MANJAPPA & ANR. A

v.

STATE OF KARNATAKA

(Criminal Appeal No. 653 of 2007 etc.)

SEPTEMBER 8, 2010 B

[P. SATHASIVAM AND ANIL R. DAVE, JJ.]

Penal Code, 1860:

ss. 366-A, 372 and 373 r/w s.34 – Kidnapping of a minor girl with an intention to force her to illicit intercourse and selling her for purpose of prostitution – HELD: In view of the evidence of the prosecution witnesses, High Court rightly set aside acquittal of one of the accused, confirmed the conviction of two, and imposed the sentence of 7 years imprisonment with a fine of Rs.50,000/- upon each of the three accused – In a case of this nature, it is just and proper to impose a deterrent sentence – Sentence/sentencing. C D

The two appellants (A-3) and (A-2) along with A-1 were prosecuted for committing offences of kidnapping a minor girl with an intention to force her to have illicit intercourse, and then selling her for purposes of prostitution. The trial court convicted and sentenced A-1 and A-2 u/ss 366A, 372 and 373 read with s.34 IPC. On the appeals filed by the State for enhancement of sentences of A-1 and A-2 and challenging acquittal of A-3, the High Court convicted A-3 also and sentenced him to imprisonment for seven years and to pay a fine of Rs. 50,000/- and enhanced the sentences of A-1 and A-2 to seven years imprisonment with fine of Rs. 50,000/- each. Aggrieved, A-3 and A-2 filed the appeals. E F G

Dismissing the appeals, the Court

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A **HELD: 1.1. All the three sections, viz. ss 366-A, 372 and 373 IPC, make it clear that if the victim is under the age of 18 years and whoever uses, procures, employs, buys or hires such person for prostitution or for illicit intercourse with any person or for any immoral purpose**
B **is liable to be punished. The maximum sentence prescribed is 10 years and also the fine. In the instant case, Medical Report dated 28.8.1997 clearly shows that the victim girl was at the time of occurrence below 18 years of age. [paras 4 and 5] [1099-C-D; G]**

C **1.2. The High Court, after appreciating the evidence of PW.1, the father of the victim, PWs. 3 and PW.4 who accompanied the police party to rescue the girl and PW.2, the victim herself, rightly confirmed the conviction and enhanced the sentence to 7 years with a fine of Rs.**
D **50,000/- each. Though leniency in sentence was pleaded, but in view of the conduct of the accused in taking a minor girl to a far away place, namely, Bombay, and selling her for illegal and immoral purposes, it is not a fit case for reduction of sentence. In a case of this nature, it is just**
E **and proper that a deterrent sentence is to be imposed on the accused. Looking from any angle and considering the fact that the victim was below 18 years as on the date of occurrence, the sentence of 7 years with a fine of Rs. 50,000/- awarded by the High Court is quite reasonable**
F **and acceptable. [paras 5- 6] [1099-G-H; 1100-A-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 653 of 2007.

From the Judgment & Order dated 06.02.2006 of the High
G Court of Karnataka at Bangalore in Criminal Appeal No. 624 of 1999.

WITH

Criminal Appeal No. 735 of 2008.

H

Shankar Divate for the Appellant. A

Anitha Shenoy for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. These appeals are directed B against the judgment and final order dated 06.02.2006 passed by the High Court of Karnataka at Bangalore in Criminal Appeal Nos. 624 and 616 of 1999 whereby the High Court allowed the appeals filed by the State of Karnataka - respondent herein and convicted the appellants herein for the offences punishable C under Sections 366A, 372, 373 read with Section 34 I.P.C. and sentenced them to undergo imprisonment for a period of seven years with a fine of Rs.50,000/- each, in default, to undergo simple imprisonment for two years.

2. The case of the prosecution is as under: D

(a) On 03.04.1997, Hanumanthappa, father of the victim, lodged a complaint alleging that his daughter Shilpa, aged 13 years, was kidnapped by the appellants herein on 24.01.1997 at about 11.00 a.m. from his house and they had taken her to E Bombay with an intention to force her to have illicit intercourse and thereafter, had sold the victim to Shanta (A-1) at Bombay for Rs.5000/- for the purpose of prostitution and for immoral purposes. On the strength of the said complaint, Kumarapatnam Police registered a case in Crime No. 41 of F 1997 and started investigation. On 24.04.1997, on receiving information about the victim, the Investigation Officer had gone to Bombay along with the panch witnesses and the complainant, traced out the girl and the appellants herein and returned to Kumarapatnam Police Station on 27.04.1997. On G the same day, the statement of the victim Shilpa was recorded and she was sent to the C.G. Hospital Davanagere for medical examination. The appellants herein and Shanta were arrested on 27.04.1997 and charged for the commission of the offences punishable under Sections 366A, 372, 373 read with 34 I.P.C. H

A (b) The prosecution examined six witnesses in support of its case and marked several documents. By order dated 03.02.1999, the Sessions Judge convicted Shanta (A-1) and Vijay M.S.Balakrishna Madiwalar (A-2) (appellant in Crl. A. No.735/2008) for the offences punishable under Sections B 366A, 372, 373 read with section 34 I.P.C. and acquitted Manjappa (A-3) (appellant in Crl.A. 653/07). Against the said order, the State preferred an appeal against the acquittal of A-3 and another for enhancement of the sentence of A-1 and A-2 before the High Court. The High Court, vide its judgment dated C 06.02.2006, allowed both the appeals of the State confirmed the conviction of A-1 and A-2 and enhanced the sentence of imprisonment for a period of seven years with a fine of Rs.50,000/- each, in default, S.I. for two years and set aside the acquittal of A-3 and convicted him for the offences D punishable under Sections 366A, 372, 373 read with Section 34 IPC and sentenced him to undergo imprisonment for a period of seven years with a fine of Rs.50,000/- in default S.I. for two years. Challenging the impugned judgment of the High Court, A-3 filed Crl.A. No. 653 of 2007 and A-2 filed Crl.A. No. 735 of 2008 before this Court.

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3. Heard Mr. Shankar Divate, learned counsel for the appellants and Ms. Anitha Shenoy, learned counsel for the State of Karnataka.

F 4. Among the three accused, Manjappa (A-3) and Vijay M.S. Balakrishna Madiwalar (A-2) are before us. As already noticed, the appellants, along with one Shanta (A-1) were charged for committing offences punishable under Sections 366A, 372, 373 read with 34 IPC. Since the learned counsel G for the appellants argued only for reduction of sentence, let us first understand the offences and the sentence, as fixed in the IPC. Section 366A relates to procuration of minor girl. As per the section, whoever induces any minor girl under the age of 18 years to go from any place or to do any act, forces or seduces to illicit intercourse with another person shall be

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punishable with imprisonment up to 10 years and also liable to fine. Section 372 speaks of selling minor for purposes of prostitution. Here again, whoever involves in disposal of any person under the age of 18 years for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purpose shall be punished with imprisonment up to 10 years and also liable to fine. Section 373 speaks about buying minor for purposes of prostitution. This section also makes it clear that whoever buys or obtains possession of any person under the age of 18 years with an intention to employ or use such person for the purpose of prostitution or illicit intercourse or for any unlawful or immoral purpose is liable to be punished up to 10 years and also liable to fine. All the three sections make it clear that if the victim is under the age of 18 years and whoever uses, procures, employs, buys or hires such person for prostitution or for illicit intercourse with any person or for any immoral purpose are liable to be punished. The maximum sentence prescribed is 10 years and also liable to fine.

5. In order to establish the prosecution case, apart from examining PW-1, father of the victim, PWs-3 and 4 who accompanied the policemen to Bombay, victim herself was examined as PW-2. In her evidence, she informed that at the time of occurrence in 1997 she was studying in 6th standard and her date of birth is 31.07.1985. She also narrated how these accused persons took her to Bombay on the assurance that they would get a job for her. She also explained that after reaching Bombay, A-2 and A-3 had sold her for a sum of Rs. 5,000/-. She informed the Court that A-1 used to purchase girls and engage them for immoral purposes. She asserted that A-1 used to engage her daily for prostitution against her wish. Medical Report dated 28.08.1997 (Annexure P-2) clearly shows that she is below 18 years of age. From her date of birth, it can easily be presumed that at the time of occurrence i.e. in 1997, she was below 18 years. Her father, PW-1, also explained how his daughter was taken to Bombay and the agony undergone by her. PWs 3 and 4, both accompanied the

A policemen to Bombay were examined as panch witnesses. Considering the prosecution witnesses, particularly, PW-2, whose statement and assertion are acceptable, the High Court rightly confirmed the conviction and enhanced the sentence to 7 years with a fine of Rs. 50,000/- each. Though learned B counsel for the appellants pleaded for leniency in view of the conduct of the accused/appellants in taking a minor girl to a far away place, namely, Bombay and sold her for illegal and immoral purposes, we feel that it is not a fit case for reduction of sentence. In a case of this nature, it is just and proper that a C deterrent sentence is to be imposed on the accused.

6. Looking from any angle and considering the fact that the victim was below 18 years as on the date of occurrence, the sentence of 7 years with a fine of Rs. 50,000/- awarded by the High Court is quite reasonable and acceptable. There is no D valid ground for interference in the quantum of sentence. Both the appeals fail and are accordingly dismissed.

R.P. Appeals dismissed.