

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION**

CRIMINAL APPEAL NO. 888 OF 2012

Farida Altaf Shaikh,
Age 32 years Occ. Housewife,
R/at Sapana Building, 2nd Floor,
Budhwar Peth, Pune.
(and at present in judicial custody and
lodged at Yerwada Female Prison, Pune).

...Appellant

Versus

1. The State of Maharashtra
2. Meeta Laskar
3. Champa Das

...Respondents

.....
Ms Pranali Kakade, Advocate for the appellant
Mr Arfan Sait, APP for respondent/State
.....

**WITH
CRIMINAL APPEAL NO. 156 OF 2011**

Rikta Rijabul Vishwas,
Age 27 years Occu. - Nil,
R/at – Karikar Pada, Post. - Daulatpur,
Dist. - Khulna, Bangladesh.

...Appellant
(Orig. Accused No. 2)

Versus

The State of Maharashtra
(Through its PSO,
Faraskhana Police Station,

...Respondent
(Orig. Prosecution)

.....
Mr Vikram Chavan, Advocate for the appellant
Mr Arfan Sait, APP for respondent/State
.....

WITH
CRIMINAL APPLICATION NO. 621 OF 2014
IN
CRIMINAL APPEAL NO. 888 OF 2012

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 26, 2015

ORAL JUDGMENT: -

1. The appellants herein are original accused Nos. 1 and 2 respectively in Sessions Case No. 862 of 2009. The learned District Judge – 13 & Additional Sessions Judge, Pune vide judgment and order dated 27th October, 2010 convicted the appellants as under :

The appellant – Farida is convicted for the offence punishable under Section 366A of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5,000/-, in default rigorous imprisonment for one year. The appellant – Farida is further convicted for the offence punishable under Section 372 of the IPC and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5,000/-, in default rigorous imprisonment for one year. The appellant – Farida is further convicted for the offence punishable under Section 5 of the Prevention of the

Immoral Traffic Act and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 2,000/-, in default rigorous imprisonment for one year. The appellant – Farida is further convicted for the offence punishable under Section 6 of the prevention of the Immoral Traffic Act and is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 5,000/-, in default rigorous imprisonment for one year. The appellant – Rikta is convicted for offence punishable under Section 373 of the IPC and is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 5,000/-, in default rigorous imprisonment for one year. The appellant – Rikta is further convicted for offence punishable under Section 344 of the IPC and is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 2,000/-, in default rigorous imprisonment for six months. The appellant – Rikta is further convicted for offence punishable under Section 4 of the Prevention of Immoral Traffic Act and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 2,000/-, in default rigorous imprisonment for six months. The appellant – Rikta is further convicted for offence punishable under Section 5 of the Prevention of the Immoral Traffic Act and is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 2,000/-, in default rigorous imprisonment for

one year. The appellant – Rikta is further convicted for offence punishable under Section 6 of the prevention of the Immoral Traffic Act and is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 5,000/-, in default rigorous imprisonment for one year. Substantive sentences are also ordered to be run concurrently.

2. Such of the facts necessary for the decision of these appeals are as under : -

That, on 3rd July, 2009 Debra Charls Walker (PW-9), working as Director of Freedom Firm, Pune received information from Right and Jossore and OSS about two girls having been trafficked from Bangladesh to Pune. Jossore organization was at Bangladesh and OSS is at Mumbai. The names and photographs of the girls were received on E-mail and it was stated that the names of the victim girls were Rabiya and Tumpa. PW-9 gave the printouts of the said email to Shyam Kamble, who was working as the Head of investigation of Freedom Firm. The printouts of the email are at Exh. 40. On the same day, PW-9 had received additional information about the said girls. That Sunaina Sebastin (PW-5) who was working as a Social Worker and was attached to Freedom Firm was

informed by PW-9 that, accused Farida Shaikh had brought these two girls from Bangladesh. She along with another social worker Somling Kamble went to Faraskhana Police Station. They were accompanied by a Journalist - Anil Nayar. The information was transmitted to Sr. P.I. - Bharat Bhushan Sharma. They had also given photographs of the minor girls as well as the location of the brothel where the girls were detained. PW-5 acted as a panch to the raid conducted by Sr. P.I. - Sharma. In the said raid, they found that the girls were living in brothel in the adjoining building which was in a dilapidated condition. The police rescued five girls. That, they were brought by different traffickers on the assurance of job. All the girls were from Bangladesh. It had transpired, that Farida had brought Musmat Rabiya from Bangladesh after assuring her of treatment for the skin disease. PW-5 has proved the panchanama at Exh. 27. PW-5 has also acted as a panch for seizure of passport of Rikta Vishwas and the said panchanama is at Exh. 28.

3. On 9th July, 2009 Rohini Bothe, P.S.I. of Faraskhana Police Station lodged a report at Police Station about the raid and the facts disclosed by the victim girls to her. On the basis of her report, Crime No. 145 of 2009 was registered at Faraskhana

Police Station against the present appellants for offences punishable under Sections 344, 363, 366A, 372, 373, 323, 504 read with 34 of IPC and Section 3, 4, 5 and 6 of Prevention of Immoral Trafficking Act. After completion of investigation, charge-sheet was filed on 11th September, 2009. The case was committed to the Court of Sessions and registered as Sessions Case No. 862 of 2009. The prosecution examined 11 witnesses to bring home the guilt of the accused. PW-1 happens to be the victim. She has deposed before the Court that she is the original resident of Odissadanga at Bangladesh. That, accused Farida was residing near the matrimonial house of her sister at Jossore in Bangladesh. PW-1 had sustained some injury on her leg which was not being cured by any medicine. Accused Farida had informed her that she would give her medicine and took her along with her brother-in-law i.e. the husband of the sister of PW-1. The victim was initially taken to Kolkata and thereafter by train to Mumbai. Sister of her brother-in-law was also with her. The girls were taken to Pune and were handed over to one lady. The said lady was known as 'Laxmi'. That, Farida had taken away Tumpa along with her. Laxmi had then taken PW-1 to her house and detained her in a room situated at the first floor. PW-1 attempted to escape from the said premises. However, she was held back by one maid-servant of

Mumtaj who insisted upon her to indulge into prostitution. That, PW-1 was left with no other alternative but to oblige the accused. PW-1 had stayed with one Mumtaj for one month. Her brother had informed about the same to one NGO. It is elicited in the cross-examination that the accused had brought PW-1 for treatment. Tumpa was accompanying her when she was brought to Pune. PW-1 has admitted that, Farida had not misbehaved with her. She has admitted in the cross-examination that, Farida had not brought her to Pune forcibly but had brought her for treatment. She had been to the house at Budhwar Peth by Taxi all by herself and that Farida had not accompanied her. The victim has also admitted that she was in the brothel for more than one month. That, during the said one month, police had come in the said area for several times. According to her, whenever the police came for raid, Laxmi used to ask the girls to conceal themselves. There were seven girls in the brothel and Laxmi used to supply meals and clothes. She has admitted in the cross-examination that, Laxmi had not given any money to Farida in her presence.

4. PW-2 Tumpa Shaikh is also a victim. She has deposed before the Court that PW-1 Rabiya happens to be the sister of her sister-in-law i.e. sister of the wife of her brother.

According to PW-2, Rabiya was suffering from skin disease. Accused Farida was residing adjacent to the house of PW-2 at Bangladesh. Farida had assured both the girls that they would get job in the Steel Company and had also assured medical treatment for skin disease of PW-1. They travelled by bus to Kolkata and from Kolkata to Mumbai by train and thereafter by bus to Pune. When they reached the Railway Station at Pune, Laxmi had taken Rabiya along with her whereas; Farida had told PW-2 to indulge into prostitution. When she refused, she was handed over to accused – Rikta. PW-2 has identified Rikta in the Court and has stated that Rikta had forced her to indulge into prostitution. She stayed with Rikta for one month. Police had rescued her from the house of accused - Rikta and had taken her to Mundhwa Remand Home. The victims could not prove the contents of their previous statement since they were not familiar with Hindi language. The police had informed them about the contents of their statement. She has specifically admitted in the cross-examination that, she was not aware that the accused had brought her for doing bad work. That, Rikta was residing in a good area. It is also admitted that PW-2 had not stated before the police that Farida had told Rikta that she is a minor and, therefore, she should not be forced to indulge into prostitution but, had told Rikta to keep PW-2 in her house. In

the cross-examination, it is elicited that the witness PW-2 has studied upto 6th class. She has further admitted that when they were sneaking into India, Farida had given illegal gratification to the police. She has admitted that nobody had forcibly brought her to Pune. PW-2 had not disclosed to the neighbours that she was being forced into prostitution. PW-2 had presumed that Rikta had connection with Farida. PW-2 had subsequently learnt that Rikta also used to go to Budhwar Peth for doing prostitution and had returned home at late night. Her husband was staying in the room and was looking after daughter of Rikta. PW-2 has specifically stated that Farida and Laxmi had assured her that they would give her a job in steel company. One person had come to the house of Rikta and had forcible sexual intercourse with PW-2. The said person was well acquainted with Rikta and her husband. That, Farida was residing with her husband and three daughters at Bangladesh. That, her whole family knows the family of Farida.

5. PW-3 – Dr. Sunil Zope is the Medical Officer, who was attached to Sasoon General Hospital on 18th July, 2009. Smt. Pawar from Faraskhana police Station had brought Tumpa to the hospital. PW-3 had referred her to Gynecological Department. PW-3 had specifically deposed before the Court

that he would not be able to identify the girls who were brought for clinical examination and that the said girls had not given any history to him.

6. PW-4 – Dr. Sachin Sonawane had examined Tumpa. After conducting the ossification test, he had formed an opinion that the victim girl was above 16 years but less than 18 years and he had issued a certificate to that effect which is at Exh. 23. On the same day, he had also examined Rabiya referred by Faraskhana Police Station. Upon conducting the ossification test, he had opined that Rabiya was also above 16 years but less than 18 years. It is elicited in the cross-examination that, as per Modi's Medical Jurisprudence, the marginal error of age is three years.

7. PW-5 – Sunayana Sebastin was the social worker attached to Freedom Firm who had made sincere efforts to rescue the girls from Bangladesh. She has deposed before the Court that she does not recollect whether Bharat Bhushan Sharma was in the office after raid. However, she has admitted that Bharat Bhushan Sharma had sent some officers with them for raid. It is admitted by the witness that, she had not shown any identification card indicating that she was working for

Freedom Firm. It is elicited in the cross-examination that, at the time of raid, the police were in uniform. Initially, they entered one Brothel where they found one girl. There were cubicles. That, the girls were concealed in a dilapidated house which was near the Brothel and when the girls saw Police, they concealed themselves in the nearby brothel. The girls were attracting customers. According to witness, the house from where the girls were rescued was owned by Laxmi. She was not aware as to whether Farida was working as owner or Manager of Laxmi.

8. PW-6 Rohini Bothe was attached to Shukrawar Peth Police Chowki as P.S.I. She has deposed before the Court that raid was conducted on 8th July, 2009 between 10.40 P.M. to 1.30 A.M. The social workers from Freedom Firm had approached Bharat Bhushan Sharma, who had called upon PW-6 and entrusted her with the job. The persons from Freedom Firm had informed that Farida Shaikh resides at Sapna Building, Budhwar Peth. Thereafter, she had conducted the raid in accordance with law. She lodged report at the police station, which is marked at Exh. 32. She has proved the contents of all the documents filed by her. She has admitted in the cross-examination that even prior to conducting the raid, she knew that the girls were brought from Bangladesh. She has admitted

in the cross-examination that, she has not recorded the statement of Tumpa Shaikh. The statement of other victims has also not been recorded by P.S.I. Bothe.

9. PW – 7 – Umesh Dhumal, who was in detection branch at Faraskhana police station has deposed before the Court that on 10th July, 2009, he had received information from social workers from Freedom Firm about the two minor girls brought from Bangladesh by Farida Shaikh.

10. PW-8 – Somling Kamble was also working as a social worker in Freedom Firm and his deposition corroborates the deposition of pw-5.

11. PW-9 Debra Walker is associated with the Freedom Firm.

12. PW-10-Anil Tingare has deposed before the Court that he has ancestral property i.e. residential house at Dhanori, Pune and he had given it on rent. On 9th July, 2009, the police had taken one lady and one girl to his house. He had identified her as the same person who was residing in his room for the previous three months. He has stated in the cross-examination

that on that day, police had not come to his house along with the said lady and girl. That, the property does not stand in his own name and the rent was received by his father.

13. PW-11 – Bharat Bhushan Sharma was the Assistant Commissioner of Police at the relevant time. He has deposed before the Court that soon after registration of crime, the matter was entrusted to him for the purpose of investigation. It is admitted in the cross-examination that the spot which was raided by the police is within the periphery of 10 minutes walk from the police station. It is admitted that the investigating agency is not in receipt of any documents to substantiate the date of birth of the victims. He has further asserted that except panch witnesses and office staff, there was nobody in the raiding party. That, upon seeing the police, girls standing on the road had started fleeing from the spot. According to him, Sunayana Sebastin has acted as panch witness.

14. Upon perusal of the substantive evidence of the victims PW-1 and 2, it is amply clear that the accused Farida had brought girls from Bangladesh and then they were forced into prostitution by Laxmi and Rikta. Both the victims have specifically stated that they had not been forced to travel to

Pune but had come to Pune with the accused persons. It is amply clear that the prosecution has proved the offences punishable under Sections 366-A and 372 of Indian Penal Code against the accused No. 1. The prosecution has also proved the offence punishable under Sections 373 and 344 of IPC and Section 4 and 5 of Prevention of Immoral Traffic Act. The victims have identified both the accused in the Court. It is true that there is no cogent and convincing evidence on record, besides ossification test to hold that the victims were minor. However, the very fact that the victims have identified the accused as the persons who had brought them from Bangladesh and forced them into prostitution is sufficient to hold the accused guilty of offences alleged against them. Hence, the findings recorded by the learned Sessions Judge, do not warrant any interference.

ORDER

- (i) Appeal is partly allowed.
- (ii) Judgment of District Judge – 13 & Additional Sessions Judge, Pune in Sessions Case No. 862 of 2009 is confirmed.
- (iii) Conviction of the appellant no. 1 for offence punishable under Sections 366(A), 372 of Indian Penal Code and section 5 & 6 of Prevention of Immoral Traffic Act is upheld.

(iv) Conviction of the appellant no. 2 for offence punishable under sections 373, 344 of Indian Penal Code and section 4 & 5 of Prevention of Immoral Traffic Act is upheld. Sentence of fine is maintained.

(v) Appellants are sentenced to the period already undergone.

(vi) Appeal stands disposed of.

(vii) Since appeal is disposed of, Criminal Application No. 621 of 2014 does not survive, hence, disposed of accordingly.

2) Learned APP has assisted the Court efficiently by producing the 'Nominal Roll of the appellants which show that appellant Rikta Rijabul Vishwas has undergone the substantive sentence of 6 years and 3 months i.e. actual sentence of 4 years 3 months and 5 days. Judicial custody for 7 months 28 days. The remissions earned till 31/01/2015 is 1 year 3 months and 27 days which is a total sentence of 6 years and 3 months. Appellant no. 1 Farida Altaf Shaikh has actually suffered rigorous imprisonment for 4 years 3 months 5 days. She was in Judicial custody for one year 3 months & 19 days. Total substantive sentence undergone by appellant no. 1 is 6 years 10 months & 21 days. 'Nominal Roll is taken on record and marked as article 'X' for the purpose of identification.

3) Learned counsel for the appellants, upon instructions submits that appellants herein are not challenging the judgment of conviction. Appellants have not deposited fine amount and therefore, they would have to undergo the default sentence. Learned counsel for the appellants submits that appellants be permitted to deposit fine amount before Sessions Court. Learned Sessions Court is hereby directed to accept the fine amount. After depositing the fine amount, appellants herein be set at liberty, if not required in any other offence. Records of Criminal Appeal No. 888 of 2012 be sent to concerned Sessions Court forthwith.

(SMT. SADHANA S. JADHAV, J.)

sgp