

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.428 of 2013

Against the judgment of conviction, dated 05.07.2012, and order of sentenced dated 07.07.2012, passed by Mr. Sudhakar Singh, Ad Hoc Additional Sessions Judge, II, Sitamarhi, in Sessions Trial No. 184 of 2012/27 of 2012 arising out of Sitamarhi P.S. Case No. 173 of 2012

Shila Devi, wife of Krishna Singh @ Kishan Singh, resident of village Barh Bihari, Meghi Tola, P.S. Pandarak, district Patna Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Neeraj Kumar @ Sanidh, Adv.

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

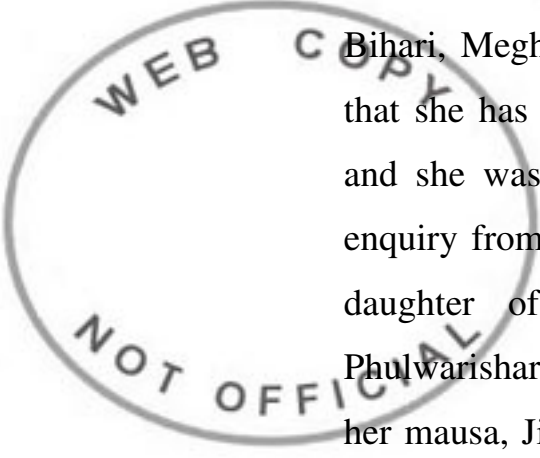
ORAL JUDGMENT

Date: 06-10-2015

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Section 5 of the Immoral Traffic (Prevention) Act, 1956, and has been sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case, as alleged in the self statement of the informant, Santosh Kumar, the Probationary Sub Inspector of Police, dated 13.06.2012, at 06.30 A.M. that on 11.03.2012 he was on patrolling to raid and arrest the warrantee accused along with Sanjeet Kumar P.W. 3, Yogendra Prasad P.W. 7, Rajesh Kumar P.W. 4, Navneet Kumar P.W. 2, Ameri Paswan (not examined). While they were returning from the raid at 05.00 A.M. on 12.03.2012 and reached Mahanth Sah Chowk, a lady aged about 50 years and a girl aged about 14 years were going on rickshaw towards west. While going on rickshaw the girl was protesting repeatedly with the old lady, the police having found some suspicion apprehended rickshaw and on enquiry it was found that there was variation in the statement of the accused, the girl and lady, which created some suspicion. The girl disclosed that the old lady is taking her to Boha Tola by force and the enquiry was made from the old lady and the minor girl and old lady were brought to the



Police Station and information was given to the police line for sending the lady police. On enquiry the old lady disclosed her name as Shila Devi, wife of Krishna Singh @ Kishan Singh, resident of village Barh Bihari, Meghi Tola, P.S. Pandarak, district Patna. She also disclosed that she has come from Sitamarhi for getting the bail of her husband and she was going to Boha Tola in the house of her relative. On enquiry from the minor girl, she disclosed her name as Renu Kumari, daughter of Gajendra Yadav, resident of Phulwarisharif, P.S. Phulwarisharif, Patna, but, disclosed that at present she was living with her mausa, Jitendra Yadav and mausi Savita Devi, residents of village Bihta, district Patna. She, further, disclosed that her step-mother has sent her with Shila Devi to Sitamarhi and she does not know the name of her step-mother. Shila Devi disclosed that she is going to her husband, who is in jail and after visiting her husband she will return back, but, on reaching Sitamarhi she disclosed that she has to go to Boha Tola Mohalla in the house of her relative. The minor girl Sugi Kumari doubted that she is being taken for selling her for prostitution and so she was protesting on rickshaw. In the meantime, the police reached. The, further, case of the prosecution is that on the statement of the old lady regarding her relative at Boha Tola enquiry was made and on enquiry it was learnt that none of the relative of Shila Devi live at Boha Tola and it was also learnt that Shila Devi is accused in a case bearing Sitamarhi P.S. Case No. 179 of 2008, dated 26.04.2008, for offence under Sections 372/373 of the Penal Code and 3, 4, 6 and 9 of the P.T. Act and her husband is an accused and is in jail in that case, hence, on these facts it was inferred that Shila Devi, wife of Krishna Singh @ Kishan Singh, resident of village Barh Bihari, Meghi Tola, P.S. Pandarak, district Patna, is taking the minor girl for the purpose of selling and to compel her for prostitution.

4. On the self statement of the informant, first information report lodged and investigation proceeded and, thereafter, after

investigation, the charge sheet submitted, case committed to the Court of sessions and after framing of the charge for offences under Sections 372 and 373 of the Penal Code and 5 of the Immoral Traffic (Prevention) Act, 1956, the trial proceeded.

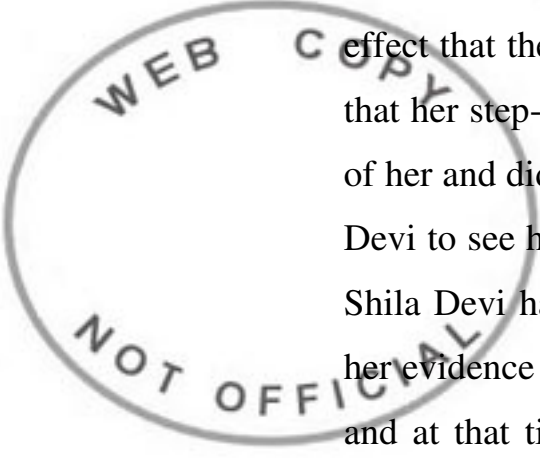
5. During trial eight witnesses were examined by the prosecution, they are P.W. 1 Sugi Kumari, the victim, P.W. 2 Navneet Kumar, Assistant Sub Inspector of Police, P.W. 3 Sanjeet Kumar, Assistant Sub Inspector of Police, P.W. 4 Rajesh Kumar, Assistant Sub Inspector of Police, P.W. 5 Santosh Kumar, Assistant Sub Inspector of Police, P.W. 6 Kumar Indra Prakash, the investigating officer of the case. He got the statement of the victim recorded under Section 164 of the Criminal Procedure Code and got her examined medically and after investigation submitted the charge sheet. In his evidence he stated that he tried to contact the mother of the victim and verified her address and found her address wrong and the Court was informed. P.W. 7 is Yogendra Prasad, Assistant Sub Inspector of Police, who was member of the raiding party and P.W. 8 is Neeraj Kumar, Judicial Magistrate, 1st Class, who recorded the statement of the victim and has proved her statement under Section 164 of the Criminal Procedure Code, marked as Exhibit 4. The investigating officer, after investigation, submitted the charge sheet on which the cognizance taken, case committed to the Court of session and the trial Court after taking into consideration the evidence of the witnesses convicted and sentenced the appellant as aforesaid.

6. The learned counsel for the appellant submits that the case hinges on suspicion. There is no evidence to suggest that the victim was procured or enticed or taken for prostitution. The statement of the victim also fluctuates from stage to stage, in fact, the identity of the victim has not been established and it is doubtful that the victim apprehended at the place of occurrence.

7. The learned counsel for the State, however, submits that

the victim was apprehended along with the appellant and was being taken on the rickshaw to Boha Tola, which is a red light area.

8. I proceed to consider the evidence of the witnesses in the light of the submissions made by the parties. The prosecution case alleged in the first information report that the appellant was apprehended along with victim while going on rickshaw and there was verbal altercation and protest by the victim which attracted the attention of the police party and so they were apprehended. The police found that there is variation in the statement of the appellant and victim and this casts a suspicion that the victim was being taken for illegal purposes and both were taken to the Police Station and the appellant disclosed her name as Shila Devi, wife of Krishna Singh @ Kishan Singh, resident of village Barh Bihari, Meghi Tola, P.S. Pandarak, district Patna, and disclosed that she has come at Sitamarhi for release of her husband on bail and was going to Boha Tola at the house of her relative. The victim, a minor girl, disclosed her name as Renu Kumari, daughter of Gajendra Yadav and has stated that her mausa, Jitendra Yadav and mausi Savita Devi, residents of village Bihta, Patna, and disclosed that her step-mother has sent her to Sitamarhi with Shila Devid. However, the minor girl was unable to disclose the name of her step-mother. Shila Devi disclosed that she is going to meet her husband in jail, but, on reaching Sitamarhi, she disclosed the minor girl Renu Kumari that she has to go to the house of her relative at Boha Tola, then, Renu Kumari, the minor girl got suspicion that she girl is being taken to sell and so the girl protested on rickshaw itself. However, witness, P.W. 2 Navneet Kumar, P.W. 3 Sanjeet Kumar, P.W. 4 Rajesh Kumar, P.W. 5 the informant and P.W. 7 Yognendra Prasad are the members of the police party who apprehended the appellant and the victim and supported the prosecution case as alleged as per the disclosure of the victim. However, P.W. 7 is the investigating officer and he in his evidence stated that he got the statement of the victim

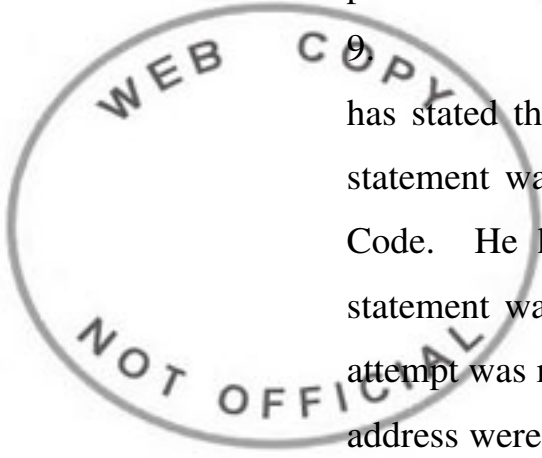


under Section 164 of the Criminal Procedure Code and he has proved the statement, marked as Exhibit 4. However, the statement of the victim under Section 164 of the Criminal Procedure Code is to the effect that the girl used to work at Bihta in the field. The victim stated that her step-mother used to assault her and her father did not take care of her and did not look after her and her step-mother sent her with Shila Devi to see her relation who is in jail in Sitamarhi, then, she learnt that Shila Devi has brought her to sell. However, the victim minor girl in her evidence as P.W. 1 has deposed that it was 4 o'clock in the evening and at that time she got down at Jhajha Railway Station to catch the shuttle train to go to her house as she was returning from the house of her Bua (father's sister), then, she met with a lady at the Railway Station, who asked her as to where she was going, then, she disclosed that she was going to Raghunathpur, then, the said lady said that appellant also had to go to Raghunathpur and commanded to follow her. Thereafter, it is alleged that As prayed for by the learned counsel for the appellant, put up gave her (Sugi Kumari, P.W.1) an orange and, thereafter, she (P.W. 1) does not know what happened. She has, further, disclosed that she has brought her to Sitamarhi Bus Stand and there were 5-6 persons with her and they get her seated on rickshaw and rest proceeded on motorcycle. The appellant asked P.W. 1 to go to Dumra Court. She has, further, deposed that in way at Mahanth Chowk when police asked the lady (appellant) disclosed that the victim is her daughter and, then, the girl (P.W. 1) disclosed that she was not her daughter. She has stated that the police was asking, but, they did not permit her to disclose under the threat of killing. She has, further, stated that lady, i.e., the appellant disclosed her name as Renu Kumari and she did not permit her to disclose anything. However, it is pertinent to mention that P.W. 1 is said to be the girl who was apprehended along with the appellant on the rickshaw. However, it is stated that she on enquiry by police disclosed her name as Renu Kumari (Sugi Kumari)

and after apprehension the appellant was sent to jail and this victim was sent to Remand Home, Gaighat, Patna. However, a petition was filed on 26.03.2012 as apparent from the order sheet on behalf of one Kamla Devi claiming that the victim of this is really Sugi Kumari may be released from the Remand Home, Gaighat, Patna, in favour of Kamla Devi. The Court took notice of the fact that the victim was apprehended disclosed her name under Section 164 of the Criminal Procedure Code as Renu Kumari (Sugi Kumari), daughter of Gajendra Yadav and a report was called for from the investigating officer about the name of the victim, the name of her father and on the petition by order, dated 28.06.2012, mentioned that a petition was filed by Kedar Choudhary and Kamla Devi on 21.06.2012 to the effect that they are the parents of the victim of Sugi Kumari, who is in Remand Home and she under the pressure of criminals disclosed her name as Renu Kumari and she has deposed in the case on 08.06.2012 in which she disclosed her name as Sugi Kumari and even shown her willingness to go with her parents and in this connection Kamla Devi and Kedar Choudhary have produced identity card issued by the Election Commission and the Below Poverty Line ration card as well as the identity card issued by the school of the victim, Sugi Kumari, released to go with the parents and her mother and brother were present in Court and, further, taken into consideration the report filed by the investigating officer that he verified on telephone from the Officer-in-Charge of Rani Talab Police Station regarding Renu Kumari. It has been learnt that real name of Renu Kumari is Sugi Kumari and father's and mother's name is Kamla Devi and Kedar Choudhary, residents of village Raghunathpur, Patna, hence, it was ordered that in view of the report of the investigating officer that Sugi Kumari out of fear has disclosed her name as Renu Kumari and then Renu Kumari is actually Sugi Kumari and in the Below Poverty Line card bearing no. 048702, which is attached with the photograph shows the photograph of Kedar Choudhary along with

four children and the photograph of Sugi Kumari matches, hence, it was ordered to release the victim, Renu Kumari @ Sugi Kumari to her parents.

However, the investigating officer, P.W. 6 in his evidence has stated that he had not recorded the statement of the victim. Her statement was recorded under Section 164 of the Criminal Procedure Code. He has, further, stated in paragraph 19 that no enquiry or statement was made from the victim. He has, further, stated that the attempt was made to contact the father and mother of the victim and her address were verified and earlier her address was wrong and, thereafter, it was learnt that her address was wrong and the Court was duly informed. However, from the perusal of the entire evidence, it is apparent that there are two sets of evidences with regard to the victim (Sugi Kumari). The first set of evidence as alleged in the first information report that the victim disclosed that her step-mother has sent her with Dhila Devi to Sitamarhi, however, she disclosed that she did not know the name of step-mother. In her statement under Section 164 of the Criminal Procedure Code she supports the prosecution case in the first information report that her step-mother had sent her with Shila Devi, to Sitamarhi to see the relative of Shila Devi. However, her statement in the Court that she met the appellant at Jhajha Railway Station and the appellant asked her to follow her to Raghunathpur and, thereafter, she was given an orange and, then, she became unconscious. However, this evidence in the Court of the victim is a development and making out a new case, which is contrary to her earlier statement under Section 164 of the Criminal Procedure Code as well as in the first information report. However, the police, during investigation, did not try to find out the address of her parents and the victim was released on the petition filed by Kedar Choudhary and Kamla Devi claiming to be parents for which the investigating officer has reported that he verified on telephone that the victim, Renu Kumari, is Sugi Kumari. However,



the parents of the victim have not been examined as witnesses. It is true that the victim was caught hold along with the appellant, however, so far the evidence that the victim was examined on 13.03.2012 while the occurrence is dated 12.03.2012.

10. Having regard to the fact that the statement of the victim is fluctuating as per the first information report as well as in the evidence in Court and two distinct theories are coming out regarding her and the first theory in the first information report which is supported in the statement under Section 164 of the Criminal Procedure Code is that her step-mother had sent her (Sugi Kumari) whereas the person who came for claiming her parentage and who got released the victim from Remand Home are Kamla Devi and Kedar Choudhary, hence, the prosecution case in first information report given a go-bye that she is the daughter of a step-mother, who is engaged in getting her selling. The victim disclosed her name as Renu Kumari in statement under Section 164 of the Criminal Procedure Code and the Magistrate P.W. 8 disclosed that the victim has given her statement out of her own sweat will and, further, having regard to the fact that in addition to the contradiction in the statement and in the evidence of the victim to her earlier statement under Section 164 of the Criminal Procedure Code and, further, the fact that it has not been established that the victim was being taken for prostitution and the finding that the victim was being taken for prostitution is only on conjecture and surmises as it is only the suspicion.

11. Hence, having regard to the facts and circumstances of the case, the appellant is entitled to the benefit of doubt, hence, I give the appellant the benefit and hold that the prosecution has not been able to prove the charge beyond reasonable doubt.

12. It is pertinent to mention that ingredients for offence under Section 5 of the Immoral Traffic (Prevention) Act, 1956, has not been established to prove the charges and the appellant is entitled to benefit

of doubt.

13. The order of conviction and sentence, recorded by the trial Court, is **set aside** and the appeal is **allowed**. The appellant is directed to be released from jail forthwith, if not wanted in any other case. She is discharged from the liability of her bail bond.

(Gopal Prasad, J)

SA/-

U	√	T	√
---	---	---	---