

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 125 OF 2014
WITH
CRIMINAL APPEAL NO. 1229 OF 2013

SNEHA
NITIN
CHAVAN

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The State of Maharashtra

..Appellant

V/s.

Amarbahadur s/o Jaybahadur
Sapkota & Anr.

..Respondents

Mr. S.H. Yadav, APP for the Appellant/State.
None for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 15 NOVEMBER 2021

COMMON JUDGMENT

1. Appeal No. 125 of 2014 is against acquittal and by Appeal No. 1229 of 2013, the State is seeking enhancement of sentence.

2. The record discloses that the respondents/accused who are natives of Nepal are not traceable since the year 2014 inspite of repeated chances granted and attempts made by the investigating agency. Today the Investigating Officer is present and he has produced the report dated 25.10.2021 placing on record that both the accused have served the sentence already granted and

thereafter, have left for Nepal and their native address in Nepal is not available.

3. I have heard the learned APP on the merits of the appeals. With the assistance of the learned APP, I have gone through the record and the evidence led. The appeals are being disposed of finally with consent on behalf of the State.

4. The record discloses that the respondents were prosecuted for the offence punishable under Section 344, 366A, 368, 372, 373, 323 read with Section 34 of IPC and Section 3, 4, 5, 6, and 7 of the Immoral Traffic (Prevention) Act, 1956 ('the said Act').

5. The prosecution case is that the respondents had kept a brothel at Kamathipura, Nagpada, Mumbai and had induced minor girls for prostitution and were living on the proceeds of the same.

6. The learned Sessions Judge by a Judgment and Order dated 23.02.2013 in Sessions Case No. 698 of 2011 acquitted the respondents of the offence punishable under Section 5(1) (ii), 6(1), 7(1)(b) of the said Act and Section 373 of IPC. The learned Sessions Judge however found the respondents guilty of the offence under Section 3(1) and 4(1) of the said Act. The respondents have been sentenced to suffer rigorous

imprisonment for two years and to pay a fine of Rs.2000/- each and in default to suffer further rigorous imprisonment for three months on either count. Both the sentences have been directed to run concurrently. The record further discloses that the respondents were in custody from 06.07.2011 and a set off of the period already undergone was granted under Section 428 of Cr.P.C. It is not in dispute that after serving the entire sentence, the respondents have been released from jail and according to the prosecution have gone back to their native place in Nepal.

7. I have considered the submissions made on behalf of the Appellant/State on the point of the acquittal and enhancement of sentence.

8. Criminal Appeal No. 125 of 2014 is against acquittal. As noticed earlier, the learned Sessions Judge has acquitted the Respondents from the offence punishable under Section 5(1)(ii), 6(1), 7(1)(b) of the said Act and Section 373 of IPC. Section 373 of IPC provides for the offence of buying minor for purpose of prostitution etc. Section 5(1) (ii) speaks of procuring or inducing or taking a child for the purposes of prostitution while Section 6(1) speaks of detaining a person with or without his consent in any brothel or in any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person. Section 7(1)(b) of the said Act relates to carrying on prostitution in or any vicinity of a public place.

9. The learned Sessions Judge has framed point nos. 3, 4 and 5 in respect of the offence under Section 5(1)(ii), 6(1) and 7(1) (b) of the said Act and Section 373 of IPC. The learned Sessions Judge on appreciation of the evidence has found in paragraph 24 that with the error of margin of six months on either side, the victim would be about 17½ years of age on the date of incident. The learned Sessions Judge has thus found that the prosecution has failed to establish beyond reasonable doubt that on the date of the alleged incident, the victim Jivita was below 18 years of age that is the reason why the learned Session Judge has acquitted the Respondents from the offence except under Section 3(1) and 4(1) of the said Act.

10. It is now well settled that in an appeal against acquittal this Court can interfere only where the finding of acquittal is perverse or the Trial Court has taken an impossible view. To put it differently where two views are equally possible and the Trial Court has chosen one, the Appellate Court cannot substitute other on the ground that it is more plausible. (See the decision of the Supreme Court in *Chandrappa and Ors. V/s. State of Karnataka*¹). Applying the said test, I do not find a case for interference is made out, insofar as the finding of acquittal from offence under Section 5(1)(ii), 6(1) and 7(1) (b) of the said Act and Section 373 of IPC is concerned.

1 (2007) 4 Supreme Court Cases 415

11. This takes me to the issue of enhancement of sentence. It is significant to note that Section 4(1) of the said Act provides for sentence of imprisonment for a term which may extent to two years or with fine which may extent to one thousand rupees or both. It can thus be seen that insofar as the conviction under Section 4(1) of the said Act is concerned, the respondents have been awarded maximum punishment permissible. Coming to Section 3(1) of the said Act, it invites maximum sentence of rigorous imprisonment for a term not less than one year and which may extent to three years and also with fine which may extent to two thousand rupees. In respect of the second or subsequent conviction, the sentence prescribed is rigorous imprisonment for a term of not less than two years which may extent to five years and also with fine which may extent to two thousand rupees. In the present case, it is not claimed that this is the second offence thus, there are no previous antecedent to the discredit of the respondents. It is thus, clear that as against the maximum sentence of three years, the learned Sessions Judge has awarded a sentence of two years *inter alia* on the ground that respondent No.1 (accused No.1) was at the relevant time a young boy, who was unmarried and insofar as the respondent No.2 (accused No.2) is concerned, was a lady having a minor child and there was nobody to look after him.

12. Considering the over all circumstances, the sentence provided and the one granted, I do not find that the learned Session Judge has been unduly lenient in granting the sentence under Section 3(1) of the said Act. As noticed earlier, insofar Section 4(1) is concerned, the maximum sentence has been awarded.

13. In the result, both the appeals are hereby dismissed.

(C.V. BHADANG, J.)