

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 1022 of 2018
With
Criminal Appeal (DB) No. 481 of 2016

[Against the Judgment of conviction dated 11.5.2016 and order of sentence dated 12.5.2016 passed by learned Addl. Sessions Judge-II, West Singhbhum at Chaibasa in Sessions Trial No. 186 of 2014].

Purnima Paun, wife of Late Ganpati Paun, resident of village Jaipur, P.O and P.S. Kiriburu, District- West Singhbhum at Chaibasa, Jharkhand.APPELLANT (Cr.A.1022 of 2018)

Santosh Kumar Kalindi, son of late Parmeshwar Kalindi, resident of Murga Pada, Birswa Toli, P.O and P.S. Kiriburu, District West Singhbhum, Jharkhand.APPELLANT (Cr.A. 481 of 2016)

Versus

The State of JharkhandRESPONDENT

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For the Appellants: Mr. P.P.N. Roy, Sr. Advocate
M/s Gautam Kumar and Birat Kumar and
Pragati Prasad, Advocates.

For the State : Mrs. Priya Shrestha, Spl. P.P.

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P R E S E N T

SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

J U D G M E N T

Dated: 17.10.2024

By Court:

I.A. No. 10642 of 2024 in Cr.A.(DB) No. 1022 of 2018

Since this criminal appeal has been taken up for final hearing, this interlocutory application, filed for suspending the sentence and to release the appellant, namely, Purnima Paun on bail, is **dismissed**.

Cr. Appeal (DB) No. 1022 of 2018
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These criminal appeals are directed against the Judgment of conviction dated 11.5.2016 and order of sentence dated 12.5.2016 passed by learned Addl. Sessions Judge-II, West Singhbhum at Chaibasa in Sessions Trial No. 186 of 2014, whereby and

whereunder, the appellants having been found guilty of charge under Section(s) 370(5) and 120B of Indian Penal Code and has been convicted and sentenced to undergo rigorous imprisonment of fifteen years and fine of Rs.5,000/- each for causing each of the offence.

2. Learned senior counsel for the appellants, assisted by other counsel, submits that from the evidence, led by the prosecution, the fact which is evident that all the girls who had gone to work at Delhi and were allegedly taken by these appellants had returned within a week. They further submit that admittedly from the evidence, it is clear that there was no exploitation, far less sexual exploitation. They further submit that the girls had gone to work because of poverty and no force was applied.

3. Learned counsel appearing on behalf of the State submits that since the girls were minor, aged about less than 18 years, and no consent was taken from their parents, the case is covered under Section 370 of the Indian Penal Code. So far as Section 370 IPC is concerned, age is not the constraint.

4. The FIR is at the instance of PW-1 (Geeta Honhaga). The informant is the mother of one of the girl who went to New Delhi. She stated that her girl went missing. She in search of the girl went to the school and when the person, who cooked mid day meal, told her to get in touch with her friend Chandu. She went to the house of Chandu, where Chandu stated that her cousin had taken the girls to Delhi. Chandu gave the mobile number of one Milan. The informant then went to the house of village *Mukhiya* where she saw parents of many girls had assembled as their children were also taken to Delhi. Then it has come to light that Purnima Paun at the early hours in the morning went and met Sarita Soy, who was also found missing in the next morning.

On the basis of aforesaid information, Kiriburu P.S. Case No. 04 of 2014 was registered for the offence under Sections 370(5), 370(6) and 120B IPC and Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000. After investigation, the police submitted charge-sheet against the appellants. Thereafter the

cognizance of the offence was taken against the appellants and the case was committed to the Court of Sessions. Since the appellants pleaded not guilty, charge was framed under Sections 370(4), 370(5) and 120B of the Indian Penal Code and they were put on trial.

5. The prosecution in order to prove its case has examined ten witnesses, who are as follows:-

- P.W.1- Geeta Honhaga (the informant),
- P.W.2- Kripa Purty,
- P.W.3- Somvari Soy,
- P.W.4- Nitima Tubid,
- P.W.5- Marshal Boyapayi,
- P.W.6- Madhusudan Tubid,
- P.W.7- Sarita Soy,
- P.W.8- Parvati Kido,
- P.W.9- Kripa Shankar Sharma (I.O.) and
- P.W.10- Susari.

6. Some documents were also exhibited in this case, which are as follows:-

- Ext.1- Signature of informant on written report.
- Ext.1/1- Endorsement on FIR regarding the registration of this case.
- Ext.2- Formal FIR.
- Ext.3- Confessional statement of accused Santosh Kumar Kalindi.
- Ext. 4- Confessional statement of accused Purnima Paun.

7. The trial Court, after considering the oral and documentary evidence, convicted the appellants for committing the offence under Sections 370(5) and 120B IPC.

8. From the evidence, led by the prosecution, we find that the important witnesses are P.Ws. 1, 7 and 10. P.W.1 is the informant of this case whereas P.Ws. 7 and 10 are two girls who were taken to Delhi and had returned.

P.W. 7 stated that Purnima Paun gave an offer to go to Delhi and she along with Purnima Paun went to the house of Santosh Kalindi. Santosh Kalindi then looking at the age of P.W. 7 stated that she is minor and she will not be taken, but Purnima Paun forced him to take the girl to Delhi. She stated that for one week she worked there in one house and thereafter when phone call came from their village, she was brought back to their native place. P.W. 10 also stated in the

similar line that she was taken to Delhi.

P.W. 1 is the informant, who stated that her daughter was also taken by Purnima Paun and Santosh Kalindi to Delhi for the purpose of working. Later on, in cross-examination, she stated that the girl had already returned.

9. In this case, the appellants have been convicted under Section 370 IPC. Section 370(1) IPC defines the offence of trafficking, which reads as under:-

370(1):- Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.— The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in determination of the offence of trafficking.

10. From perusal of the aforesaid provision, it is clear that there should be an element of exploitation. The word 'Exploitation' has been defined in the Black's Law Dictionary, sixth edition, as under:-

"Exploitation. Act or process of exploiting, making use of, or working up. Utilization by application of industry, argument, or other means of turning to account, as the exploitation of a mine or a forest. State Finance Co. v. Hamacher, 171 Wash. 15, 17 P.2d 610, 613. Taking unjust advantage of another for one's own advantage or benefit (e.g. paying low wages to illegal aliens)."

Similarly, the word "exploitation" has been defined in Longman Dictionary of Contemporary English Edition as under:-

"exploitation 1 a situation in which you treat someone unfairly by asking them to do things for you, but give them very little in return - used to show disapproval: [+of] The film industry thrives on the sexual exploitation of women. 2 the development and use of minerals, forests, oil etc for business or industry : [+of] the controlled exploitation of

resources | commercial/economic exploitation 3 the full and effective use of something : [+of] greater exploitation of these data 4 an attempt to get as much as you can out of a situation, sometimes unfairly : [+of] the exploitation of religion for political ends."

11. Further, the explanation (1) of Section 370 IPC explains exploitation, which shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

12. From the evidence, we do not find any material which would suggest that the girls were exploited. None of the witness stated about exploitation. Admittedly, this is not a case of sexual assault nor of indecent behavior with the girls. Further immediately after the phone calls, they were made to return to their homes which was also facilitated. Considering the aforesaid evidence, we do not find any ingredients to attract Section 370(5) of the Indian Penal Code.

13. Accordingly, the judgment of conviction dated 11.5.2016 and order of sentence dated 12.5.2016 passed by learned Addl. Sessions Judge-II, West Singhbhum at Chaibasa in Sessions Trial No. 186 of 2014 is **set aside**. Accordingly, these appeals are **allowed**.

14. This Court directs the appellant, namely, Purnima Paun [appellant of Cr.A (DB) No. 1022 of 2018] to be released forthwith from custody, if not required in any other case. So far as appellant, namely, Santosh Kumar Kalindi [appellant of Cr.A.(DB) No. 481/2016] is concerned, since he is on bail, he along with his bailors are discharged from the liability of the bail bonds.

15. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

Jharkhand High Court, Ranchi.
Dated: the 17th October, 2024.
NAFR/Anu/Cp.-3.