

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 301 OF 2016**

1. Mohd. Mofizul Mohd. Ajedali Sardar,
Aged 35 years, Occ. Service,
Residing at Gaon Dhantara,
Ghar-Chalita Bariya,
Mohalla Digha Shashra,
District Jessore, Bangladesh
 2. Mohd. Kalim Gulfam Ansari,
Age 30 years, Occ. Waiter,
Residing at Room No. 5, Marwadi Chawl,
14th Lane, Kamathipura, Nagpada,
Mumbai – 8
(Presently lodged at Kolhapur Central Prison)
- ...Appellants

Versus

The State of Maharashtra
(At the instance of Nagpada Police Station
vide their C.R. No. 172 of 2014)

...Respondent

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 14th MARCH 2019

ORAL JUDGMENT :

1 By this appeal, the appellants have impugned the judgment and order dated 30th March 2016 passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Sessions Case No. 589 of 2014, convicting and sentencing them as under :

- for the offence punishable u/s 370(2) r/w 34 of the Indian Penal Code ('IPC'), to suffer RI for 7 years and to pay a fine in the sum of Rs. 10,000/-, each, in default of payment of fine, to undergo further RI for 1 month.

The appellants were, however, acquitted of the offence punishable under Section 5 of the Immoral Trafficking (Prevention) Act, 1956; Sections 3 and 6 of the Passport Act and under Section 14 of the Foreigners Act r/w Section 3(1) of the Foreigners Order 1948.

2 The facts in brief are as under :

On 15th May 2014, the police of Nagpada Police Station received information from PW 1-Raj Madhukar Mogalkhot, a social worker working with an NGO-Bombay Teen Challenge, that one woman was brought for sale by two persons. Pursuant thereto, the police accompanied PW 1 – Raj and went to Kamathipura, 14th lane, Nagpada, Mumbai. The informant (PW 1) went and interacted with the two men and a lady, whereas, the police who were in civil dress,

stayed at some distance. According to the informant, he interacted with the said persons and learnt that the husband of the lady (PW 2) wanted to sell the lady and was in search of a customer. The informant posed himself as a customer, pursuant to which, an amount of Rs. 40,000/- was demanded by the accused and the deal was negotiated for Rs. 30,000/-. Pursuant thereto, the informant called the police persons who were in civil dress and thereafter the accused were brought to the police station. Since the lady with those two persons was not knowing Hindi and could only speak Bengali language, an interpreter was arranged. The informant's complaint was registered as an FIR. The offences alleged were under Section 370 r/w 34 of the IPC as well as under Section 5 of the Immoral Trafficking (Prevention) Act. Thereafter, the statement of the lady (PW 2-victim girl) was recorded and the accused were arrested on the very day i.e. on 15th May 2014. After investigation, charge-sheet was filed as against the accused persons in the Court of the learned Judicial Magistrate First Class. As the offence were triable by the Sessions Court, the case was committed to the Sessions Court. Learned Sessions Judge framed charge as against the appellants for the offence

punishable under Section 370 r/w 34 of the IPC; Section 5 of the Immoral Trafficking (Prevention) Act; Sections 3 and 6 of the Passport Act and under Section 14 of the Foreigners Act r/w Section 3(1) of the Foreigners Order 1948. The accused pleaded not guilty to the case and claimed to be tried.

The prosecution in support of its case, examined four witnesses; PW 1 – Raj (complainant); PW 2 - the victim, whose evidence was recorded through Video Conferencing, as she was in Bangladesh; PW 3- Santosh Virbhadra Vyaghehalli (Investigating Officer), and PW 4 – Jagdish Pandurang Deshmukhe (also an Investigating Officer).

The defence of the appellants is that of total denial and false implication.

3 Learned counsel for the appellants submitted that the appellants have been falsely implicated in the said case. He submitted that the evidence of the first informant is unbelievable and that the person from whom he received information with regard to the sale of a lady by two men has also not been corroborated by recording the

statement of the said person. He submitted that no independent witnesses were examined to support the evidence of PW 1-Raj i.e. the persons who heard the conversation which took place with regard to the alleged transaction between the complainant and the accused. He further submitted that there was no reason for the police to record the statement of PW 1 as an FIR, when the victim herself was present and as such the police ought to have recorded her statement as an FIR. He further submitted that there are glaring discrepancies in the statement of the victim and the first informant and the evidence of the Investigating Officer, rendering the prosecution case doubtful. He submitted that according to the victim, the incident took place in the morning, whereas, it is the prosecution case that the incident took place in the evening at around 7:00 p.m. He submitted that admittedly no money transaction had taken place between the complainant and the appellants. He further submits that as far as appellant No. 2 is concerned, there is nothing on record to show that the appellant No.2 was residing in room No. 5, 14th lane, Kamathipura, where the victim girl was taken/kept. He further submits that neither has the victim girl (PW 2) stated the exact role of appellant No. 2, nor does the

complainant state that the appellant No. 2 offered any money or made any statement with regard to the sale of the victim girl. According to the learned counsel, the appellant No. 1 has also been falsely implicated by the police and the complainant. He states that the appellant No. 1 had come with his wife (PW 2) from Bangladesh to Kolkata and to Mumbai in the intervening night of 14th May 2014 and 15th May 2014; that they had come to India on a valid passport, Visa and train tickets and that they stayed in one lodge at Nagpada. He submitted that according to the appellant No. 1, on 15th May 2014, in the morning, the police came to the lodge and took them to the police station; that the police did not accept their explanation i.e. the reason for coming to Mumbai; and assaulted him and thereafter arrested him the said case.

4 Learned A.P.P submits that no interference is warranted in the impugned judgment and order.

5 Perused the papers with the assistance of the learned counsel for the parties. It is not in dispute that the investigation in the

said case commenced on the basis of the information supplied by PW

1- Raj to the police of the Nagpada Police Station.

6 PW 1 – Raj has stated that he was working as a Rescue Officer with the NGO-Bombay Teen Challenge for about 10 years. According to him, on 15th May 2014 at about 6:45 p.m, he received information that one girl was going to be sold at Kamathipura, 14th lane, Marwadi Chawl, Room No. 5. After receiving the said information, he went to the police station, pursuant to which, two constables were sent with him. He has stated that when he reached the spot, he saw one lady and two gents and hence, asked the police to stay at some distance; that thereafter, he went towards them and asked them as to where they were from; that one out of them told him that they were from Kamathipura; that whilst talking to them, he learnt that they were selling the lady and that one man and the lady were from Bangladesh; that when he posed as a bogus customer, they asked for Rs. 40,000/-, but he tried to negotiate the deal for Rs. 30,000/-, however, the deal was finalized for Rs. 40,000/-. He has stated that thereafter, he signaled to the police, pursuant to which, the police

came and took them to the police station. He has stated that the man who was dealing with the transaction, was Sardar and disclosed that he was a resident of Kamathipura. He has further stated that when the police made inquiry with the lady, they learnt that the man was holding a passport of Bangladesh and that the man was married to the lady, who was brought to Mumbai for sale. He has stated that the lady was not aware of the said fact, that she was brought to Mumbai for being sold. He has stated that the police recorded his complaint/FIR (Exhibit 35). The said witness has identified the lady.

The tenor of the cross-examination of the said witness is to show that no such incident took place as alleged by him. Certain omissions were brought on record in the said cross-examination to show that the incident has taken place on the road and not in room No. 5, as was alleged by him. The said witness when confronted, has also admitted that he had not recorded the conversation that took place between them at the spot. The said witness has also accepted that the said accused – appellant No. 1 had a valid passport and Visa and had railway tickets to show that he and the lady had travelled from

Bangladesh to Kolkata and thereafter by train from Howrah to Mumbai. He has also admitted the fact that the lady had a valid passport and Visa, however, it was lost during the travel from Howrah to Mumbai. He has also admitted that he had not disclosed the full name of the informant who had provided information to him, with regard to sale of a lady, at Kamathipura. He has denied the suggestion that he was falsely implicating the accused despite the fact, that they had come from Bangladesh on a valid Visa, in a false case to get a reward from the NGO.

7 As far as the evidence of PW 2 – victim is concerned, her evidence was recorded through an interpreter on video conferencing. She has stated that she was married to appellant No. 1; that it was her second marriage; she has stated that she had come to Mumbai with the appellant No. 1 and his sister on 13th May 2014. According to PW 2, she was not aware that the appellant No. 1 i.e. her husband had brought her to Mumbai. PW 2 has stated that the appellant had disclosed to her that his first wife was admitted in a hospital at Kolkata and told her that they were going to Kolkata, however, she

realized that she was in Mumbai when she spoke to a few persons. She has further stated that when she questioned the appellant No. 1, he told that this was Kolkata and not Mumbai and took her to some place where again she was told by some other girls that she was in Mumbai. She has stated that they came to Mumbai in a train. She has further stated that even earlier, when she was at her mother's place, the appellant No. 1 came and told her that his mother was not keeping well and asked him to accompany him and when he reached appellant's mother's house, she found her in good health. She has further stated that the appellant No. 1 told her at that time that they would go to his Uncle's house to Kolkata. She has stated that the appellant No. 1 told her that they had to visit the hospital but since it was night, they would have to stay at some place and accordingly took her to a place. She has stated that she did not know the place. She has stated that in the night, her husband i.e. appellant No. 1 told her that he was going to the toilet and will come back in 15-20 minutes, after which, 4 to 5 persons came and started pulling her leg and when she screamed, 3 to 4 ladies came from outside. She has stated that the ladies asked her about the persons, to which, she replied that she did

not know them. She has further stated that she asked them as to where she was, to be told that it was Mumbai, after which, she said, the police came and took them to the police station. She has further stated that when the police asked her husband i.e. appellant No. 1 as to how many times, he had visited Mumbai, he disclosed to them that it was his first time, however, the passport showed that he had visited India thrice. She has stated that she had disclosed to the police that her passport was lost, on the train to Mumbai. She has stated that she was being sold by her husband in Mumbai.

The tenor of the cross-examination of the said witness is to suggest that the incident had taken place in the morning of 15th May 2014 and not in the evening. It was also sought to be suggested that she was married to the appellant No. 1 three years prior to the incident and had a daughter from the said marriage, which was denied by her. According to PW 2, she was married to the appellant No. 1 a few days prior to coming to India. The said witness when questioned, as to whether she has made any inquiry with her husband during the two days when they were travelling, PW 2 replied that she asked her

husband, however, her husband (appellant No.1) told her that he was with her and as such was safe.

8 No doubt, there are certain minor discrepancies in the evidence of PW 1 and PW 2, but the discrepancies are not material and are not such that affects the substratum of the prosecution case. As far as the submission of the learned counsel for the appellants, that according to PW 2, the incident took place in the morning and not in the evening, it is to be noted only to be rejected. It is pertinent to note that the victim was aged 25 years, illiterate, unable to speak Hindi or English and was travelling for the first time out of Bangladesh. There is evidence to show that the said witness has not specifically stated that the police came in the morning, and as such, there is no merit in the said submission. There is nothing to suggest that PW 2 had any grievance as against the appellant No.1, to falsely implicate him. The evidence of PW 2 i.e. the victim, the wife of appellant No. 1 inspires confidence that she was misled by the appellant No. 1 and after telling her that they were going to Kolkata, was brought to Mumbai.

9 Similarly, the evidence of the Investigating Officer i.e. PW 3 – Santosh as well as PW 4-Jagdish inspire confidence. PW 3 was a PSI of the Nagpada Police Station at the relevant time. His evidence shows that on 15th May 2014 at about 6:00 p.m, PW 1 informed them that two men had brought one lady for sale for prostitution at Kamathipura, pursuant to which, he deputed two constables with him in civil dress. The said witness categorically denied the suggestion made by the appellants' advocate that the appellants and the victim were brought to the police station in the morning itself. The evidence of the aforesaid witness clearly shows the role and complicity of the appellant No. 1 in bringing the victim from Bangladesh to Mumbai for selling her for prostitution.

10 As far as the appellant No. 2 is concerned, he is a resident of Mumbai and is alleged to have been present along with the appellant No. 1 at the time when the appellant No. 1 disclosed about selling one lady to PW 1. As far as PW 2 is concerned, it appears from her evidence that she had not seen the appellant No. 2 at any point of time prior to be taken to the police station, nor does she allege

to have heard any conversation having taken place between her husband (appellant No.1) and appellant No. 2. Neither has the police collected any material to show that the appellant No. 2 was a resident of room No. 5, 14th lane, Kamathipura. The evidence on record is not sufficient to show the complicity of the appellant No. 2. Hence, as far as the appellant No. 2 is concerned, he is entitled to the benefit of doubt. Hence, the following order :

ORDER

- (1) The appeal is partly allowed;
- (2) The conviction of the appellant No.1 is maintained. The appellant No. 1 on completing his term of imprisonment, shall be repatriated to Bangladesh and his passport be returned to him;
- (3) As far as appellant No. 2 is concerned, the conviction and sentence of the appellant No. 2 is hereby quashed and set-aside and he is acquitted of the offence punishable under Section 370(2) of the IPC. Bail bond, if any, stands cancelled.

REVATI MOHITE DERE, J.