

Sudarshan Nandi and anr. Vs. the State of West Bengal

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Court : Kolkata

Decided On : Nov-25-2009

Judge : Ashim Kumar Banerjee and ;Kalidas Mukherjee, JJ.

Acts : Juvenile Justice (Care and Protection) Act, 2000 - Sections 2, 49 and 49(1);
;Indian Penal Code (IPC) - Sections 120B, 373 and 376

Appeal No. : CRA No. 814 of 2005

Appellant : Sudarshan Nandi and anr.

Respondent : The State of West Bengal

Advocate for Def. : Pinaki Bhattacharyya and ;J.N. Chatterjee, Advs.

Advocate for Pet/Ap. : Saswata Gopal Mukherjee, Adv.

Disposition : Appeal dismissed

Judgement :

Kalidas Mukherjee, J.

1. This appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan, Calcutta in Sessions Trial No. 1(3) of 2005 arising out of Sessions Case No. 92 of 2004 sentencing thereby the appellants to suffer rigorous imprisonment for eight

years and to pay fine of Rs. 1,000/- each, in default to suffer rigorous imprisonment for six months under Section 373 of the Indian Penal Code and to suffer rigorous imprisonment for eight years and to pay fine of Rs. 1,000/- in default to suffer rigorous imprisonment for six months each under Section 120B of the Indian Penal Code with the direction that both the sentences shall run concurrently.

2. A complaint was lodged by S.I. Debol Kumar Das suo motu wherein it has been alleged that after receiving information the complainant along with lady constable Usha Pradhan and lady Home Guard Kajal Ghosh rescued two minor girls and arrested two accused persons from the room of Laxmi Rani Ghosh situated at 3rd floor, 20 Durga Charan Mitra Street, Calcutta 700 006. Taking two witnesses, the complainant and his force went to the said premises in the third floor and found Jamuna Shaw and Gurbari Andia inside the room situated at the right side of the staircase. On being asked they stated that on 05.6.2002 they were brought by Laxmi Rani Ghosh @ Padma Rani Ghosh, the owner of that room and Sudarshan Nandi from their native village within the district of Baleswar, Orissa for the purpose of illegal prostitution. The girls were rescued and the accused persons were arrested from inside the premises at 20 D.C. Mitra Street, Calcutta - 700006.

3. After return to the P.S. a case was registered being SC case No. 135 dated 15.6.2002 under Section 373/120B of the Indian Penal Code and a G.D. Entry to that effect was also made being G.D.Entry No. SC No. 1735 dated 15.6.2002. After completion of investigation the charge sheet was submitted. The charge was framed under Section 373 and 120B of the Indian Penal Code to which the accused persons pleaded not guilty and claimed to be tried.

4. The learned Trial Judge upon consideration of the materials on record passed the impugned judgment holding that the victim Jamuna Shaw was under 18 years of age on the date of her obtaining possession by the accused persons Laxmi Rani and Sudarshan Nandi as well as on the date of recovery from their custody. The learned Judge, however, held that the prosecution could not establish that the other victim girl Gurbari Andia was below 18 years of age. The learned Judge further held that as regards the identity of Shyama Devi Singh it was not clear

whether the Shyama Devi and Shyama Devi Singh were one and the same person. It was further held that from the evidence of the witnesses prosecution could not establish that accused Shyama Devi Singh was also a party to the conspiracy in obtaining the victim girls from their home town at Orissa. The learned Judge acquitted accused Shyama Devi Singh of the charges and convicted Laxmi Rani Ghosh and Sudarshan Nandi under Section 373 and 120B of the Indian Penal Code.

5. Mr. Mukherjee appearing on behalf of the appellants submits that no specific complaint was lodged and the G.D. Entry was treated as the suo motu F.I.R. It is contended that no superior officer endorsed the case to the I.O. for investigation.

6. Mr. Mukherjee further contends that the victim girl previously resided at Dum Dum as it would appear from the evidence on record and there is no evidence to show that she was confined in a place and forced to prostitution. It is contended that there is no documentary evidence as to the age of the victim girl and in such a case the age should have been determined by the Juvenile Board under Section 49 of the Juvenile Justice (Care and Protection) Act 2000. It is submitted that the determination of age under the orders of the learned Magistrate was not proper.

7. Mr. Mukherjee contends that there was discrepancy as to the identity of the premises where raid was conducted and the prosecution could not prove wherefrom the recovery of the girls was made 20 or 22A of D.C. Mitra Street, of Calcutta - 700 006. It is submitted that the identity of the premises wherefrom the recovery was made has not been established and the questions put to the accused during examination under Section 313 Cr.P.C. caused prejudice to the accused. It is contended that the place of seizure and the place of occurrence have not been proved. It is submitted that there is no evidence to show that the appellants had possession over the victim girl. Mr. Mukherjee has referred to the decisions reported in 2009(2) C.Cr.L.R.(SC) 387 [Ram Suresh Singh v. Prabhat Singh alias Chhotu Singh and Anr.]; 2009(2) C.Cr.L.R.(SC) 382 [Ranvir Yadav v. State of Bihar]. Mr. Mukherjee has referred to the provisions contained in Section 2(d) of the Juvenile Justice (Care and Protection) Act 2000.

8. Mr. Bhattacharya appearing on behalf of the State submits that the victim girl is not an accused and the provision of Juvenile Justice (Care and Protection) Act regarding determination of age by the Juvenile Welfare Board under Section 49 of the Juvenile Justice (Care and Protection) Act does not come into play. It is contended that like other cases of Section 376 of the Indian Penal Code where the victim girls are produced in Court, the learned Magistrate passes an order for the ossification test of the victim girl and in the instant case it was done under the order of the learned Magistrate which was quite legal and valid. Mr. Bhattacharya further contends that minor discrepancies with regard to the identity of the premises wherefrom the recovery was made are to be ignored. It is submitted that from the evidence on record it is clear that the appellants obtained possession and control over the victim girls and the truthful version of the victim girl cannot be ignored. It is further contended that because of the lapses in investigation the prosecution case cannot be disbelieved. Mr. Bhattacharya has referred to and cited the decisions reported in 2009(2) SCC (Cri) 737 [Zindar Ali Sheikh v. State of West Bengal and Anr.]; AIR 2004(SC) 2684 [State rep. by Inspector of Police, Vigilance and Anti-Corruption, Tiruchirapalli, Tamil Nadu v. V. Jayapaul]; : AIR 1973 (SC) 2622 [Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra]; : AIR 1974 SC 294 [Sat Kumar v. State of Haryana]; 2009(1) SCC (Cri) 143 [Shivappa and Ors. v. State of Karnataka]; 2009 1 SCC (Cri) 2339 [Ashok Kumar Caudhary and Ors. v. State of Bihar] and : AIR 2004 SC 210 [Gyasuddin Khan alias Md. Gyasuddin Khan v. State of Bihar].

9. Mr. Mukherjee has referred to the provision of Section 49(1) of the Juvenile Justice (Care and Protection) Act 2000 which is quoted hereunder:

(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

10. It is for the prosecution to choose under which Act it will proceed. In the instant case prosecution has chosen to proceed against the accused persons under Section 373 of the Indian Penal Code wherein the victim girl is the witness. It is not the case of either side that the victim girl needs care and protection under the provisions of Juvenile Justice (Care and Protection) Act 2000. The victim girl was not produced before the 'Competent Authority' under the provisions of the said Act. It is also not the case that the victim girl has come in conflict with the law. Under such circumstances, the provisions of the said Act do not come into play. The learned Court below, therefore, rightly passed order for holding ossification test of the victim girl in absence of any documentary proof regarding the age. We are, therefore, of the considered view that there is no legal infirmity in the procedure followed by the learned. court below in determining the age of the victim girl.

11. As regards the contention of Mr. Mukherjee that the I.O. was not competent to investigate the case in absence of endorsement by O.C., it appears from the formal FIR that the S.I. Debol Kumar Das took up the investigation under order of OC section 'C'. Therefore, the contention of Mr. Mukherjee that the I.O. was not competent to investigate the case without the same being endorsed by the O.C., is not acceptable.

12. PW 1 Jamuna Shaw has stated in her evidence that she was arrested from Sonagachi; she was residing in the house of Laxmirani and was arrested therefrom. It was also in her evidence that she was brought from her house at Gowapara by Laxmirani and Sudarshan Nandi on the assurance that she would be given a job. It is in her evidence that she was residing at Sonagachi in that house for 9/10 days before her arrest by the police; Sudarshan and Laxmirani had gone to her house at Gowapara and told her that she would be given a job as maid servant and, as such, she came with them. It is also in her evidence that her mother sent her with them as they told her mother about the job.

13. P.W. 1 has further stated that Laxmi Rani and Sudarshan Nandi thereafter brought her to Calcutta and put her at Sonagachi; she was kept in a house and was not allowed to go even to fetch water; that house in which she was kept with Laxmi Rani belongs to Shyama Devi Singh and Laxmi Rani and Sudarshan Nandi

used to force her to illicit sexual intercourse with different persons without giving her any money. In the cross-examination she has stated that she had never talked to any other people of that house as she was not allowed.

14. P.W. 2, Gurbari Andia, the other victim girl stated that Sudarshan Nandi brought her to the red light area from her house at Goapara; Sudarshan Nandi came to her house with Laxmi Rani and told that he would provide her with a job of maidservant. It is also in her evidence that Laxmi Rani and Sudarshan Nandi forced her to have illicit sexual intercourse with different persons; she resisted but they threatened her; she was not given any money for the said illicit sexual intercourse.

15. P.W. 10, is the father of the victim, Jamuna Shaw. He has stated that Sudarshan Nandi had brought his daughter Jamuna saying that she would be provided with a job, but, he brought and kept her in 'Kharab bari'. It is in his evidence that he sent his daughter Jamuna with Sudarshan Nandi for a good job.

16. P.W. 11, is the mother of Gurbari Andia who has stated that Sudarshan Nandi had brought her daughter from her house for arranging a job of maidservant; Sudarshan Nandi went to her house with Laxmi Rani. P.W. 3, is the Doctor, who examined Jamuna Shaw. He considered the X-ray report and other papers and opined that Jamuna Shaw was habituated to sexual intercourse.

17. As regards the search and recovery of the victim girl, P.W. 4, the lady constable who accompanied the complainant has stated in her evidence that they went to a room upstairs and recovered two girls. In the cross - examination she has stated that apart from the two persons no other man was present there. P.W. 5, a nearby shop owner has stated that the police apprehended two females from 20 D.C. Mitra Street and that house is a brothel; the women who reside there are prostitutes or sex workers; police brought two girls from that house. P.W. 6, another witness for the search and recovery has stated that he resides at 22/A Durga Charan Mitra Street and when he was taking tea he found that police apprehended two females and brought them from 20 D.C. Mitra Street ; he saw the two girls and also Laxmi rani ; police wrote a document at that time and he signed on the same. In the cross- examination he stated that the search lists were

prepared on the roof and not in any room.

18. P.W. 7 is the complainant who has stated that on reaching 20 D.C. Mitra Street they found two minor girls who were used for the purpose of prostitution and illicit intercourse; they rescued the two girls from the room of Laxmi Rani Ghosh; Sudarshan was also present in that room and he was arrested; that room was in the 3rd floor of the building; a search list was prepared at the P.O. in the presence of two witnesses. The I.O. P.W. 9 has stated that he visited P.O. i.e. 20 Durga Charan Mitra Street and examined the other tenants in that building and recorded their statements. In the cross - examination he has stated that there are five owners of 20A, Durga Charan Mitra Street as appeared in Exhibit 7; in Exhibit 7 and 7/1 there is no mention that the premises 20A Durga Charan Mitra Street is a brothel; there is no existence of the house at 20 Durga Charan Mitra street; but it is 20A Durga Charan Mitra Street and he received communication from the CMC dated 07.02.03 that there was no existence of the house at 20 Durga Charan Mitra Street. It is contended by Mr. Mukherjee that there was discrepancy with regard to the holding number of the premises wherefrom the search and recovery were made. Both the complainant and the I.O. stated that they visited the P.O. which was at 20 D.C. Mitra. Street. It is in the cross-examination of P.W. 9 that as per Municipal record the holding number was 20A and there was no existence of 20 D.C. Mitra Street. We are of the considered view that this discrepancy with regard to the holding number of the premises does not cast any shadow of doubt on the veracity of the prosecution case. It is evident from the testimony of the P.Ws as discussed above that the appellants obtained possession of the victim girls from their native village at Orissa with the plea of arranging a job of maid servant in Kolkata. It is also in the evidence that they kept the victim girls in the red light area and forced them to prostitution and the police after getting information recovered the said two victim girls. It is, therefore, very much clear that the appellants obtained possession of the victim girls from Orissa and it continued till the search was conducted and recovery was made. Out of the two girls only Jamuna Shaw was held by the learned Trial Court as the minor i.e. the below age of 18 years and in respect of other girl Gurbari Andia, the learned Trial Judge held that the prosecution could not prove that she was below 18 years. The learned Trial Judge rightly held that the appellants had possession over the victim girls and that

Jamuna Shaw was below 18 years of age. The decisions cited by Mr. Mukherjee are not applicable in the facts and circumstances of the instant case.

19. The learned Trial Judge was, therefore, justified in convicting the appellants under Sections 373 and 120B of the Indian Penal Code and passing the sentence under the impugned judgment. There is no ground to interfere with the findings of the learned Trial Judge.

20. There is no merit in this appeal.

21. The appeal is dismissed.

22. Let a copy of this judgment be sent to the correctional home where the appellants are detained.

23. A copy of this judgment be also sent along with the lower court records to the learned Trial Court immediately.

24. Urgent Xerox certified copy, if applied for, be handed over to the parties as early as possible.

I agree