

BOMBAY HIGH COURT

Emperor

Vs

Batubai Ganeshu

(Fawcett, C.J. Patkar, J.)

06.02.1927

JUDGMENT

Patkar, J.

1. This is an application for enhancing the sentence passed on the two accused, who have been convicted under Sections 373 and 114, Indian Penal Code. Accused No. 1 has been sentenced to eight months' rigorous imprisonment and accused No. 2 to one year's rigorous imprisonment.
2. The facts of the case are, that the girl Kesharbai was married to one Rasila Sukhiaji in Kashmir. She stayed for some time with her brother-in-law Kasu, and then accused No. 2, who is a cousin of Rasila and Kasu, brought her to Bombay in June 1925 to the brothel of accused No. 1, who paid her railway fare.
3. Kesharbai got tired of the life in the brothel, and on or about March 29, 1926, she left the brothel in company of a visitor at 4 A.M. Accused No. 1 then filed a complaint to the effect that Kesharbai had stolen her ornaments and cash and had disappeared from the house.
4. Kesharbai then surrendered herself to the Police, who on investigation found that there was no truth in the complaint of accused No. 1, and ascertaining that Kesharbai was not more than seventeen years of age, brought this case against the present accused. Kesharbai was examined on April 6, 1926, by Dr. Nunan who came to the conclusion that her age was seventeen so that at the time she was brought to Bombay, she was about sixteen years old.
5. It is suggested that Kesharbai was a woman of bad character and therefore the sentence passed by the learned Magistrate is adequate. The question whether Kesharbai was or was not of bad character has no bearing upon the guilt of the accused under this section. Accused No 1 appealed to this Court in Criminal Appeal No. 487 of 1926, and her appeal was dismissed on October 13, 1926. It is argued that the offence was committed in Kashmir, when Kesharbai was handed over by Rasila to accused No. 2. I think that the learned Magistrate is right in holding that what took

place in Kashmir was only a preparation for committing the offence, which was completed in Bombay. It was arranged in Kashmir that this girl should be handed over to accused No. 2 in order that he might bring her to Bombay and keep her in the brothel of accused No. 1. The offence committed by accused Nos. 1 and 2 was completed in Bombay, when accused No. 2 put the girl in the brothel of accused No. 1 in June 1925. The girl got tired of the life that she led in the brothel and ran away.

6. We think that the sentence in this case should be enhanced to two years' rigorous imprisonment in the case of each of the accused.

Fawcett, J.

7. I agree. The case is a very bad one, in which there was a deliberate bringing of this girl to Bombay from Kashmir by accused Nos. 1 and 2, and the offence is one that is punishable with a sentence of ten years' rigorous imprisonment. The learned Government Pleader does not press for an order that the two accused should be committed to the Sessions for a fresh trial, and this would, obviously, result in considerable trouble and expense. Therefore, I think, the best course is to enhance the sentence within the limits imposed by Section 439, viz., to the maximum sentence of two years' rigorous imprisonment, that the Magistrate himself could have passed.

8. In regard to certain points which were urged in the arguments it has already been ruled in *Emperor v. Jorabhai* (1926) 28 Bom. L.R. 1051, that an accused, who has had his appeal dismissed, cannot have his case reheard on the merits of his conviction, upon an application for enhancement of sentence. The fact that the appeal in this case was summarily dismissed, in my opinion, makes not the slightest difference. I was a member of the Bench that dismissed it, and can say that the appeal was dismissed on the merits. The question of jurisdiction was also a point then considered, and it was held that there was no objection to the Magistrate having tried the case. After hearing further arguments, I do not think there is any reason to hold that that conclusion was wrong.

9. In the case of accused No. 1, she never really obtained possession of the girl, until the girl had been brought to Bombay and put in her brothel. There might, for instance, have been a quarrel at the railway station at Bombay between accused Nos. 1 and 2, and the girl might have been taken to some other place. In the case of accused No. 2 it might, no doubt, be contended that he obtained possession of this girl in Kashmir with the intent mentioned in Section 373. But here the facts show that his possession was not really effective, until he got the assistance of accused No. 1 to bring the girl to Bombay, so that he could take her to a brothel here. Therefore, I think, the view taken by the Magistrate was correct.