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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.834 OF 2016**

Sadhana @ Sima Vishwajit Kaviraj )  
Aged 35 years, residing at Tony Vila )  
Church Pakhadi Road No.2, Room No.127, )  
Sahargaon Andheri (East), Mumbai. )  
Presently in Kolhapur Jail. )..... Appellant.  
(Original accused No.2)

V/s

The State of Maharashtra  
(At the instance of Ghatkopar Police Station) )..... Respondent.

**ALONGWITH  
CRIMINAL APPEAL NO. 164 OF 2017  
ALONGWITH  
CRIMINAL APPLICATION NO.153 OF 2017**

Parul @ Parvati Mohammad Aslam Chavan )  
Age-37 years, Occ: Housewife, )  
Indian Inhabitant, Residing at Room No.1, )  
Bldg. No.13, Sahargaon CBWD Colony, )  
Andheri (E), Mumbai )  
(Presently lodged in Khambala Central Jail )  
Kolhapur) ....Appellant/  
Original Accused No.1

V/s

The State of Maharashtra  
(through Ghatkopar Police Station) ..... Respondent.

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Mr. Shashikant P. Choudhari a/w Mrs. Snehal S. Chaudhari , Ms.  
Kishori V. Tribhuvan, appointed by High Court Legal Aid Services  
Committee for the Appellant in Criminal Appeal No. 834 of 2016.

Mr. Rakesh Sawant a/w Shamiana Hussein i/b Mr. Vasant Bansode for  
the Appellant in Criminal Appeal No.164 of 2017.

Mr. S.R. Agarkar, APP for the State in both the appeals.

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**CORAM: NITIN W. SAMBRE, J.**

**Judgment reserved on 19/08/2020**

**Judgment pronounced on 11/11/2020**

**JUDGMENT:**

1] The Appellants/Accused were convicted in Sessions Case No.390 of 2009 by the Court of Sessions, Greater Bombay vide judgment and order dated 26<sup>th</sup> October, 2016 for the offence punishable under Section 372 read with Section 34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of seven years with fine of Rs 25,000/- each and in default to undergo further rigorous imprisonment for a term of five months. The Appellants/Accused were also convicted for the offence punishable under Section 5 of the Immoral Traffic (Prevention) Act and were sentenced for rigorous imprisonment for a period of seven years with fine of Rs 2,000/- each and in default to undergo further rigorous imprisonment for five months. Appellants/Accused were also convicted for the offence punishable under Section 4 of the Immoral Traffic (Prevention) Act and were sentenced for rigorous

imprisonment for a period of two years with fine of Rs 1,000/- each and in default to undergo further rigorous imprisonment for five months.

2] Prosecution case in brief as against the Accused is as under:-

3] The International Justice Mission (“IGM”), a social organization (hereinafter referred to as “NGO”) is claimed to be active in the field of rescuing minor girls from the prostitution. P.W.1- Navin who is working as a Liaison Officer in the said NGO with his co-social worker P.W.6 – Jitesh received an authentic information that accused persons are into the business of providing minor girls in prostitution and as such, P.W. 6 entered into telephonic conversation with Parul @ Parvati – Accused No.1 regarding providing girls. Such information was then shared by P.W. 6 – Jitesh with P.W.1 – Navin. P.W. 6 accordingly decided to act as decoy customer and started interaction with Accused No.1 Parul @ Parvati for providing minor girls. Initially a meeting was held on 30<sup>th</sup> March, 2009 at Jogi Restaurant, Chakala, Andheri(East). It was attended by Accused No.1 Parul @ Parvati and Accused No.2 Sadhana @ Sima. At the relevant time, two girls were

brought with them so as to demonstrate availability of minor girls in the business of prostitution. P.W. 2 – Kajal and Puja were those two girls who were brought on 30<sup>th</sup> March, 2009. It is the case of the prosecution that P.W. 6, a decoy customer, through his spy camera recorded entire conversation and the incident.

4] On 2<sup>nd</sup> April, 2009, second meeting took place at the very same spot i.e. Restaurant Jogi alongwith P.W. 6 and P.W.1 complainant which was attended by Accused No.1 – Parul @ Parvati with Kajal and Puja wherein an amount of Rs 90,000/- plus Rs 30,000/- was quoted towards prostitution charges. Thereafter, on the same day, i.e. on 2<sup>nd</sup> April, 2009 P.W. 6 and P.W. 1 planned rescue operation and accordingly called Accused No.1 and decided to meet at Hotel Shreya at Ghatkopar on 3<sup>rd</sup> April, 2009. In the backdrop of aforesaid, P.W. 6 and P.W.1 went to Ghatkopar Police Station and reported the matter to ACP Tawade. P.W. 5 – Belinda and one more person decided to act as panch witness and the said NGO provided an amount of Rs 15,000/- i.e. 10 currency notes of Rs 1000 denomination, 10 currency notes of Rs 500 denomination.

5] After drawing the photocopies of the currency notes, pre-trap panchanama-Exhibit-61 was prepared at the Police Station wherein it was decided that P.W.6 who would act as a decoy customer, upon completion of transaction shall signal to P.W. 7 – PI Fulsingh Pawar.

6] As planned, Accused came with three girls viz Puja, Kajal and Rashmi who were brought by Accused No.3 – Parvin.

7] After parting with the amount and having negotiated further, P.W. 6 signaled P.W. 7 about the incident, resulting into raid wherein the girls so also the accused persons were apprehended. The seizure of the currency marked notes alongwith mobile phones was made vide Exhibit-62. The numbers of currency notes recovered from Accused No.1 – Parul @ Parvati and Accused No.2 - Sadhana @ Sima were duly verified and found to be the same as was reflected in the photocopy of the currency notes at Exhibit-60. At this stage, P.W. 6 handed over Compact Disk (CD) containing audio and video recording of the events dated 30<sup>th</sup> March, 2009, 2<sup>nd</sup> April, 2009 and 3<sup>rd</sup> April, 2009.

8] Based on the complaint lodged by P.W. 1 – Navin, Exhibit-43 came to be registered for the offence punishable under Section 372 of the Indian Penal Code and Sections 4 and 5 of the Immoral Traffic (Prevention) Act.

9] Crime No.122 of 2009 came to be registered and the accused persons were duly arrested. Since the Accused pleaded not guilty, charge vide Exhibit-3 came to be framed against the accused persons.

10] So as to substantiate the charge, prosecution has examined in all following 9 witnesses:-

P.W. 1 – Navin Joseph Rego (examined at Exh.42) who accompanied P.W.6-Jitesh to Jogi Restaurant on 2<sup>nd</sup> April 2009 and panch witness Benjamin at Hotel Shreya on 3<sup>rd</sup> April, 2009.

P.W.2 - Kajal Sudhir Roy (examined at Exh.44) is one of the child victims of crime caused to carry on prostitution and who was shown on 2<sup>nd</sup> April 2009 and 3<sup>rd</sup>

April 2009 to P.W.6- Jitesh and P.W.1-Navin and Benjamin as a girl for having sexual relationship.

P.W.3 – Rashmi Sunil Patel (examined at Exh.49), the another minor victim also was caused to carry on the prostitution and was taken to Hotel Shreya on 3<sup>rd</sup> April, 2009.

P.W. 4 – Dr. Pratap Daya Anand (examined at Exh.53), Medical Officer, attached to Nagpada Police Hospital who has issued Medical Examination Certificates of the three victim girls and also took their X-rays and opined their age in their respective medical examination reports.

P.W. 5 – Belinda Melezes (examined at Exh. 59), a panch witness to the pre-trap panchanama and planning done at Ghatkopar Police Station on 3<sup>rd</sup> April, 2009, so also a panch witness to the raid conducted at Hotel Shreya on 3<sup>rd</sup> April, 2009.

P.W.6 - Jitesh Madhavji Jala (examined at Exh.78) who is an employee of the IJM has acted as decoy customer and had conversation with accused. He is a direct witness to the main incidence on 30<sup>th</sup> March, 2009, 2<sup>nd</sup> April, 2009 and 3<sup>rd</sup> April, 2009 and was also present at the time of pre-trap planning and panchanama and at the time of trap at Hotel Shreya.

P.W. 7 – P.I. Fulsingh Shyamrao Pawar (examined at Exh.94) who was attached to Ghakopar Police Station as P.I. participated in pre-trap planning and panchanama and post trap panchanama on 3<sup>rd</sup> April, 2009 on the instructions of ACP Mr. Yashwant Tawade and he also went to Hotel Shreya and conducted trap.

P.W. 8 - API Vijayanand Raya Kadam (examined at Exh.98), who was PSI attached to Ghatkopar Police Station who scribed FIR by informant P.W.1 – Navin and registered CR No.122 of 2009 at Ghatkopar Police Station and also

recorded statement of three victim girls and after their preliminary medical examination sent them to Chembur Mahila Vastigruh.

P.W. 9 - PI Uttam Ramchandra Kadam (examined at Exh.100) is PI Crime, attached to Ghatkopar Police Station at the relevant time and was present at the time of preparing pre-trap panchanama and he was also a member of raiding party at Hotel Shreya. The investigation was handed over to him on 6<sup>th</sup> April, 2009 and on 7<sup>th</sup> April, 2009 he sent victim girls to Nagpada Police Hospital for their medical examination to ascertain their age. He recorded statement of Waiters and Manager of the Hotel Shreya, who were working at the Hotel on 3<sup>rd</sup> April, 2009. After completion of the investigation, he filed Final Report / Charge Sheet against all the three accused.

11] After appreciating the evidence on record, the learned Sessions Judge convicted the Accused as referred to above.

12] While questioning the conviction, the learned Counsel Mr. Shashikant Chaudhari and Mr. Rakesh Sawant would urge that the prosecution has failed to examine material witnesses such as ACP Tawade and such other important witnesses. It is further claimed that there are material irregularities which has resulted into illegality in the investigation and as such acquittal needs to be ordered. The learned Counsel would further urge that though the evidence which was produced in the form of CDs was discarded, still the learned Sessions Court committed an error in appreciating the said evidence therein. As such, it is claimed that the evidence in the form of material brought on record does not satisfy the very ingredients of Section 372 of the IPC under which the Appellants were convicted and as such acquittal is sought.

13] Mr. Agarkar, learned APP supported the case of the prosecution. According to him, prosecution has proved the entire case beyond reasonable doubt as is observed by the Sessions Court and that being so, conviction of the Appellants is liable to be maintained by dismissing the present appeals.

14] I have heard respective Counsel at length. The Counsel have also tendered their written notes of arguments.

15] Considered rival submissions.

16] P.W. 1 – Navin who is examined at Exhibit-42 narrated his source of information from P.W. 6 – Jitesh Jala who has spoken with Parul @ Parvati. According to him, he has lodged the complaint which is duly proved vide Exhibit-43. He has further deposed in his examination-in-chief that the alleged discussion about the offence was recorded by P.W. 6 and the same is in the form of CD which reflects demand of Rs 90,000/- and Rs 30,000/- towards costs of the girls in the prostitution. In his cross-examination, he has admitted that he has not informed the police about getting information regarding prostitution of minor girls. He has also admitted that he went to Ghatkopar Police Station alongwith panch i.e. P.W.5. He has further admitted that when he visited the Hotel at Ghatkopar, he ordered for beer. In his cross-examination, he has further admitted that he along with P.W.6 have not informed the police on 2<sup>nd</sup> April, 2009 about the operation. He also admitted that amount to be passed on to the

accused persons through decoy customer P.W. 6 was provided by his organization.

17] There were certain contradictions noticed in the evidence of P.W.1 such as, not intimating the police about the incident, source of the amount which is used in the offence i.e. from which bank it was drawn and his interaction with Accused No.2 for the first time on 2<sup>nd</sup> April, 2009.

18] P.W.2 Kajal who is examined at Exhibit-44, a victim, claims that she was working with Accused No.2 Sima and she attended the Jogi Restaurant with the said Accused. She further admitted that Jaya, daughter of Accused No.2 was accompanying them on 2<sup>nd</sup> April, 2009 and Rahul paid Accused No.2 Rs 2500/-. She further stated that on 4<sup>th</sup> April, 2009 alongwith Accused, she went to Shreya Hotel at Ghatkopar with Jaya at which time an FIR came to be lodged. She further stated that Rahul was talking with Accused No.2 and inquired nature of job to be done. However, there is no clarity as to the nature of job to be carried out in the evidence of this witness. The necessary ingredients as such, as defined under sub-clause (f) of Section 2 of the

Immoral Traffic (Prevention) Act are not mentioned in the evidence of this witness. In cross-examination, this witness has admitted that she does not understand Marathi or she cannot read, write or speak the same.

19] Another victim P.W.3 – Rashmi though stated about acceptance of money by Accused Nos. 1 and 2 however has not supported the case of the prosecution.

20] P.W.4 – Dr. Pratap has stated about about examination of the victim girls and their condition. He has proved through his evidence as to the age of the victim girls vide Certificate at Exhibits-55, 56 and X-ray plates at Exhibit-57.

21] P.W. 5 – Belinda, panch witness who drew pre-trap panchanama has stated that he was called at Ghatkopar Police Station as Panch and details of trap to be laid were narrated to her and accordingly pre-trap panchanama was drawn. She is witness to photographs of the currency notes and has also proved the pre-trap panchanama at Exhibit-61. She further deposed that three Nokia mobiles phones were

seized. She has also deposed that hidden camera was produced at the police Station by P.W.6 alongwith recorded transcript which was duly seized with other articles. According to her, post-trap panchanama was drawn which is at Exhibit-62. In cross-examination, she has admitted that part of the post-trap panchanama was drawn at the Police Station. She further deposed that about alleged meeting of 2<sup>nd</sup> April, 2009 she came to know from P.W. 1 – Navin in the Police Station. She is also not aware about exact amount paid to the accused persons. She has further disowned the marked portion from her deposition.

22] P.W. 6 – Jitesh was examined at Exhibit-78. In his examination-in-chief, he has deposed that he has shared information with the officials of NGO. He has deposed that after having received the information, with P.W.1 he went to meet the accused, based on which raid was conducted. He further deposed that pre-trap panchanama came to be drawn at Police Station whereas after the raid police prepared CD of the recording and transcript. He further deposed that CDs of incidents dated 30<sup>th</sup> March, 2009, 2<sup>nd</sup> April, 2009 and 3<sup>rd</sup> April, 2009 were prepared by him. He was unable to identify date of the

conversation. The transcripts are exhibited at Exhibits-79 and 80 at his behest. The CDs and transcripts of 2<sup>nd</sup> April, 2009 and 3<sup>rd</sup> April, 2009 are identified at Exhibits-81 and 82 and 83 respectively. He was subjected to detailed cross-examination wherein he was unable to narrate aims and objects of his NGO and admitted that he has not recorded conversation with the Accused Parul so also his source Shiva. He was unable to answer his source of securing spy camera and the description of the same. He further admitted in cross-examination that he has drawn CDs in his office. He further deposed that he has shown the video recording of 30<sup>th</sup> March, 2009 to P.W. 1 – Navin. However, he has retracted from the same. He has further deposed that after every recording, chip in the camera was changed and was not handed over to the police and further claimed that these chips were handed over by Navin to police on 3<sup>rd</sup> April, 2009. He has also contradicted his statement that before 3<sup>rd</sup> April, 2009, he never visited the Police Station.

23] As such, from the evidence of P.W.6 and also that of P.W. 5 and P.W. 1, it cannot be gathered that that original chips as has been claimed to have been deposited by P.W.1 were seized and there is an

action of proving the said electronic document in accordance with the provisions of Section 65B of the Evidence Act.

24] P.W. 7 – Fulsingh Pawar who is examined at Exhibit-94 deposed that he was serving as Police Inspector at Ghatkopar Police Station. According to him, at Hotel, P.W. 6 produced 3 CDs and one transcript. He has further claimed that at the Hotel, currency notes, 3 CDs, 3 mobiles and one transcript were sealed by him by putting it in different envelopes and investigation in the matter was handed over to PSI Kadam and PI Kolekar. In cross-examination, he has stated that P.W. 6 never informed him about operation of camera. He then contradicted his earlier statement by stating that P.W. 6 Jitesh Jala handed him over the transcript of recording of 2<sup>nd</sup> April 2009 at Hotel Shreya itself and not of the recording of 30<sup>th</sup> March, 2009 or 3<sup>rd</sup> April, 2009. He further admits that in spite of facility of recording date and time provided in the camera, he has not seen the date and time when the recording was carried out. He further admits that the transcript was not carried out in the Police Station and there is no certification.

25] P.W. 8 – Vijayanand Kadam who is examined at Exhibit-98

informed about the instructions given by ACP Tawade of conduct of raid and of taking complete information from P.W. 1 – Navin. He further deposed that he has registered the crime in question. He has also deposed that he has recorded statement of three victims including P.W.2 and P.W.3. He has further stated that investigation in the matter was then transferred to PI Fulsingh Pawar – P.W.7. In his cross-examination, he has admitted that he did not go to Hotel Shreya and recorded FIR at 10.00 P.M. He deposed about not remembering as to whether he has recorded statement of victims or of Jitesh Jala or P.W.1 – Navin.

26] As far as P.W. 9 - Uttam Kolekar is concerned who is examined at Exhibit-100, he has claimed that he was attached to Ghatkopar Police Station and P.W. 6 has shown him the video recording of 30<sup>th</sup> March, 2009 and 2<sup>nd</sup> April, 2009 so as to identify accused persons. He further admitted that investigation of the case was initially carried by P.W. 7 Pawar which was taken over by him on 6<sup>th</sup> April, 2009 for further investigation. He claims that he has charge-sheeted the accused. In cross-examination, he admitted that transcript of the CDs was drawn by another Police Officer.

27] As such, from the analysis of the evidence as is brought on record, facts remains that ACP Tawade was not examined as prosecution witness under whose instructions and supervision pre-trap panchanama was drawn.

28] It is also brought on record that the aims and objects of the NGO are not known and panch witnesses were provided by P.W. 1 and P.W. 6. It is also brought on record that amount to be used in the crime in question through decoy witness was provided by NGO. However, source of the said amount, as to bank from which it was drawn is not placed on record.

29] It is also brought on record that after the raid, part of the panchanama was drawn at the spot, whereas part of it was drawn in the Police Station so as to establish the seizure.

30] P.W. 5, panch witness in her evidence has admitted that she had some friends working with NGO/Rescue Foundation, which establishes her link with the complainant. This Court has already observed that

currency notes which are used in conducting trap against the accused persons were provided by NGO i.e. through P.W.1, which the prosecution ought not to have accepted. As such, it is established from the evidence on record that P.W.5, a panch witness, is an interested witness. In the aforesaid backdrop, testimony of P.W. 5 cannot be termed to be reliable. Apart from above, CDs which claimed to have been formed to be the basis for proving the offence were not mentioned to have been seized in the presence of P.W.5. As such, the panch witness in her evidence has not mentioned about seizure of CDs.

31] The evidence of P.W. 6 – Jitesh Jala also appears to be dicey on the aspect of seizure of CDs. The said witness has deposed that on 30<sup>th</sup> March, 2009, 2<sup>nd</sup> April, 2009 and 3<sup>rd</sup> April, 2009 with the help of button camera (spy camera) he has recorded entire scene and conversation with the accused persons which primarily satisfies the very requirement under Sections 4 and 5 of Immoral Traffic (Prevention) Act so also Section 372 of the Indian Penal Code. He has also disclosed that recording was done in the spy camera on the memory card and memory card was handed over to police through

P.W.1 – Navin. As far as these memory cards are concerned, there is no seizure memo of the same and as such, seizure of alleged three memory cards of the aforesaid three dates is not established. As a consequence of above, evidence in the form of three CDs is not a primary evidence but the evidence that was copied from the three memory cards which are missing from the prosecution case.

It appears that P.W. 6 at certain point claims that he has supplied these Compact Discs, whereas P.W. 1 supplied memory cards. At some point of time, he has mentioned that transcripts were drawn by police after having viewed the CDs in Police Station. He has also stated about CDs i.e. same were provided with transcripts by him whereas P.W.1 claims that neither CDs nor transcripts were sealed, as provided by P.W. 6. As such, there is material contradiction in the evidence of this witness. He has also given an admission that he has handed over the CDs to Investigating Officer. P.W. 7 – Fulsingh stated that it is P.W. 6 who has produced CDs and transcripts which they have verified and sealed. In the aforesaid backdrop, the entire case of the prosecution which is based on concrete evidence of recorded video and audio can not withstand the scrutiny of law as the said evidence is

not at all reliable. Apart from above, from the evidence P.W. 7, a doubt is created as to whether the women police constables were accompanying with the raiding party. P.W. 9 in his evidence admitted that there were three women police constables. However, there is no record coming forth about the same as neither statement of such women police constables is recorded nor station diary entry to that effect is produced on record and that being so very presence of so-called women constable is under cloud. If we examine the aforesaid unreliable evidence from the testimony of P.W.7 and P.W.9, P.W. 9 is a Police Inspector who was heading the raiding party, sub-section (6-A) of Section 15 of the Immoral Traffic (Prevention) Act contemplates that trafficking police officer who intends to make a search under the said provision shall be accompanied by atleast two women police officers which case is not at all established in the case in hand. Though there is mention about presence of women police constable Revati Jadhav, neither any documentary evidence in the police station in the form of station diary nor statement of said woman police constable is produced on record. In the backdrop of aforesaid evidence, it can be inferred that the prosecution has failed to examine material witness to establish its case particularly under Sections 4 and

5 of the Immoral Traffic (Prevention) Act. Even the victims i.e. P.W.2 and P.W. 3 have not supported the prosecution case. Even if there is seizure of currency notes from the accused persons, once it is stated that evidence of P.W.1, P.W. 5 and P.W. 6 is not reliable i.e. of complainant, panch witness and the decoy customer, it is difficult to infer from the evidence of P.W. 2 and P.W. 3 i.e. alleged victims that the accused persons were living on the income from the prostitution.

32] The prosecution also failed to establish that the victim girls i.e. P.W.2, P.W. 3 and one more girl were procured by accused persons for the sake of prostitution for want of evidence to that effect. As stated hereinabove, P.W. 2 and P.W. 3 i.e. victim girls have not at all supported the case of the prosecution.

33] Of course, even if from the evidence of P.W. 9 or P.W. 7 it could be inferred that there is recovery of currency notes which were provided to decoy customer by P.W. 1 in the capacity of Nodal Officer of Rescue Foundation/NGO, fact remains that object with which the amount was paid i.e. very requirement of Section 4 and 5 of Immoral Traffic (Prevention) Act and Section 372 of the Indian Penal Code is

not established beyond reasonable doubt. In support of the aforesaid observation reliance can be placed on the judgment of this Court in the case of *Anita Jethalal Katariya vs. State of Maharashtra* reported in (2019) 3 AIR Bom R (Cri) 422, particularly paras 12 and 13 which read thus :-

“12. Fair and proper investigation alone would lead to a fair prosecution and in the absence of the same, it would be persecution. It is more often seen that the Social Service Branch, Crime Branch, or the Anti Women Trafficking Cell are conducting raids on the basis of the secret information given by the NGO and, therefore, they are obliged to have the members of the NGO to act as panchas and to aid any investigation and further prosecution as well.”

“13. In the present case, the conviction under Section 370(2)(3) cannot be proved as there is no material to show that the women, who were found in the brothel, were trafficked or that they have been detained in the said parlour by using, forcing, coercion, abduction, practicing fraud and, therefore, it cannot be said that the present Appellant had exploited the women, who were allegedly found in the parlour and, therefore the accused-Appellant deserves to be acquitted under the provisions of Sections 370(2)(3) of the Penal Code, 1860.”

34] If we see the necessary ingredients which could be inferred from the provisions of Section 372 are, whoever sells, lets to hire or otherwise dispose of any person who is under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse. In the case in hand, once the very recording by spy camera which was in the form of foundation based on the evidence of P.W.1, P.W. 5 and P.W. 6 is not proved, the very ingredients of the said section are not satisfied. Similar appears to be the case under Sections 4 and 5 of the Immoral Traffic (Prevention) Act which provides for punishment for living on the earnings of prostitution and for procuring, inducing or taking a person for the sake of prostitution. Testimony of the victim girls has not supported the case of the prosecution so as to draw inference for satisfaction of the ingredients of Sections 4 and 5 of the Immoral Traffic (Prevention) Act or Section 372 read with Section 34 of the Indian Penal Code.

35] As observed hereinabove, it is not apparent from the evidence of any of the witnesses that there is satisfaction as regards sub-clause

(f) of Section 2 of the Immoral Traffic (Prevention) Act which defines “prostitution” from the evidence of victims or decoy customer.

36] The oral testimony of the decoy customer or complainant cannot be said to be sufficient enough to rest the foundation of prosecution story to be proved and that being so, in my opinion, the conviction of the accused persons cannot be sustained.

37] In view of the above, in my opinion, both these present appeals need to be allowed.

38] In the result, following order is passed :-

### **ORDER**

(i) Both these appeals are allowed.

(ii) The judgment delivered by the Sessions Court in Sessions Case No.390 of 2009 on 26<sup>th</sup> October, 2016 convicting the Appellants/Accused for the offence punishable under Section 372 read with Section 34 of the Indian Penal Code and Sections 4 and 5 of the Immoral Traffic (Prevention) Act is hereby quashed

and set aside.

(iii) It is directed that Appellants/Accused be immediately set free if not required in any other offence.

(iv) Fine amount deposited, if any, be refunded to the Appellants/Accused.

(vi) Since both these appeals are disposed of Criminal Application No.153 of 2017 taken out in Criminal Appeal No.164 of 2017 does not survive and the same is also disposed of.

( NITIN W. SAMBRE, J. )