

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

CRIMINAL APPEAL NO. 127 OF 2012

Asha Gopal Thapa @ Asha Ashok Tiwari @ Asha Tamang & Anr. Versus The State of Maharashtra	Appellants Respondent
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Mrs. Megha Bajoria for the appellants.
Mr. H.J. Dedhia, APP for the respondent/State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 05th OCTOBER, 2017***

P.C. :

1. The appellants herein have challenged the judgment and order dated 25th November, 2010 in Sessions Case No. 114 of 2010 whereby the learned Ad-hoc Additional Sessions Judge, Sewree, Mumbai has convicted them for offences under Sections 4, 5, 6 and 7 of the Prevention of Immoral Traffic (Prevention) Act, 1956 (for short 'PITA Act') and sentenced them as under :-

(i) Accused No.1 has been convicted for an offence punishable under section 4 of the PITA Act and sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.500/- in default to suffer rigorous imprisonment for fifteen days.

(ii) Accused nos.1 and 2 are convicted for offence punishable under section 5 of the PITA Act and sentenced to

suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- in default to suffer rigorous imprisonment for four months, by each.

(iii) Accused nos.1 and 2 have also been convicted for offence punishable under section 6 of the PITA Act and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment for six months, by each.

(iv) The accused nos.1 and 2 have also been convicted for offence punishable under section 7 of the PITA Act and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs.500/- in default to suffer rigorous imprisonment for seven days, by each.

2. The prosecution's case in brief is that PW1-Rajesh Narayan Kamble, Police Inspector attached to Nagpada Police Station had received information that the accused were running a Brothel at 111, Anwar Mansion, behind H.R. Metal, Nagpada, Mumbai – 400008. They were also informed that the persons running the said brothel were procuring minor girls for the sake of prostitution. In the light of the said information, the police personnel at Nagpada Police Station decided to conduct a raid. Accordingly, on 17th November, 2009, at 04.30 p.m., PW1-Rajesh Narayan Kamble, who was a police constable, alongwith PW2-Nitin Mungekar and PW3-Sujay Deashan, who are social workers from rescue foundation went to the said brothel. PW3-

Sujay Deashan acted as a dummy customer. PW3 paid Rs.200/- to accused no.1 for procuring minor girl. Subsequently, the premises were raided. Panchnama was conducted. Victim PW4, who was a minor girl, was rescued. Pursuant to the F.I.R. lodged by PW1, crime no.343 of 2009 was registered against the aforesaid appellants for offences under sections 342 to 363 of Indian Penal Code and sections 4, 5, 6 and 7 of the PITA Act. The charge was framed and explained to the accused. Statements of the witnesses were recorded. The prosecution examined those witnesses. Upon considering the evidence on record, the learned Sessions Judge acquitted the accused nos.1 and 2 for the offences under section 373 r/w section 34, 376 r/w section 109 of Indian Penal Code, acquitted the accused no.3 for the offences under section 373 r/w section 34, 376 r/w section 109 of the Indian Penal Code as well as for offences under sections 4, 5, 6 and 7 of the PITA Act and convicted and sentenced the accused nos.1 and 2 as stated above. Being aggrieved by this conviction and sentence, the appellants/accused nos.1 and 2 have preferred this appeal.

3. Ms. Megha Bajoria, the learned counsel for the appellant, submitted that the testimony of PW4 who is stated to be victim of the crime, does not inspire confidence as her testimony suffers from material contradictions and omissions. She has further submitted that the prosecution has not examined the other girls who were also present at the time of the raid. She, therefore, submits that it would not be safe to pass conviction on the testimony of PW4. She has further deposed that the pancha witness PW2 is a significant witness.

Similarly, not much reliance is placed on PW3, as according to him, he had visited the premises about two to three months prior to the incident despite which he had not reported the incident to the police. She submits that the prosecution has also not produced the birth certificate of the victim and that the medical evidence reveals that the victim was about 15 to 16 years of age. She has stated that considering the margin of error, the victim cannot be considered to be a minor girl.

4. Mr. H. J. Dedhia, the learned APP for the respondent/State, has submitted that the testimony of the prosecution witness through the presence of the accused in the brothel has further supported the testimony of prosecution witness PW1, PW2, PW3 and PW6 and also proves that there was a raid and PW4, the victim girl was rescued. He further submitted that the evidence of PW3, who acted as a dummy customer, clearly indicates that the accused was raising money from him by engaging PW4 into prostitution.

5. Heard the learned counsel for the appellants and the learned APP for the State. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties

6. PW1 and PW6 are the police personnel attached to Nagpada Police Station. The testimony of these two witnesses clearly indicate that they got information that prostitution was being carried out in 111, Anwar Mansion, behind H.R. Metal, Nagpada, Mumbai – 400008. Hence, they decided to conduct a raid in the said premises. The

testimony of these two witnesses clearly indicates that they had secured the presence of PW2, who is a social worker at rescue foundation and PW3, who acted as a dummy customer. PW3 was asked to visit the said brothel at Anwar Mansion. The testimony of PW3 indicates that the accused was present in the said brothel. He demanded a girl from appellant no.1. Appellant no.1 was given two notes of the denomination of Rs.100/-. His testimony indicates that the appellant no.1 accepted the said amount and instructed appellant no.2 to bring the girls. PW3 selected one girl and took her to one of the cabins. The pancha witness thereafter gave the signal and the police personnel alongwith pancha witness entered the brothel. They conducted search of the brothel. They seized some condoms/contraceptives. They also took five girls including PW4 in their custody. The money which was found with the appellant no.1 was seized. Panchnama was drawn and thereafter the accused were taken into custody.

7. The testimony of PW1, PW2 and PW6 also amply proves that the said brothel was raided on 17th November, 2009 and that the victim girl i.e. PW4 and other girls were rescued from the said brothel. In her testimony, PW4 has deposed that she is a native of Sankleshwara, Anbela, Dist. Bangalore. She was earlier working as a house maid. She had met one Babu at the bus stand. He had assured that he will provide employment to her with attractive salary. She deposed that the said Babu took her to Kamatipura and kept her in the house of both the appellants. She has further deposed that she stayed with both these appellants for a period of 15 to 20 days. She has stated that the

appellants herein had forced her to enter into sex trade. She has stated that the appellants used to receive Rs.200/- from each of the customers and would pay Rs. 15 to 20 to her. She has further stated that when she refused to entertain the customer, the appellant no.2 used to beat her. She has stated that she as well as other victims had tried to escape from the brothel but they were not successful. Her testimony also indicates that at the relevant date, PW3 had come to the brothel and after paying the money to the accused, he had taken her to the cabin and soon thereafter, the police entered the brothel and had rescued her and other victims.

8. The evidence of the victim girl clearly proves that one Raj had approached her and that he had given her custody to both these appellants. The testimony of PW4 proves that the appellants had forced her into prostitution and that they used to receive money from the customers. PW4 was examined by the medical officer. PW5 Dr. Rahul Patwad had done clinical as well as radiological examination. He has opined that the victim was 15 to 16 years of age on the date of the examination. The evidence adduced by the prosecution, more particularly the evidence of the victim clearly indicates that the appellants herein were living on the earning of the prostitution. These accused had forced PW4 into prostitution. The testimony of PW4 further reveals that she was detained in the said brothel and despite her attempt, she was unable to escape from the said brothel. It is also evident that the said brothel is close to masjid and school. The evidence adduced by the prosecution, therefore, establishes the

ingredients of Sections 4, 5, 6 and 7 of the PITA Act. The contradictions/omissions which are brought on record are not material to substantiate the facts and credibility of the witnesses. The fact that the other victims are not examined, is also not a ground to discard the testimony of PW4. PW2 and PW3 have no grudge against the appellants. Their testimony cannot be discarded merely because they have served as prosecution witnesses.

9. Considering all the factors, in my considered view, there are no grounds made out to interfere with the conviction or sentence. The Criminal Appeal is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)