



This article is brought to you for “free” and “open access” by Beyond Briefs Law Review. It has been accepted for inclusion in Volume 1 Issue 1 of Beyond Briefs Law Review after due review.

The Copyright of the Article duly remains with the Author and the Journal.

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of the Publishing Editor of Beyond Briefs Law Review. The Editorial Team of Beyond Briefs Law Review and the Author holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of Beyond Briefs Law Review. Though all efforts are made to ensure the accuracy and correctness of the information published, Beyond Briefs Law Review shall not be responsible for any errors caused due to oversight or otherwise.

CASE COMMENT: BUDHADEV KARMASKAR V/s STATE OF WEST BENGAL

~ Harsh Rawat ¹

SUPREME COURT CASE: 14th February 2011

PETITIONER: BUDHADEV KARMASKAR

RESPONDENT: STATE OF WEST BENGAL

BENCH: HON'BLE MR. JUSTICE L. NAGESWARA RAO, HON'BLE MR. JUSTICE B.R. GAVAI, HON'BLE MRS. JUSTICE B.V. NAGARATHNA

INTRODUCTION

The above case is very significant as it paved the way for protecting the rights of sex workers. This case brings to the attention the pathetic life of sex workers and the social disgrace linked to them. This case ruling upheld the basic rights of sex workers to live their life with dignity as enshrined under Article 21 of the Constitution of India.

This case also caused the Apex Court to lay down the guidelines to pay attention to the predicament of sex workers to avoid any possibility of mishappening with them. Furthermore, it sensitized the public about the fact that sex workers are not a product or a commodity and they must not be treated abhorrently because of their profession. They are also human beings and are also subjected to the same rights, privileges and obligations as the other members of society.

FACTS OF THE CASE

On the ominous night of 17th September 1999, a horrifying murder of a sex worker took place at the red-light area located in Jogan Dutta Lane agitated the conscience of the general public. The deceased in the case was Shrimati Chaya Rani Pal. Before the incident, the deceased was sleeping in her room situated next to the staircase on the second floor of the building. Afterwards, the

¹ You may contact the author at the following email address: harsh21rawat@gmail.com.

accused came there and stumbled upon the deceased which caused a violent argument between them.

The accused kicked the deceased and fitted her with fists. This assault led to excessive bleeding of the deceased. She got unconscious and fell. Thereafter, the accused dragged her through her hair and pushed her forehead against the wall. Consequently, she started bleeding from her head as well as her nose. One of the eyewitnesses, Asha Khatoon, a maidservant, raised an alarm who was present on the second floor at the time of the incident. Subsequently, the other residents assembled at the point of the incident and witness the deceased being ferociously battered by the accused. The accused tried to escape from the crime spot but was eventually arrested within a few hours by the police. She was taken to the hospital but was found dead by the doctors.

ISSUES RAISED:

- Whether the statement of eyewitness Ms Asha Khatoon is admissible under Section 164 of CrPC?
- Does the living conditions of the Sex-workers improve after this hearing?
- Whether the appointment of the committee by the Apex Court has any positive implications on the fundamental rights of sex workers particularly Article 21 of the Indian Constitution?

LAWS INVOLVED:

- Section 164 of CrPC, 1973;
- Section 302 & 53 of Indian Penal Code, 1860;
- Section 3, 4 & 8 of the Immoral Traffic Prevention Act, 1956 and
- Article 21, 21A, 14 of The Constitution Of India.

CONTENTIONS BY APPELLANTS

The Appellants learned advocate brutally refused all the charges framed by the prosecution. They submitted the statement of the eyewitness, Asha Khatoon is not admissible under Section 164 of CrPC (Power of the Judicial Magistrate to record statements or confession), as she did not appear during the cross-examination process. To justify their point, they relied upon the case of Raghuvver Singh V/s the State of Uttaranchal, 2007. It was also argued that no resident of the place of the

incident was summoned as a witness. Due to this reason, the learned advocate highlighted the ambiguity surrounding the prosecution story.

CONTENTIONS BY RESPONDENTS

They contended that the relationship between the accused and the deceased was hostile, and they quarrelled at intervals. They submitted an injury report made by a physician which stated that the deceased was beaten harshly by the accused through legs and fists. The report also pointed out that a total of 11 injuries were inflicted upon the deceased on various parts of the forehead and face that culminated in her death. They further argued that only 8 out of 11 injuries are enough to cause death in the normal course of nature.

RATIONALE OF JUDGEMENT

In the present case, the accused was convicted by the High Court of Calcutta for life imprisonment under Section 53 of the Indian Penal Code, 1860. He appealed in the Supreme Court against the order of the High Court. But his appeal was rejected by the Supreme Court and a *Suo motu* transformed it into a Public Interest Litigation about the deplorable conditions of the sex workers in the country. The Court denied the contentions raised by the Appellants about the statement of the eyewitness. The Court attached reasonable importance to the statement of the eye witness, Asha Khatun which provided a realistic description of the act of the accused. It was also evident from the eyewitness statements that there was hostility between the accused and the deceased and they often used to quarrel. It was also confirmed that the accused stumbled upon the deceased, while she was sleeping near the staircase that led to the squabble.

The court believed that the grave injury suffered by the deceased was further demonstrated with the help of a post-mortem report made by the competent physician. It was also clearly proven that the injuries inflicted were sufficient to cause the death of the deceased in the normal course of nature. The court expressed its displeasure on no explanation of the injury near the left eye of the accused when the defence case was pure denial.

The Apex Court appointed a committee on 12th September 2011 which comprises Retd. Judges, sitting Judges and Senior Advocates to find out various measures to protect the rights of sex workers and their profession. The committee has been diligently working for safeguarding the women who are in sex-working or have been trying to quit. The committee is sincerely working to find out ways to ensure good living conditions for the sex workers. The Apex Court passed an

order based on the interim report prepared by the committee in 2011 which focussed on key issues such as:

- Providing alternative livelihood to sex workers who want to change their lives.
- Provision for a State helpline number for sex workers to seek legal aid at no cost.
- Need to broaden the scope of schemes specifically meant for the rescued victims of trafficking in such a way that sex workers choosing rehabilitation could be covered in that.
- To ease the rules for verification of residential addresses that enabled them to access bank accounts, voter-ID cards, ration cards etc.
- Safeguarding the rights of sex workers including the right to life with dignity, right to education, right to livelihood etc.

DEFECTS OF LAWS

Sex workers are disadvantaged in their fundamental rights such as the right to education, the right to vote, and the right to access government schemes due to lack of government documents. They are deprived of ration cards, Voter-ID cards etc. It is a very serious problem. Even after 75 years of Independence, they were looked down upon by their fellow human beings. They are not able to freely exercise their fundamental right of freedom to trade or to engage in any kind of public service. They are not able to give their services in any type of Profession. Even if they try to do so, they are discouraged and not treated properly by their fellow beings. This is a very sad part of the reality. These issues were not even raised till the report of 2011 and despite being Indian citizens, they couldn't exercise their fundamental rights. Even after 9 years of such order, the sex workers were deprived of the ration provided by the government. When the Pandemic hit the country, they died due to starvation. In 2020, an application was filed by Durbar Mahila Samanwaya to request the authorities to provide a dry ration to the sex workers, upon which the Court directed the authorities to provide a dry ration to sex workers.

INFERENCE

This judgement is an astonishing example of how sex workers are ill-treated and put to death at the hands of demonic people who consider them merely a commodity. It provided a social message that people should be intolerant of such inhuman acts in a developed society. The above case brought our attention to the miserable life of sex workers. Poverty is the only factor that drives them to take such dark jobs. They are reluctant to do it. It does not mean that due to the social stigma attached to their profession, they do not have the right to live with dignity.

Every individual has the right to life and personal liberty under Article 21 of the Indian Constitution. It does not mean merely animal existence. It indicates the Right to life with dignity. Until and unless prostitution will not be acknowledged as a 'profession' in terms of law, sex workers would continue to be exploited by the people who frowned upon them. The Supreme Court took a Suo Moto cognizance of this case to facilitate the prevention of such heinous crimes and laid down the guidelines to protect the rights of sex workers. This judgement not just shook the conscience of the general public, but also inspired social change.

