

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.3118 of 2018

ORDER:

This Criminal Revision Case arises out of the judgement dated 31.08.2018 passed in Crl.A.No.394 of 2018 by the XIV Additional District & Sessions Judge, Ranga Reddy District by confirming the judgment dated 23.04.2018 in C.C.No.301 of 2016 on the file of XXII Metropolitan Magistrate, Cyberabad at Ibrahimpatnam.

2. The revision petitioner is the Accused No.1 in C.C.No.301 of 2018. He was convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- each for the offence punishable under Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act"), in default, to suffer simple imprisonment for a period of 15 days. Aggrieved by the same, the petitioner/A.1 has preferred an appeal before the lower appellate Court and the same was dismissed by confirming the judgment of the trial Court. Being aggrieved, the present revision has been preferred.

3. Heard the arguments of learned counsel for petitioner and learned Public Prosecutor.

4. The brief facts of the case of the prosecution are as follows:

On 01.08.2016 at about 20.00 hrs, the Inspector of Police, Yacharam, received a credible information that some persons were buying a female infant baby at Mall village and proceeding towards Hyderabad in a Toofan vehicle bearing No.AP-27TT-5914. On receiving information, the police of Yacharam,

immediately conducted vehicle checking in front of the police station about the said vehicle. At about 20.00 hours, the police stopped a Toofan vehicle and found three ladies and one male person along with the driver who were present in that vehicle. Out of them, a female infant baby was present with a lady. The Sub-Inspector of Police questioned that lady about the details and recorded her confessional statement in the presence of LWs.8 and 9. The said lady confessed the commission of the offence. Basing on her confessional statement, the police seized the amount and taken the infant baby and brought the petitioner/A.1 to the police station.

5. Basing on the panchanama, the Inspector of Police registered a case in Crime No. 156 of 2016 under Section 81 of the Act and Section 317 of IPC.

6. During the course of investigation, LW.13-Sub-Inspector of Police examined and recorded the statements of LW 1 to 7 and arrested the accused/A-1 to A-4.

7. On 2.08.2016 at 2.00 P.M. the accused/A-6 voluntarily came to the police station and surrendered before the Sub-Inspector of police. Then, A-1 to A-4 & A-6 sent for judicial remand.

8. The point for consideration in this matter is :

Whether the prosecution proved the guilt of the accused beyond reasonable doubt for the offence punishable under section 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 317 of IPC against the petitioner/A-1?

9. According to the prosecution, this is a case of sale of an infant baby.

10. The revision petitioner is Accused No.1, who was convicted for the offence under section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015. The sub- Inspector of Police, Yacharam Police Station laid charge sheet against the accused in Crime No. 156 of 2016 under Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 317 of IPC.

11. The XXII Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District, vide judgement dated 23.04.2018 acquitted the accused/A-7 & A-8 for the offence punishable under Section 81 of the Act and convicted the A-7 & A-8 for the offence punishable under Section 81 of the said Act and sentenced to undergo is rigorous imprisonment for a period of three years and to pay a fine of Rs.1 lakh each, in default, the accused shall suffer simple imprisonment for a period of 15 days.

12. The property which is deposited under CPR No. 86/2016 i.e., Rs.40,000/- was ordered to be confiscated to State, after appeal time is over.

13. The lower appellate Court has partly allowed the appeal preferred by the accused/A-7 & A-8. The appeal was dismissed against the petitioner/A-1 confirming the judgement passed by the XXII Metropolitan Magistrate for the offence punishable under Section 81 of the act. The appeal preferred by appellants/A-7 & A-

8 was allowed by setting aside the conviction recorded against them by the trial Court.

14. Aggrieved by the impugned judgement of conviction of the revision petitioner/A-1, this revision has been preferred against the impugned orders of the appellate Court.

15. The learned counsel for revision petitioner submits that once the parents of the infant female who are accused/A-7 & A-8 are acquitted the prosecution failed to prove the case against the A-1/petitioner also.

16. It is further submitted that the allegation of the prosecution is that the infant female baby of A-7 & A-8 with the support of A-1 trying to sell to the accused A5 and A-6 is also not proved as the trial Court found the accused/ A-5 and A- 6 are no way concerned with the present case. Once, when both the Courts held that the prosecution failed to establish the offence under Section 81 of the Act against A-5 and A-6, A-7 and A-8 the question of selling the said infant female baby by the accused/A-1 does not arise therefore he is also entitled for acquittal.

17. It is further submitted that the very genesis of the case of prosecution is not proved.

18. On the other hand the learned Public Prosecutor submits that the prosecution has proved the guilt of the accused/A-1 beyond reasonable doubt. Both the Courts held A-1 liable for the offence under Section 81 of the Act and convicted him. The ground urged by the counsel for the petitioner is that accused Nos. 5,6, 7 and 8 have been acquitted, and therefore, the

accused No. 1 is also liable to be acquitted cannot be considered in the light of the evidence appearing against the accused No. 1. The accused No. 1 was found in possession of the baby at the time of the ride conducted by the police. She was unable to explain the position of the baby with her at the time and therefore she is liable for punishment under Section 81 of the Act.

19. Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as under:

“81. Sale and procurement of children for any purpose.

“Any person who sells or buys a child for any purpose shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend up to seven years.”

20. Before advertng further, the factual matrix in this case is that, the prosecution examined PWs.1 to 12 to prove the case against the accused/A-1 and others. The trial Court acquitted all the accused except A-1. The trial Court observed that A-1 to A-4 were travelling in the TOOFAN vehicle on 1.08.2016. It is also proved that A-1 was having a female baby and cash of Rs.40,000/- with her. The cash of Rs.40,000/- was seized from A-1. There is no dispute that A-7 & A-8 are the parents of the infant baby. The accused/A-1 is no other than the relative of accused/A-7 & A-8.

21. At this juncture, the defence of the accused has to be taken into consideration. The counsel for accused raised the defence before the trial Court that after getting the delivery at Devarakonda, she was shifted to Kamineni Hospital, Hyderabad as

there was swelling over her palm and leg. Thereafter on the request of A-7, who is her husband, A-1 has secured Rs.40,000/- for the treatment of the A-8 and she was proceeding to Hyderabad from this work along with the infant baby. Meanwhile, the police arrested A-1 and taken into custody of the infant baby and seized Rs.40,000/- from her. Therefore it is the defence of the accused that A-1, A-7 and A-8 had no intention to sell the infant baby and that they have not committed any offence and are entitled for acquittal.

22. The version of the prosecution is that PW.8 received information about the illegal sale of infant baby and he has directed the police officials PW.1, PW.2, PW.8, PW.11 and PW.12 to detect the crime. Ex.P7 is the FIR and Ex.P8 is the medical certificate issued by the Civil Surgeon, Community Health Centre showing the delivery of a female baby on 21.07.2016. PW3 is the driver of the crime vehicle stated that police stopped his vehicle in front of the police station and the passengers went into the police station. As he stood outside the police station, he doesn't know anything about the case. PW.4 and PW.5 are the brother and sister of A-8. PW.4 did not support the case of the prosecution but stated that A-7 delivered a baby at Government Hospital, but due to swelling of the palm and left leg, she was shifted to Kamineni hospital for treatment and thereafter A-1 took the baby who was present at Government hospital and coming from Devarakonda to the Kamineni hospital. PW. 5 is the wife of PW.4 who has stated on the same lines. PW.6 and PW.7 are the Punch witnesses. Ex.P2 is the confession his punchnama.

23. On a consideration of the entire material, it is obvious that the trial Court has unnecessarily involved the provision under Section 106 of Indian Evidence Act and convicted the accused/A-1 holding that as she was found with the baby and cash of Rs.40,000/-. The version of the defence is more probable than the version of the prosecution with regard to the sale of the baby. There is evidence on record to show that A1 is relative to A-7 and A-8. There is also evidence on record to show that after delivery A-7 was shifted to Kamineni hospital for treatment to her leg. The baby was delivered at Devarakonda. As A-7 was suffering with swelling of leg she was shifted to Kamineni hospital. A-1, the relative of the A-7 has brought the child and also the cash for giving it to A-1 for treatment at Kamineni hospital. The version of the defence is more probable than the version of the prosecution. The trial Court has rightly acquitted all the accused/A-2 to A-8 but wrongly convicted the A-1. Merely because, the baby and cash were found with the A-1, the trial Court invoked the provision under Section 106 of the Indian Evidence Act holding that the A-1 has failed to explain the position of the baby and the cash with her. The very version of the defence through the witnesses clearly reveals that after the delivery of A-7 she developed a swelling in her leg and for better treatment she was shifted to Kamineni hospital and A-1 being the relative of the A-7 was bringing the child and cash along with her.

24. On the other hand when the trial Court has acquitted all the accused/A2 to A9 nothing remains for the prosecution to connect the A-1 to the crime. Even if this version of prosecution is taken into consideration that A1 was trying to buy the baby. The

other links of the circumstantial evidence is that A-7 and A-8 are the parents of the baby trying to sell the baby to her are not proved as they were acquitted by the trial Court. The other accused/A-5 and A-6 were also acquitted. Therefore, there is no evidence which is acceptable to convict the accused/A-1 with the crime in this case. The recovery of the baby from A-1 and the recovery of cash of Rs.40,000/- from A-1 is not sufficient to convict the accused. If really, A-1 has purchased the baby by paying cash of Rs.40,000/- the cash should be with the A-7 and A-8 and not with A-1. Therefore the version of the prosecution is not proved beyond reasonable doubt. Hence the accused/ A-1 is entitled for acquittal.

25. In the result, the Criminal Revision Case is allowed by setting aside the judgement of the trial Court confirmed by the lower appellate Court convicting the accused for the offence under Section 81 of the Act. The accused shall be released forthwith if she is not required in any other case. The bail bonds of the accused shall stand cancelled.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 26-12-2018.