

(2012) 08 CAL CK 0035
In the Calcutta High Court
Case No : C.R.A. No. 521 of 2010

Sanjib Singh alias Sanjit Kumar Singh alias Indradev Singh	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Immoral Traffic (Prevention) Act, 1956 — Section 5
Penal Code, 1860 (IPC) — Section 34, 365, 367

Citation : (2012) 4 CALLT 85 : (2012) 5 CHN 791

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : Subhasis Pachhal in C.R.A. No. 521 of 2010 and Mr. Isita Chatterjee in C.R.A. No. 536 of 2010, for the Appellant; Debasish Roy, learned P.P. and Ms. Rituparna De for the State of W.B. in both the Appeals, for the Respondent

Final Decision : Allowed

Judgement

Kanchan Chakraborty, J.—These two appeals have been taken up for hearing together as both the appeals are arising out of same judgment and order dated 03.08.2010 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Howrah in Sessions Trial No. 395 of 2008 thereby convicting the appellants along with three others for committing offence under sections 5 of the Immoral Traffic (Prevention) Act and sentencing them to suffer rigorous imprisonment for four years and to pay fine. Sanjib Singh alias Sanjit Kumar Singh alias Indradev Singh has preferred C.R.A. No. 521 of 2010 while Bimal Sarkar has preferred C.R.A. 536 of 2010. Both the appellants have taken similar grounds in their appeal against the judgment. The grounds they have taken are stated below:

(a) that the learned Trial Court failed to appreciate the evidence in its true and proper perspective as far as these two appellants are concerned:

(b) that the learned Trial Court failed to take into consideration the fact that both

the appellants, being drivers of hired vehicles, were no way connected with the alleged immoral trafficking;

(c) that the learned Trial Court wrongly interpreted that "they were taking" in order to justify the judgment for conviction:

(d) that the learned Court failed to appreciate the evidence of the witnesses, specially the victim girls, who categorically stated that the vehicles, which were driven by these two appellants, were hired from Barasat:

(e) that the learned Trial Court failed to appreciate that the appellants had no intention to procure or obtain the victims for the purpose of prostitution:

(f) that the judgment, being otherwise bad in law as far as these two appellants are concerned, is liable to be set aside.

Both the appeals are covered by this common judgment below:

2. The factual aspects of the prosecution case, on the basis of which the trial commenced in the learned Trial Court, in short, is stated below:

3. On 02.07.2008, Keshab Chakraborty, Inspector of Police. C.I.D., West Bengal, received a source information that a group of criminals would avail Up Chennai Mail of that day at night in coach No. S-6 berth Nos. 38, 40, 50 to 54 and 56 from the Howrah Railway Station along with some girls procured by them from different localities with an intention of commercial sexual exploitation and trafficking them in the other state out of West Bengal. After noting the facts in a G.D., he along with other police officials and other officers of Howrah G.R.P.S. held a raid in the train at about 23.20 hours. The 2839 Up Chennai Mail was about to leave from Platform No. 23 at 23.45 hours. As the train was scheduled to leave after about 25 minutes, they were keeping watch over the coach No. S-6 from a safe distance from different angles and waiting for boarding of the bona fide passengers in coach no. S-6. At about 23.45 hours they boarded on coach No. S-6 of the train along with two individual witnesses and found four girls were sitting in seat Nos. 55, 51, 53 and 54 of lower berth. They also found two male persons sitting in seat Nos. 38 and 40 of the lower berth. Mr. Chakraborty disclosed his identity and examined all those six passengers and they also disclosed their names as Pratima Roy, Payal Sarkar, Nilima Ghosh, Sikha Mondal, Sawata Mukherjee and Aswini Sabat. It was reported to them by Pratima Roy, Payal Sarkar and Nilima Ghosh that Sikha Mondal, Saswata Mukherjee and Aswini Sabat assured them to provide suitable job at Chennai. On interrogation Sikha, Saswata and Aswini confessed that they procured those three girls from different places of 24 Parganas (North) and were taking them to Chennai with an intention to engage them in commercial sex business for earning money. They also disclosed that they came to Howrah Station with the help of Bimal Sarkar and Sanjib Kumar Singh, the appellants herein, by their Maruti Cars. Mr. Chakraborty and his team arrested those passengers and, thereafter, came to the cab road of Howrah Station where Bimal and Sanjib were standing by the

side of their Maruti Cars. The victim girls confirmed their identity and also told Mr. Chakraborty that these two persons carried them to Howrah Station from Barasat by their Maruti Cars. Mr. Chakraborty arrested them from the cab road of Howrah Station. Thereafter, one First Information Report was lodged by him with the Inspector-in-Charge, Howrah G.R.P.S., which, ultimately registered as Howrah G.R.P.S. Case No. 185 of 2008 dated 03.07.2008 against five accused persons including these two appellants under sections 365/367/34 of the Indian Penal Code read with section 5 of the Immoral Traffic (Prevention) Act.

4. These two appellants were arrayed to face charges above, to which they pleaded not guilty and, accordingly, the trial commenced. As many as 18 witnesses were examined on behalf of the prosecution. The seizure list, written complaint, requisition slip, signature on the seizure list, report of treatment and sketch map of the place of occurrence were admitted into evidence and marked exhibits. No witness was examined on behalf of the defence. The learned Trial Court upon consideration of the evidence on record and upon consideration of the evidence given by the appellant in course of their examination u/s 313 of the Code of Criminal Procedure, came to a conclusion that all the accused persons including these two appellants Bimal Sarkar and Sanjib Singh committed offence u/s 5 of the Immoral Traffic (Prevention) Act and, accordingly, sentenced them to suffer rigorous imprisonment for four years and to pay fine of Rs. 1000/- each. The appellants challenged sustainability of the judgment on the grounds already stated.

5. Mr. Pachhal and Ms. Chatterjee, learned advocates appearing for the appellants Sanjib and Bimal, respectively, contended that in order to attract section 5 of the Immoral Traffic (Prevention) Act, prosecution is to establish that the persons made accused had procured or obtained or take away the victim with an intention to use them for immoral purpose. Mr. Pachhal contended that the appellant, Sanjib Singh, was a driver of a Maruti Car, which was hired by the other accused persons who have actually liable for committing the offence u/s 5 of the Immoral Traffic (Prevention) Act. For driving of a hired vehicle, he cannot be said to have committed the offence.

6. Ms. Chatterjee, learned advocate for the appellant, Bimal Sarkar, contended that essential ingredients of section 5 of the Immoral Traffic (Prevention) Act are that the accused procured or obtained or take away victims with an intention to use them for sexual activities or to sell them for the purpose of prostitution. Therefore, mens rea in the offence is intention to use the victims for the purpose of commercial sex business. This appellant, Bimal Sarkar, was not a party to the group who procured the victims. He only lent his maruti car to the hirer and made a trip to Howrah Station. This fact, ipso facto, does not necessarily establish that he was one of the members of the gang who were involved in the operation. The view of the learned Court was entirely wrong on this issue.

7. Both Mr. Pachhal and Ms. Chatterjee taken this Court to the view of the learned Court in respect of those two appellants. The learned Court without

giving any reason, whatsoever, held them liable for the offence. The learned Court found nexus of the appellants with the other accused person as they were apprehended from cab road of Howrah Station and tried to flee away seeing police.

8. Mr. Roy, learned Public Prosecutor appearing for the respondent-State of West Bengal, contended that in connivance with these two appellants, the actual culprit, i.e., Sikha and Aswini, took the victims to Howrah Station. They had to reason to wait in the cab way with Saswata who was not sent up. Therefore, Mr. Roy contended, the learned Trial Court correctly found nexus between the appellants and the actual culprits. So the judgment impugned is not required to be upset.

9. In the instant case, P.W. 1, Keshab Chakraborty, Inspector of Police, who lodged First Information Report, stated in his examination-in-chief that they found two maruti cars on the cab way of the Howrah Station. The accused Aswini told him that they came to Howrah Station by using those two cars. The drivers of those two cars were standing near the vehicles. They disclosed their identity. They disclosed also that they carried those girls with the accused persons by their vehicles. The P.W. 1 arrested them therefrom.

10. The P.W. 3 is the S.I. of Police. It is found from the evidence of the P.W. 3 that on the basis of the statement of one of the victims, the appellants Bimal Sarkar and Sanjib Singh were arrested from the cab road. Saswata Mukherjee, another accused, was also found standing with them on the cab road. Interestingly enough, Saswata Mukherjee, was not found guilty by the learned Trial Court, In fact, he was not arrayed to face charge as on the prayer of the Investigating Officer of the case. he was discharged earlier.

11. The P.W. 4, S.I. of Police. C.I.D.. West Bengal, stated that he had no idea from where the maruti cars were hired.

12. The P.W. 5, Inspector of Police, C.I.D., West Bengal, stated that two maruti vans were seized and Sanjib Singh and Bimal Sarkar were arrested. She has stated that the maruti vans, which were seized, were in the cab road in between platform Nos. 21 and 22.

13. The P.W. 6, S.I. of Police, C.I.D., West Bengal, who was a member of the raid party, stated the same thing to the effect that two maruti vans were seized which were hired by Sikha and her companions in order to bring the victims to Howrah Station. It also appears from her cross-examination that in all five persons were arrested from Chennai Mail.

14. The P.W. 7 is another S.I. of Police, C.I.D.. West Bengal. She stated that the victim girls disclosed that they came to Howrah Station by two vehicles. According to her statement, the appellants were arrested from the cab way of Howrah Station and their maruti cars were seized. In her cross-examination she failed to say wherefrom those vehicles were hired but stated that the girls were

brought from Barasat.

15. The P.W. 8. was also a member of raid party. He stated that two persons, i.e., the present appellants, were arrested from the cab road of Howrah Station and their vehicles were seized.

16. The P.W. 9. A.S.I. of Police, stated that as per the statement of the victim girls, these appellants were arrested from the cab road of Howrah Station. In his cross-examination, he made it clear that hired cars were used for carrying passengers and the seized vehicles were hired from Barasat.

17. The P.W. 10 has stated nothing against these two appellants.

18. The P.W. 11. Pratima Roy. is one of the victim girls rescued by the police from Chennai Mail on the relevant date. As far as these two appellants are concerned, she stated that she found two maruti vans at Shanpukur. Barasat. She found two women there. On the basis of her statement, police arrested the drivers of the maruti vans from cab road at Howrah Station. She has no idea whether the vehicles were openly hired for movement at Shanpukur.

19. The P.W. 12 is Moslema Bibi alias Nilima Ghosh, another victim girl. She stated that she had been to the house of co-accused Sikha at Ganji Mill. Barasat, wherefrom she and other two victims along with Sikha went to the Howrah Station by a big maruti. The husband of Sikha was also present at Howrah Station. She stated in her cross-examination that two maruti vehicles were hired to reach the Howrah Station. She has made it further clear by stating again in her cross-examination that she resides at Birati. Vehicles are usually lined up for hiring at Shanpukur, Barasat More, Champadali, Out of many vehicles, two were hired.

20. The P.W. 13. S.I. of Police, C.I.D., has stated that as per statement of the accused persons, these two appellants were arrested from the cab road from Howrah Station. There is no other evidence, whatsoever, as far as these two appellants are concerned excepting the fact that the appellants were arrested from the cab road at Howrah Station with their maruti cars.

21. In the instant case, the statements of the victims girls. Pratima Roy and Moslema Bibi alias Neelima, have been recorded u/s 164 of the Code of Criminal Procedure, which were marked Exhibits-8 and 9. Pratima Roy, the P.W. 11, stated to the Magistrate that on 02.07.2008. she was taken to the Howrah Station by a car. The P.W. 12. Moslema Bibi stated nothing about the cars and these two appellants before the Magistrate.

22. In the instant case, this Court is not concerned with the allegations and aspersions as well as evidence so far they are related to the accused persons other than these two appellants. Therefore, the discussion in these appeals is restricted to the appellants only.

23. What is found from scanning of evidence that two maruti cars were hired by

the other convicts in order to bring the victims to Howrah Station. It is the victims themselves who stated that two maruti cars. out of many, were hired for that purpose. The statement of P.W. 12. in fact, made it clear that the maruti cars were lined up in the stand and were chosen by the other convicts for the purpose of making their journey to Howrah Station from Barasat. In course of examination u/s 313 of the Code of Criminal Procedure these two appellants categorically stated that their cars were hired and they carried Aswini and Sikha with the victim girls from Barasat to Howrah Station and they were arrested from cab road while they were waiting, for the reasons not known to them. The learned Court found nexus between these two drivers of hired maruti cars with the convicts, who actually procured the victim girls for the purpose of commercial sex business and trafficking them to Chennai. Husband of Sikha, i.e., Saswata, was discharged from the case, as he was not sent up by police for trial. It is not understood how the learned Court found the drivers of two maruti cars had connection with the racket. When it is found that those were hired from the lined up vehicles at Shanpukur, Barasat, amongst many, it cannot be said that these two drivers of maruti cars had any prior knowledge about the trafficking or that had any intention to take away or procured the victims within the meaning of section 5 of the Immoral Traffic (Prevention) Act.

24. Upon screening of the evidences, I find that the learned Court failed to appreciate the evidences properly as far as these two appellants are concerned. To be stated precisely, they simply carried the girls by their cars, which were hired by the members of the racket and that they had any such intention to trafficking has not at all been established. It is really doubtful whether or not these two appellants were connected with the racket. I do not agree with that view of the learned Court and. accordingly, find these two appellants should get benefit of doubt.

25. In view of the above discussion, the appeals succeed and the appellants. Sanjib Singh and Bimal Sarkar are found not guilty u/s 5 of the Immoral Traffic (Prevention) Act and the order of conviction and sentence as far as these two appellants are concerned. is set aside.

26. In the facts of the case, I make no order as to costs.

27. Interim order, if there be any. stands vacated. Let a copy of this judgment along with Lower Court Records be sent to the learned Court below without delay.

Let urgent photostat certified copy of this order, if applied for. be given to the learned Advocates of the parties upon compliance of necessary formalities.