

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 25.04.2019

Judgment Delivered on : 17/06/2019

Cr.A. No. 413 of 2013

- Narayan Rao S/o U.V. Ramanna, Aged About 46 Years, R/o Tilak Nagar, J- 747 Gudhiyari, Police Station - Gudhiyari, District- Raipur, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, Through: The Police Station Urla, District- Raipur C.G.

-----Respondent

For Appellant	: Mr. Rajkumar Pali with Mr. Amit Kumar Sahu, Advocate
For Respondent/State	: Mr. Adil Minhaj, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

17/06/2019

1. This appeal has been preferred by appellant against the impugned judgment of conviction and order of sentence dated 16.4.2013, passed by the learned 4th Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No.72/2010, convicting the appellant under Section 372 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 05 years & fine of Rs.500/- and R.I. for 03 years & fine of Rs.500/- with default stipulations, respectively.

2. Case of prosecution, in brief, is this that complainant Yogeshwar Rao Gote (P.W.-8) received information that the appellant, who is Director of Gurukul Ashram, Nandanvan, is illegally trading children in Ashram. He gave intimation to Ruchir Garg (P.W.-17). Thereafter a sting operation was planned and a team was constituted. In the afternoon of 02.03.2010 these witnesses approached the appellant in Ashram and discussed about getting a child of one month. Appellant very clearly made a demand of Rs.2,50,000/-, whereupon Ruchir Garg (P.W.-17) issued a cheque in favour of appellant of Rs.2,50,000/- drawn on account maintained by him in I.C.I.C.I. Bank. On receipt of cheque, appellant handed-over a female child, who was admitted in the Medical College Hospital at Raipur for care and treatment. Thereafter complainant lodged complaint in Police Station, Urla based on which F.I.R. (Ex.P-9) was registered against the appellant, the investigation was taken-up and after completion of the investigation, the charge-sheet was filed.
3. The appellant was charged with offence under Sections 372 & 201 of IPC. He denied charges and prayed for trial. The prosecution in support of its case examined 21 witnesses in all. Statement of appellant was recorded under section 313 of Cr.P.C., in which he denied all the incriminating evidence appearing against him in the prosecution case and pleaded innocence and false implication. He examined three witnesses in his defence. After completion of trial, the appellant stands

convicted and sentenced in the manner as mentioned herein-above.

4. It is submitted by the learned counsel appearing on behalf of appellant, that appellant has been erroneously convicted without there being any support of prosecution witnesses. The fact is this that the appellant was running an orphanage and on the request of needy childless parents, the orphan children were given on adoption. The appellant is not involved in illegal trading of children. It was a donation that he had received from Ruchir Garg (P.W.-17) regarding which there are admissions of witnesses, therefore, no case is made out under Section 372 of I.P.C. The appellant is engaged in social service by giving support to helpless children. Therefore, it is prayed that appeal be allowed and appellant be acquitted of all the charges. Reliance has been placed on judgment of ***Singh Bench of Karnataka High Court, Thimmappa @ Channaraju and Kumara Vs. The State of Karnataka***, reported in ***(2010) Cri.L.J. 2695***.
5. Counsel for the State opposes the appeal and submits that as per evidence available in record of the trial Court, it is a complete case of trading of child and there is no evidence to show that it was a case of adoption. Therefore, it is clearly a case of child trafficking. The appellant is running a registered society and therefore it cannot be said that he was unaware of the provisions of Section 41 of Juvenile Justice Act and CARA rules. Apart from that the appellant had received a self cheque and not in the name

of the Ashram, which also shows his malafide intentions. On the basis of evidence present, it is apparent that present is a clear case of procurement of female child for illegal purposes. Therefore, no case is made out for acquittal of appellant.

6. In reply, it is submitted by the learned counsel for appellant that it is not a case of illegal procurement of child. A letter was given by father of child to appellant about handing over of child willingly for the reason that he is not in a position to take care and maintain his child. It is again reiterated that cheque that was given to appellant was given in the shape of donation to Asharam. Hence, this appeal may be allowed.
7. I have heard the learned counsel for both the parties and perused all the documents and records of the Court below.
8. The point in issue in this appeal is whether the prosecution has proved charges against appellant on the basis of the evidence beyond reasonable doubt?
9. Yogeshwar Rao (P.W.-8), the complainant has stated that he received an information that the appellant is engaged in sale of children from his Ashram. He passed on this information to Ruchir Garg (P.W.-17), who is Bureau Chief of Sahara Samay. Ruchir Garg (PW-17) then planned a sting operation and for that purpose constituted a team consisting of himself, Sanjeev Agrawal (P.W.1), Ashish Tiwari (P.W.-13), Balbinder @ Rinku (P.W.-12) and Firoz Hussain (P.W.-11). This witness has further

stated that he and Ashish Tiwari (P.W.13) went to Gurukul Ashram, met with appellant and expressed their desire to adopt a child. Appellant informed them that if they want a child through legal procedure, then it will take time and at the same time, he suggested another method by which he can directly hand over a child to them. He also informed that he has just received one month old child in his Ashram. In next meeting, this witness along with Ashish Tiwari again discussed with appellant, who made statement that he will give child for Rs.2,50,000/- and also requested that if cheque is given, then it should be in his name. Later on, these witnesses along with Ashish Tiwari, Balbinder @ Rinku, Sanjeev Agrawal and Ruchir Garg had gone to the Ashram, handed over a self cheque drawn on the account of Ruchir Garg (P.W.-17) to appellant, and immediately thereafter appellant handed-over a female child. This witness has further stated that he got the child admitted in Medical College Hospital, Raipur and then lodged F.I.R. vide Ex.P/9 in Police Station, Urla. In cross-examination, his statement has remained unrebutted. He has admitted that he made a proposal to appellant that he wanted to adopt a child for the reason that he himself is not having any child. On scrutinizing the entire cross-examination of this witness, there is nothing found to contradict statement made by him in examination-in-chief.

10. Sanjeev Agrawal (P.W.-1) is one of the members of team constituted for conducting sting operation. He has supported

version of Yogeshwar Rao (P.W.-8) by making statement about his presence in sting operation and handing over of child to complainant by appellant. In cross-examination his statement has remained un rebutted. No admission has been made by this witness in his cross-examination so as to contradict the statement made by him in examination-in-chief.

11. Similar is the Statement of Balbinder @ Rinku (P.W.-12) who was also member of the team.
12. Ashish Tiwari (P.W.13) has also stated about his presence in the discussions and at the time when the child was handed over to the complainant after the appellant received a cheque from him. His statement also remained un rebutted in cross-examination. In cross-examination, he has specifically denied previous suggestions given although he has admitted that the appellant had made a statement regarding construction going on in the Ashram and he was requesting for donations, but there is no specific admission made by him, that the cheque given to the appellant was for the purpose of donation.
13. Another important and relevant witness is Ruchir Garg (P.W.-17) who was informed by complainant that appellant is engaged in illegal trading of children. He is the person who on receipt of said information planned for sting operation and also gave a self-cheque drawn on his account to appellant against purchase of child from the Ashram of appellant. He has supported version of

Yogeshwar Rao (P.W.-8) and other witnesses of team members.

His statement also remained unrebutted in cross-examination.

14. After closely scrutinizing the evidence present on record of the trial Court and especially discussing evidence of relevant witnesses, I am of this view that prosecution has proved beyond reasonable doubt that the appellant has sold a minor female child of one month to Yogeshwar Rao (P.W.-8) for Rs.2,50,000/-. Although, the self cheque could not be encashed and no money was transferred, but once the cheque was received by the appellant, it can safely be presumed that transaction was complete.
15. Defence witness No.1- U. Hemlata has stated that one person against whom she lodged F.I.R. had approached her and discussed about taking a child in adoption. Said person again came after a week and said that he wants to adopt a child who is sick and he will get her treated. However, thereafter said person never returned and she does not know about further incident. This evidence does not lead to any direction to contradict the evidence of prosecution in this case.
16. Defence Witness No.2- Shailendra Kumar Shukla has stated about celebrations of festivals and birthday of children in Ashram. It is also not an evidence to contradict evidence of the prosecution.
17. Ashish Tiwari (P.W.-13) has stated that the police has registered

a false case against the appellant. He himself had adopted one child. From the cross-examination of this witness, it is clear that he is not a witness of transaction regarding which evidence has been produced by the prosecution. Therefore, the evidence brought in defence does not help appellant in any manner.

18. After closely scrutinizing relevant evidence present on record of the trial court, I am of this opinion that prosecution has proved its case beyond reasonable doubt. Although it is a statement that the child was sold for the purpose of adoption, but the appellant has clearly side tracked in his duties to ensure fulfillment of legal conditions as required under Section 41 of Juvenile Justice Act and CARA rules. Therefore, it cannot be said that when the child was sold by him, the intention was to give the child on adoption. Therefore, it can be said, that in such kind of trading that has taken place in this case, the child may have been employed and exploited for labour or subjected to prostitution at her adulthood or even before it. Therefore, it is a clear case of commission of offence under Section 372 of I.P.C.
19. After overall consideration, I do not find any substance in this appeal, the same is liable to be and is hereby dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge