

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) No.13/2019

Sri Narayan Baidyakar, S/O. Lt. Niranjana Baidyakar, of 1 No. Kalachari, P.S.-Kamalpur, District-Unakoti Tripura.

---- Appellant(s)

Versus

The State of Tripura

-----Respondent(s)

For Appellant(s) : Ms. Simita Chakraborty, Advocate.

For Respondent(s) : Mr. Sumit Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing : **5th March, 2020.**

Date of judgment : **24th March, 2020.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER

This appeal is filed by the original accused to challenge the judgment dated 25.06.2018 passed by the learned Additional Sessions Judge, Unakoti Judicial District, Kamalpur in Sessions Trial No.40 of 2012. By the impugned judgment the accused was convicted for offences punishable under Sections 365 and 366 of the Indian Penal Code (IPC, for short) and under Sections 5(1) and 6(1) of the Immoral Traffic (Prevention) Act, 1956. For the offence under Section 365 of IPC he has been sentenced to rigorous imprisonment of 3(three) years. For offence under Section 366 of IPC he has been sentenced to rigorous imprisonment of 5(five) years. For offence under Section 5(1) of the Immoral Traffic (Prevention) Act, 1956 he has been sentenced

to rigorous imprisonment of 3(three) years and for one under Section 6(1) of the said Act rigorous imprisonment of 7(seven) years. All sentences are to run concurrently. Separate fines are also imposed.

2. Briefly stated the prosecution version was that one Ruma Datta Chowdhury, a widow lady was residing with her parents. On 19.12.2009 the accused Narayan Baidyakar took said Ruma Datta Chowdhury by giving her promise of securing a job for her in Fisheries Department at Agartala. She did not return home and the family members, therefore, started looking for her. On 25.12.2009 her brother Satyabrata Choudhury filed a missing person's report. The family members during their search came to know that the victim girl was kept in a confinement in a brothel at Silchar. Upon a tip-off they went to the place along with police party and rescued the victim girl on 30.12.2009. An F.I.R. was lodged before Kamalpur Police Station to this effect on 27.05.2010. A charge was framed against the accused for having committed offences punishable under Sections 365 and 366 of IPC and Sections 5(1) and 6(1) of Immoral Traffic (Prevention) Act, 1956 on 12.07.2013. A separate charge also dated 12.07.2013 was framed for having committed offence under Section 420 of IPC on the premise that he had collected ₹3,000 from the families of job aspirants of the said area.

3. Upon completion of the trial, learned Sessions Judge acquitted the accused for the offence under Section 420 of IPC but

convicted him for the rest of the charges and handed down sentences as noted above. It is the said judgment of the learned Sessions Judge which the accused challenged in this appeal.

4. We may notice the gist of evidence.

Subrata Choudhury, PW-7, is the elder brother of the victim girl. He deposed that the victim girl being a widow was residing with his parents since about 5 to 6 years. Couple of years ago the accused describing himself as Babul Deb came to the village with a job offer for his sister in the Fisheries Department. At his parents' house the accused handed over a form to be filled up and said that the victim should go to Agartala next day with necessary documents for interview. Accordingly, his sister left the house with the accused to go to Agartala but did not return on that day. Next day also she did not return. Mobile number of the accused was found switched off. Couple of days later they lodged a missing person's report with the police. 6 or 7 days after that Malay Deb of their village met his father and told him of the information of his sister being traced in Silchar. Thereupon his younger brother Satyabrata Choudhury and a relative with the help of the Silchar police rescued the girl from a brothel at Silchar. His sister was found about 15 days after she left home to go to Agartala. After returning home she was ill for some time.

In the cross-examination, he stated that his sister was ill for about 6 or 7 days after she returned and after which she had talked to her mother and brother about the events. He was not sure whether his brother had given the details to the police.

About 10 days after the victim returned the police officers from Kamalpur Police Station had visited their house.

5. Smt. Urmila Choudhury, PW-8, was the mother of the victim girl. She also confirmed that the victim was residing at her house since 5 to 6 years due to death of her husband. According to her deposition the accused describing himself as Babul Deb had visited their house few years back and offered job for her daughter in the Fisheries Department. She and her husband, therefore, agreed to send the daughter for interview to Agartala next morning. Accordingly, next day the accused took the victim girl to take her to Agartala. However, when she did not return, a missing person's report was filed before the police station a day or two later. They tried to trace the girl. Few days later, Malay Deb informed her husband about the daughter being found at Silchar. Her son went to Silchar and rescued the daughter. At that time her daughter was ill and, therefore, she did not have any detailed conversation with the victim. Upon being asked the victim had told her that the accused had left her in a brothel at Silchar.

6. Satyabrata Choudhury, PW-12, the first informant, deposed that he had lodged the FIR before the police. The victim was his younger sister and was residing with him and his parents since the death of her husband. In the year 2009 the accused had come to their house and had promised job for his sister in Fisheries Department and taken her ostensibly for an interview at Agartala. At that time he was doing a job at Guwahati and

residing there. Since the girl did not return as promised, his family members had started searching for her. Upon hearing of this, he had also come to his native village from Guwahati next day. About 10 days later one Malay Deb of the village informed his father about the sister being kept at a brothel at Silchar. Upon receiving this information, he went to Kamalpur Police Station who advised him to go to Silchar and get in touch with the local police. He met the local MLA and with his reference along with his friends and relatives went to Silchar and got in touch with the local police. With the help of the police they traced out his sister. He brought her back home. His sister was in a shock and was unable to speak. She had to be treated by doctors. She became normal only about 15 days later when she informed him that while going towards Agartala in a jeep, accused sprayed some chemicals which left her dizzy. When she became normal, she found that she was in a house at Silchar. She was confined there. There were other women in the house who forced her to engage in prostitution. Following day after returning home with his sister he had filed a written complaint before the police against the accused.

7. Smt. Ruma Datta Choudhury, PW-34, the victim girl, deposed that her husband died in the year 2009. Since then she started residing with her parents at Halahali. Once she had gone to the office of SDM, Kamalpur where she met the accused Narayan Baidyakar who introduced himself as Babul Deb. He helped her obtaining Permanent Resident Certificate. Once again

when she went to Ambassa for registering herself with the Employment Exchange, she met the accused and helped her out. At that time he brought up the topic of a job offer at Fishery office at Agartala. He visited her house couple of days later and persuaded her mother to let her go with him to Agartala. On 19.12.2009 she left her village to go to Agartala by boarding a jeep at the market of village Halahali. According to her during this journey some liquid was sprayed on her face which caused great discomfort. She became unconscious. When she regained consciousness, she was in a room. Later she learnt that it was at Silchar. A lady told her that she was sold there and she would not be able to return. She told her that if she continued crying, she would have to be shifted somewhere else. Couple of days later a person asked her address. She gave him her name and address. About 10 or 12 days later her brother Satyabrata Choudhury, her brother-in-law and the police rescued her from the said house. For some time after returning she was unwell. She had to undergo treatment. When she fully recovered, she narrated the incident to her brother and mother upon which her brother lodged a police complaint. She identified the accused Narayan Baidyakar who had identified himself as Babul Deb.

In the cross-examination, she stated that when she was recovered by her brother, police was also present. At that time she had told the police about the incident but had not given a complaint in writing to the police at Silchar. She had described the entire incident to the family members about 15 days after

returning home. In the jeep while they were going to Agartala there were about 10 to 15 other passengers. The liquid was sprayed in presence of all of them.

8. PW-1, Sujit Paul, was a resident of Ambassa. He said that a few years ago he had received a telephone from one Bijoy Das informing him that one girl of Halahali was sold to a brothel at Silchar. He had a relative at Halahali through whom he informed this to the brother of the girl.

9. Malay Deb, PW-6, was the uncle of Sujit Paul (PW-1). He corroborated the deposition of Sujit Paul. He had approached Mantu Choudhury, father of the victim girl, and conveyed the message from Sujit Paul that his daughter was found at a brothel at Silchar.

10. Shyam Kumar Chauhan, PW-9, the Circle Inspector, was posted at Silchar at the relevant time. He deposed that on 30.12.2009 Satyabrata Choudhury (the first informant) from Tripura appeared before him and gave a petition for rescuing his sister who was detained at some place at Silchar which was a brothel. The witness deputed his staff and sent them to the said place who recovered the victim. On the basis of identification provided by her brother Satyabrata Choudhury, she was allowed to go with her brother.

11. PW-2, Smt. Sandhya Debnath, deposed that few years ago the accused had come to her village offering a Government

job to anybody who paid him ₹7,000. He made such an offer for her son. She, however, did not accept the offer.

12. PW-3, Urmila Rajak, was a resident of nearby village. She referred to the visit by the accused to her house few years ago and offering Government job on payment of ₹3,000. Her mother had paid ₹3,000 to the accused for the job for her sister. She was told that her neighbour had also given similar sum of money to the accused.

13. Smt. Debabala Rajak, PW-14, deposed that around the year 2010 the accused had approached her family members offering a job in Fisheries Department on payment of ₹3,000. Her parents had paid the said sum to the accused in her presence. One of her friends Namita Debbarma had also paid a similar sum to the accused and given her documents. Under his instructions, she, her brother Nirmal Rajak, her friend Namita Debbarma and her brother went to Agartala with the accused who took them to a Court compound where he prepared two applications for her and her friend Namita. He left them for some time and returned promising them that they would get the jobs. They returned home by a train but never got the job.

14. PW-15, Smt. Namita Debbarma, gave a similar account of the accused having approached her and Smt. Debabala Rajak (PW-14) with a job offer in the Fisheries Department upon payment of ₹3,000. According to this witness also both the girls along with their brothers had gone to Agartala with the accused

where some documents of job applications were prepared. After which they returned from Agartala. They had paid money to the accused but never got the job.

15. Sri Nirmal Rajak, PW-17, brother of Smt. Debabala Rajak, also gave a similar version.

16. Smt. Dipali Rajak, PW-18, mother of Debabala also referred to having paid ₹3,000 to the accused for getting a job for her daughter.

17. Sri Bagirath Debbarma, PW-22, father of Namita Debbarma also claimed to have paid ₹3,000 to the accused for securing a job for his daughter.

18. Sri Amal Namasudra, PW-27, was the resident of North Kachucherra. He deposed that the accused had come to his village few years back to whom he had paid ₹7,000 for getting a job in the Forest Department which never materialized.

19. Sri Kajal Baidyakar, PW-28, deposed that about 5(five) years back he had gone to visit his in-laws. After he returned home he found that his daughter Rekha was missing. His inquiries revealed that the girl was taken on a scooter by the accused Narayan Baidyakar. She returned home after couple of days. The girl later on told him that she was taken to Silchar by the accused who had sold off all her ornaments and left her there. He had also sold her to an old lady and accepted money for that.

In the cross-examination, this witness, however, agreed that in his police statement he had not stated that the accused had sold the ornaments. He admitted that he had not lodged any complaint against the accused for the said incident.

20. Subimal Barman, PW-32, was a Sub Inspector of Police posted at Kamalpur Police Station at the relevant time. He had arrested the accused and carried out the investigation. During his investigation he had found many photographs of women as well as the documents from the accused which he had seized. During his investigation he found that the accused was collecting such documents under the pretext of securing jobs for the victims.

In the cross-examination, he agreed that the incident took place on 19.12.2009 whereas the F.I.R. was lodged only on 27.05.2010. Prior to that, the police had merely received a missing person's report. He, however, explained that the F.I.R. was lodged after the victim returned and was fit to narrate the details.

21. Ashok Kumar Paul, PW-33, had carried out part of the investigation. He narrated the steps taken during the course of such investigation.

22. This is the gist of relevant depositions. From such deposition it can be seen that the attempt of the prosecution is to establish that accused Narayan Baidyakar often introduced himself as Babul Deb. He claimed to be an employee of Fisheries Department. He would get in touch with various unemployed

women of the villages promising to get them job in the Fisheries Department upon payment of certain sums of money. He had collected documents and money from several such victims, often taken them to Agartala in the pretext of making job applications but never fulfilling the promise. None of the girls ever received appointments. So much is borne out from the evidence of Smt. Debabala Rajak (PW-14), Smt. Namita Debbarma (PW-15) and Sri Nirmal Rajak (PW-17). It is not necessary to refer to evidence of several other witnesses on this point.

23. The attempt on part of the prosecution further is to establish that the accused had also approached the family of the victim, offering a job for her on payment of ₹3,000. Under such pretext he had taken the victim to Agartala, but instead sold her to a brothel at Silchar. Insofar as the shady background of the accused is concerned, it may have a limited relevance. What is of importance is did in the instant case, as alleged by the prosecution, the accused take the victim girl to Agartala under false pretext and then sold her at Silchar forcing her into the life of prostitution.

24. In this context, important evidence is that of the victim girl herself and her close relatives. While assessing such evidence, we must bear in mind considerable delay in filing the first information with the police. Undisputed facts are that the alleged incident took place on 19.12.2009. Even going by the version of the prosecution witnesses that the victim girl was not traced for

about 10 or 12 days thereafter and was actually recovered from Silchar on 30.12.2009, it must be remembered that the F.I.R. was lodged on 27.05.2010, that is nearly 5(five) months later. The prosecution must explain such enormous delay in filing the first information report. In this context, the first informant Satyabrata Choudhury (PW-12), the brother of the victim and who himself had gone to Silchar to retrieve the girl, had offered to explain the delay by suggesting that after returning home his sister was unable to speak. She had to be treated by doctors. She became normal in about 15 to 16 days thereafter. It was then that the girl told him and other family members about the incident. Other family members had also given a similar version. The girl herself (PW-34) had deposed that after returning home she was unwell. Because of the spray of fluid on her, she had to undergo medical treatment. After some time she recovered and narrated the incident to her brother and mother upon which the F.I.R. was lodged. In the cross-examination, she had stated that she had narrated the incident to her family members after about 15 days of returning home.

25. Thus, the long delay of 5(five) months in lodging the F.I.R. is sought to be explained by the prosecution witnesses by suggesting that for about a fortnight after the girl returned home she was physically and mentally disturbed and could not give the full details of her ordeal. The victim specifically stated that she had narrated the entire incident to her family members about a fortnight after returning home. The explanation offered by the

prosecution for such long delay thus does not cover the entire period. By the account of the victim girl and her relatives, she was able to give full details of the incident after about 15 days of her returning home. The F.I.R. which was lodged nearly 4(four) and half months later was thus grossly belated and the delay remained unexplained. Another significant aspect of the delay is that admittedly the girl was retrieved from Silchar by her brother with the aid of the local police. Thus, the Silchar police was present at the time when the girl was retrieved from the brothel at Silchar. Nothing prevented the family members from lodging a complaint then and there. It is strange that even the police did not take cognizance of such a serious incident by registering an F.I.R. straightway. Subrata Choudhury, PW-7, brother of the victim had stated that about 10 days after the girl returned home, police from the local police station had visited their house. Even at that time FIR could have been filed.

26. The deposition of the relevant witnesses shall, therefore, have to be scrutinized minutely bearing in mind this gross unexplained delay. The victim herself as well as her relatives such as, her brother Subrata Choudhury (PW-7) and mother Smt. Urmila Choudhury (PW-8) had narrated about the accused approaching the family members with a job offer for the victim in Fisheries Department upon payment of ₹3,000 and upon which the victim accompanied the accused to Agartala on 19.12.2009. The victim girl herself had also given this version. With respect to the first part of the accusation of the prosecution, there appears to be

no reasonable doubt. The victim girl thus did accompany the accused to Agartala on the said date for applying for a job interview. It is also undisputable that the victim girl did not return home on the same day or shortly thereafter. The family members started making enquiries as stated by her brother Subrata Choudhury (PW-7), another brother Satyabrata Choudhury (PW-12), the first informant, who had joined the family from Guwahati where he was residing. The family had also registered a missing person's report with the police which would provide a corroboration. The fact that the family later on received an information passed on by PW-1 Sujit Paul through his uncle Malay Deb (PW-6) that the victim girl was traced at Silchar need not be doubted. The fact that Satyabrata Choudhury (PW-12) visited Silchar and with the aid of the local police retrieved the girl from there is well documented. However, what precise role did the accused play in the victim girl being diverted to Silchar instead of her home after making a show of applying for a job at Agartala, has to be minutely examined.

27. In this context, the most important witness for obvious reasons would be the victim girl herself. In her deposition she stated that she and the accused had boarded a jeep from a market place in the village to go to Agartala. In the jeep the accused had sprayed some liquid on her face which caused great discomfort and left her unconscious. When she regained her consciousness, she found herself in a room at Silchar. In the cross-examination she admitted that there were about 10 or 15

other people in the jeep. She was sprayed in presence of these persons.

28. Her version of being rendered unconscious upon being sprayed with a liquid and remaining in such state still she was deposited at a place in Silchar, does not seem believable. Firstly, as noted there were about 10 or 15 other passengers in the jeep. Secondly, she claimed that she was sprayed in presence of all of them. Thirdly, she claimed that unknown to her she was taken to Silchar under such condition where she regained her consciousness. When the entire incident thus took place in a closed vehicle in presence of several other people and after which as claimed by the victim she was taken in such unconscious or semiconscious condition to Silchar instead of Agartala, surely this would have attracted the attention and aroused curiosity of large number of people. Admittedly there were several people in the jeep. When in broad day light if the victim was being taken in an unconscious state, several other people would have witnessed the incident and questioned the accused about the same. This version given by the victim thus does not inspire confidence. She has clearly made a false claim and exaggerated the circumstances under which she was found at Silchar.

29. She is the sole witness as to how she landed up at Silchar instead Agartala and back to her home. In order to rely on the sole testimony of this witness, she had to be of trustworthy

nature. Coupled with gross delay in lodging the F.I.R., her deposition has to be carefully assessed.

30. Though there is corroborative evidence of her relatives of the victim girl having left with the accused from her village supposedly for reaching Agartala for making a job application and it is undisputable that she did not return to her village later, she is the sole witness who can state as to under what circumstances she went missing. Her evidence in this respect simply does not inspire confidence.

31. A proper and a better investigation could have been more useful. From the time when the victim girl was being rescued from Silchar, if proper F.I.R. was lodged and investigation carried out, her retrieval could have been documented duly supported by independent panch witnesses. The place from where she was found, in the custody of persons whom she was kept, the circumstances under which she was kept in the confinement all could have been part of the investigation. Neither the police nor the complainant furthered the cause of prosecution by first not starting the investigation straightway and thereafter lodging the F.I.R. nearly 5(five) months after the girl went missing and about 4½ (four and half) months after being found, as stated by her and family members, could provide details of her ordeal. The role of the accused in forcing the girl into flesh trade is not reliably established by the prosecution. His conviction for none other the offences for which he is found guilty can be sustained.

32. Impugned judgment and sentence are set aside. The accused is acquitted. Shall be released forthwith, if not required in any other criminal case.

33. Appeal is disposed of. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak

