

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 29.08.2019

Judgment delivered on 12.12.2019

CRA No. 654 of 1999

Kaushilya @ Mongra W/o Ramlal Satnami, aged about 20 years, R/o Phutaha College, Batti, Jarhabhata, Bilaspur, MP (Now CG)

---- Appellant

Versus

State of MP, through Station House Officer, Mahila Police Station, Bilaspur, MP (Now CG)

---- Respondent

For Appellant - Mr. Malay Shrivastava, Advocate
For Respondent/State - Mr. Ishan Verma, PL.

WITH

CRA No. 689 of 1999

Smt. Shanti Bai, W/o Laxman Kukreja, aged 65 years, R/o Om Nagar, Jarahabhata, Phutaha College Back, District Bilaspur, MP (Now CG)

--- Appellant

Versus

State of MP, through Station House Officer, Mahila Police Station, Bilaspur, MP (Now CG)

---- Respondent

For Appellant - Mr. S.P. Sahu, Advocate (Legal Aid)
For Respondent/State - Ms. Shriya Mishra, PL.

WITH

CRA No. 858 of 1999

Ram Pyari, W/o Bablu Banjara, aged about 25 years, R/o Om Nagar, Jarahabhata, Phutaha College, District Bilaspur, MP (Now CG)--- **Appellant**

Versus

State of Madhya Pradesh (Now CG)

---- Respondent

For Appellant - Mr. Shashi Kumar Kushwaha, Adv
For Respondent/State - Ms. Shriya Mishra, PL.

HON'BLE (SMT.) JUSTICE VIJLA SINGH KAPOOR

CAV JUDGMENT

Since all the aforementioned cases arise out of the same judgment dated 25.02.1999 passed in Sessions Trial No.137/1998, they are disposed of by this common judgment.

2. Facts leading to disposal of all the three aforementioned appeals, in brief, are that on 13.03.1997 Maya Sharma (PW-4) the Station House Officer of the concerned Police Station received a secret information regarding involvement of the accused Shanti Bai in running prostitution and eking out her livelihood with the same. Thereupon she constituted a raid party by summoning up two witnesses, PW-1 and PW-5 and after giving them two currency notes of 100 denomination and the other one of 50 denomination to be given to her, vide Panchnama Ex.P-2 duly signed by her and the said two witnesses. After the raid was effected, the accused/appellants herein were found to be involved in the prostitution. The said currency notes given to PW-5 were seized under Ex.P-6, Ex.P-7 and Ex.P-8 and the permission to get all the three accused/appellants for their medical examination was obtained from the SDO vide Ex.P-13, Ex.P-14 and Ex.P-15. FIR (Ex.P-12) was taken down against the accused/appellants under Section 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 (for brevity "**the Act of 1956**") and after completion of investigation charge sheet was filed against them under Sections 3, 4, 5, 6 and 7 thereof. Learned Court below however framed the charge against accused Kaushaliya and Rampyari under Section 7 but against accused Shanti Bai it was under Sections 3, 4, 5 and 6 of the Act of 1956.

3. Learned Court below vide judgment impugned convicted accused Rampyari and Kaushaliya under Section 7 and accused Shanti Bai under Sections 3, 4, 5 and 6 of the Act of 1956 by imposing sentence of RI for 2 months to accused Rampyari and Kaushaliya whereas that of RI for one year, one year, 3 years and 7 years for each offence respectively in respect of Shanti Bai, all to run concurrently. Hence this appeal.

4. Counsel for the accused/appellants submit that the findings recorded by the Court below are not based on the proper appreciation of the evidence on record and therefore, they are liable to be set aside. According to them, even the ownership of accused Shanti Bai in the house in question has not been proved as Patwari Santosh Kumar (PW-3) has not stated anything regarding the same. They submit that one of the independent witnesses namely Ajay Masih (PW-1) has not supported the case of the prosecution and has been declared hostile.

5. State counsel however supports the judgment impugned and submit that PW-4, PW-5 and PW-6 have duly supported the case of the prosecution and therefore, the findings recorded by learned Court below cannot be said to be illegal or arbitrary in any manner whatsoever.

6. Though Ajay Masih (PW-1) has turned hostile yet he has admitted his signature on the documents of Ex.P-2 to Ex.P-8. Dr. Malti Chandrakar (PW-2) who conducted medical examination of accused/appellants Rampyari and Kaushaliya has given several physical features of the two and stated that they both were

habitual to sexual intercourse vide reports Ex.P-9 and Ex.P-10. Most important witness to the case of the prosecution is Amar Kumar Gandharv (PW-5) who has duly supported the case of the prosecution stating that on the date of incident when he along with his friend were on the stroll, Station House Officer (PW-4) called them and told about the prostitution being run by accused/appellant Shanti Bai and thus expressed her willingness to make a raid in her house. He has further stated that after giving two currency notes of 100 denomination and one of 50 denomination under Panchnama (Ex.P-2) asked them to first go to the house of accused Shanti Bai to be followed by her little later. This witness has further stated that when he went to the house of accused/Shanti Bai she was found standing just in front of her house and the negotiation between them started. First, according to this witness, she had demanded Rs.300 but ultimately the deal was settled for Rs.250. First of all, PW-1 entered her house, and then after giving signal to PW-4, this witness (PW-5) also went inside and found two other women (later on came to be known as Kaushaliya Bai and Rampyari) present there. He has further stated that after going inside he saw two cots lying there - one occupied by one girl with PW-1 and the other one by another girl with this witness. According to him, when the girls were insisting them to put off their clothes quickly as they were to go somewhere else, the raid party appeared on the scene. Seizure of currency notes made under Ex.P-6, Ex.P-7 and Ex.P-8 has also been proved by this witness. This witness has further clarified that the house of accused Shanti Bai was located and visited by him on the basis of

information provided to him by PW-4. He has further stated that other people are also residing near her house door of which was southwards.

7. This Court does not see any force in the argument of the counsel for the appellants that it has not been established that the house in question was in the ownership of accused Shanti Bai because PW-5 has clearly stated that when he reached the said house, she (Shanti Bai) was standing there and the deal was settled with her only. If the position was otherwise, the defence should have raised this point during trial by leading evidence that the house where the raid was made did not belong to her, but unfortunately nothing like this has happened at appropriate stage.

8. Thus in view of above, it can safely be said that the prosecution has proved its case beyond reasonable doubt that accused Kaushaliya and Rampyari were carrying prostitution at public places and so also the Court below too has been fully justified in appreciating the evidence led by the prosecution and holding them guilty under Section 7 of the Act of 1956. Likewise, in respect of accused Shanti Bai also the prosecution has duly proved that she was allowing her premises to be used as brothel, pulling on her survival on the income derived from the same, inducing the people for the purpose of prostitution and detaining persons where the prostitution was carried on maybe with or without consent. Thus conviction of Shanti Bai under Sections 3, 4, 5 and 6 of the Act of 1956 is also fully justified.

9. As regards sentence, the accused/appellant Rampyari is said to have remained in jail for about one month and 10 days and the other one namely Kaushaliya @ Mongra for about 15 days, considering the fact that the incident had taken place in the year 1997 and thereby a considerable period has already rolled by, this Court thinks it proper to reduce the sentence imposed on them to the period already undergone. Order accordingly.

10. As regards accused Shanti Bai, the incident in this case is quite old having taken place about 23 years back, that she is a poor lady now in her late eighties, that during trial and after passing of the judgment impugned she has been on bail and did not misuse the liberty granted to her and further that no criminal antecedents have been pointed out against her, and further taking into consideration the peculiar facts and circumstances of the case, this Court is inclined to reduce the sentence imposed on her to the period already undergone so that she can meet her end trouble-free. Accordingly, the sentence imposed on Shanti Bai is also reduced to the period already undergone keeping in mind the larger interest of justice.

11. As stated above the appeals are allowed in part as observed in the preceding paragraphs of the judgment.

Sd/-

(Vimla Singh Kapoor)
Judge