

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

:::UDALGURI

**Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.**

Sessions Case No. 85/2017

U/S 370(5) IPC

GR Case No. 780/2016

State of Assam

-Vs-

Dipak Gupta @ Dipak Prasad Gupta.....Accused person.

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. M. C. Narzary, Learned Advocate.

Date of Evidence : 19-07-18: 17-06-19: 17-08-19.

Date of Argument : 19-08-2019.

Date of Judgment : 21-08-2019.

J U D G M E N T

1. The prosecution case in brief is that on 24-07-16, at about 6.30 am while the accused Dipak Gupta was taking victim girls (victim-A and victim-B) to Delhi with inducement of earning more money, he was caught by informant Rohit Nag Secretary of VDP and his companions. Thereafter they handed over the accused and the victim girls to police of Panery P.S. Later on, informant Rohit Nag lodged an FIR with the Officer-in-Charge of Panery P.S.

2. On the basis of the FIR, Panery P.S. Case No. 50/16 U/S 370(5) IPC was registered and after completion of investigation police had submitted charge sheet U/S 370(3) IPC, against the accused Dipak Gupta @ Dipak Prasad Gupta.
3. Learned Addl. Chief Judicial Magistrate, Udalguri after having complied with the provision U/S 207 CrPC found that the offences U/S 370(3) I.P.C. is exclusively triable by the Court of Sessions and accordingly, committed the case to the Court of Sessions on 18-09-17. Thereafter, the learned Sessions Judge vide Order dated 28-03-18, transferred the case to this court for disposal.
4. In consideration of the submission of the learned counsel for both the parties and on evaluation of materials on record having found sufficient grounds for presuming that the accused person had committed offence U/S 370(5) I.P.C., charge was framed there under and the ingredients of charge U/S 370(5) I.P.C., were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove its case examined the following 05(five) witnesses.
 - PW 1- Rohit Nag.
 - PW2- Victim-A.
 - PW3- Gupta Tanti.
 - PW4- Amit Sona.
 - PW5- Victim-B.
6. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence case was of total denial and declined to adduce defence evidence.
7. In the light of the above facts and circumstances, the point for determination in the instant case is set up as follows:-
 - (I) Whether the accused committed an offence of trafficking for the purpose of transporting two minor girls by inducement?

DISCUSSION, DECISION AND REASON FOR DECISION:

8. I have heard arguments placed by learned counsel for both sides and carefully appraised the evidence on record in its proper perspective.
9. Learned defence counsel Mr. M.C. Narzary has argued that none of the prosecution witnesses including the victims have adduced evidence supporting the prosecution case. The prosecution has miserably failed to prove that the accused has committed an offence under Section 370(5) IPC.
10. PW1 is Rohit Nag, informant of this case. In his evidence PW1 had deposed that about 2 years back the incident happened. On the date of occurrence at about 6 am in the morning, while he was in his house some person informed him that two girls were going to Delhi. Then he came to Nonaipara market. In the market, he learnt from Nortom Sagar that two girls were going to Delhi and they should be caught. Then he went to Goriajhar by a bicycle. At Goriajhar, he boarded a small vehicle and went to Tangla Railway station. In the railway station he found victim-A and victim-B and the father of victim-A. PW1 asked them where they were going. Then he found the accused along with them. Then on suspicion that the girls were being taken to Delhi, he with the help of two others detained the accused and brought the accused, victim girls and the father of victim-A in a reserved vehicle to their tea garden. Meanwhile someone had informed SSB personnel about the incident. The SSB personnel came to the garden and took the accused, victim girls, father of victim-A and him to Panery PS. In the Police station as asked by the Police he put his signature in the FIR. Ext -1 is the FIR and Ext-1(1) is the signature of PW1. In cross-examination, PW1 had stated that he did not know the contents of the FIR. He did not know whether the accused was present in the bus by which the victim girls and father of victim-A were going to Tangla railway station. He took the accused to the club of their garden for interrogation. They could not make the enquiry as immediately the SSB personnel came and took the victim and the accused to

the Police station. He did not know to where the victim girls were going on that day.

11. PW2 is victim-A. In her evidence PW2 had deposed that about one and a half years ago, the occurrence took place. At the time of incident, his younger sister Madhumati Sonar was working as domestic help in a house in Delhi. On the date of occurrence herself, her father, her aunt and accused, who is her brother-in-law, went to Tangla railway station to go to Delhi. While they were in Tangla railway station, the informant and three others came there and on suspicion took them back to their village and filed the instant case without their knowledge. In connection with the case filed by the informant, her statement had been recorded by the Magistrate U/S 164 Cr.P.C. Ext-2 is the statement and Ext-2(1) and 2(2) are the signatures of PW2. In cross-examination, PW2 had stated that at the time of incident, the informant was member of AASA. The informant and the other youths accompanied her to the Court when she was produced before the Id. Magistrate by the Police. The informant and the other youths tutored her what to depose before the Id. Magistrate. Accordingly, she gave statement before the Magistrate U/S 164 Cr.P.C.
12. PW3 is Gupta Tanti. In his evidence PW3 had deposed that about two years ago, the occurrence took place. At the time of incident he was in Bangalore. He did not know anything about the incident. Cross-examination of PW3 had been declined by the defence.
13. PW4 is Amit Sona. In his evidence PW4 had deposed that he did not know anything about the incident. His statement had not been recorded by the Police in connection with the instant case. He stay in Bangalore. Cross-examination of PW4 had been declined by the defence.
14. PW5 is victim-B. In her evidence PW5 had deposed that about one and a half years ago, the occurrence took place. Victim-A is the daughter of her cousin sister. During the time of incident, she visited the house of victim-A, who

informed her that she would go to bring her sister Madhu Sona back home. At the time of incident, Madhu was working as domestic help outside Assam. On the date of occurrence, PW5, victim-A, victim-A's father and the accused went to Tangla railway station to board a train to go to the place where Madhu had been working. Then three youths of their community detained them suspecting that she and victim-A were taken to outside state by the accused in order to sell them. They brought them to Nonaipara Tea garden where army personnel also came. They took them to Panery PS. The Police produced her before the court. The Magistrate recorded her statement U/S 164 Cr.P.C. She put thumb impression in her statement. In cross-examination, PW5 had stated that the accused did not take them with him in order to sell them. The members of AASA (All Assam Adivasi Students Association) forced them to make statement against the accused before the Police.

15. On appraisal of the evidence on record it is found that none of the two victim girls has adduced evidence implicating the accused. The accused is related to both the victim girls. There is clear and specific evidence of the victim girls that while they were going to board a train at Tangla railway station in order to go to Delhi, on suspicion the informant and his companion detained them and took them back to their village and handed over them to the police. PW3 and PW4, who are the independent witnesses of the case, have no knowledge about the incident. According to PW1, the informant, on suspicion they detained the accused and victim girls and brought them to their Tea Garden and before they could make an enquiry into the matter the SSB personnel came and immediately took the victim girls and the accused to the police station. PW1 had also revealed in cross-examination that he did not know where the victim girls were going on that day.

16. Section 370 IPC is relating to offence of human trafficking. According to Section 370 IPC 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.

17. Thus, under Section 370 IPC the following acts for the purpose of exploitation of a person amount to trafficking:

- (1) Recruiting purpose
- (2) Transporting persons
- (3) Harboursing persons
- (4) Transferring and
- (5) Receiving person or persons.

Under said section the above acts must be done by:

- (i) Using threats, or
- (ii) Using force or any other form of coercion, or
- (iii) By abduction, or
- (iv) Practising fraud or deception, or
- (v) By abuse of power, or
- (vi) By inducement including the giving or receiving of payments or benefits.

18. Cumulative assessment of the evidence on record does not make out a case wherein the accused is found to use threat, force, practicing fraud or deception to take the victim girls with him. It is also not found that he took the victims with him by abduction, abuse of power or by inducement. There is also no evidence that the accused habitually imports, exports, removes, buys, sells, traffics or deals in slaves.

19. In view of above discussion it appears that the prosecution has failed to prove the charge under Section 370(5) I.P.C. against the accused Dipak Gupta @ Dipak Prasad Gupta beyond all reasonable doubt.
20. Situated thus the point for determination is decided in the negative and against the prosecution.

ORDER

21. In the result, the accused Dipak Gupta @ Dipak Prasad Gupta is found not guilty under Section 370(5) I.P.C., and acquitted of charge under Section 370(5) I.P.C., and set with liberty forthwith.
22. Bail bond executed by the accused Dipak Gupta @ Dipak Prasad Gupta and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.
23. Send back the original case record of GR Case No. 780/16 to the court of learned Chief Judicial Magistrate, Udalguri, with a copy of the Judgment, forthwith.
24. Judgment is signed, delivered and pronounced in the open court today the 21st day of August, 2019.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE.....UDALGURI.

SESSIONS CASE NO. 85/2017

APPENDIX

(A) Prosecution Exhibits:

Ext.1 : FIR.

Ext.2 : Statement U/S 164 Cr.P.C. of Victim-A.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW 1- Rohit Nag.

PW2- Victim-A.

PW3- Gupta Tanti.

PW4- Amit Sona.

PW5- Victim-B.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)
Addl. Sessions Judge.
Udalguri.