

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

**CRIMINAL APPEAL NO. 987 OF 2022
WITH
INTERIM APPLICATION NO. 2557 OF 2022**

Dattatray Murlidhar Chavan	..Appellant
Versus	
The State of Maharashtra	..Respondent

Mr. Amresh Sharma (appointed Advocate) for Appellant.
Mr. S. R. Agarkar, APP for State/Respondent No.1.

**CORAM : SARANG V. KOTWAL, J.
DATE : 9 FEBRUARY 2023**

ORAL JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 17/01/2022, passed by learned Additional Sessions Judge, Nashik, in Sessions Case No.248 of 2008. The Appellant was convicted for offence punishable U/s.372 of the Indian Penal Code (for short 'I.P.C.') and was sentenced to suffer R.I. for ten years and to pay a fine of Rs.1000/- and in default of payment of fine to suffer R.I. for three months. He was also convicted for commission of offences punishable under sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956, however, no separate sentence was

imposed on him. He was in custody since 09/10/2008 to 16/04/2009 and then from 04/10/2021 up to 17/01/2022. He was granted set off for that period. Apart from the Appellant, there were three other accused. All of them were acquitted from all the charges.

2. This is a strange case where the appellant is made an accused during investigation of the F.I.R. lodged by himself. He had approached the police in October 2007 and lodged an F.I.R. on 23/10/2007 mentioning therein that his daughter was induced to go to Pune by the accused No.2 and the accused No.1. The allegations in the F.I.R. are that, both these accused caused disappearance of the appellant's daughter. He suspected that, she was in some danger and, therefore, he lodged this F.I.R.. It was registered at Panchavati police station vide C.R.No.380 of 2007, under sections 363 and 366 r/w. 34 of the I.P.C. During investigation, the police made the appellant as one of the accused.

3. The prosecution case was that, the victim and her brother were children of the appellant from his first marriage. He

was residing with his first wife and both the children. There are allegations that the appellant forced his first wife into prostitution. He was also forcing his daughter similarly. His first wife died because of the health issues caused by such torture. The Appellant's daughter was also forced similarly and, therefore, she and her brother used to run away from the appellant's house to the relatives of their mother. It is alleged that, on one such occasion his daughter was given to some stranger by accepting money. On these allegations the appellant faced the trial.

4. Heard Shri. Amresh Sharma, learned appointed advocate for the Appellant and Mr. Agarkar, learned APP for the State/Respondent.

5. During trial, the prosecution examined nine witnesses including the Appellant's son, the relatives of his first wife, the Medical Officers and the police officers. The Appellant's daughter was not examined. The Defence of the Appellant was that the appellant was made a scapegoat by the police officers because he was on inimical terms with the police. The appellant had made

complaints against some police officers. He had even filed a writ petition before this Court. It is his case that, his first wife's family was on inimical terms with him, therefore, all of them were deposing against him.

6. PW-1 P.I. Dhanraj Dayma was attached to Panchavati police station at the relevant time. The investigation was entrusted to him on 11/06/2008. He had arrested the appellant. He had collected the C.A. reports and had filed the charge-sheet against the appellant.

7. PW-2 Girjabai Kamble was the sister of the appellant's first wife Chandrakala. She has deposed that, her mother's name was Houshabai. The victim and his brother were children of Chandrakala. The Appellant used to beat them and, therefore, they went to reside with PW-2's mother Houshabai. After that, since the appellant continued troubling them, PW-2's brother brought them to reside with PW-2 herself. It is her case that the appellant's daughter had told her that the appellant used to beat her and used to force her in bad profession. He used to demand money from her.

PW-2's further case is that the appellant had given burn marks to his son and used to beat him.

8. PW-3 Ganesh Chavan was the appellant's son. He has deposed that the appellant was forcing PW-3's step mother i.e. the appellant's second wife into prostitution. According to this witness, the appellant had forced PW-3's mother into prostitution. Because of that, she had died as her health deteriorated because of some ailment of her uterus. He has deposed that the appellant was forcing PW-3's sister into prostitution. Therefore, PW-3 had gone to a different village. His sister i.e. appellant's daughter had followed him. They stayed with their maternal aunt. They did not want to go back to the appellant's house. For two to three years he was in remand home.

In the cross-examination, he stated that, neither he nor his sister had made any complaint against the appellant. He could not give details and dates about the harassment caused to them. He admitted that the relations between the appellant and PW-3's maternal aunt were not cordial.

9. PW-4 Chhababai Kale was another sister of the appellant's first wife. She has deposed that the appellant had forced her sister into prostitution. She had died because of the health issues caused because of that. PW-3 and his sister used to come back to PW-4 because of harassment caused by the appellant. This used to happen frequently. After that, PW-4's brother took the victim to the house of PW-2 and from there the police took her with them.

In the cross-examination, she admitted that her father had made a complaint against the appellant.

10. PW-5 Dhanaji Jalak was the police officer who had taken down the F.I.R. given by the appellant. The F.I.R. is produced on record at Exhibit 115. In that F.I.R., as mentioned earlier, he admitted that there were allegations against the accused Nos.1 and 2 in the F.I.R. regarding disappearance of the appellant's daughter.

11. PW-6 Dr. Vaishali Giri had examined PW-3 on 12/11/2007. She had found two injuries; 1) infected wound on right leg below knee and 2) multiple healed scars on left leg and

buttock.

She admitted in her cross-examination that, those injuries were possible by falling on hard surface. The medical certificate shows that the healed scars were corresponding to the burn injuries.

12. PW-7 Dipak Bagul was attached to Panchavati police station. He had conducted some part of investigation. He had conducted the spot panchanama and recorded the statements of the witnesses. He tried to find the victim. He arrested the accused Nos.1 and 2.

He admitted in his cross-examination that the victim had run away from her house on 2 to 3 occasions.

13. PW-8 Vishnu Avhad was attached to Panchavati police station. He conducted the investigation from 30/10/2007. He had recorded the statements of some of the witnesses. He brought the victim and PW-3 to the police station. They were not willing to go back to the appellant. He recorded their statements. According to him, his investigation revealed that the victim was not abducted by

the other accused, but she had run away from the house because of the harassment caused by the appellant and because of his attempts to force her into prostitution. According to him, his investigation revealed that the appellant had taken some money and had given the custody of the victim to the accused No.1. He had caused recording of statement of the victim U/s.164 of the Cr.p.c. He had arrested the accused No.4.

He admitted in his cross-examination that the appellant used to make complaints against the police officers.

14. PW-9 Dr. Rita Patil had examined the victim. She has deposed that she did not find any visible external injury on the person or on the private part of the victim and there were no recent signs of intercourse.

This, in short, was the evidence of the prosecution.

15. Learned counsel for the appellant submitted that, age of the victim is not proved, therefore, ingredients of Section 372 of the I.P.C. are not proved by the prosecution. The victim is not examined, therefore, there is no evidence against the appellant.

The second wife of the appellant is not examined. She could have thrown light on the facts of this case. PW-3 was unhappy with the appellant and, therefore, he has given evidence against the appellant. The statement U/s.164 of Cr.p.c. of the victim cannot be read into evidence as it is not a substantive piece of evidence. He submitted that, there is no evidence against the appellant.

16. Learned APP opposed these submissions. He relied on the evidence of PW-2, PW-3 and PW-4 to contend that, their evidence is consistent. He also submitted that, PW-3's evidence is corroborative with his own medical examination showing injuries suffered by him at the hands of the appellant.

17. I have considered these submissions. As far as injuries caused to PW-3 are concerned, it is not the subject matter of this trial and no charge is framed for that.

18. The F.I.R. was lodged by the appellant himself. In that F.I.R. the allegations were made against the accused Nos.1 and 2. During that investigation, the investigating agency made the appellant an accused. The most important lacuna in the

prosecution case is non examination of the victim i.e. the appellant's daughter. Absolutely no reasons are mentioned as to why she could not be examined. In that sense the prosecution is clearly handicapped and there is no direct evidence against the present appellant. As far as evidence of PW-2 and PW-4 is concerned, it is clearly hearsay evidence and nothing has transpired in their presence. The grievance, if any, on the part of the victim could have been proved by the victim herself, but she is not examined. PW-3 has also not given the details, dates and particulars of the incidents. His evidence is quite vague. His evidence shows that he himself was admitted to remand home and he was unhappy with the appellant. His evidence does not prove the prosecution case against the appellant that the appellant had given custody of his daughter to others in exchange of money or that he had forced the victim into prostitution. No specific details or instances are mentioned by PW-3 at all.

19. The Investigating Officer has deposed about conclusion of the investigation, but that cannot prove those facts. So far as he is concerned, that conclusion remains hearsay as his opinion. The

prosecution could have proved the case only through the evidence of the victim; which is lacking in this particular case. The medical examination of the victim does not take the prosecution case any further. It is also important to note that the investigation itself started on the basis of an F.I.R. lodged by the appellant himself. The evidence also shows that the appellant was on inimical terms with the police officers, therefore, his defence of false implication is probable. As rightly submitted by learned counsel for the appellant, the statement of the victim recorded U/s.164 of the Cr.p.c. cannot be taken into consideration in absence of her own deposition. Considering all these aspects, I find that the prosecution has failed to prove it's case against the appellant. He deserves to be acquitted.

20. Hence, the following order:

O R D E R

- i) The Appeal is allowed.
- ii) The Judgment and order dated 17/01/2022, passed by learned Additional Sessions Judge,

Nashik, in Sessions Case No.248 of 2008 is set aside.

- iii) The Appellant is acquitted from all the charges in Sessions Case No.248 of 2008 before learned Additional Sessions Judge, Nashik.
- iv) The Appellant shall be released forthwith if not required in any other offence.
- v) The Appellant shall execute bail bond under the provisions of Section 437-A of the Cr.p.c. to the satisfaction of the Trial Court.
- vi) The Appeal is disposed of accordingly.
- vii) With disposal of the Appeal, the Interim Application No.2557 of 2022 does not survive and it is also disposed of.

(SARANG V. KOTWAL, J.)