

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

Criminal Appeal No.440 of 2004

The State of Maharashtra

... Appellant.
(Orig.Complainant)

Versus

1. Somling Kallappa Kamble,
Age 50 years,

2. Sou. Godabai Vithal Kamble,
Age 40 years,

3. Nilam Dashrath Kamble,
Age 42 years,

4. Sou. Sujata Dashrath Kamble,
Age 33 years
(Abated vide Ct's ord.dt.19/10/23)
All Residents of Khatav,
Tal.Miraj, Dist. Sangli.

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... Respondents.
(Orig.Accused No.1 to 4)

Smt MH Mhatre, APP for the appellant/State.
Ms Aishwarya Sharma, appointed Advocate for respondents/
accused No.1 to 4.

Coram : R. N. Laddha, J.

**Reserved on : 9 November 2023.
Pronounced on : 2 January 2024.**

Judgment :

The present appeal is filed against the judgment and order dated 5 December 2003, passed by the learned Ad-hoc Assistant Sessions Judge, Sangli, in Sessions Case No.12 of 2003, acquitting the accused/respondents herein for the offences punishable under Sections 366-A read with 34 of the Indian Penal Code and 5 (b) and 5(c) of the Immoral Traffic (Prevention) Act, 1955.

2. Brief facts of the case are that accused No.1 Somling is the father and accused No.2 Godabai is the step-mother of the prosecutrix (hereinafter referred to as 'the victim'), below 18 years of age, were resident of village Khatav. In January 2001, accused No.4 (since deceased) came from Azamgarh (U.P.) to village Khatav. Accused No.1 and 2 asked the victim to accompany accused No.4, Sujata, to Azamgarh for prostitution. The victim then went with accused No.4, Sujata. On reaching Azamgarh, accused No.3 and 4 forced her into prostitution. The victim stayed there for a month before returning to her village with accused No.3, Nilam. In April 2001, accused No.1 and 2 sent the victim girl to the residence of Asha Kamble to engage in prostitution and accepted Rs.30,000/- from her. The victim stayed there for

approximately six months and was involved in prostitution. On 9 October 2001, police conducted a raid on Asha Kamble's brothel and rescued the victim. The victim was sent to a Reformatory House located in Solapur. After that, accused No.1 went to Solapur and obtained her custody. After returning from Solapur, the victim was sent to her maternal uncle's house in Kudachi village, where she stayed for about a month. Accused No.1 then brought the victim to his house in Khatav village. However, fifteen days prior to lodging the FIR, accused No.1 and 2 had been pressuring the victim to engage in prostitution at Asha Kamble's house in Mumbai.

3. Fed up with this, the victim decided to take action. She went to the police station with Somling Draupadi Kamble (PW2), a social worker, and lodged a complaint against all the accused. Based on this report, an offence vide CR No.123 of 2002 was registered against the accused under Sections 366-A read with 34 of the Indian Penal Code and 5 (b) and 5(c) of the Immoral Traffic (Prevention) Act, 1955. After being sent to the Civil Hospital, Sangli, for a medical Examination, the victim was transferred to the Women's Reformatory House. Upon completion of the investigation and being satisfied with the involvement of the accused, a charge sheet came to be filed against them.

4. Charge came to be framed against the accused for the offences punishable under Sections 366-A read with 34 of the Indian Penal Code and 5 (b) and 5(c) of the Immoral Traffic (Prevention) Act, 1956. The accused abjured the guilt and claimed trial. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of the prosecutrix/victim (PW1), Somling Draupadi Kamble (PW2), and PSI Jyotiram Govind Bhosale (PW3), the investigating officer. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (CrPC) came to be thereafter recorded consisting of denial and false implication.

5. After hearing the arguments of the learned Counsel for both parties, the learned trial Court concluded that the evidence of the prosecution witnesses was not sufficient to prove the guilt of the accused. Consequently, the trial Court acquitted them.

6. Being aggrieved and dissatisfied with the impugned judgment and order of acquittal, the appellant/State has preferred this appeal.

7. I have heard Ms MH Mhatre, the learned Additional

Public Prosecutor for the State and Ms Aishwarya Sharma, the learned Counsel for accused/respondents and perused the impugned judgment, grounds in the appeal memo, evidence of the prosecution witnesses and entire material on record.

8. Ms MH Mhatre, the learned APP appearing on behalf of the appellant/State, submitted that the learned trial Court committed a manifest error by acquitting the accused/respondents. According to the learned APP, the impugned judgment and order is contrary to the evidence on record. She submitted that the learned trial Court ought to have relied upon the ossification test conducted by the Radiologist and the medical opinion, which shows that the victim was a minor. She submitted that accused No.1 and 2, being parents of the victim girl, abused their authority as parents by directing her to go with accused No.4, selling her for an amount of Rs.30,000/- to Asha Kamble in Mumbai, and earning money from her prostitution work. In her view, the prosecution established the guilt of the accused for the offences they were charged with.

9. Ms Aishwarya Sharma, the learned Counsel appearing on behalf the accused/respondents, supported the line of reasoning adopted by the trial Court to record the finding of

acquittal. She argued that the ossification test of the victim was conducted almost two years after the alleged incident, and the prosecution failed to establish the age of the victim. The learned Counsel submitted that the victim did not mention any force or inducement by accused No.1 and 2 to go to Azamgarh and Mumbai.

10. The learned Counsel invited attention to the testimony of the victim girl and submitted that the victim resided with her brother in Kudachi village after returning from Azamgarh. She did not claim that accused No.1 and 2 had come to village Kudachi and insisted her to go to Mumbai. The evidence of the victim is silent on who introduced her to Asha Kamble and where she met her for proceeding towards Mumbai. The victim did not state that she was forced, compelled, or induced by accused No.1 and 2 to go along with Asha Kamble. She also did not say that her parents abused their authority by applying any pressure to go to Azamgarh or Mumbai.

11. Ms Aishwarya Sharma, the learned Counsel, argued that the victim had an opportunity to report to the police that she was brought for prostitution against her will, but she did not do so when she was rescued by the police and sent to remand

home in Mumbai. She remained in the remand home for about seven months before being transferred to a women's reformatory house. On the contrary, the prosecutrix deposed that when she went to Solapur, she wrote a letter to her father, accused No.1 and called him. The learned Counsel submitted that the prosecutrix, in such circumstances, would not have called her father and would not have gone along with him to their village. However, she did not make any complaint about forced prostitution at the instance of her parents.

12. The learned Counsel submitted that the evidence of the victim demonstrates that when she went to Solapur, she wrote a letter to her father/accused No.1 and called him; in such circumstances, the victim would not have called her father and gone along with him to their village. In support of her contention, the learned Counsel relied on the following judgments : *i) Chandrappa & Ors. Vs. State of Karnataka, 2007 Cri.L.J. 2136; ii) Harilal etc. Vs. State of M.P (Nav Chattisgarh) 2023 SCC OnLine SC 1124; iii) Rajak Mohammad Vs. State of Himachal Pradesh (2018)9 SCC 248; and Shweta Gulati & Anr. Vs. The State Government of NCT of Delhi 2018 SCC OnLine Del 10448.*

13. The trial Court initially addressed the prosecution's case regarding the age of the victim girl and concluded that the prosecution failed to prove that the victim was a minor at the time of the incident. In the cross-examination, the victim acknowledged that she might be between 20 and 21 years old. However, the prosecution relied heavily on the ossification test report (Exh.26), which was admitted by the defence. The report suggested that the victim's age could be 18 years plus or minus one year. It is pertinent to note that apart from this ossification test report, there was no other evidence on record regarding the victim's age. The ossification test was conducted on the victim on 1 October 2002, one year and ten months after the alleged incident that occurred in January 2001.

14. In the present case, the age of the victim would be more than 18 years by application of the margin of error principle. It is a settled position of law that the benefit of doubt, at all stages, goes in favour of the accused. In view of the above, the learned trial Court rightly held that the prosecution has not succeeded in proving that the victim was a minor on the date of the alleged incident.

15. The victim girl in her evidence stated that accused No.1 and 2 sent her to Azamgarh with accused No.4. However, she

did not claim that accused No.1 and 2 forced or induced her to go with accused No.4, nor did she allege that they used deceitful means to send her with accused No.4. She also did not allege that accused No.4 ever forced her to come along.

16. In relation to the second incident, the victim testified that she stayed with accused No.1 and 2 for two months after returning from Azamgarh. After that, they sent her to Mumbai along with Asha Kamble. She stayed in Mumbai for approximately six months. Following a police raid on the brothel house, she was rescued and sent to a remand home in Mumbai. She stayed there for about seven months before being transferred to the Women's Reformatory House in Solapur.

17. The victim's testimony regarding her visit to Mumbai is inconsistent. During her cross-examination, she admitted that she travelled to Mumbai from Raibag by ST bus and not from the village Khatav as she had previously claimed. This evidence contradicts her claim that she was sent by accused No.1 and 2 along with Asha Kamble. Additionally, she stated that after returning from Azamgarh, she stayed with her brother in Kudachi village, which is close to Raibag. That apart, the victim did not mention who introduced her to Asha

Kamble or where they met before proceeding towards Mumbai. The victim testified that the accused were receiving money for her prostitution. However, this fact was not mentioned in her FIR. The victim did not claim that she was sending money to accused No.1 and 2 from Azamgarh or Mumbai, nor did the prosecution claim that accused No.1 had received money from accused No.4 before sending the victim to Azamgarh.

18. Additionally, the evidence of the victim suggests that her family atmosphere was good, and they owned agricultural land; after the death of her mother, the accused no.1 father took care of her and her siblings, and after she was brought from the women's reformatory house, Solapur, her father took her to their village and arranged her marriage. Based on this evidence, it is difficult to digest that she was sent to Azamgarh and Mumbai for prostitution.

19. After the raid, the victim had an opportunity to disclose to the police that she was brought for prostitution against her will. However, she did not make any such complaint before the police. The victim was in a remand home for about seven months and was later sent to the Women's Reformatory House at Solapur. Despite being in a position to do so, she did

not make any complaint about forced prostitution at the instance of her parents. On the contrary, her evidence demonstrates that when she went to Solapur, she wrote a letter to her father and called him. Her father/accused No.1 thereafter took her to their village and arranged her marriage.

20. After reviewing the evidence of Somling Kamble (PW2), it appears that the police brought the victim from the custody of the accused No.1 on his complaint, and she lodged the FIR. However, according to the victim, she was residing with her brother in the village Kudachi before lodging the FIR. The investigating officer (PW3) also stated that the victim, her brother and Somling (PW2) came to the police station to lodge the FIR and then went to village Khatav to apprehend the accused. The evidence of Somling (PW2) shows that he received information about the insistence of accused No.1 and 2 to send the victim again for prostitution from the victim's brother, who was admittedly not examined in this case. Therefore, whatever information Somling (PW2) received from the victim's brother is hearsay. Moreover, the victim did not claim that she ever disclosed to Somling (PW2) that her parents pressured, insisted or forced her into prostitution. That apart, the victim did not explain the delay in lodging the

FIR.

21. In such circumstances, the trial Court, in my considered opinion, rightly found the accused/respondents not guilty of the offences for which they were tried.

22. Resultantly, this appeal fails and is hereby dismissed.

[R. N. Laddha, J.]