2022 INSC 337

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.852 OF 2018

SARTAJ KHAN .. Appellant

VERSUS

STATE OF UTTARAKHAND .. Respondent

J U D G M E N T

UDAY UMESH LALIT, J.

1. This appeal under Section 379 of the Code of Criminal Procedure, 1973 read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against the judgment and order dated 07.12.2017 passed by the High Court of Uttarakhand at Nainital in Government Appeal No.139 of 2016.

2. The case of the prosecution as set out in the judgment under appeal was as under:

> "2. The case of the prosecution, in a nutshell, is that at 11:00 AM, S.I. Manju Pandey, In-charge Human Trafficking Unit Shadra Bairaj, Banbasa along with other police officials reached at Sharda Bairaj near Indo-Nepal border towards eastern side to check the illicit human

trafficking. One volunteer namely Meera Sauda was also with them. They were checking the people coming from Nepal border. At about 13:30 hours, a secret information was received that an Indian boy was trying to import a minor girl of Nepal origin for the purpose of exploitation. The information was acted upon and one girl was noticed near a cart selling snacks towards the eastern side of Sharda Barrage. The name of the girl was ascertained. She disclosed her name "X X X"[1] R/o Village Koteshwar, District Kathmandu, Nepal, aged about 15 years. The investigation was carried out by maintaining all decency through Meera Sauda, who was well conversant with Hindi and Nepali languages. She disclosed to the police party that on 10.04.2015, she came all alone to see her uncle namely Arjun Sharma, who was a teacher in Lamki (Nepal). On 11.04.2015 at about 10:00 AM, she was having ice-cream from a cart at Atariya Bus stand. A boy came and stood by her side. He also started having the ice-cream. He tried to entice her. He allured her that he would take her to Banbasa in India where she can do shopping. They would stay in a hotel at Banbasa and in the morning, he would send her back to Atariya, Nepal. She trusted him. The boy brought her from Atariya, Nepal to Mahendra Nagar. He started pressing her breast in the bus. She told him not to do so. Thereafter, at Mahendra Nagar, he made her to sit on a horse cart, which was going towards India. They reached Banbasa bridge at about 13:45 hours. The gate was closed. Many horse carts and vehicles were parked. There was lot of rush. The boy got down from the horse cart and told her that there was police checking. He tutored her to tell the police that she was going to Banbasa for shopping. He started walking ahead. He told her that he would see her after some distance. Thereafter, they searched the boy. They reached near canal gate. The boy was standing near the tree facing towards bridge. "X X X" recognized the boy and told that he was the same boy, who has enticed her to come from Nepal. The boy was arrested. He disclosed his name Sartaj Khan, S/o Sardar Khan, R/o Mohalla Bhure Khan, P.S. Khakhra, District Pilibhit, Uttar Pradesh. He was aged 30 years. He admitted his guilt. The respondent and girl were brought to the office for counseling. Other police officials also reached the spot. It was, primafacie, found that the boy had brought the girl to India for exploitation. The personal search of the respondent was carried out. One pocket diary, one packet of condom, two man force tablets, Indian and Nepal currency and two mobile phones were found from his possession. The seizure memo was prepared. One copy of the same was handed over to the respondent. PW2 "X X X" was medically examined by PW4 Dr. Vinod Kumar Joshi.

3. The FIR was registered. The investigation was carried out and the challan was put up after completing all the codal formalities.

1 Identity of the prosecutrix/victim is not being disclosed.

> 4. The prosecution has examined as many as six witnesses in its support.
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> 5. Thereafter, the statement of respondent was recorded under Section 313 of Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated."

3. The appellant was tried in the Court of Special Sessions Judge, Champawat, in Special Sessions Trial No.07 of 2015 for having committed the offence punishable under Sections 363, 366-B, 370(4), 506 of the Indian Penal Code, 1860 ("IPC" for short) and Section 8 of the POCSO Act,

4. In support of its case, the prosecution relied upon the testimony of PW1 Manju Pandey, who along with PW3 Meera Saud had initially interacted with the victim who was examined as PW2. The evidence of PW3 Meera Saud was as under:

> "That on 11.04.2015, I was present in my office. S.I. Manju Pandey, Constable Bhuvan Rana, Constable Laxman Chand, constable Ganesh Singh Bisht and constable Ravi Joshi and driver Heera Singh were also present. We all were carrying out checking. The gate for the entry to Nepal was closed. It was abouf 1 :00 or 1½ pm. It was day time. We reached a little towards Nepal. Some person came to meet Manju Pandey and told that one girl is standing near the cart. We all went near to the said chaat stall.
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> The chaat cart was in front towards of the custom office. I know Nepalese language. One girl about 14-15 years old was standing near the chaat cart. When I asked the name and address of the said girl in Nepalese language then she told her name is "X X X" and she is resident of Koteshwar, Kathmandu. And she told that on 10.04.2015 she was coming to Lamki in a bus from Kathmandu (Nepal) to meet her uncle and when she reached Atariya she was standing and having ice-cream from a cart and then she met with a boy who asked her to

> come to Banbasa, and he would make her roaming and shopping and would send her back to Atariya.
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> Thereafter we both boarded on a bus to Mahindra Nagar from there. Then we reached Mahindra Nagar. That boy fed me food in Mahindra Nagar. Thereafter we sat on a horse cart to India from Mahindra Nagar bus stand. When we reached towards Nepal in Banbasa then this boy asked me to stay there as the checking is going on ahead and he will meet me ahead. She told that she does not know the name of the boy. She can recognise after seeing him.
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> Thereafter, we all along with the girl came towards the canal after crossing the bridge in Manju Pandey's vehicle. When we reached at canal gate then the said girl pointed towards a boy and said that this is the same boy who is standing with his face towards canal and brought me. Thereafter the said boy was encircled and apprehended by the policemen and was taken to the Manju Pandey's office. A counselling was conducted there. After some time, Circle Officer and the Project Director Mr. Janak Chand, and Secretary Bhuvan Chand Gadkoti from our office came there. The CO reached in one hour and the officers from our office reached in 20-25 minutes.
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> Thereafter, when people from our society in Nepalese and CO made inquiry with "X X X" then she told the same thing as mentioned above. And a document of joint inquiry was prepared. We all put our signatures on it. It is marked as Exhibit Ka-1 on the record. it is verified by me today. Thereafter the lady sub inspector prepared the memo of recovery of the prosecutrix and memo of arrest of the accused after arresting the accused. It was signed by the policemen and the people who were present at the time of the counselling. It is identified by me today. It is marked as exhibit Ka-2. The CO did not sign it. Manju Pandey had searched the accused. And she sealed the articles such as mobile etc. which was recovered from him.
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> Thereafter we went to police station Banbasa along with the prosecutrix and. the accused with policemen. The sub inspector got the report registered and handed over the prosecutrix and the accused to the police station."

5. As regards the age of the victim, PW4 Dr. Vinod Kumar Joshi, who was one of the Members of the Board which had medically examined her, stated as under:

> "The prosecutrix was medically fit in my opinion. Thereafter, on the

> basis of the report with regard to the age of "X X X" received from CMO Udham Singh Nagar by SI Meenakshi Nautiyal, PS Loha Ghat which is document no. 5Ka/16 5Ka/18, report of Radiologist district hospital Udham Singh Nagar on X-Ray from is document no. 5Ka/17 which is perused by CMO Udham Singh Nagar and the report of dental surgeon district hospital Udham Singh Nagar which is document no. 5Ka/19, one supplementary report with regard to the age of "X X X" was prepared by me which is document no.5Ka/22. On which I found the age of "X X X" to be about 17 years old. On which, I identify my handwriting and signature and the signature of SI Meenakshi Nautiyal. It is marked as exhibit Ka-6."

6. The Trial Court having acquitted the appellant of the charges levelled against him, the State of Uttarakhand preferred the Government Appeal No.139 of 2016 challenging the acquittal.

7. After considering the material on record and the rival submissions, the High Court found that the Trial Court had not considered the material evidence on record. Having analyzed the reasons which had weighed with the Trial Court, the High Court found that the decision of the Trial Court was perverse and the case of the prosecution deserved to be accepted. Allowing the appeal vide its judgment under appeal, the High Court set-aside the order of acquittal and convicted the appellant of the offences punishable under Sections 363, 366-B, 370(4) and 506 of the IPC, and under Section 8 of the POCSO Act. He was awarded substantive sentence of 7 years imprisonment under the first, imprisonment for 10 years under the second, imprisonment for 10 years under the third, and, imprisonment for one year under the fourth count of the offences punishable under the

IPC. In respect of the offence punishable under Section 8 of the POCSO Act, he was awarded imprisonment for three years. All the sentences were to run concurrently.

8. Being aggrieved, the instant appeal has been preferred.

9. We have heard Mr. Jitendra Mohan Sharma, learned Senior Advocate in support of the appeal, and, Mr. Jatinder Kumar Bhatia, learned Advocate for the State.

10. Mr. Jitendra Mohan Sharma, learned Senior Advocate submits *inter alia:*

(a) The requirements under Section 188 of the Code of Criminal Procedure, 1973 were not satisfied and no sanction in terms of said Section was placed on record; and that in the absence of such sanction, the appellant could not have been tried.

(b) There was no allurement which was extended by the appellant and the victim had gone from Kathmandu to Atariya covering the distance of more than 650 kms. on her own.

(c) The age of the victim was definitely beyond 18 years of age and, as such, the offence would not come under Section 370(4) of the IPC.

11. The submissions are countered by Mr. Jatinder Kumar Bhatia, learned counsel for the State. He strongly submits that the view taken by the High Court does not call for any interference.

12. Section 188 of the Code is to the following effect:

> "**188. Offence committed outside India**.—When an offence is committed outside India—
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> (a) by a citizen of India, whether on the high seas or elsewhere; or
>
> (b) by a person, not being such citizen, on any ship or aircraft registered in India,
>
> he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:
>
> Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

13. In terms of Section 188, even if an offence is committed outside India, (a) by a citizen whether on the high seas or anywhere else or (b) by a non-citizen on a ship or aircraft registered in India, the offence can still be tried in India provided the conditions mentioned in said Section are satisfied. The Section gets attracted when the entirety of the offence is committed outside India; and the grant of sanction would enable such offence to be enquired into or tried in India.

14. As the facts and circumstances of the case indicate, a part of the offence was definitely committed on the soil of this country and as such going by the normal principles the offence could be looked into and tried by Indian courts. Since the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 of the Code and there was no necessity of any sanction as mandated by the proviso to Section 188. We, therefore, reject the first submission advanced by Mr. Sharma.

15. Coming to the second submission, it is true that the victim had traveled on her own from Kathmandu to Atariya. However, the evidence on record completely establishes that she was lured into coming to India. The offences alleged against the appellant were thus rightly invoked and fully substantiated.

16. As regards the third submission, the evidence on record is absolutely clear that the age of the victim was below 18 years of age. The medical board had not only done the radiological tests but had also undertaken dental test on the basis of which her age was found to be below 18 years.

17. In the circumstances, sub-section 4 of Section 370 IPC would definitely get attracted. Said Section 370(4) postulates minimum sentence

of 10 years. Viewed thus, the sentences awarded to the appellant cannot be termed to be excessive on any count.

18. We, therefore, see no reason to take a different view in the matter. Affirming the view taken by the High Court, we dismiss the appeal.

19. The appellant shall serve out the sentence awarded to him.

…….J.
(UDAY UMESH LALIT)

…….J.
(S. RAVINDRA BHAT)

…….J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi;
March 24, 2022.