

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

CRIMINAL APPEAL NO. 705 OF 2015

Arabali @ Ajagar Ashraf Mulla	]	
Age-28, Occ: Service,	]	
Residing at Shyampatil Building	]	
Near Ramma Mandir, Ghansoli,	]	
Navi Mumbai, Address of Native	]	
Village-Mokhal, At Post-Dhokali	]	
Thana-Jivanvala, 24 Pargana,	]	
West Bengal	]	..Appellant
(Central Jail Mumbai)	]	(Ori. Accused)

v/s.

The State of Maharashtra	]	
(At the instance of Dongri-Police Station]		..Respondent (Ori. complainant)

Ms. Manisha Devkar Court appointed advocate for Appellant.
Mr. S.R. Agarkar-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 12th April 2019.

JUDGMENT.

1. The appellant herein is the original accused No.1 in Sessions Case No. 204 of 2012 passed by Additional Sessions Judge, City Civil Court, Bombay, vide judgment and order dated 17th March

2015 and 18th March 2015. The appellant is convicted as per section 235 (2) of Criminal Procedure Code for the offences punishable under Sections 363, 366, 366-A, 376, 506 read with 34 of the Indian Penal Code, 1860 and the appellant is acquitted for the offences punishable under Sections 3, 4 and 5 of the Immoral Trafficking (Prevention) Act, 1956 and for the offences punishable under section 235 (2) of Criminal Procedure Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5000/-, in default, to suffer rigorous imprisonment for further two months on each count. He is also sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for further two months. He is sentenced to suffer rigorous imprisonment for two year and to pay fine of Rs.2000/-, in default, to suffer further rigorous imprisonment for fifteen days. Hence, this appeal.

2. On 18th November 2011, PW-2-Jamina Bibi Abdul Razzak Mandal, the mother of the victim lodged a report at Dongri Police Station alleging therein that her daughter was missing from house since 9th November 2011. She had left the house under the pretext that she was visiting her maternal uncle. Her mother had enquired about her with her brother. She had learnt that she had not reached the house of her maternal uncle.

3. PW-2 had not filed any missing report. On 18th November 2011, she received a phone call from her daughter, informing her that she was misled by present appellant with whom she had voluntarily left house since he had promised to marry her. In spite of

getting married to her, he had indulged into human trafficking and had pushed her into prostitution.

4. On the basis of the said report Crime No. 161 was registered against the appellant and others for the offence punishable under Sections 366, 376 and 506 of the Immoral Trafficking (Prevention) Act, 1956. He was arrested on 19th November 2011 and since then he is in custody. The case was committed to the Court of Sessions and registered as Sessions Case No. 204 of 2012. The prosecution had examined 10 witnesses to bring home the guilt of the accused.

5. The case rests upon the evidence of PW-1 i.e. victim herself, PW-2 the mother of the victim, PW-7 Suchita Phad who had examined the Victim.

6. It is to be noted that the victim was neither well versed with Hindi language nor with Marathi language. The only language she knew was Bengali and therefore, the Court was constrained to take the services of an interpreter.

7. PW-1 the victim has deposed before the Court that her financial condition was very poor. One day she had received a missed call from unknown person. Upon enquiry he disclosed his name as Ajagar. He has expressed her love for her. He had asked her to meet him since he desires to marry her. He had been frequently calling upon her. He had expressed love for her on every occasions. On 9th November 2011, he had asked her to meet him at Barasat Railway Station. It is pertinent to note that till that day, the victim had not seen the accused. She met him at the Railway Station. They

had been to Sihalda Railway Station and from there she was taken to his uncle's house and there he disclosed to his relatives that he intends to marry her. On that day, at night, they had occupied the same room. According to her, since he promised to marry her, he had forcible sexual intercourse upon her and had sexual intercourse for about four times. On the next day, he had taken her mobile and had left the house. He returned at about 9.00 p.m. He had continued to maintain sexual relations with her. On 13th November 2019, they had been to Mumbai. He had taken her to one house which was occupied by couple and they were introduced to her as sister and brother-in-law. Little did she know that the said couple will force her into prostitution. She has deposed before court the trauma that she had gone through since 13th November 2011 to 18th November 2011 whereby several customers were brought and she was forced to have sex with them. Finally on 18th November 2011 she called upon her brother PW-2 and had disclosed her trauma. Thereafter, PW-2 had decided to initiate prosecution case against the accused. Since she was forced to have sex with several people, the accused was booked under the Immoral Trafficking (prevention) Act, 1956.

8. On 19th November 2011, the victim was sent for medical examination. She was examined by PW-7 Dr. Suchita Ambaji Phad. Dr. Phad has proved the certificates at **Exhibit-78-Colly**. She has deposed before the Court that on the basis of Dental, Physical and Radiological Examination, she had opined that the age of the victim is 15 to 16 years. PW-7 had also examined the accused. She had certified that there was ample evidence to indicate that the victim

had been sexually assaulted. The learned counsel appointed for the appellant submits that, in fact PW-2 had learnt about the fact that her daughter was missing since 9th November 2011, however, till 18th November 2011 she has not made any efforts to initiate any criminal prosecution nor had filed any missing complaint and she has admitted the same. In any case, the victim herself has stated that the family was passing through financial crisis, the fact that mother had not lodged a missing complaint cannot be held against her mother and nor can shatter the sterling testimony of PW-1 the victim.

9. The accused was also prosecuted under the provisions of Immoral Trafficking (Prevention) Act, 1956 but the prosecution had failed to prove that the accused was either maintaining a brothel. There are lacunas in investigation and hence the accused was acquitted for the said charges.

10. It is a pitiful case of a vulnerable girl who was forced into human trafficking by the appellant. There is no reason to interfere with the findings recorded by the learned Sessions Judge. Implicit reliance can be placed upon the sterling testimony of the victim. The order shows that the the applicant was on bail during the investigation enquiry and trial since 19th November 2011.

11. The order dated 22nd November 2018 passed by this Court indicates that when the matter was called out on several occasions, none appeared for the appellant. Finally accused-appellant had sent a letter to this Court that he desires to withdraw this appeal and the same has not been finally heard as he was in custody since 2011. By an order dated 22nd November 2018, the said

application was rejected and the matter was listed for final hearing. This court has also observed that none appeared for the appellant. In fact on 22nd August 2017 the learned Counsel Mr. Arun Rajput had requested this Court to list the matter for final hearing and accordingly the matter was listed for final hearing from the week commencing from 18th September 2017.

12. Be that as it may, this is a fit case where no leniency can be shown to the appellant as he has ruined the life of a minor girl. The prosecution has proved the case against the accused beyond the reasonable doubt. Hence, the appeal deserves to be dismissed.

ORDER

- i) The Appeal is dismissed.
- ii) The conviction and sentence of the appellant for the offences punishable under Sections 363, 366, 366-A, 376, 506 read with 34 of the Indian Penal Code, 1860 and acquittal of the appellant for the offences punishable under Sections 3, 4 and 5 of the Immoral Trafficking (Prevention) Act, 1956 passed by Additional Sessions Judge, City Civil Court, Bombay vide judgment and order dated 17th March 2015 and 18th March 2015 and sentencing him to suffer maximum rigorous imprisonment for 10 years is confirmed.
- iii) The learned Advocate, Ms. Manisha Devkar was appointed in the present matter to espouse the cause of the appellant as it happens to be an appeal filed by the

appellant, who is in custody. She has put in her best efforts to espouse the cause of the appellant. Hence, her professional fees are quantified as per rule to be paid to her by High Court Legal Aid Services Committee, Mumbai.

(SMT. SADHANA S. JADHAV, J)