

Anand

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

CRIMINAL APPEAL NO. 551 OF 2016

Radha alias Reena Saila Tamang .Appellant
Aged : 53 yrs, residing at Room No. 2,
Sachdev Chawl, Nepali Galli,
Sonapur, Bhandup (W),
Mumbai – 400 078.

Vs.

The State of Maharashtra .Respondent

Mr. S. P. Chaudhari a/w Mr. N. Tank, Mr. P. P. Pawar, Appointed
Advocate, for the Appellant
Mr. P. H. Gaikwad, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 22.04.2019

ORAL JUDGMENT

. The Appellant has impugned the Judgment and Order dated 19.05.2016 passed by the learned Special Judge, under the POCSO Act, Greater Bombay in Sessions Case No. 491 of 2013, convicting and sentencing her as under :-

- for the offence punishable under Section 368 r/w 34 of the Indian Penal Code, to suffer R. I. for five years and to pay

fine of Rs. 500/-, in default to suffer S.I. for seven days.

- for the offence punishable under Section 3 of the Immoral Traffic (Prevention) Act, to suffer R. I. for three years and to pay fine of Rs. 500/-, in default to suffer S.I. for seven days.

- for the offence punishable under Section 4 of the Immoral Traffic (Prevention) Act, to suffer R. I. for two years and to pay fine of Rs. 500/-, in default to suffer S.I. for seven days.

- for the offence punishable under Section 6 of the Immoral Traffic (Prevention) Act, to suffer R. I. for seven years and to pay fine of Rs. 1,000/-, in default to suffer S.I. for seven days.

- for the offence punishable under Section 17 r/w 4 of the Protection of Children from Sexual Offences Act, to suffer R. I. for seven years and to pay fine of Rs. 1,000/-, in default to suffer S.I. for seven days.

The Appellant was, however, acquitted of the offences punishable under Sections 366, 366A r/w 34 of the Indian Penal Code and under Sections 7 and 9 of the Immoral Traffic Prevention Act and under Sections 366, 366A r/w 34, 373, 368 r/w 34 of the Indian Penal Code, under Section 17 r/w 6 of the Protection of Children from Sexual Offences Act, and under Sections 3, 4, 6, 7 & 9 of the Immoral Traffic Prevention Act.

2. At the outset, it may be noted that the aforesaid Appeal was filed by two Appellants i. e. Radha alias Reena Saila Tamang and Babita Maila Tamang. During the pendency of the aforesaid Appeal, the Appellant – Babita Tamang expired and as such, the Appeal has abated as against her. It is also pertinent to note, that the co-accused i. e. Santosh alias Satish alias Navinkumar Ratnakar Shetty has not filed an Appeal challenging his conviction and sentence. Insofar, as the Accused – Durgamma Tamang is concerned, she was acquitted of all the charges.

3. The prosecution case in brief is as under :-

On 11.02.2013, PW.1 – Amrit Kaur (Complainant) received information that prostitution was going on in Room No. 26, Pannalal Chawl, Second floor, Falkland road, Grant Road, Mumbai. Pursuant to the information, PW.1 – Amrit Kaur informed the police, pursuant to which, the said place was raided and two girls (“Z” and “R”) were rescued. Accordingly, PW.1 – Amrit Kaur lodged a complaint with the V. P. Road Police Station which was registered vide C. R. No. 7 of 2013. One of the two rescued girls made a disclosure to the learned Magistrate of the PITA Court about prostitution activities by the Appellant, pursuant to which, the learned Magistrate directed the V. P. Road police to arrest the Appellant – Radha Tamang. Accordingly, the police went to the brothel located at Sachdev Chawl, Sonapur, Bhandup from where the Appellant – Radha Tamang was arrested. Four victim girls were rescued from the said brothel. Out of the four victim girls, one of them was examined as PW.2 – (prosecutrix). As the girls had no relatives in Mumbai, for their safety, they were sent to the rescue foundation, Kandivali. On enquiry, one of the victim girls, who was rescued from the brothel run by the

Appellant, disclosed how she was brought to Mumbai by Santosh alias Satish alias Navinkumar (Original Accused No. 2) and was forced into prostitution. Pursuant to the disclosure made by PW.2 – the prosecutrix to PW.1 - Amrit Kaur, PW.1 lodged a complaint / FIR with the Bhandup Police Station, which was registered vide C. R. No. 67 of 2013 with the Bhandup Police Station, for the alleged offences punishable under Sections 328, 368, 370, 370A r/w 34 of the Indian Penal Code r/w 3, 16 of the Protection of Children from Sexual Offences Act r/w Sections 3, 4, 5, 6, 7 & 9 of the Immoral Traffic (Prevention) Act, as against the Appellant – Radha & co-accused - Santosh, Durgamma and Babita. After investigation, charge-sheet was filed as against the accused, including the Appellant in the Court of the learned Metropolitan Magistrate, 54th Court, Mazgaon, Mumbai. As the offences were triable by the Court of Sessions, the case was committed to the Court of Sessions for trial.

4. The learned Judge framed charge as against the accused, including the Appellant for the aforesaid offences, to which the accused pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case examined nine witnesses; PW.1 – Amrit Kaur (Complainant); PW.2 – prosecutrix; PW.3 – Francina D'Souza, spot panch; PW.4 – Dr. Sachin Sonawane, Medical officer, who conducted the ossification test on the prosecutrix; PW.5 – P. I. Rajendra Chikhale; PW.6 – P. I. , Gulabrao Gore; PW.7 – Dr. Henal Shah; PW.8 – P. I. – Sudhir Gadkari and PW.9 – Sr. P. I., Dattatraya Bhargude.

6. The defence of the Appellant was that of total denial and false implication.

7. After hearing the parties, the learned Special Judge, Greater Bombay was pleased to convict and sentence the accused including the Appellant, as aforesaid in para 1.

8. Learned counsel for the Appellant submitted that the Appellant has been falsely implicated in the said case. According to the learned counsel, the prosecution had miserably failed to prove the age of PW.2 - prosecutrix i. e. she was below 18 years of

age. He further submitted that the person who allegedly passed on the information to PW.1 – Amrit Kaur has not been examined and as such, the same is fatal to the prosecution case. According to the learned counsel, as the prosecution had failed to prove that the victim girls were administered any stupefying substance, the accused, including the Appellant were acquitted of the offence punishable under Section 328 of the Indian Penal Code.

9. Learned APP supported the impugned Judgment and Order of conviction and sentence and submitted that no interference was warranted.

10. Heard learned counsel for the parties at length and perused the evidence and documents on record with their assistance.

11. As noted above, during the pendency of the aforesaid Appeal, Appellant – Babita Tamang expired and as such, her name was deleted from the array of the Appellants. As far as co-accused – Santosh is concerned, it appears that he has not preferred any

Appeal in this Court against the Judgment and Order of his conviction and sentence. According to the learned counsel for the Appellant, the prosecution had failed to prove the age of PW.2 – prosecutrix. He submitted that although PW.2 – prosecutrix in her evidence has deposed that she was about 15 years of age, when co-accused – Santosh brought her from Bangalore to Mumbai, however, in her cross-examination, she has deposed that she did not know her date of birth. Learned APP relied on Exh. 35, the School Leaving Certificate issued by the Education Department, Karnataka Government dated 30.05.2008, in support of his submission that the prosecution had proved that the prosecutrix was a minor and that her date of birth was 08.05.1995. He submitted that the learned counsel for the Appellant had not taken any objection to the said School Leaving Certificate and hence, the said document was exhibited at Exh.35. A perusal of the School Leaving Certificate issued by the Education Department, Karnataka Government shows the prosecutrix's (PW.2) date of birth as 08.05.1995. The incident is of 26.02.2013 and thus, it is evident that PW.2 – prosecutrix was a minor aged 17 years and 9 months at the time of the incident and

as such, a “Child” as defined under the POCSO Act. A perusal of the roznama dated 12.08.2015 shows that the prosecution had produced the School Leaving Certificate of the prosecutrix and since the Advocate for the Appellant had no objection to exhibiting the document and admitting the said document, the School Leaving Certificate was exhibited at Exh.35. In view of the same, there is no merit in the said submission of the learned counsel for the Appellant, that the prosecution had failed to prove that PW.2 – prosecutrix was a minor at the time of the incident.

12. As far as the evidence of PW.2 – prosecutrix is concerned, she has in detail set out, how she was lured to come to Mumbai by co-accused – Santosh, how she was taken to Kamathipura and thereafter, from brothel to brothel by the accused. According to PW.2 – prosecutrix, co-accused – Santosh had disclosed that he would arrange for a job in Pune when she was in Bangalore, pursuant to which, she agreed to go to Pune; that Santosh met her at the Bangalore Bus stop, where he offered her tea and after drinking the same, she fell drowsy; that she boarded the bus for Pune (infact Mumbai), and during the whole

time, she was in the bus, she was asleep. She has further stated that when they reached the destination, Satish disclosed to her that they had reached Pune, when in fact, they had reached Mumbai. She has stated that she was still feeling drowsy when she got down from the bus. She has stated that co-accused – Santosh called one lady from his mobile, pursuant to which, one lady came and took her with her; that one Asha introduced her to one Maya; that she saw several young girls at the said place; and that when she spoke to the said girls, she realized that she was brought to a brothel in Mumbai at Kamathipura and was not in Pune, as disclosed by co-accused – Santosh. She has stated that she disclosed to the girls that she did not want to do prostitution, however, she was compelled to do so. She has further stated that from Maya's house, she was taken to the house of co-accused – Babita, where she met the Appellant. She has further stated that the Appellant – Radha took her to Bhandup, Sonapur also for prostitution work and that on 26.02.2013 at around 1.30 p. m., a raid was conducted, pursuant to which, the Appellant – Radha was arrested and she was taken to the Bhandup Police Station. She has stated that she narrated in detail how she was lured by

Santosh and was compelled into prostitution. There were three other victim girls, who were also rescued at the relevant time. There is nothing in the cross-examination of the said witness to discredit her testimony.

13. The evidence of PW.2 – prosecutrix is duly corroborated by PW.1 – Amrit Kaur. PW.1 - Amrit Kaur has stated that after the information was received by her, she informed the V. P. Road Police Station, pursuant to which, a raid was conducted. She has further stated that one of the girls made a disclosure to the Magistrate of the PITA Court about the activities of the Appellant, pursuant to which, the Magistrate ordered the arrest of the Appellant – Radha. She has further stated that pursuant thereto, they visited Bhandup, Sonapur from where the Appellant was arrested and four girls were rescued, one of them, being PW.2 – prosecutrix.

14. The evidence of PW.3 – Francina D'Souza, panch witness also corroborates the evidence of PW.1 – Amrit Kaur and PW.2 – prosecutrix with regard to the arrest of the Appellant.

PW.4 – Dr. Sonawane, who conducted the Medical examination as well as Radiological examination of the victim girl, opined that the prosecutrix was more than 17 years and less than 18 years at the relevant time. He also found that her hymen was torn.

15. The evidence on record adduced by the prosecution clearly shows the complicity of the Appellant. The prosecution has duly proved that PW.2 – prosecutrix was lured by co-accused – Santosh in coming to Mumbai where she was forced to stay with other girls and was compelled to indulge in prostitution activities against her will and consent. From the evidence on record it appears, that in addition to PW.2 – prosecutrix, there were three other girls who were rescued from the brothel run by the Appellant.

16. Considering the aforesaid, no infirmity is found in the impugned Judgment and Order of conviction and sentence. Hence, the Appeal is dismissed.

17. I would like to record a word of appreciation for the

able assistance provided and the efforts taken by Mr. Chaudhari, as an appointed Advocate, in conducting the Appeal.

18. High Court Legal Services Committee to award fees of the learned appointed Advocate, as per Rules.

(REVATI MOHITE DERE, J.)