

## APPELLATE CRIMINAL.

---

*Before Panckridge and M. C. Ghose JJ.*

1932

Feb. 25.

PADMAMANI DASEE

v.

EMPEROR.\*

*Abetment—Woman, if can be guilty of abetment under section 6(1) of the Calcutta Suppression of Immoral Traffic Act, 1923—Calcutta Suppression of Immoral Traffic Act (Beng. XIII of 1923), s. 6(1).*

A woman may be guilty of abetting a male person in the commission of an offence under section 6, sub-section (1) of the Calcutta Suppression of Immoral Traffic Act, for living on the earnings of a prostitute, although she cannot be convicted for the substantive offence.

### CRIMINAL APPEALS.

The material facts appear from the judgment.

*S. K. Sen and Beereshwar Chatterji* for the appellant in appeal No. 693.

*Sureshchandra Talukdar* for the appellant in appeal No. 694.

*Anilchandra Ray Chaudhuri* for the Deputy Legal Remembrancer, *Khundkar*, for the Crown.

PANCKRIDGE J. The appellant Brajamohan Shaha has been convicted of an offence punishable under section 6, sub-section (1) of the Calcutta Suppression of Immoral Traffic Act, 1923 and the appellant Padmamani Dasee has been convicted of abetment of the offence, of which the first appellant has been convicted, that is to say, she has been convicted of an offence punishable under section 6, sub-section (1) of the Act read with section 109 of the Indian Penal Code.

The facts of the case are as follows:—Inspector Madanmohan Chakrabarti of the Calcutta police

\*Criminal Appeals, Nos. 693 and 694 of 1931, against the order of S. K. Sinha, Chief Presidency Magistrate, Calcutta, dated Aug. 28, 1931.

received instructions to watch a certain house, numbered 12/6, Nilmani Datta Lane, with a view to discover whether or not it was used as a brothel. He proceeded to watch the house during the early part of the night and he discovered that several men visited it. After having watched for two nights, he entered the house in plain clothes. He found two men there and the girl, in respect of whom the appellants have been convicted, namely, Durgabala Dasee, with them on the verândâh. Shortly after, the appellant Brajamohan arrived. While he was there, another man arrived, of the name of Rahimuddin, who has not been called as a witness for the prosecution. Investigation has established that the house is the joint property of the female appellant and the mother of the male appellant. The female appellant apparently led the life of a prostitute in her early days and she has borne three daughters, the youngest of whom is the girl Durgabala, who is now about 20 years old. One of these daughters is now in the keeping of a man and has nothing to do with this case and may be dismissed from our consideration. Apparently, the second daughter was for some years the mistress of the male appellant and bore him a number of children. However, the male appellant and his mistress fell out and she is now being maintained by another man.

With regard to Durgabala, a body of evidence has been called to prove that she is following the profession of a prostitute and that men are introduced to her through the instrumentality of the male appellant. The Inspector stated that he had obtained information from various informers whose names he was at first unwilling to disclose, though he subsequently revealed them. In consequence of that information, he was successful in getting into touch with various men who were in the habit of visiting the house. Certain of these men have given evidence. One Satyacharan Chakrabarti, who lives close to the house in question, states that he has lived in the locality all his life; that he is now 40 years old and that as long as he can remember the house has been used as a brothel. He

1932

*Padmamani**Dasee*

v.

*Emperor.**Panckridge J.*

1932

*Padmamani**Dasee*

v.

*Emperor.**Panckridge J.*

further states that he knows both the male appellant and the female appellant and he has often heard them quarrelling over money. Panchu Ghosh, another witness, gives evidence to the same effect. So does the witness Muneendranath Mitra. There are two other witnesses, Sukumar Ghosh and Bholanath Sen, who have given evidence of the nature I have indicated; but, for reasons which he states in his judgment, the learned Chief Presidency Magistrate considers these two witnesses unworthy of credit and we, therefore, dismiss their evidence from our consideration. In addition, there is the evidence of Satyadhan Chakrabarti, Rabeendranath Rudra and Rateendramohan Mukherji. Two of these witnesses state that they were introduced to the girl by the male appellant and that they sometimes paid money to him and sometimes to the female appellant.

Various suggestions were put forward on behalf of the male appellant. It was said that he is a man of means and, therefore, has no temptation to maintain himself on the immoral earnings of Durgabala. It is stated that he inherited Rs. 9,500 from his uncle some ten years ago and that he owns a house. As regards the house, the evidence is that it is mortgaged and is in possession of the mortgagee and that the appellant has to pay interest on the mortgage money so that the ownership of the house is of very little advantage to him. As regards the money he inherited from his uncle, having regard to the mode of life he has admittedly been leading for some years, it can safely be assumed that very little of that money is left. We do not think that he has been successful in showing that he has sources of income other than Durgabala's immoral earnings. The witnesses may have exaggerated the part played by the male appellant in the conduct of the brothel, but it is impossible to dismiss so substantial a body of testimony coupled with what the inspector saw with his own eyes. It is not without significance that when the male appellant was asked to account for his presence in the house he described himself to the inspector as a co-sharer.

In the section, it is provided that, where a male person is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, it shall be presumed, until the contrary is proved, that he is knowingly living on the earnings of prostitution and the same presumption arises when he is proved to be living with, or to be habitually in the company of, a prostitute in the same manner. We think that, in this case, there is ample evidence to show that the male appellant has been guilty of an offence punishable under section 6, sub-section (1) of the Calcutta Suppression of Immoral Traffic Act, 1923, and we do not consider that the sentence passed by the learned magistrate is too severe.

We now turn to the case of the female appellant. Mr. S. K. Sen on her behalf has raised an interesting point of law. The substantive offence under section 6, sub-section (1) is an offence of which only a male person can be guilty. There are other sections, namely, sections 7, 8 and 9, which create offences which can be committed by persons of either sex, but only a male person can be guilty of the substantive offence under section 6, sub-section (1). Mr. Sen argued that, inasmuch as his client is, by statute, incapable of committing the main offence under section 6, sub-section (1), she is also incapable of abetting such offence: or in other words, she cannot be convicted under section 6, sub-section (1) of the Calcutta Suppression of Immoral Traffic Act read with section 109 of the Indian Penal Code. I was at first inclined to assent to this argument, because I thought it possible that there was a distinction between a case where the law presumes a person by reason either of age or of sex physically incapable of committing an offence though capable of abetting its commission by another and a case like the present where a class of persons, namely, females, is deliberately excluded from the scope of the section, not by reason of any physical incapacity to commit the offence, but on

1932

*Padmamani**Dasee*

v.

*Emperor.**Panckridge J.*

1932

*Padmamani**Dasee*

v.

*Emperor.**Panckridge J.*

grounds of policy with which the court is not concerned. However, I have come to the conclusion that if the legislature had intended to make females incapable of abetting the offence punishable under section 6, sub-section (1), it would have stated so in unmistakable terms. There may be the reasons which have induced the legislature to exclude females from the operation of the section without taking the further step of rendering them incapable of abetting the offence under it when committed by a male person. It is instructive, in this connection, to compare section 11 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict., c. 69). That section enacts that any male person, who in public or private, commits or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person shall be guilty of misdemeanour. It seems to me clear that Parliament, when it desired to make both the offence of the commission of the act of gross indecency and also the procuring of such offence punishable in the case of male persons only, considered it necessary to express its intention in plain language. I am of opinion that if we compare the section of the English statute with the language of the Bengal Act XIII of 1923, we are justified in concluding that the local legislature has not seen fit to make the abetment of an offence under section 6, sub-section (1) of that Act punishable only in the case of a male person. There is, therefore, in my opinion, no legal bar to the conviction of the female appellant if the facts justify it.

We are, however, both of opinion that, in the circumstances of this case, the evidence does not justify such a conviction. To be guilty of abetment, the appellant must intentionally aid the doing of the offence, of which the male appellant has been convicted. In so far as there is evidence against the female appellant, it proves not that she aided the male appellant, but that she was herself guilty of conduct, which, but for her sex, would have been

punishable as a substantive offence under section 6. The mere fact that she was the owner of an undivided half of the house, in which Durgabala was leading the life of a prostitute, is not, in our opinion, a fact amounting to abetment on her part.

That being so, the appeal of the female appellant is allowed and her conviction and sentence are set aside.

She will be discharged from her bail-bond and set at liberty.

The male appellant will surrender to his bail and serve out the remainder of the sentence.

GHOSE J. I agree.

*Appeal No. 693 allowed; and  
No. 694 dismissed.*

A. C. R. C.

1932

*Padmamani.*

*Dasee.*

v.

*Emperor.*

*Panckridge J.*