

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 28, 2010

Date of Order: November 30, 2010

+ Crl. Appeal No.127 /2004

%

Ms. Laxmi

30.11.2010

...Appellant

Versus

The State

...Respondent

Counsels:

Mr. A.K. Singh for appellant

Mr. O.P. Saxena for respondent.

AND

Date of Reserve: October 05, 2010

+ Crl. Appeal No.120 /2004

%

Laxmi

...Appellant

Versus

State

...Respondent

Counsels:

Mr. A.K. Singh for appellant

Mr. O.P. Saxena for respondent.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. On 16th August 2001, a raid was conducted by SHO Police Station Kamla Market under the supervision of ACP Kamla Market with the help of Dr. Uma Davbratta, a social worker at kotha no.57, G. B. Road, Delhi as well as on other kothas. From Kotha no.57,

police rescued four girls namely Anjali, Bindu, Pinki and Fatima. These girls were sent to Nirmal Chaya and a case FIR NO.470 of 2001 was registered against appellant Laxmi and her co-accused Shamshad, who were running this kotha on the basis of statement of prosecutrix Fatima @ Babita to Ms. Manju, Sutpd. OHG Nirmal Chaya. However, appellant Laxmi and her co-accused Shamshad, who were running this kotha did not get deterred by the raid of 16th August, 2001 and they continued their business with new girls. A second raid was conducted at different kothas of G.B. Road on 24th December 2001 by SHO and ACP along with same social worker and again six minor girls namely Mumtaj, Munni, Sapna, Shanti and Rani were rescued from kotha no.57. These girls were sent to OHG Nirmal Chaya and Anwara, one of the girls recovered made a statement to Ms. Manju, Suptd. OHG Nirmal Chaya on 4th February 2002 which was forwarded to SHO and an FIR No.44 of 2002 was recorded. The appellant Laxmi was tried in both the cases along with Shamshad for various offences under IPC as well as offences under Sections 3,4,5, 6 and 7 of ITP Act. She was convicted in both the cases.

2. These two appeals have been filed by the appellant Laxmi assailing her conviction and sentence under Sections 3,4,5 and 6 of ITP Act in both the cases. She was sentenced to two years imprisonment under Section 3 of ITP act and 7 years imprisonment under Section 4 of ITP Act in FIR No.470 of 2001. She was convicted under Section 343, 368, 373 and 376 of IPC read with Section 109 IPC as well and sentenced to undergo two years under Section 343 IPC, five years under Section 368 and seven years each under Section 373 and 376 read with Section 109 IPC for offences under ITP Act and in both the cases the sentence to her under, under Section 4 was seven years under Section 5, five years and under Section 6, seven years along with fine. In FIR No.470 of 2001, sentence under Section 3 ITP Act was one year while in FIR No.44 of 2002 under Section 3 of ITP Act. All sentences were accompanied with some fine.

3. The relevant provisions of ITP Act read as under:

Section 3(1) and 3(2)(a) of ITP Act read as under:

3. Punishment for keeping a brothel or allowing premises to be used as a brothel.— (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than two years and which may extend to three years and also with fine which may extend to ten thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakh rupees

(2) a any person who,—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part

thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.”

4. Sections 4, 5 and 6 of ITP Act read as under:

4. Punishment for living on the earnings of prostitution.—(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable

with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

(2) Where any person over the age of eighteen years is proved,—

- (a) to be living with, or to be habitually in the company of, a prostitute; or
- (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or
- (c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

5. Procuring, inducing or taking person for the sake of prostitution .—(1) Any person who—

- (a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
- (b) induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
- (c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or
- (d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this subsection, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.

(3) An offence under this section shall be triable,—

- (a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or
- (b) in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

5A. Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of,—

- (a) threat or use of force or coercion, abduction, fraud, deception; or
 - (b) abuse of power or a position of vulnerability; or
 - (c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person,
- commits the offence of trafficking in persons.

Explanation.—Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution.

5B. (1) Any person who commits trafficking in persons shall be punishable on first conviction with rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life.

(2) Any person who attempts to commit, or abets trafficking in persons shall also be deemed to have committed such trafficking in persons and shall be punishable with the punishment hereinbefore described.

5C. Any person who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons shall on first conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to fifty thousand rupees.

6. Detaining a person in premises where prostitution is carried on .—(1) Any person who detains any other person, whether with or without his consent,—

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may be less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2-A) Where a child found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,—

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl."

5. The question which arises is whether the appellant Laxmi was running a brothel at Kotha No.57, G.B. Road, Delhi as this is the basis of her conviction in both the cases. It is vehemently argued by the counsel for the appellant that the trial court did not appreciate that girls recovered from the brothel house by the prosecution had turned hostile in both cases and none of them had supported the case of the prosecution that

appellant Laxmi was running a brothel house on the first floor, Kotha No.57, G.B. Road. I consider that this contention of the counsel for the appellant must fail. In FIR No. 470 of 2001 Fatima is the prime witness. She testified that after she was brought to Delhi by a man and a woman on the pretext of providing her a job, accused Shamshad along with another person took her initially to kotha no.56 and then to kotha no.57. Kotha No.57 was owned and managed by appellant Laxmi. She identified the appellant Laxmi in the court. She submitted that she was made to indulge into prostitution under duress. She used to be beaten by co-accused Shamshad and confined in a room whenever she refused to indulge into prostitution. Whenever police used to visit kotha, she used to be concealed at a place in Sultanpur Farm, Prem Nagar, Police Station Nangloi. The appellant Laxmi and Shamshad had been taking money from the customers and they would pay her only afterwards after deducting charges. Even her own share of earnings used to be kept by them on the pretext that she would be given it later on. The appellant Laxmi had to pay around Rs.1 lac of her earnings made from prostitution which she did not pay. She stated that she was 17 years of age when she was sold to Shamshad and another person. PW-3 and 4, two other minor girls recovered from kotha also deposed that the kotha was being run by appellant Laxmi. However, they not identified her in the court and on this point they had turned hostile. In FIR No. 44 of 2002 PW-1 Rajni in her testimony has categorically stated that after she was forced into prostitution by one Raj Kumari and rape was committed on her, she was brought at Kotha No.64, G.B. Road by Raj Kumari, thereafter she was sold to Renu. From Kotha No.64, she had come to Kotha No.57, G.B. Road of Laxmi and at Kotha No.57 , she indulged into prostitution. Fifty percent of her earnings from prostitution was retained by herself and 50% used to be retained by the Kotha owner. Although in the court she refused to identify Laxmi, appellant herein, however, she did say that the kotha owner was Laxmi. She also stated that there were 20/30 girls at Kotha No.57 who used to indulge into prostitution. Her this testimony had gone unrebutted. Rajni is one of the girls recovered from this kotha no.57.

PW-2 Manju had also stated that she was brought from Kathmandu to Delhi at Kotha No.57. She, however, stated that she did not know who was the owner of this kotha but she did testify that she was indulging into prostitution at this kotha at G.B. Road. To same effect is the testimony of Sheela PW-3 and Savita PW-4 and Mani PW-5. All these witnesses have testified about their having indulged into prostitution at kotha no.57. PW-6 Anuwara is another victim of sexual assault. She was residence of West Bengal before she was forced into prostitution. She was brought to Delhi by a man and a woman on the pretext of getting some job and she testified that at Delhi she was taken to a hotel where she was raped and on next day, co-accused Shamshad brought her to kotha no.57 at G.B. Road and she was compelled to become a sex worker. She was told that if she did not want to indulge into this trade, she would have to pay Rs.1 lac, the price for which she was purchased. Thereafter, accused Shamshad started beating her whenever she refused to have sexual intercourse with the customers. Shamshad did not allow her to even feed her child and her child used to be drugged by Shamshad and her child thus would remain asleep and she was not allowed to go out of kotha. She however stated that she was not aware who was the owner of kotha. She stated that from her earnings, Shamshad used to keep some money. She was cross examined by learned PP and in her cross examination she stated that she did not remember if she had made statement to the Suptd. of Nirmal Chaya that kotha no.57 was owned by Laxmi. She however admitted that she knew Laxmi by name but stated that she cannot identify Laxmi and could not say if Laxmi (accused/appellant) was the owner of kotha.

6. PW Pramod Raheja who had purchased the premises, viz. plot no.57, G.B. Road inclusive of the premises where this trade was being done. He deposed that one Mumtaj Chaudharian was the tenant on the first floor. In about 1988-89, Mumtaj Chaudharian died and by succession her granddaughter Frida Malik became tenant. However, the premises on the first floor was being used by Laxmi and Shamshad for running a brothel

house. He identified both Laxmi and Shamshad in the trial court. During cross examination he stated that his shop was on the ground floor and he used to remain at the shop up to 6.30/7 pm and the staircase leading up to first floor of the premises were adjacent to his shop. So he had seen Laxmi and Shamshad going to kotha from those staircase. He knew Laxmi and Shamshad by face. However, he learnt their names from a sweeper and a hawker. He had filed an eviction petition for eviction of the premises. The police also confirmed the names of accused persons as Laxmi and Shamshad. PW Madan Singh Rawat is the manager of Sanchar Communications. He testified that on an application made by Laxmi resident of first floor, 57, G.B. Road, Delhi a telephone, connection number 3504256 was installed at 57, first floor, G.B. Road, Delhi. He proved the copy of receipt of security deposited made by Laxmi Devi as Ex.PW9/B and a copy of terms and conditions for booking phone duly thumb marked by appellant Laxmi as Ex.PW9/C and D respectively and monthly bill raised by the department as Ex.PW9/E.

7. It is apparent from the testimonies of these witnesses that kotha no.57 at G.B. Road first floor was being managed by Shamshad and appellant Laxmi, the two accused persons. No doubt the girls recovered from there have turned hostile as far as identification of appellant Laxmi is concerned but their turning hostile would not cast a shadow on the testimony of other witnesses which shows that it was Laxmi and Shamshad who were running this brothel house (kotha). The telephone at this kotha was got installed by appellant Laxmi. Her identity as given in the application is daughter of Prasad Rao. Her identity as given by her to the police and to the court is also Laxmi daughter of Prasad Rao r/o 57, G.B. Road. It is not her case that she was a tenant in the premises or a sub tenant in the premises. Her residence is this kotha. She has not lead defence to prove that she was living at 57 GB Road for some other purpose. Witness after witness deposed that premises 57, GB Road, was being used for running a brothel house. One witness has deposed that this brothel house was owned by appellant Laxmi.

8. The identity of Laxmi as owner of brothel house has been well established by the prosecution by examining the owner of the building and by examining the persons from telephone department. A perusal of record would show that she in the bail applications made in the Court also she had shown herself as a resident of 57, GB Road, Delhi. In the bail bonds filed on behalf of her surety, she has been shown as resident of 57, G.B. Road, Delhi. In view of Section 106 of Indian Evidence Act, the onus to prove as to in what capacity and for what business, she was living at 57, GB Road, Delhi was on her since this fact was in her special knowledge. She had failed to prove that she was living there for the purpose other than running a kotha. Under these circumstances, it stands proved beyond doubt that she was living there for running a kotha and managing kotha with help of co-accused Shamshad.

9. I, therefore, consider that in view of the provisions of Section 3 of ITP Act, the appellant was rightly held guilty for the offence by learned trial court.

10. Section 4 of ITP Act is connected with running and managing a kotha. There is no doubt that Laxmi is above 18 years. She was living at 57, GB Road with the prostitutes and running this kotha. It has also been proved that a part of earnings from prostitution by witnesses was retained by her. Thus she was living on the earnings of prostitution and she was rightly convicted by the learned trial court under Section 4. Section 5 of ITP Act makes taking of a person for the sake of prostitution as an offence. Witness after witness have come and stated that they were indulging into prostitution at 57, GB Road which proved taking of these prostitutes at 57, GB Road for the purpose of prostitution. Some of the prostitutes were initially forced into prostitution by some other persons and they later on moved to this kotha. Still procuring or taking persons for the purpose of prostitution amounts to an offence under Section 5 of the ITP Act. PW-1 Fatima in first

FIR and PW-4, Savita in 2nd FIR was a child when inducted into profession. PW-17 proved that on 2.1.2002, she was aged between 15 years and 16 years. Thus, when she was inducted to prostitution, she was a minor child. PW-6 was aged 17 years on 9.9.2002. She was raped and then forced into this profession when she was minor. The appellant was, therefore, rightly convicted under Section 5 read with proviso in both the cases. The conviction of the appellant Laxmi under Section 4 and 6 of the ITP Act was also justified as there are allegations made by Fatima and Anwara recovered from kotha that they were detained in kotha no.57 without their consent and not allowed to leave it and even her child also used to doped.

11. It is submitted by counsel for the appellant that the investigation in this case was not conducted by special investigating officer as required under Section 15 of ITP Act. I consider this plea must fail since in this case at the time of search ACP and SHO who fall in the category of officers as notified under Section 15 of the Act were leading the team. Merely because SHO during further investigation has taken the help of his junior staff, would not mean that he had not conducted the investigation. The investigation is a complex process and investigation may involve simultaneous investigation into various aspects and it is sufficient if the investigating officer in charge of investigation satisfies all the provisions of the Act. It is not necessary that he personally has to do all the acts of investigation. He is at liberty to hand over part of the investigation to his subordinate and can take help of special agencies during investigation. I find no force in the arguments of counsel for the appellant.

12. Witness PW-1 Fatima in FIR No.470 of 2001 had categorically testified that appellant Laxmi along with co-accused Shamshad used to force her into prostitution and she used to be illegally confined to a room and beaten whenever she refused to indulge into prostitution. She stood her cross examination well. From her testimony, it is apparent

that the appellant Laxmi was rightly convicted by the learned trial court under Sections 343, 368, 373, 376 read with Section 109 of IPC i.e. the offences of wrongful confinement (343 IPC) and wrongfully concealment and keeping in confinement (368 IPC) of Fatima Khatoon despite knowing that she had been abducted in the name of providing job, stood proved from the testimony of Fatima Khatoon. The offence of buying Fatima Khatoon for the purpose of prostitution also stands proved (Section 373 IPC) in view of the testimony of Fatima Khatoon. Fatima has also testified to the effect that she was forced into prostitution and she used to be beaten whenever she refused to entertain client. Thus, offence under Section 376 read with Section 109 IPC also stood proved against appellant Laxmi who was managing this kotha with co-accused Shamshad. I consider that the trial court rightly convicted the appellant Laxmi for offence under Section 343, 368, 373, 376 read with section 109 IPC in first FIR.

13. In view of my foregoing discussion, both the appeals filed by the appellant Laxmi are hereby dismissed.

November 30, 2010
rd

SHIV NARAYAN DHINGRA, J