

Ramesh

Vs

The State of Maharashtra

Criminal Appeal No. 72 of 1961

(CJI B. P. Sinha, K. N. Wanchoo, J. C. Shah JJ)

24.07.1962

JUDGMENT

SHAH, J. -

On May 1, 1962, we ordered after arguments were concluded that the appeal be allowed and the conviction of the appellant be set aside. We now proceed to record our reasons in support of the order.

The appellant, Ramesh Amin, and seven others were tried in the Court of Session, Aurangabad, for offences punishable under ss. 366, 366A. Indian Penal Code, and abetment thereof. The appellant was the third accused at the trial. The Sessions Judge convicted accused Nos. 1 to 4 and 7 of the offences charged against them and sentenced them to suffer rigorous imprisonment for two years for each offence, and acquitted the rest. The High Court of Bombay entertained appeal of accused Nos. 1 to 4 (but not of accused No. 7) and set aside the order of conviction and sentence against them for the offences punishable under s. 366 read with s. 34 and s. 366A of the Indian Penal Code. The High Court, however, convicted the appellant of abetting the seventh accused in inducing a minor girl, Anusaya, to go with other persons from her residence at Kabadipura to Gulzar Theatre, and then to a house known as Bohori Kathada with intent that she may or knowing that she was likely to be seduced to illicit intercourse. With special leave the appellant has appealed to this Court.

The seventh accused, Patilba, is a resident of Aurangabad and the eighth accused is his wife. Anusaya is the daughter of Shakuntala by her husband Kashinath. After the death of Kashinath, Shakuntala brought her infant daughter Anusaya to the house of Patilba and started living with him as his mistress. Sometime later Shakuntala left the house of Patilba and took up residence at Nasik but Anusaya continued to live with Patilba and was brought up by him. Marriage was arranged by Patilba between Anusaya and one Ramlal, but Anusaya declined to live with her husband. Patilba introduced Anusaya to some "customers" and she started indulging in promiscuous intercourse, for money. It was the prosecution case that on January 13, 1960, the appellant went to the residence of Patilba and asked him to bring Anusaya and one Chandrakala (a woman following the profession of a prostitute) to the Gulzar Theatre, and accordingly, Patilba, the eighth accused, Chandrakala and Anusaya went to the Theatre. At the instance of the appellant, Anusaya and Chandrakala were taken by one Devidas (who has given evidence as an approver) to Bohori Kathada. Sub-Inspector Pagare of the Police Station City Police Chowk, Aurangabad, had received information that some persons were consuming illicit liquor in a room at Bohori Kathada and he arranged to raid that house. Pagare found accused Nos. 1 to 5 and Devidas in a room consuming liquor. He also found Chandrakala and Anusaya in an inner apartment. Persons found in the room were arrested and sent for medical examination to the local Civil Hospital, and it was found that Anusaya had not attained

the age of 18 years. Pagare then laid an information before the Judicial Magistrate, Aurangabad, for offence punishable under the Bombay Prohibition Act, 1949 - (we are informed at the Bar that in respect of those offences the accused were acquitted and we are not concerned in this case with those offence) - and also for offences punishable under ss. 366 and 366A of the Indian Penal code against nine persons including the appellant, Patilba and Devidas. In the course of proceedings for commitment to the Court of Session, Devidas was tendered pardon on condition of his making a full disclosure of the circumstances within his knowledge. The case was then committed to the Court of Session, Aurangabad for trial. The Court of Session held that accused Nos. 1 to 4 had in furtherance of their common intention kidnapped Anusaya - a girl below the age of 18 years - in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she would be forced or seduced to illicit intercourse, and the seventh accused Patilba had abetted the commission of that offence, and that accused Nos. 1 to 4 and 7 had induced Anusaya to go from her residence to the Gulzar Theatre and from the theatre to Bohori Kathada with intent that she may be or knowing that it was likely that she would be forced or seduced to illicit intercourse. He accordingly convicted accused Nos. 1 to 4 of the offence under s. 366 read with s. 34 of the Indian Penal Code and also of the offence under s. 366A of the Indian Penal Code.

The High Court of Bombay in appeal acquitted accused Nos. 1 to 4 of the offence of kidnapping because, in their view, accused Nos. 1 to 4 had "nothing whatever to do with the original kidnapping by Patilba (the 7th accused) and since he was not the lawful guardian of this girl, her being brought to this room cannot be regarded as kidnapping". The learned Judges also acquitted accused Nos. 1 to 4 of the offence under s. 366A observing that "there is no evidence of any direct talk between any of the accused and the girl, nor even of any inducement offered through Patilba (accused No. 7). Even so far as accused No. 3 is concerned, there is no direct talk between Anusaya and accused No. 3 which can be regarded as an inducement to her to move either from the house of Patilba or from the theatre to the room in question." But in their view the case against the appellant "did not end with this" : They observed :

"The evidence clearly indicates that accused No. 3 instigated Patilba and Devidas to bring the girl to the theatre and thereafter to the room in question. Patilba, as we have stated, being in custody of this girl and the girl being minor and helpless, induced or forced her to go to the cinema and thereafter to this room and actually left her there. So far Patilba was concerned, he intended that she should be forced or seduced to illicit intercourse by one or the other of the accused. Accused No. 3 by asking Patilba to bring the girl to the theatre and asking Devidas and Patilba to bring the girl to the room clearly instigated Patilba in the commission of this offence. He must, therefore, be held clearly guilty of the offence of abetment of this offence by Patilba."

The High Court accordingly convicted the appellant of the offence under s. 366A read with s. 109 of the Indian Penal Code, because, in their view, he had abetted the commission of an offence punishable under s. 366A by Patilba by instigating the latter to bring Anusaya to the theatre and by further instigating Patilba and Devidas to bring Anusaya from the theatre to Bohori Kathada.

In our view, the appellant cannot in law be held guilty of abetting the commission of an offence punishable under s. 366A, Indian Penal Code, by Patilba.

The facts proved by the evidence are these : Anusaya at the material time had not attained the age of 18 years. She was brought up by Patilba and even though she had married Ram Lal she was at the

material time and for many months before living under the guardianship of Patilba. For a long time before the date of the offence Anusaya was accustomed to indulge in promiscuous intercourse with "customers" for money. She used to entertain, as she herself admitted, "one or two customers every day" and had before the date of the offence been habituated to the life of a prostitute. On the day in question she and her companion Chandrakala went to the Gulzar Theatre accompanied by Patilba. In the theatre Anusaya and Chandrakala were seeking customers : they repaired during the break in the show to the entrance of the theatre for that purpose, but she had to return disappointed because they found a police van parked near the entrance. Anusaya and the 6th accused went to Bohori Kathada for carrying on their profession as prostitutes. There is no evidence that she was not willing to go to Gulzar Theatre on the night in question nor is there any evidence that she was unwilling to go to Bohori Kathada to which she and her companion were invited for the purpose of prostitution.

Do these facts make out a case against the appellant of abetment of the offence of procreation of a minor girl punishable under s. 366A of the Indian Penal Code ? Section 366A was enacted by Act XX of 1923 to give effect to certain Articles of the International Convention for the Suppression of Traffic in Women and Children signed by various nations at Paris on May 4, 1910. There are three principal ingredients of the offence :

- (a) that a minor girl below the age of 18 years is induced by the accused,
- (b) that she is induced to go from any place or to do any act, and
- (c) that she is so induced with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person.

The evidence clearly establishes that Anusaya had not at the material time attained the age of 18 years. But there is no evidence on the record that Patilba induced Anusaya to go to the theatre or from the theatre to Bohori Kathada. It must be assumed that when Patilba accompanied Anusaya to the theatre and from the theatre to the Bohori Kathada at the suggestion of the appellant he knew that she was going for plying her profession as a prostitute. But in our judgment a person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of eighteen years, does not thereby commit an offence under s. 366A of the Indian Penal Code. It cannot be said that thereby he induces her to go from any place or to do any act with the intent or knowledge contemplated by the section.

We agree that seduction to illicit intercourse contemplated by the section does not mean merely straying from the path of virtue by a female for the first time. The verb 'seduce' is used in two senses. It is used in its ordinary and narrow, sense as inducing, a woman to stray from the path of virtue for the first time : it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. It is in the latter sense that the expression has been used in ss. 366 and 366A of the Indian Penal Code which sections partially overlap. This view has been taken in a large number of cases by the Superior Courts in India, e.g. Prafulakumar Basu v. The Emperor [(1929) I.L.R. 57 Cal. 1074.], Emperor v. Laxman Bala [(1934) I.L.R. 59 Bom. 652.], Krishna Maharana v. The King Emperor [(1929) I.L.R. 9 Pat. 647.], In re Khalandar Saheb [A.I.R. 1955 A.P. 59.], Suppiah v. Emperor [A.I.R. 1930 Mad. 980.], Pessumal v. Emperor [(1924) 27 Cr.L.J. 1292.], King Emperor v. Nga Ni Ta [(1903) 10 Burma L.R. 196.] and Kartara v. The State [I.L.R. [1957] Punjab 2003.]. The view expressed to the contrary in Emperor v. Baijnath [(1932) I.L.R. 54 All.756.], Shaheb Ali v. Emperor [A.I.R. 155 Cal. 100.], Aswini Kumar Roy v. The State [(1933) I.L.R. 60 Cal. 1457.] and Nura v. Emperor [A.I.R. 1934 Lah. 227.] that the phrase used in s.

366 of the Indian Penal Code is "properly applicable to the first act of illicit intercourse, unless there be proof of a return to chastity on the part of the girl since the first act" is having regard to the object of the Legislature unduly restrictive of the content of the expression "seduce" used in the Code. But this is not a case in which a girl who had strayed from the path of virtue when she was in the custody of her guardian and had with a view to carry on her affair accompanied her seducer or another person. Such a case may certainly fall within the terms of s. 366 or s. 366A whichever applies. But where a woman follows the profession of a prostitute, that is, she is accustomed to offer herself promiscuously for money to "customers", and in following that profession she is encouraged or assisted by someone, no offence under s. 366A is committed by such person, for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse. Intention on the part of Patilba or knowledge that Anusaya will be forced to subject herself to illicit intercourse is ruled out by the evidence : such a case was not even suggested. Seduction implies surrender of her body by a woman who is otherwise reluctant or unwilling to submit herself to illicit intercourse in consequence of persuasion, flattery, blandishment or importunity, whether such surrender is for the first time or is preceded by similar surrender on earlier occasions. But where a woman offers herself for intercourse for money - not casually but in the course of her profession as a prostitute - there are no scruples nor reluctance to be overcome, and surrender by her is not seduction within the Code. It would then be impossible to hold that a person who instigates another to assist a woman following the profession of a prostitute abets him to do an act with intent that she may or with knowledge that she will be seduced to illicit intercourse.

Appeal allowed.

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