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Parbati Dasi Vs. Emperor

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Court : Kolkata

Decided On : May-15-1933

Reported in : 148Ind.Cas.597

Judge : Costello and; M.C. Ghose, JJ.

Appellant : Parbati Dasi

Respondent : Emperor

Judgement :

Costello, J.

1. This is an appeal against the conviction of one Parbati Dassi who was sentenced to one year's rigorous imprisonment by the Chief Presidency Magistrate of Calcutta for an offence under Section 8, Calcutta Suppression of Immoral Traffic Act, XIII of 1923. It appears that Parbati Dassi is the mother of a girl named Lakshi. They came together from Rangoon to Calcutta arriving in this city on July 12, 1932. The prosecution was the outcome of certain investigations made by the Police in consequence of an anonymous letter received by them in which it was stated that there was a girl named Lakshi aged about 13, living with her mother Parbati and carrying on the business of prostitution at a house No. 219, Bow Bazar Street. On receipt of that letter which was addressed to the Deputy Commissioner of the Detective Department of the Calcutta Police and dated August 3, 1932, an Inspector proceeded to No. 219, Bow Bazar Street, which is a

three storeyed building at about 3 P.M. on the afternoon of August 3 last. That house appears to be occupied by a certain number of women who are prostitutes but there also reside a number of perfectly respectable and ordinary people. The Inspector proceeded to a room on the first floor of the house and found the door bolted from inside. As soon as he knocked at the door he heard sounds as if somebody jumping out of a window from inside the room. After an interval of two or three minutes the door was opened by the present accused Parbati Dassi, and a man named Nabin Chandra Sarma was also discovered inside the room. Parbati when questioned as to the whereabouts of her daughter Lakshi, replied that she had sent her to a friend. The Inspector immediately afterwards got information from a man Gour Mohan Seal that some one jumped out of the window of a room on the first floor of the house. The Inspector then traced the girl to an adjoining Basti and took charge of her and had her brought to the Police Office. She was later medically examined and according to the report of the Police Surgeon it was found that she was probably between 16 and 17 years in age, but might have been somewhat older.

2. After further investigation the mother Parbati Dassi was put up for trial upon a charge of having brought her daughter, the girl Lakshi, to Calcutta from Rangoon with a view to her carrying on the business of a prostitute. The defence set up by Parbati was that her daughter was of some repute as a musical artist and that she had come to Calcutta for the purpose of getting employment, she having previously had various engagements in Rangoon. The accused woman put in a written statement which formulated her defence as follows.

I am innocent of the charge against me. Miss Shorabjee, the former proprietress of the Pearl Talkies, Calcutta who is also interested in several of them in Rangoon informed my daughter Lakshi at Rangoon that she had arranged a good job for her in the New Pearl Talkies at Dharamtolla Street Calcutta. My daughter came down to Calcutta in July last 1 accompanied her. She entered into a contract of service with the aforesaid Cinema Company from July 16, 1932 and since then she has been giving performances as a dancer and songstress in different cinemas in Calcutta I did not bring her to Calcutta for the purpose of prostitution or for any other immoral purposes. She was already an artist of renown in Rangoon having

had connections with several local shows and she has also established her reputation in Calcutta, it is absolutely untrue that the two prosecution witnesses, Sudhir and Gopal, ever came to visit her at 219, Bow Bazar Street or that I ever introduced them to my daughter. She is nineteen and has attained majority.

3. The reference to the two prosecution witnesses in this written statement relates to the evidence given by the two young men mentioned, which was to the effect that they had sexual intercourse with this girl for a monetary consideration. Now it is clear that the girl after her arrival in Calcutta did succeed in obtaining a succession of professional engagements. It was stated in the written statement as we have seen that Lakshi had some kind of recommendation or at any rate was acting upon a suggestion from a Miss Shorabjee who was a former proprietress of the New Pearl Cinema in this city. The girl Lakshi was in fact given an engagement by the New Pearl Talkies Cinema to give performances as a dancer and singer from July 16 to July 23, 1932, that is to say a week's engagement for which she drew a salary of Rs. 125. That seems to indicate that the girl must be an artist of some merit. Then from September 3 to September 7, she had another engagement with the same Cinema. From September 19, till the 23rd she had an engagement at a Cinema known as the Ruby Cinema and for that five days' engagement she was paid Rs. 75. Then on October 1, under a contract in writing made a day or two before, she commenced an engagement which in the first instance was to last until the end of the year 1932 at a salary of Rs. 300 a month. Having regard to these facts it seems to me tolerably clear and indeed beyond doubt that this girl Lakshi was a skilled and attractive performer as a singer and dancer who had already made good in her profession. The fact that she obtained an engagement so soon after her arrival in this city and the fact that she was receiving a salary of Rs. 300 a month, would as I have said indicate that she must be an artist of some merit.

4. The learned Chief Presidency Magistrate in the judgment by which he convicted Parbati of on offence under Section 8, Act XIII of 1923(B.C.), after referring to the engagements which I have mentioned remarked

It is true that she has a certificate from Rangoon as to her dancing and singing abilities, But the fact remains that hers is a dual calling. It is perfectly obvious that her profession as a cinema actress does not militate or clash with her other less reputable calling. Section 8 of the Act requires proof of intention that the girl was brought into Calcutta for the purpose of prostitution.

5. The learned Chief Presidency Magistrate is quite right in pointing out that Section 8 requires proof of intention, but with considerable regret I find myself unable to agree with the reasons given by the learned Magistrate for coining to the conclusion which he did that such proof had been fully established by the prosecution. It is always a matter of some regret when one finds oneself unable to confirm a decision given by such a careful and competent Magistrate as the present Chief Presidency Magistrate. But he says.

In this connection it should be noted that the accused did not bring her daughter to Calcutta by previous contract agreement with any cinema. Miss Shorabji who is said to have recommended her, has apt been called as a witness. It is clear that the accused brought her daughter to Calcutta for purposes of gain. She is being exploited both ways both as a cinema actress and a woman of the town It is precisely to suppress this sort of exploitation of human flesh and blood that the Immoral Traffic. Act was devised. Another circumstance worth noting is that the girl is not a cinema actress but only a singer and dancer who performs in cinema theatres. It is well known that singing and dancing constitute the advertisement side of the trade of prostitution.

6. I think it is perhaps a little unfortunate that any observation should be made either by the learned Chief Presidency Magistrate or by anybody else which in substance is to the effect that a female professional dancer or singer must necessarily and invariably be a person of loose moral character. It may be that actresses and actors in this country are still regarded as being persons who are not respectable just as in the middle ages they were deemed to be rogues and vagabonds but it does seem to me even so that it is carrying the matter a little too far to suggest that the carrying on of the profession of a singer or dancer by a woman does necessarily and of course connote the business of prostitution.

However, be that as it may, the learned Chief Presidency Magistrate seems to have taken the view that the mother of this girl brought her daughter to Calcutta for a two-fold purpose, namely, that the daughter should get an engagement in her more reputable profession and also derive profit from carrying on the other business which the learned Chief Presidency Magistrate refers to as rather 'the less reputable.' We have come to the conclusion that in the circumstances of this case the prosecution have not sufficiently established and beyond reasonable doubt established 'proof' of 'intention' which the learned Chief Presidency Magistrate himself realised to be a necessary ingredient in the offence charged. It is of importance, to bear in mind all or rather the precise material words of the section with which we are now concerned. Section 8, runs as follows:

Any person who brings or attempts to bring or causes to be brought into Calcutta, any woman or girl with a view to her carrying on, or being brought up to carry on the business of a prostitute, shall be punished.

7. It is manifest that that section is aimed primarily at the class of persons who may be described as professional procurers 'a person who traffics in women and girls.' The language of t he section now is fairly wide and would apply to any person either a stranger or a relative of a woman provided the alleged offender had brought a woman or girl to Calcutta with a view to her doing the things mentioned in the section. It is important to observe in connection with this section that the question of the woman or girl is not material. This section is not like other sections of this act or those of the Indian Penal Code which are framed for the protection of minor girls. This section is wide enough to include any case of bringing or causing to be brought any woman to Calcutta for immoral purposes. But in fact the Police in the present case as a primary step caused this girl to be medically examined with a view to ascertaining what her age was. That seems to indicate that they proceeded in the first instance on the assumption that this was a case of a minor girl. This is not the fact, for as I have already said according to the medical evidence this girl was above the age of 16.

8. Now the defence amounts to this: that the mother and the daughter came from Rangoon together and the mother was desirous that her daughter should carry on

the profession of a dancer and a singer. [His Lordship dealt with the evidence and held that the prosecution had not succeeded in establishing that the mother brought the girl to Calcutta, still less that the mother brought the girl for the purposes mentioned in the section and continued.]. It follows therefore that this conviction ought to be set aside. There is another matter however which of itself in my opinion would be a ground for setting aside the conviction. It appears that there was a suggestion made by the Police or by those who conducted the prosecution that the girl and her mother left Rangoon because they were likely to fall foul of the Rangoon Police and that that is why the girl and her mother decided to come to Calcutta seeking fresh fields for carrying on the business of prostitution.

9. In all the circumstances of the present case that appears to be a theory not warranted by the facts as proved in the proceedings before the learned Magistrate. It is the fact that the girl did start to carry on the profession of an actress at the New Pearl Cinema. Now when the girl herself gave evidence on behalf of her mother in support of the defence which had been put forward, certain questions were put to her in cross-examination, which were obviously designed to bring to the notice of the Court, or at least insinuate that the mother had been in trouble with the Police in Rangoon. Those questions were clearly intended to suggest that the mother had already been exploiting her daughter for immoral purposes in Rangoon and in that connection had been convicted of a criminal offence. The answers given by the girl in the course of the cross-examination are as follows:

I have been living with, my mother all along. I lived at 239-39 Street, Rangoon, with her. I cannot say that my mother was fined Rs. 50. On my return from cinema I learnt that she was fined Rs. 50. I cannot say that it was under the Burma Brothels Act. It was a year after that that we came to Calcutta.

10. It is quite obvious that Lakshi was cross-examined as to whether or not her mother had been previously convicted for an offence of a kind involving sexual immorality on the part of Lakshi. It is clear that a suggestion was made to the effect that the present accused had been convicted under the Burma Brothels Act. It seems to me a little difficult to understand that how it was that the learned Chief Presidency Magistrate permitted a cross-examination in any such lines. The cross-

examination was in my opinion wholly irregular and the girl ought not to have been asked questions intended to elicit the fact, if it was a fact, that her mother hid to her discredit a previous conviction. It is contrary to the elementary principles of British Criminal Jurisprudence that any evidence of a previous conviction should be allowed to be adduced in the course of a trial save in a few well defined and exceptional circumstances. For the reasons already given however, we are of opinion that on the actual merits of the case it is extremely doubtful to say the least of it whether the matter falls within the terms of Section 8, Act XIII of 1923 at all. That being so we think that the accused must at any rate be given the benefit of such doubt. The conviction and sentence must be set aside and the accused Parbati Dassi released.

M.C. Ghose, J.

11. I agree.

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