

(2022) 09 CAL CK 0124
In the Calcutta High Court
Case No : Criminal Appeal No. 46 Of 2019

Archana Dey @ Sakila @ Samina

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 6, 13

Indian Penal Code, 1860 — Section 107, 120B, 304B, 306, 344, 354, 366, 366B, 372, 373, 498A

Code Of Criminal Procedure, 1973 — Section 164, 173, 428

Citation : (2022) 09 CAL CK 0124

Hon'ble Judges : Joymalya Bagchi, J;Ajay Kumar Gupta, J

Bench : Division Bench

Advocate : Sekhar Kumar Basu, Diptangshu Basu, Punam Basu, Saswata Gopal Mukherji, Parthapratim Das, Manasi Roy

Final Decision : Dismissed

Judgement

Ajay Kumar Gupta, J

1. Appellant has assailed the judgment and order of conviction and sentence dated 20.12.2018 and 21.12.2018 passed by the Learned Additional District and Sessions Judge, Fast Track Court No. II, Bichar Bhawan, Calcutta in Sessions Trial No. 1 (4) of 2015 arising out of Sessions Case No. 99 of 2014, thereby convicting the appellant under Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'the said Act') and sentencing her to suffer imprisonment for a term of one year and to pay fine of Rs. 2000/- in default to suffer imprisonment for another term of two months for the offence punishable under Section 3 of the said Act, further to suffer imprisonment for a term of one year and to pay fine of Rs. 1000/- in default to suffer imprisonment for another term of two months for the offence punishable under Section 4 of the said Act, further to suffer imprisonment for a term of eight years and to pay fine of Rs. 2000/- in default to suffer imprisonment for a term of one year for the offence punishable under Section 5 of the said Act and also to suffer

imprisonment for a term of seven years and to pay fine of Rs. 2000/- in default to suffer imprisonment for a term of one year for the offence punishable under Section 6 of the said Act. All the above sentences shall run concurrently.

2. The prosecution case as alleged against the appellant is to the effect that in the beginning of 2011 the victim who is originally a resident of village Doljitpur, P.S. Norail, Dist.- Jessore in Bangladesh fell in love with one Lavlu, sometimes at the end of April, 2011 while she was going to her sister's house at Jessore she accidentally met Lavlu on the way; Lavlu told her to go to his sister's house; he took her in a Auto and then on a bus to Khulna and married her. On the next day he took her to the border on a bus; from there he took her for some distance on a motor bike. At about 7 o'clock in the evening she was taken to a room occupied by the appellant at 32, Imam Bux Lane, Sonagachi. She came to know later from daughter-in-law of the appellant that she is in India and she had been sold by Lavlu. Appellant forcibly locked her in a room, tortured and caused strangers to come to her room for the purpose of prostitution in exchange of money. Finally, she was rescued from 32, Imam Bux Lane, Sonagachi by police officers. On the basis of the victim's statement, F.I.R. was registered being Burtolla Police Station Case No. 328 dated 12.09.2011 under Section 354/366/366B/372/373/120B, I.P.C. against the appellant and Lavlu.

3. After completion of investigation, charge sheet was submitted against the appellant under Section 120B/366B/344, I.P.C. Subsequently, charges were framed against the present appellant under Sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 since the Trial Court held that Sections 120B, 366B and 344, I.P.C were not applicable as the appellant had not imported the victim from Bangladesh or conspired, rather her husband had sold her to the present appellant who forcibly confined, tortured and put her in prosecution against her will. The appellant pleaded not guilty and claimed to be tried.

4. Defence case is that the appellant had not committed offence as alleged, she is innocent and has been falsely entangled into the case. Defence examined only one witness, Asit Kumar Dey as D.W.1 to disprove the case of prosecution. In course of trial, prosecution examined seven witnesses including the victim girl to bring home the guilt of the appellant. Number of documents and materials brought on record by the prosecution and those were marked as Exhibits 1 to 10 and material exhibits as I to IV/2.

5. After appreciation of the oral and documentary evidence, the Trial Judge, by impugned judgment and order convicted and sentenced the appellant, as above.

6. Mr. Basu, learned senior counsel appearing on behalf of the appellant, submitted that the appellant is no way connected with offence, as alleged. None of the witness proved that the victim girl is a citizen of Bangladesh. Learned counsel further submitted that the Investigating Officer who had investigated or rescued the victim had no authority to investigate the case registered under the Immoral Traffic (Prevention) Act, 1956 because he is not a Special Officer

designated under the Act to investigate the case under Section 13 of the said Act. Consequently, entire prosecution case is vitiated and on such ground alone the appellant deserves an acquittal. He relied *State (U.T. Delhi) vs. Ram Singh* (1962) 2 SCR 694 in support of his contention. Further he argued prosecution case has not been proved beyond reasonable doubt. He submitted evidence led by the prosecution is not reliable owing to vital contradictions and/or inconsistency in the manner of bringing victim to India by her husband namely Lavlu. So-called rescue of the victim is also shrouded in mystery. Hence, appellant is liable to be acquitted.

7. On the other hand, Mr. Saswata Gopal Mukherji, learned Public Prosecutor with Mr. Das supported the prosecution case. Referring to *R.A.H. Singuran v. Shankare Gowda Alias Shankara and Another* (2017) 16 SCC 126 he contended investigation by an officer not authorised by law is irregular. It is well settled that the invalidity/irregularity in investigation does not vitiate the case unless prejudice or a miscarriage of justice has been caused to the appellant. He further submitted prosecution witnesses have proved the case beyond doubt.

8. It is germane to garner the evidence as adduced by witnesses during the course of the trial, to determine how far the prosecution has been able to establish the essential ingredients of the offences charged against the appellant beyond the shadow of all the reasonable doubt. For a just and proper disposal of a criminal appeal, marshalling and appreciation of the evidence on record is essential.

9. I have gone through the relevant records meticulously and I find from the evidence of P.W. 7, S.I. at DD, IT Section, Lal Bazar, that he received source information on 12.09.2011 that a minor girl from Bangladesh had been confined at the 1st floor of premises no. 32, Imam Bux Lane. Upon receipt of the information, he informed the O.C. who, in turn, intimated his superior officer and thereafter under his instruction, he set up a team consisting of S.I., P.R. Sikdar, L.S.I., T. Mukherjee, L.C., G. Narginari under leadership of O.C., IT Section they went to the 1st floor of 32, Imam Bux Lane. Upon knocking the door, a minor girl opened the door. Another woman in her forties was beside her. He interrogated the minor girl, who disclosed her name and age. She also disclosed that she was a resident at Doljitpur, Jessore, Bangladesh. Upon further interrogation she narrated her ill fated story. She narrated at the end of April, 2011 she had developed a love affair with one boy namely Lavlu. Subsequently, he married her. Thereafter in the name of taking her to Lavlu's sister's house, he brought her to Sonagachi and sold her to the appellant, who confined her in a room, tortured her and forced her into prostitution against her will.

He recorded statement of victim and other witnesses rescued her after preparation of rescue memo. He also seized exercise book, electric bill in the name of appellant and one bag containing the wearing apparels of the victim girl. Thereafter, he registered FIR being Burtolla P.S. Case No. 328 dated 12.09.2011 under Section 344/366/366B/372/373/120B IPC. He also arranged for recording

statement of the victim under Section 164 of the Cr.P.C. and her medical examination and finally submitted charge sheet against Archana Dey @ Sakila @ Samina under Section 344/366B/120B IPC.

10. The victim girl was examined as P.W. 6. She deposed in the year 2011 she had relationship with Lavlu. Lavlu had taken her to his sister's house at Narail. Thereafter, he had taken her to Khulna by bus and from there he took her by motor cycle to an unknown place. She asked him where he was taking her. When they were passing through a jungle she became afraid and started crying. He threatened her to stop crying otherwise he would kill her and throw her in the jungle. Hence, she kept mum. He then took her to the appellant's house and kept her there for a month. Appellant's daughter-in-law told her she is now in India and had been sold by her husband. Thereafter, appellant took her to Sonagachi for prostitution. She further tortured her and used to cause strangers to come into her room and forced her to do bad work. The victim proved her signature in the Rescue Memo, which was marked as Exhibit 1/2. Her statement was recorded by I.O. Police seized her wearing apparels and other belongings. She identified her signature on the seizure list. She had been taken for medical examination. Doctor had examined her. Her statement was recorded by the Learned Magistrate (Exhibit 7). She also identified the appellant in Court room.

11. P.W. 1 is a social worker attached with International Justice Mission. She deposed that the Director, Biju Mathew informed her to accompany the team in the rescue operation. P.W.1 along with her colleague Sharon Daniel (P.W. 2) accompanied the rescue team. All of them went to premises no. 32, Imam Bux Lane, Calcutta 7. At the first floor of the building they entered a room at the right hand side of the stair case. After entering the room, she found a middle aged lady and one young girl. Police asked the name of the girl. She disclosed her name. She also disclosed that she was from Bangladesh and had been brought by one boy. She further disclosed that she was sold to Sakila alias Archana Dey in exchange of money. After rescuing her, police prepared a rescue Memo and seizure list. She put signatures on both the documents. Police seized one electricity bill, note book and some cloths of the girl. She proved her signature on the Rescue Memo marked as Exhibit 1 and the seizure list marked as Exhibit 2. P.W.1 also identified the appellant in the Court.

12. P.W. 2 similarly reiterated the aforesaid facts and corroborated P.W. 1.

13. P.W. 3, A.S.I. posted at the I.T. Section of DD, Lalbazar, was a member of a rescue team. He stated on 12.09.2011 in the evening officer Ranjit Chowdhury told him to go out for a raid at Sonagachi. He along with team went to 32, Imam Bux Lane of Sonagachi. During raid, a minor girl and one lady was found in a room in the first floor of the said building. On questioning, the girl narrated that she was a Bangladeshi national and had been brought there by one Lavlu and sold to the appellant. He identified Archana Dey in the Court.

14. P.W. 4, a Judicial Officer recorded the statement of the victim girl under

Section 164, Cr.P.C. The V.G. signed her statement. The signature is marked as Exhibit 6. Upon perusal of exhibit 6, I find she had narrated the incident before the Judicial Magistrate which corroborates her deposition in Court as well as the contents of the F.I.R.

15. P.W. 5, Demonstrator of Forensic and State Medicine, deposed that on 16.09.2011 he examined the victim in connection with Burtolla P.S. Case No. 328 dated 12.09.2011 under Section 120B/344/366/366B/372/373 of the I.P.C. He stated she was brought and identified by Gunisri Narginari, lady constable. On examination, he prepared radiological examination report and opined as follows:

- 1) She is habituated to sexual intercourse.
- 2) Regarding recent sexual intercourse and suffering from venereal disease, opinion is kept pending till receipt of expert's report.
- 3) Clinically she was not pregnant.
- 4) There was no injury in her body or private part except in hymen as noted in the report.
- 5) Considering the physical findings, dental data and data of radiological examination together, my opinion is that the girl identified as Sahanara @ Parul was aged about 18 years but below 20 years at the date of her radiological examination on 20.09.2011.

16. On careful perusal of the depositions of the aforesaid witnesses, I do not find any vital contradiction regarding selling of victim girl, who was from Bangladesh national to the appellant. All the witnesses also corroborated the prosecution case regarding time, place and manner of rescue of the victim. Moreover, I feel minor discrepancies and/or contradictions, caused due to memory lapses after some time may occur in genuine cases and ought to be ignored. In such a situation, I do not find any sufficient reason to disbelieve the prosecution witnesses.

17. Victim girl (P.W.6) was examined and cross examined from Bangladesh via video conference by the trial Court. She stated that one Lavlu being her husband took her from Bangladesh and sold her to the appellant in exchange of money. Appellant confined her in a room, tortured and forcibly put her to prostitution against her will. P.W.6 identified appellant in Court. It is not disputed by the defence that she is not from Bangladesh and had been rescued from Sonagachi in India. P.W.6 also proved the contents of the First Information Report. Her version in Court is consistent with her statement before police and Magistrate. This inspires my confidence that she is truthful witness.

18. Defence witness i.e., D.W.1 employee of Election Office stated Archana Dey, wife of Apurba Dey and Jharna Dey, daughter of Archana Dey are both residents of 32, Imam Bux Lane. They are voters of 166, Shyampukur Assembly Constituency, Kolkata-6. Till date, they are voters of the said constituency. Their

residential address is mentioned in the published voter list as 32, Imam Bux Lane. This corroborated that the place of rescue of victim is from the residence of the appellant.

19. I am unable to convince myself with the submission made by Mr. Basu that the trial is vitiated due to lack of authority of the Investigating Officer. According to him, the officer who had rescued the victim girl, investigated the case and submitted charge sheet under section 173 of the Criminal Procedure Code is not a special officer designated under the Act and is not empowered under Section 13 of the said Act. On the other hand, I am in agreement with Mr. Mukherji in view of *R.A.H. Singuran v. Shankare Gowda Alias Shankara and Another* that investigation by an officer not authorised by law is irregular and does not vitiate the proceeding. It is well settled that the invalidity/irregularity in investigation does not ipso facto vitiate the trial unless it has occasioned miscarriage of justice to the accused. It is undisputed that the investigation conducted by the Sub-Inspector of DD, IT Section, Lal Bazar, has not prejudiced the appellant in any manner and no objection was raised by the defence at the earliest opportunity.

20. Appellant has not made out a case by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. Appellant had raised this point first time at the time of argument before the Trial Court and not before that. The cardinal principle of law is that the challenge to an irregular proceeding ought to be raised at the initial stage but this is not the case here.

21. Any defect in investigation, which merely hits at its technicality, would not render the entire proceeding void as has been laid down in the *H.N. Rishbud v. State of Delhi* A.I.R. 1955 SC 196 and *Dr. M.C. Sulkunte v. The state of Mysore* A.I.R. 1971 SC 508 by the Apex Court. Thus, I am not convinced that investigation conducted by P.W. 7 had caused serious prejudice or miscarriage of justice to the appellant. Consequently, it would not vitiate the trial.

22. In the light of the aforesaid discussion and findings, I hold prosecution case against the appellant have been proved beyond reasonable doubt. Conviction and sentence of the appellant are upheld.

23. Appeal is, thus, dismissed.

24. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.

25. Lower court records along with copies of this judgment are to be sent down at once to the learned Trial Court as well as the Superintendent of Correctional Home for necessary compliance.

26. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.