

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

CRIMINAL APPEAL NO.549 OF 2010

Rekha Krishna Tamang
Age – 43 yrs.,
Residing at : Sapana Building,
Budhwar Peth,
Pune
(presently in Yerawada Jail)

... Appellant/
Orig. Accused

versus

The State of Maharashtra
(At the instance of
Faraskhana Police Station, Pune,
C.R.No.201/09)

... Respondent

.....

- Mr.Abhaykumar Apte, Advocate for the Appellant.
- Mr.Rajan Salvi, Addl.P.P. for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th MAY, 2018.

JUDGMENT :

1. The Appellant has preferred this Appeal challenging the Judgment and Order dated 21/07/2010 passed by the District Judge - 13th and Additional Sessions Judge, Pune, in Sessions Case No.1061/2009.

2. By the said impugned Judgment and Order, the Appellant was convicted and sentenced under various heads as follows -:

1. U/s 344 of the Indian Penal Code. For this offence, the Appellant was sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- and in default of payment to suffer rigorous imprisonment for one year.
2. U/s 373 of IPC, the sentence awarded was rigorous imprisonment for 7 years and a fine of Rs.10,000/-, in default of payment further rigorous imprisonment for one year was awarded.
3. U/s 3 of the Prevention of Immoral Traffic Act (PITA). For this offence the Appellant was sentenced to suffer rigorous imprisonment of two years and to pay a fine of Rs.1,000/- and in default of payment was sentenced to suffer simple imprisonment for six months.
4. U/s 4 of the PITA. For this offence the Appellant was sentenced to suffer rigorous imprisonment for 7 years.

5. U/s 5 of PITA. For this offence the Appellant was sentenced to suffer rigorous imprisonment for 7 years and to pay a fine Rs.5,000/- and in default of payment of fine was sentenced to suffer rigorous imprisonment for one year.
6. U/s 6 of PITA. For this offence the Appellant was sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- and in default of payment of fine was sentenced to suffer rigorous imprisonment for one year.

All the substantive sentences were directed to run concurrently and the period of detention undergone by the Appellant was granted as set off u/s 428 of Cr.P.C.

3. The fine amount was directed to be distributed amongst the victims.
4. Ordinarily when compensation is awarded, the victims are required to be impleaded as Respondents in the Appeal.

However, considering that I am inclined to dismiss the Appeal for the reasons mentioned herein-below; the right of the victims to receive the compensation, remains unaffected and therefore I am deciding this Appeal, though they are not made parties. The Appeal is pending before this Court since year 2010 and I am informed that the Appellant has already undergone her full sentence. I do not see any propriety in keeping the Appeal pending. Therefore this Appeal is taken up for final hearing, it is being heard and decided.

5. The prosecution case in brief is as follows;

At about 02.45 p.m. on 15/09/2009, one Sham Kamble who was a social worker approached the Social Security Cell, Crime Branch, Pune. He informed the officers that, prostitution racket was conducted at 1010, First floor, Second wing, Sapna Building, Budhwar Peth, Pune. On receiving this information, the officer in charge of Social Security Cell, Crime Branch, called two Panchas including a lady Pancha. Sr.P.I. of Faraskhana Police Station was informed and his assistance was

sought in conducting the raid. At about 03.50 p.m., the police staff and the Panchas proceeded to the said building and conducted the raid. They found 8-10 girls there. Out of them, 5 girls told them that they were forced into prostitution. Out of those girls, 3 were minors. They informed that, they were forced into the prostitution and their earnings were taken by the Appellant. These girls were from different parts of the country and one of them was from Bangladesh. The Appellant was present there and was arrested. API Vimal Bidve, attached to Social Security Cell, Crime Branch, Pune City, who was present during the raid lodged the FIR, with Faraskhana Police Station.

6. The investigation was carried out by the officer of Faraskhana Police Station. The owner of the brothel was not found. The victims were sent for medical examination for determination of their age and their custody was handed over to Remand Home.

7. After completion of the investigation the charge-sheet

was filed on 09/11/2009. Since the case of was exclusively triable by the Court of Sessions; it was committed to the Court of Sessions, Pune.

8. During trial, the prosecution examined 11 witnesses. The prosecution examined 3 victims, a lady Pancha, Medical Officer and the Police staff including the Investigating Officer. The Appellant denied the case against her and examined one defence witness namely Sudhakar Deshmukh, who was the other Pancha, when the raid was conducted. However, the defence witness did not support the Appellant, but supported the prosecution case. After recording the evidence and the statement of the Appellant u/s 313 of Cr.P.C. the learned Judge heard arguments of both the parties. After considering all these aspects, the learned Judge passed the impugned judgment and order.

9. To avoid naming the victims, they are referred to as victim Nos.1, 2 and 3 in this judgment. The victim No.1 was

examined as P.W.1. According to her, she was married and was residing at Assam with her husband. One Khairun brought her to Pune on the assurance of giving a job. This victim was handed over to the Appellant, who forced her into prostitution. On 15/09/2009 when the raid was conducted, she sought help from the police and expressed her wish to go back to her native place. She has deposed that there were many minor girls in the brothel, who were forced into prostitution. The victim No.2 was examined as P.W.2 who told a similar story. She was brought from West Bengal and was given in custody of the Appellant, who forced her into prostitution. The third victim was examined as P.W.3, who was brought from Bangladesh and was similarly forced into prostitution. All these three victims have given their age between 16-18 years during their deposition. Their cross-examination proceeded on the similar lines, mainly in the direction to suggest that they were not minors and they were willingly submitting themselves for prostitution. This suggestion is denied by all the three witnesses. Though the victims have admitted that they were not aware as to who was the owner of

the brothel, they have deposed that the Appellant had forced them into prostitution and was taking their earnings.

10. P.W.6 Dr.Shinde has produced the medical certificates in respect of P.W.2 and P.W.3 to show that the age of P.W.3 was between 15-17 years and age of P.W.2 was between 14-16 years as per the medical examination conducted on them. P.W.8 Dr.Sachin Sonawane has deposed that P.W.1 was found to be between the age of 16-18 years. This medical examination of all the victims was conducted on 05/10/2009 after they were rescued from the brothel.

11. Apart from this evidence, the prosecution has examined P.W.4 Police Naik Dattatray Machindra Jadhav attached to Social Security Cell, Crime Branch, P.W.5 Police Constable Dhanashree Amritrao More attached to Social Security Cell, Crime Branch, P.W.7 Nalini Dilip Sarthe, as a lady Pancha, P.W.9 Sr.P.I. Rajendra Murlidhar Bhambare who was in-charge of Social Security Cell, Crime Branch, P.W.10 API Vimal Avdaji

Bidave who was attached to Social Security Cell, Crime Branch who had lodged the FIR and who was the Investigating Officer, P.W.11 PI Vyankat Maruti Gangalwar, attached to Faraskhana Police Station, who had conducted the raid. FIR is produced at Ex.26 and Panchanama in respect of the raid is produced at Ex.18.

12. All these witnesses have deposed about the raid which was conducted on 15/09/2009 at the said building. They have consistently deposed that after preparation and calling the Panchas they went to the spot and found the girls including some minor girls, who were forced into prostitution. The victims were rescued and the Appellant was arrested. Their cross-examination has not yielded any material aspect in favour of the defence.

13. The Appellant has basically denied that she was present at the spot when the raid was conducted and she has denied that she has anything to do with the prostitution racket. However, she has not explained from where she was arrested.

She has taken an inconsistent stand by saying at one point that she had gone for a Pooja with the girls to a temple and she was arrested there and at other place she has stated she has gone to some temple alone when she was arrested.

14. I have heard learned Counsel Mr.Abhaykumar Apte, for the Appellant and Mr.Rajan Salvi, Addl.P.P. for the State of Maharashtra.

15. Mr.Apte submitted that there was a discrepancy in respect of the timings as to when the raid was conducted. The Panchanama shows that it was carried on between 15.30 to 18.15 hours whereas the evidence shows that the raid was conducted at 04.15 hours. I do not find force in these submissions because the recording of Panchanama had started before the police party started from the Police Station, which naturally was before the actual raid. He further submitted that there is no evidence to show that the Appellant had forced the victims into prostitution and no evidence is led to show that they

were forcefully handed over to the Appellant. I see no reason to disbelieve the evidence of the victim girls. Their evidence is reliable and they have particularly stated that they were brought to Pune from different parts either forcefully or through deceit and were handed over to the Appellant. They have further consistently deposed that the Appellant has forced them into prostitution. Mr.Apte further submitted that, the medical evidence mentions that the age of the girls was between 15-18 years. He submitted that the age determined through medical evidence is approximate and there is a margin of atleast 6 months on either side and therefore there was a strong possibility that these girls were not minors.

16. Looking at the nature of evidence it can be seen that even before the raid was conducted, the girls were procured by the Appellant for prostitution much earlier. Therefore, it can safely be concluded that they were forced into prostitution when they were minors. As a result I find that the prosecution has proved beyond reasonable doubt that the Appellant had

procured minor girls for prostitution and that she had forced the victims into prostitution. The prosecution has also proved that she was living on the earnings of the minor girls.

17. Thus the prosecution has proved all the offences for which the Appellant was convicted and sentenced. Section 344 of IPC deals with the wrongful confinement for 10 or more days. Section 373 of IPC is in respect buying a minor for purposes of prostitution. The explanation of section 373 mentions that any person managing the brothel who buys or hires or otherwise obtains possession of the female under the age of 18 years, shall, until the contrary is proved be presumed to have obtained possession of such female with the intent that she would be used for the purpose of prostitution.

18. In this case, since the prosecution has proved that the victims who were minor girls, were bought by the Appellant, the Court can presume that the Appellant had obtained their possession with the intent that the victims would be used for the

purpose of prostitution. The appellant has not led any evidence or not has established her defence to rebut this presumption.

19. Section 3 of PITA act provides the punishment for keeping a brothel or allowing premises to be used as a brothel. In this case, though the owner of the place is not found, there is sufficient evidence to hold that the Appellant was keeping and managing the brothel. Therefore the offence u/s 3 of PITA is clearly made out. The evidence also shows that the Appellant was living on the earnings of the prostitution making out a case u/s 4 of PITA. The prosecution has also proved that the Appellant had procured the victims for the prostitution within the meaning of section 5 of PITA and since the offence was committed against the will of the victims, and since the victims were minors, she has committed the offence u/s 5 of the PITA.

20. The prosecution has also proved that the Appellant has committed the offence u/s 6 of PITA which provides punishment for detaining a person in the premises where prostitution is

carried out. Sub-section 2-A of section 6 also raises a presumption against the Appellant. The said sub-section provides that when it is found that a minor is sexually exploited, unless the contrary is proved, the court shall presume that the minor was detained for the purposes of prostitution, or has been sexually exploited for commercial purposes. Even this presumption is not rebutted by the appellant.

21. Thus, taking the overall view of the matter and considering the evidence on record, I find that the learned Trial Judge has not committed any error in convicting and sentencing the Appellant. Hence, the Appeal is dismissed and the impugned Judgment and Order passed by the learned District Judge - 13th and Additional Sessions Judge, Pune, in Sessions Case No.1061/2009 is hereby confirmed.

(SARANG V. KOTWAL, J.)