decided to conduct the raid of the premises No. 39 North Road West C. I. T. Nagar, Saidapet. As he had no time to obtain a warrant from the Court, he prepared the grounds of belief in Exhibit P-3. P. W. 3 and P. W. 2 and Mrs. Sebastian immediately left the premises of Saidapet Court and reached the house of the accused. They entered the house and found the accused standing in the main hall of the house. P. W. 3 questioned the accused about the visitor. The accused pointed out the bed room, which was bolted from inside. P. W. 3 tapped the door of the bed room in the presence of the witnesses by calling out the name of P. W. 1. The door was opened. They all went inside the room and found P. W. 1 and the prostitute girl Mahalakshmi half naked. The Assistant Commissioner of Police, P. W. 3 asked P. W. 1 and the girl to dress themselves properly and come out. They dressed themselves and they came out. P. W. 3 learnt the name of the prostitute as Mahalakshmi. She was below 21 years of age. He asked the decoy P. W. 1 as to what had happened. P. W. 1 narrated to P. W. 3 the entire transaction. P. W. 3 questioned the accused about the money. She produced the five ten rupee currency notes M. O.1 series from the almirah which was kept in the room opposite to the bed room. P. W. 3 showed them to the witnesses and verified the numbers found in the notes and they tallied with the numbers noted in the entrustment mahazar Exhibit P-1. He seized the five ten rupee currency notes under a mahazar, Ex. P-2, attested by the witnesses.

4. The plea of the accused was that on 13-10-1969 at about 5 p. m. she was giving coffee to her children who returned from the school then. There was failure of electricity on that day. One Sub-Inspector of Police came there and told her that there were reports against her and called her to go to the police station with him for enquiry. The accused asked him as to what kind of reports that came against her. The Sub-Inspector of Police told her that one Narayanan had given a report against her. She further says that for the last 20 years, she has been selling

sarees and in that connection the said Narayanan owes her Rs. 150 in the deal between them. In that connection, she had quarrelled with him often. So, she thought that the said Narayanan might have given a report against her and for that purpose only she was taken to the police station. The prostitute girl Mahalakshmi was there in the station. The Sub-Inspector of Police threatened her. Then she was sent to the vigilance home. On that day, her husband was not at home, but had gone to the office. She returned to the house on the next day at about 9 p. m., when her husband came and got her released. She examined one witness in support of the case.

Accepting the testimony of P. Ws. 1 to 3 in support of the prosecution case, the learned trial Judge found that all the ingredients of Section 3 (1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 have been proved and convicted the appellant for an offence under Section 3 (1) of the said Act. It is important to notice one material piece of evidence of P. W. 2 who stated that when the A. C. P. W. 3 questioned the accused about the money, she admitted having received it from P. W. 1 and said she had kept it in the almirah. This is not the case spoken to by P. W. 1 himself nor is it the evidence of P. W. 3. With regard to this most important aspect of the case, I find conflicting versions given by P. Ws. 1 and 3 on the one side and P. W. 2 on the other. P. Ws. 1 and 3 do not state that the accused admitted having received the money (Rs. 50) from P. W. 1 at all. But P. W. 2 appears to have been rather overzealous in his evidence and attempted to out-herod Herod by stating that the accused admitted having received it from P. W. 1. I do not believe the evidence of P. W. 2, in view of such a fundamental discrepancy and contradiction found in the testimony of P. W. 2 as compared with the testimony of P. Ws. 1 and 3 together.

5. It has been argued that P. W. 1 the decoy is in a sense an accomplice and therefore his testimony must be corroborated. Mr. Nagarajan argued that under Section 7 of the Act an accused could be jointly arraigned as a co-accused and within the ambit of even other provisions of the Act a decoy witness must be treated at least as an accomplice in some sense. The act of prostitution by any girl simpliciter is not a crime (In re Ratnamala : AIR1962 Mad31 . The decoy who participates in the act of sexual intercourse cannot be termed as an accomplice,

but certainly the decoy witness P. W. 1 would be partisan witness interested in the success of the prosecution because he lends himself as an instrument for the purpose of raid wherein he figures prominently in stating the details of the sexual transaction in which he either participates actively or indulges. Therefore, I would like to take a very wary and circumspect attitude in weighing the evidence of P. W. 1 in this case. Even according to the testimony of P. W. 1 he handed over the money to the prostitute girl, one Mahalakshmi. Be it noted, that even P. W. 1 does not state that he delivered the money to the accused. But the crux of the matter is the payment of the money to the accused.

According to P. W. 1, Mahalakshmi handed over the money to the accused and she kept it in the almirah. Accepting this testimony I am unable to see how this would satisfy the proof of the ingredient 'for the gain of another person'. According to Section 2, 'brothel' includes any house, room or place or any portion of any house, room or place, which is used for the purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. In *John in re* 1965 MLJ (Cri) 654, Ramakrishnan, J., held '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 no evidence here of two prostitutes having worked for their mutual gain in these premises. There is no satisfactory evidence that the prostitution of Mahalakshmi was for the gain of the accused. In the absence of such evidence there cannot be a finding that the premises in question was used as a 'brothel'. Accepting the testimony of P. Ws. 1 and 3, I am unable to see how the prosecution succeeds in proving that Rs. 50 was for the gain of the accused-appellant. It is certainly not the case of P. W. 1 that he gave the money Rs. 50 to the accused. In the absence of proof of this important ingredient under Section 3 (1) of the Act. I am unable to hold that the premises No. 39 North Road, West C. I. T. Nagar, Saidapet, Madras is a 'Brothel' kept or managed by the accused-appellant.

6. Mr. Nagarajan contended that according to the reasoning found in paragraph 17 of the judgment of a Division Bench in *Bhumi Mia v. State* : AIR1969 Cal416 the 'test purchaser' of a female body would be an accomplice and therefore his evidence is tainted evidence. His argument ran further thus : Here was the

informant who was a witness to the entire transaction upto a certain point viz., until she asked the prostitute girl to take P. W. 1 to the bed room and the girl took P. W. 1 to the bed room, and at that point the informant left the premises. The prosecution, so argued the learned Counsel, must have examined the informant in corroboration of the testimony of P. W. 1. The learned Public Prosecutor relied on the rationale found in the Supreme Court decision in *Bhanuprasad Hariprasad Dave v. State of Gujarat* : 1968 CriLJ1505 wherein their Lordships of the Supreme Court held that

The utmost that can be said against Ramanlal, the Deputy Superintendent of Police, Erualkar, and Santramji is that they are partisan witnesses as they were interested in the success of the trap laid by them. It cannot be said - and it was not said - that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction. While in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regards the evidence of a partisan witness it is open to a Court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration. In the case of partisan witness, the corroboration that may be looked for is corroboration in a general way and not material corroboration as in the case of the evidence of accomplices.

This proposition of law has been enunciated by the Supreme Court while considering the scope of the offence under Section 161, Cri. P. C., in relation to the testimony of certain witness in that case.

But even this decision makes it clear that with regard to the evidence of a partisan witness like P.W. 1, it is open to a court to convict the accused person solely on the basis of that evidence if it is satisfied that that evidence is reliable. But it may in appropriate cases look for corroboration. Therefore, in my view, this is a case where I would unhesitatingly look for corroboration. in a general way. I am unable to find even general corroboration in support of the accused receiving the money from P.W. 1. It is true the money was produced by the accused ultimately from an

almirah. But such a proof on the part of the accused is consistent with her knowledge of the existence of M. O. 1 series in the almirah. But that fact cannot be equated with the proof of the fact of the amount of Rs. 50 utilised for the gain of the accused-appellant. As already observed by me, the proof of this essential ingredient is lacking in this case. It emerges clearly from the evidence adduced by the prosecution that there was only one girl Mahalakshmi in the premises and the prosecution proved only one act of prostitution with the girl Mahalakshmi. The place inhabited by the accused is a place used once for the purpose of prostitution; therefore the house of the accused cannot be treated as a 'brothel' kept by the accused-appellant. It is true the Supreme Court in Krishnamurthy v. Public Prosecutor, Madras 1967 MLW (Cri.) 59 : 1967 Cri LJ 544 observes as follows:

It may be true that a place used once for the purpose of prostitution may not be a brothel, but it is a question of fact as to what conclusion should be drawn about the use of a place about which information had been received that it was being used as a brothel, to which a person goes and freely asks for girls, where the person is shown girls to select from and where he does engage a girl for the purpose of prostitution. The conclusion to be derived from these circumstances about the place and the person 'keeping it' can be nothing else than that the place was being used as a brothel and the person in charge was so keeping it. It is not necessary that there should be evidence of repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances is sufficient to establish both that the place was being used as a brothel, and that the person alleged was so keeping it. But, in this case there was only one girl in the premises, and at best a single instance of prostitution is proved. But, I am unable to find any surrounding circumstance sufficient to establish that the premises No. 39 North Road West C. I. T. Nagar, Saidapet was being used as a 'brothel' and that the person alleged viz., the accused was so keeping it. In my view, a perusal of the definition of the word 'brothel' would clearly indicate that the place must be used for purposes of prostitution for the gain 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, in my view, would not suffice for the purpose of prostitution, for the definition mentions

the word 'purposes'. Even accepting the testimony of P.Ws. 1 and 3, I am unable to see whether the significant ingredient 'purpose of prostitution' has been proved in this case.

7. It has been argued by the learned Public Prosecutor that the evidence on record would support a conviction Under Section 4 (1) of the Act. I have already held that the offence under Section 3 (1) of the Act has not been satisfactorily proved against the accused-appellant. Therefore, she is not found guilty and acquitted. The argument of the learned Public Prosecutor is that such acts on the part of the accused, viz., her stating the hire charges for the act of sexual intercourse and her asking Mahalakshmi to take P.W. 1 into the room would constitute abetting or aiding the act of prostitution by Mahalakshmi. Under Section 4 (1) of the Act 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. Under Section 4 (2) of the Act if a person is proved to have exercised control, direction or 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 the prostitution. Here the accused-appellant negotiated the terms for the prostitution of Mahalakshmi when P.W. 1 and the informant arrived. But all these acts would give rise to a presumption against the accused that such person is knowingly living on the earnings of prostitution of another person within the meaning of Sub-section (1) to Section 4 of the Act until the contrary is proved.

8. The learned Public Prosecutor cited a number of authorities of this Court in support of the proposition that the offence under Section 4 (1) is a lesser offence and although the accused has been charged only under Section 3 (1) of the Act she can be convicted on the proved facts under Section 4 (1) in this case which is a lesser offence. The learned Public Prosecutor relied on the following authorities for this proposition of law:

1. Krishnamoorthi v. State (C. A. No. 197 of 1963) (Mad.).

2. Subramaniam v. State C. A. No. 252 of 1963 (Mad.).

3. Gangamma v. State C.A. No. 458 of 1961 (Mad.).
4. E. G. Chennayyan v. State C. A. Nr. 385 of 1961 (Mail.).
5. Ramadevi v. State C. A. No. 415 of 1961 (Mad.).
6. Kumari alias Vijaya v. State C.A. No. 785 of 1965 (Mad.).

But on the proved facts, I have already held that the amount of Rs. 50 has not been proved to be for the gain of the accused-appellant. In view of such a finding I am unable to hold that the accused-appellant knowingly lives wholly or in part on the earnings of Mahalakshmi. That apart, Section 4 (2) of the Act gives room only for a presumption. In my view, the statutory presumption cannot be equated with the rigorous standards of proof of the offence under Section 4 (1) in criminal law. The onus still lies on the prosecution to prove the offence under Section 4 (1) of the Act. A close scrutiny of the ingredients of the respective sections of 3 and 4 would clearly indicate that the ingredients of the offence under Section 3 are fundamentally different from the ingredients of the offence under Section 4. In my view, although Section 4 (1) is a lesser offence in point of the punishment there ought to be a separate charge of which the accused must have sufficient notice to meet. In the absence of a charge under Section 4 (1) of the Act and on the strength of a mere presumption embodied in Section 4 (2) it may not be legally correct to convict the accused-appellant for an offence under Section 4 (1) of the Act. In the result, the criminal appeal is allowed. The accused-appellant is acquitted of the offence under Section 3 (1) of the Central Act 104 of 1956. The bail bond stands cancelled. If the fine is paid it is directed to be refunded.