courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 18/10/2025

Pinky Das @ Rehana Khatoon @ Rina Mitra Vs The State of West Bengal

C.R.A. 401 of 2010

Court: Calcutta High Court

Date of Decision: Aug. 2, 2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 164#Penal Code, 1860 (IPC) â€" Section 34, 372, 373

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Minoti Gomes, Mr. Dipanjan Chatterjee, Ms. Soumi Kundu, Mrs. Puja Das Sarkar, for the Appellant; Madhusudan Sur, Apurba Kr. Dutta for the State of W.B., for the Respondent

Final Decision: Dismissed

Judgement

Kanchan Chakraborty, J.
The challenge in this appeal is to the judgment dated 26.05.2010 passed by the learned Additional District &

Sessions Judge, Fast Track Court No. 9, Bichar Bhawan, Calcutta in Sessions Trial No. 1 (1) of 2010 (corresponding to Sessions Case No. 117

of 2009) thereby convicting the appellant for commission of offences punishable under Sections 372/373/34 of the Indian Penal Code and

sentencing her to undergo rigorous imprisonment for seven years for both the offences under Sections 372 and 373 of the Indian Penal Code and

to pay fine. The factual aspects of the prosecution case, on the basis of which the trial commenced in the learned Trial Court, in short, is stated

below:

2. On 29.08.2009, Dilip Kumar Ghosal, S.I., I.T. Section of Detective Department, submitted a report before the Deputy Commissioner of

Police, Detective Department, Lalbazar, Kolkata stating therein that on the self same date at about 11.25 hours, a woman called up at this office of

I.T. Section, Detective Department, Lalbazar and identified herself as sex worker of Sonagachi area and informed that a minor girl was brought at

5, Imam Box Lane and detained in the room of Chutki Saha, on the first floor since 26.08.2009 for the purpose of prostitution. After receiving that

information, S.I. Dilip Kumar Goswami, I.T. Section, Detective Department, left the office with permission of his superior towards the place of

occurrence along with Additional O/C., I.T. Section, P.R. Sikdar. S.I. of Police and two lady constables. After reaching the place of occurrence,

Sri Goswami found two lady NGO members were present there. Thereafter, they all proceeded towards the place of occurrence and found one

girl, namely Sweety Khan alias Soumi Nag (16 years) appearing to be minor, was in the room of Chutki. In course of examination, with the help of

N.G.O. members, the girl narrated the incident and it appeared to Dilip Kumar Goswami that a racket was involved and some unknown persons

and the landlord were also connected with the matter. He recorded the statement of the victim girl, Sweety Khan alias Soumi Nag. On the basis of

the said information, the Deputy Commissioner of Police, Detective Department, endorsed the report to S.I., P.K. Sikdar, for starting a case and,

accordingly, the case was registered as Burtalla P.S. Case No. 330 of 2009 dated 29.08.2009 under Sections 372/373/34 of the Indian Penal

Code against Chutki Saha, landlord of 5, Imam Box Lane, Kolkata 700 006 and other unknown accused persons. The case was investigated into.

In course of investigation, the victim girl made statement u/s 164 of the Code of Criminal Procedure and on the basis of her statement, the

appellant, Pinky Das alias Rehana Khatoon alias Rina Mitra was arrested. Chutki Saha and Pinky Das alias Rehana Khatoon alias Rina Mitra

were arrayed to face charges under Sections 372/373/34 of the Indian Penal Code of which they pleaded not guilty and, accordingly, the trial

commenced. Prosecution examined as many as 11 witnesses in course of trial. The Rescue Memo, statement of the victim girl u/s 164 of the Code

of Criminal Procedure, seizure list and signatures thereon, labels and signatures thereon, one bank passbook, medical report, draft sketch map of

the place of occurrence, written complaint, D.D. Entry and formal First Information Report were admitted into evidence and marked exhibits on

behalf of the prosecution. No witness was examined from the side of the defence. Upon consideration of the evidence on record, oral and

documentary, the learned Judge found that the prosecution brought home charge against Chutki Saha and Pinky Das alias Rehana Khatoon alias

Rina Mitra under Sections 372/373/34 of the Indian Penal Code and recorded their conviction and sentence, which is impugned in this appeal,

mainly, on the following grounds:

(a) that the learned Court was oblivious of the fact that there is no mention of the name of the appellant Pinky Das alias Rehana Khatoon alias Rina

Mitra in the First Information Report;

(b) that the learned Court did not also consider that the father of the victim did not mention the name of the appellant Pinky Das alias Rehana

Khatoon alias Rina Mitra at any point of time;

(c) that the learned Court also failed to consider that the mother of the victim, who would have been one of the best witnesses in the case was

tendered by the prosecution only and her examination was withheld;

(d) that the learned Court also failed to consider that the P.W. 9, Dilip Kumar Ghosal, categorically stated in his examination-in-chief that the minor

girl who was rescued, failed to recall the name of the appellant when interrogated immediately after her rescue;

(e) that the learned Trial Court did not take into consideration that the P.W. 11, Prakash Ranjan Sikdar, the Investigating Officer of the case,

stated categorically that neither G.D. Entry, nor the statement given by the victim girl disclosed the name of Pinky Das alias Rehana Khatoon alias

Rina Mitra;

(f) that the learned Court failed to consider also the statement of the P.W. 4, Smita Singh, a social worker, who accompanied the P.W. 9, S.I.

Dilip Kumar Goswami to the spot at the time of rescue of the victim girl, that she saw the victim girl at Liluah Home 2/3 weeks ago prior to the

date of incident;

(g) that the learned Court failed to appreciate the evidence on record in its proper and true perspective as far as this appellant, Pinky Das alias

Rehana Khatoon alias Rina Mitra is concerned and that the learned Court erred in recording conviction against the appellant on the basis of

uncorroborated testimony of the victim girl who was having a very bad track record.

3. Mr. Chatterjee, learned advocate for the appellant contended that the learned Court believed the sole testimony of the victim and recorded the

conviction without seeking corroboration of the same from the testimonies of other witnesses. He contended that conviction can well be recorded

on the sole testimony of the victim of a case of like nature if, and only if, the testimony is found consistent, credible and trustworthy. It is not a rule

of law that in all the cases Court has to accept sole testimony of the victim regardless to the facts and circumstances, antecedents of the victim and

inconsistency in her statement. He had stated further that the name of the appellant was disclosed for the first time after recording of the statement

of the victim girl u/s 164 of the Code of Criminal Procedure. Prior to that the victim girl was rescued on 29.08.2009. According to the prosecution

case, she was in the primness at 5, Imam Box Lane since 26.08.2009. The statement u/s 164 of the Code of Criminal Procedure was recorded on

04.09.2009. In the meantime, she was interrogated, but she did not disclose the name of the appellant, Pinky at any point of time to anyone. There

is no extra-judicial confession or confessional statements of two accused wherefrom the name of the appellant can be traced out. The statement u/s

164 of the Code of Criminal Procedure of the victim was marked as exhibit-2. It says that Pinky, i.e., the appellant was dealing in sari business and

became acquainted with the victim in that connection. Pinky told her mother that she wants to take the victim so that she can also do business in

sari. As the landlord of the house was not willing that victim reside in that house, mother of the victim permitted Pinky to take the victim with her.

Pinky took the victim in her house at Sreerampur. Thereafter, she had taken her to different hotels at Digha and Konnagar. She was compelled to

do nasty things. She confined her in the room and did not make any payment. Pinky used to scold her and, thereafter, took her to one Chutki at

Sonagachi. Chutki compelled the victim to do nasty things by using force and earned Rs. 2200/-. Thereafter, the police officials rescued her. She

did not want to go Home, as the Home did not provide good food.

4. Mr. Sur, learned advocate for the prosecution, contended that it was not the prosecution case that the convict, Sweety, reported her father and

mother that the appellant Pinky Das alias Rehana Khatoon alias Rina Mitra had taken her to the hotels at Digha and other places and compelled

her to participate in sexual intercourse. Naturally, undisclosure of the name of Pinky Das alias Rehana Khatoon alias Rina Mitra by the father of the

victim, does not discard the evidence of the victim. It is true, he contended, that mother would have been a very valuable witness in this case, but,

non-examination of the mother of the victim does not necessarily demolish the prosecution case because statement of the victim corroborated her

earlier statement made before the learned Magistrate u/s 164 of the Code of Criminal Procedure (exhibit-2). He contended further that whatever

the nature and character of the victim was, the provisions of law envisaged in Sections 372 and 373 of the Indian Penal Code applies to each and

every if other essentials are established. When the evidence of the victim makes it clear that she was well acquainted with the appellant, who used

to go to her mother for selling sari, therefore, he contended, the learned Court had rightly passed order of conviction against the appellant.

5. It is true that Sweety, the victim, was not having a good track record, rather she left her house on many occasions and rescued thereafter. She

was in Homes and sometimes arrested by police also. But, only because of that, it cannot be said that the provisions of Sections 372 and 373 of

the Indian Penal Code cannot be attracted to her. The offence under Sections 372 and 373 of the Indian Penal Code are set out below:

372. Selling minor for purpose of prostitution, etc. - Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen

years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for

any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be

punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to find.

Explanation I. - When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who

keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with

the intent that she shall be used for the purpose of prostitution.

Explanation II. - For the purpose of this section ""illicit intercourse"" means sexual intercourse between persons not united by marriage or by any

union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or,

where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

373. Buying minor for purposes of prostitution, etc. - Whoever buys, hires or otherwise obtains possession of any person under the age of

eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person

or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I. - Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under

the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall

be used for the purpose of prostitution.

Explanation II. - ""Illicit intercourse"" has the same meaning as in section 372.

6. The essential ingredients of offence under Sections 372 of the Indian Penal Code are:

(a) selling, letting to hire or otherwise disposes of any person,

(b) such person should be under the age of 18 years,

(c) there should be an intention to employ such a person or use for the purpose of prostitution or illicit intercourse with any person or for any

unlawful or immoral purpose.

7. The essential ingredients of offence u/s 373 of the Indian Penal Code are the same as Section 373 in respect of the person who buys, hires or

otherwise obtains possession of any such female under the age of 18 years.

8. In the instant case, the appellant allegedly has used the victim, Sweety, for prostitution or illegal intercourse with other persons. The charge

against her is that she disposed of Sweety to Chutki for that purpose.

9. Now the question is whether this appellant Pinky Das alias Rehana Khatoon alias Rina Mitra sold or otherwise disposed of the victim to Chutki

or not. From the evidence on record I find that Chutki did not utter a single word to the police to that effect that the appellant sold the victim to her

for the purpose of prostitution. None but only victim has stated this fact to the learned Magistrate who recorded her statement u/s 164 of the Code

of Criminal Procedure. The statement of the victim u/s 164 of the Code of Criminal Procedure was recorded on 04.09.2009, which was admitted

into evidence and marked Exbt.-2. It discloses that Sweety had acquaintance with Pinki. Pinkii used to visit her mother to sell sari. She also stated

that the economic condition of her parents was not sound and, as such, her mother allowed her to go with Pinki and do sari business. Accordingly,

she had been to Pinki''s house at Shreerampore where she stayed for two days and, thereafter, she was taken to different hotels at Digha and

Konnagar and was forced to participate in sexual intercourse with different persons in exchange of money, which Pinki did not share with her. This

statement u/s 164 of the Code of Criminal Procedure was reproduced by the victim while examined as P.W. 1. She had given elaborate details of

what the appellant had done with her. She has not deviated from her earlier statement u/s 164 of the Code of Criminal Procedure while she was

cross-examined by the defence. There is no other evidence as to how the victim girl came to the brothel at Sonagachi. No one to say this. In fact,

Chutki, the co-accused, would have enlightened the matter but she did not say anything either to police or to the Magistrate in form of confessional

statement. Now the question falls for consideration is whether the learned Court rightly accepted and believed the statement of the victim girl as far

as this appellant is concerned. I have carefully gone through the entire judgment passed by the learned Court. The learned Court came to a

conclusion that provisions of Section 372 of the Indian Penal Code applies to even married or unmarried female irrespective of the fact that she

had been leading an immoral life. In fact, a through reading of Sections 372 and 373 of the Indian Penal Code leaves no room of doubt that the

provisions therein attract to each and every lady, whether married or unmarried, but do not apply to the girls more than 18 years of age. In other

words, the provisions applied to minor girls below the age of 18 years. It has been contended that the victim was below 18 years of age at the

relevant point of time. Therefore, provisions of Sections 372 and 373 of the Indian Penal Code are applicable to her. P.W. 1, i.e., the victim girl,

while examined in Court mentioned her age as 17 years. She was not asked a single question by the defence while she was cross-examined in

respect of her age. In her statement u/s 164 of the Code of Criminal Procedure, she mentioned her age as 18 years. Her statement u/s 164 of the

Code of Criminal Procedure was recorded on 04.09.2009. The victim girl was examined in Court as P.W. 1 on 28.01.2010. She stated her age

as 17 years on that time. It goes to show that in stead of being increased within a span of one year, it decreased and came down to 17 years from

18 years. Therefore, the statement of the victim girl, regarding her age either in Court or before the Magistrate, cannot be taken into consideration

as a conclusive one. No evidence, whatsoever, was produced in Court by the prosecution such as, birth certificate, school admission certificate,

school leaving certificate, etc. to establish the fact that the victim was below 18 years at the relevant period of time. Exhibit-8 is the report of

medical examination of the victim. The doctor who prepared that report, was examined as P.W. 5. It was stated by the P.W. 5 that on

02.09.2009, i.e., two days prior to recording of the statement of the victim by the Magistrate u/s 164 of the Code of Criminal Procedure, she

examined Sweety who disclosed her age as 16 years. This fact indicates clearly that within a period of two days, she reduced her age by two

years. The P.W. 5 examined the victim girl and came to an opinion that she was habituated to sexual intercourse, clinically she was not pregnant

and there was no injury in her body or private parts except the old healed tear of hymen and considering the plegsical findings, dental data and date

of radiological examination together she opined that the victim was above 16 years of age but below 18 years on 10.09.2009. In her cross-

examination, she stated with confidence that the report was conclusive proof that Sweety was below 18 years but above 16 years of age. She at

the same time stated that she did not mention four years of age range in her report.

10. The learned Court accepted what the P.W. 5 had stated. The range of four years if used, for the purpose of determination of the correct age,

in that case the victim girl either was 14 years or 20 years old at the relevant period of time. So that fact does not necessarily establish the correct

age of the victim girl. When Doctor in her cross-examination stated confidently that the age of the victim was below 18 years but above 16 years, I

think that ought to have been accepted by the Court because there is already a gap of two years for the purpose of adding or subtracting two

years from either of the sides. The learned Court, therefore, has dealt with the matter of age correctly by accepting the evidence of the expert, i.e.,

the P.W. 5.

11. The P.W. 9, S.I. of Police, Dilip Kumar Goswami, who lodged the First Information Report, had been to the place of occurrence. He stated

that the minor girl told him that one lady brought her to Chutki Saha but she could not recall the name of that lady who brought her. This statement

of P.W. 9 was not challenged by the defence while P.W. 9 was cross-examined. In fact, defence did not take the risk to ask any question to P.W.

9 on that issue. This statement of P.W. 9 makes it clear that the minor was brought to Chutki in the brothel by a lady known to her. She could not

say the name. She stated the name of that lady to the Magistrate on 04.09.2009. It is not the case of the defence that she was tutored during this

period, i.e., from 29.08.2009 to 04.09.2009, by anybody to say the name of this appellant as the lady who brought her to Chutki.

12. Coming to the evidence of the father of the victim, i.e., the P.W. 8, it appears that he stated that his daughter was rescued from Sonagachi

area. He also stated that he met his daughter at Lalbazar but she did not disclose anything to him. He further stated that his daughter did not

disclose also the name of any person to him. This is to be noted that the name of Chutki was not also stated by the victim to her father, the P.W. 8.

The father of the victim would have been a good witness in the matter of ascertaining the age of the victim, but he was not asked any question

whether Sweety was more than 18 years or not either by the defence or by the prosecution.

13. There is no rule of law that evidence of victim or injured cannot be accepted unless corroborated by the evidence of other witnesses. If the

evidence of the victim or injured is found trustworthy, it is not required to be corroborated by any witness. Conviction can well be recorded from

such uncorroborated testimony of the victim. This is settled principle of law also. In the instance case, it is found that the victim made a statement

before the Magistrate u/s 164 of the Code of Criminal Procedure long before she was examined in Court. She has not deviated from her earlier

statement during her cross-examination in Court. She could not say to her father anything inside the Lalbazar, but she stated the Investigating

Officer of the case that a lady brought her to Chutki, the co-accused, whose name she could not recollect. The learned Trial Court did not find any

reason to discard the evidence of the victim. Simply because the examination of the mother of the victim was withheld, the statement of the victim

cannot be discarded and disbelieved. I find that the learned Court had rightly come to a conclusion that none but the appellant taken the victim to

Chutki with an intention that she be employed or used for the purpose of prostitution. Therefore, I find that the judgment impugned is not required

to be interfered with.

14. It is contended by the learned advocate for the appellant that the lady is having children and she is in custody for a considerable period of time.

Therefore, this Court should take a lenient view. I do not find any reason to agree to that submission. Offence committed by the appellant is very

serious in nature and no sympathy can be shown to the appellant. She, being a lady, used another lady below 18 years of age for the purpose of

prostitution. She deserves no sympathy.

15. Accordingly, the appeal fails. The judgment impugned is upheld.

16. In the facts of the case, I make no order as to costs.

17. Interim order, if there be any, stands vacated. Let urgent photostat certified copy of this order, if applied for, be given to the learned advocates

of the parties upon compliance of necessary formalities.