

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

CRIMINAL APPEAL NO. 852 OF 2014

Mustaffa Maksoodali Khan.

Age : 23 years, Sangamnagar Zopadpatti,
Near Amar Hotel, On the Mazenine Floor,
of New National School, S.V. Road,
Antop Hill, Mumbai.

..Appellant.

V/s.

The State of Maharashtra.

(through Goregaon Police Station in
C.R. No. 19/2013)

..Respondent.

Mr. Aakash Kavade a/w. Mr. A.L. Bhise I/b. Mr. Amit P. Ghag, advocate for
appellant.

Mr. S. H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 17, 2019.

JUDGEMENT. :

1 The appellant herein is convicted for the offence punishable under section 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 2,000/- I.d. to suffer R.I. for 6 months, by Additional Sessions Judge, Greater Mumbai, vide Judgment and Order dated 5/8/2014 in Sessions Case No. 99 of 2013. Hence, this appeal.

Talwalkar

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) On 16/1/2013 Mrs. X lodged a report at Goregaon Police Station, Mumbai alleging therein that she was residing with her relatives alongwith her husband and daughter aged about 2 and ½ years old. Her husband was working as driver on water tank. He had met with an accident on 8/6/2012. He was subjected to disabilities.

(ii) The complainant was working as an extra artist in film industries and was running the family. Some time in the month of October, 2012, she was in search of job. She had been to Andheri. There she had met Kundan Yadav. She had expressed her difficulties to him and he had assured to help her. They had exchanged cell phone number.

(iii) On 10th December, 2012, she has enquired with him about the availability of the job. He had called her to MEGA Mall, Oshiwara as audition for some film was in progress. She met him at about 6.30 p.m.. He informed her that the meeting would continue for some time and till then they could wait on the first floor of building No. 264/2099, Motilal Nagar. An unknown person was waiting in the said room. She had disclosed the economic condition of her house to the said person and had also informed him that she is in need of Rs. 50,000/-. The said

person informed her that his name was Mustafa Khan i.e. the present appellant. He had also informed her that he works as a financier in the film industries and that he could give her a suitable job as well as Rs. 50,000/-. He requested her to wait at the same spot and that he would give her Rs. 50,000/- within one or two days. He had solicited sexual favours from her in lieu of Rs. 50,000/- and he told her that he would be able to give her job on 20/12/2012.

(iv) She had called upon him and asked him to give Rs. 50,000/-. He had evaded to meet her stating that he is out of station. He had called her on 30/12/2012 under the pretext of giving her job for 2 days. She had been to Motilal Nagar. He had again ravished her against her wish.

(v) On 14/1/2013 he had informed her that the cheque for the amount of Rs. 50,000/- is ready. She refused to go at that time. But he insisted her to visit his office. When she went to his office, he again ravished her. He did not give her cheque on an assurance that he would pay by RTGS.

(vi) On the basis of the said report, Crime No. 19 of 2013 was registered against the appellant for offence punishable under section 376 of the Indian Penal Code. After completion of investigation, the charge-sheet was filed on 7th March, 2013. The case was committed to the Court of Sessions and registered as Sessions Case No. 99 of 2013.

The prosecution examined as many as 6 witnesses to bring home the guilt of the accused.

3 P.W. 1 Mrs. X is the first informant. She has deposed in consonance with the first information report and the same is marked at Exh. 17. She has denied the suggestion that Kundan Yadav had taken her to the office of Manoj Shrivastav. It is also admitted by the prosecutrix that whenever the accused called her, she informed her husband that she has to go out for work and had not disclosed to the husband about the sexual intercourse with the accused. She was in need of Rs. 50,000/- as she wanted to take a rented house. She has proved the contents of the FIR which is marked at Exh. 18.

4 The learned Counsel for the appellant has drawn attention of this Court to the admission of the prosecutrix which is as follows- "It is correct as accused promised me that he will give work and money and therefore, I have consented for sexual intercourse." According to the learned counsel for the appellant, the very fact that it is admitted that it was consensual act, section 376 of the Indian Penal Code would not be attracted.

5 P.W. 2 Dr. Suchita Phad has examined the prosecutrix P.W.1.

P.W. 1 is a married woman and mother of child and therefore, medical examination at belated stage may not be a significant factor.

6 P.W.3 Ramu Ramlakhan Singh happens to be the husband of the prosecutrix. According to him, he was informed by the prosecutrix that the appellant had done wrong work with her. She had disclosed that she was ravished. Therefore, he stood by her when she decided to lodge a complaint.

7 P.W. 4 Lakhan Raskar was attached to Goregaon Police Station and has conducted spot panchanama, which is marked at Exh. 25. It is admitted by P.W. 4 that at the time of recording of FIR, the complainant had not narrated the nature of the work of the accused.

8 It is therefore, clear that there is non-compliance of section 156 of the Code of Criminal Procedure, 1973. The date and time of forwarding the FIR to the Magistrate is not mentioned on the proforma of FIR.

9 P.W.5 Ms. Anisha Verma is an important witness. She has deposed before the Court that she was working as a model in film line since 4 to 5 years. She was acquainted with one Neetasha Natu,

Talwalkar

Journalist working with Times of India. On 27/2/2013 upon reading newspaper, she had learnt that one Mustafa Khan was being prosecuted for an offence punishable under section 376 of the Indian Penal Code as a report was lodged against him. She enquired with Neetasha Natu and thereafter, informed her that she had also met one Mustafa Khan. He had promised her to give a lucrative assignment and had attempted to sexually abuse her. However, she ignored him. She was asked to contact the Police Inspector of Goregaon Police Station. Accordingly, she had contacted and her statement was recorded. She has deposed before the Court that she was given the contact number of Mustafa Khan by one Sameer Khan who is working as coordinator in the film line. He was described as an Art Director, who was in search of heroin. She had met Mustafa Khan in the Hotel Delicacy of China at Lokhandwala. He had disclosed to her that he is an art director of the film "Barfi". He had given her an offer of Rs. One Lakh signing amount. The said letter was signed by a producer. She had demanded some signing amount as an advance. At that time, he had informed her that he had introduced a girl from Lokhandwala as heroin and gave her flat and four wheeler. She has further stated that Sameer Khan was insisting upon her to contact Mustafa Khan but since she doubted genuineness of his offer, stopped her communication with him. She had identified Mustafa Khan in court. In the cross-examination also she has reiterated that she had met

Mustafa in China Hotel, but never thereafter. She had rather disconnected herself with Mustafa.

10 P.W. 6 Ganesh Rekulwad is the Investigating Officer who claims to have followed the procedure of investigation as per the Criminal Manual. He has admitted that P.W.5 has not lodged special report against the accused.

11 Upon perusing the evidence adduced by the prosecution, it is more than clear that the accused was influencing the ladies aspiring to join film industries and was in the habit of taking disadvantage of their vulnerable situation. It cannot be said for a moment that P.W. 5 is a got up witness as there are no embellishment or exaggeration in her evidence.

12 Such acts are rampant in film industries and that vulnerable girls would fall prey. Although it is the contention of the learned Counsel for the appellant that it was a consensual act and that it was for a consideration, the said submission cannot be taken into consideration in view of the peripheral circumstances, which are brought on record by the prosecution. Besides punishing wrong doer, law has to be deterrent as well. Therefore, in the present case, this Court is not inclined to

interfere with the findings recorded by the learned Additional Sessions Judge, Greater Bombay. Hence the appeal is dismissed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]