



Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO.14 of 2016.**

State
Through Police Inspector(major)
Women Police Station
Panaji, Goa. ... Appellant.

V e r s u s

Jyoti V. Dhoble, w/o Vijay
Dhoble, aged 36 years, R/o
Mandrekar Chawl, B-1, Ghatkopar,
Bhatwadi West, Mumbai-84 Respondent.

Mr Pravin Faldessai, Additional Public Prosecutor for the
appellant.

CORAM: BHARATI DANGRE J.

Date: 8th August 2025.

ORAL JUDGMENT

1. The State of Goa has preferred the present appeal, against the judgment of acquittal passed by the Additional Sessions Judge, South Goa in Criminal Appeal No.73 of 2014 thereby reversing the judgment and order dated 9.5.2014 passed by the trial Court convicting the appellant under Sections 4 and 5 of Immoral Traffic (Prevention) Act, 1956. The impugned judgment has acquitted the respondent of charges and thus set her at liberty.

2. I have heard Mr Faldessai, learned Addl. Public Prosecutor for the appellant. None represented the respondent.

With the assistance of Mr Faldessai, I have perused the judgment passed by the Court below and also perused the evidence on which prosecution relied before the learned Judicial Magistrate First Class.

3. The accused, was charged by the Judicial Magistrate First Class, Vasco on 28.10.2013 as below:-

“That since 26.12.2012 at Vasco you have been living on the earnings of prostitution of Noor Banu procured by you for prostitution activities and you have thus committed offence punishable under section 4 of the Immoral Traffic (Prevention) Act and within my cognizance.

Secondly, you procured Noor Banu resident of Mumbai and induced her for the purpose of prostitution with a promise to pay Rs.2,000/- per day and thus committed offence punishable under section 5 of the Immoral Traffic (Prevention) Act and within my cognizance.

And I hereby direct that you be tried by this Court on the said charges.”

She pleaded not guilty and therefore was subjected to trial in Criminal Case No. 91/S/2013/C by the Magistrate.

4. The prosecution in support of its case examined 8 witnesses and the Magistrate formulated the point of determination as below:

“Whether the prosecution proves beyond reasonable doubt that the accused procured the victim Noor Banu for the purpose of prostitution at Vasco and was living on the earnings of the prostitution and hence committed an offence punishable under Sections 4 and 5 of the Immoral Traffic(Prevention) Act?”

5. It is the case of the prosecution that the accused had brought PW3 to Goa for being supplied to the customers for flesh trade and received money from them which she retained.

As per the prosecution, PW8, the Police Inspector, Women Police Station, at Panaji received credible information that a lady in the age group of 35 to 40, years having deep scar on the middle of her forehead residing in room no. 222 at Vasco Residency, at Vasco is carrying out Prostitution activities by engaging a female aged 25 to 30 years in Vasco city and is living on the earnings of prostitution. As per the prosecution, the accused, acting as a pimp, adopted a modus operandi of finding customers for the young woman for engaging her into prostitution, to receive sum of Rs.2500/- per hour and Rs.8000/- for the whole night and she would deliver the female to the prospective customer between 18.30 hours to 19.00 hours near Canara Bank, opposite Vasco Residency. Accordingly, it was decided to arrange a raid and

rescue the female from the lady pimp by observing necessary legal procedure.

6. In order to give effect to the said information, the PW8 called two witnesses to act as panchas and in their presence, panchanama was drawn on 28.12.2021, depicting the sequence of events leading to apprehending the accused and taking search of the room in the hotel.

The panchanama dated 28.12.2012 (Exh.16) is brought on record through PW1, panch witness Kamal Shaikh, who failed to support the case of the prosecution and resiled from the panchanama and was therefore allowed to be cross-examined.

The panchanama at Exh.16 is therefore not proved by the prosecution as the second panch witness is not examined and PW1 Kamal Shaikh did not support the case of the prosecution. In any case, even assuming for a moment that the identity of the accused is not disputed and it is also not disputed that upon apprehending the accused along with victim, PW3, was brought from the hotel and search was taken, Mr Faldessai would submit that merely because PW1 did not support the case of the prosecution, it do not lose its credibility.

7. Turning my attention to the evidence of PW3 who identified the accused sitting in the dock, I have gone through her deposition, as she has deposed that she received the number of the accused through some other person, who assured that she would get employment and earn more money, which will resolve her problem in life.

PW3 Noorbanu Siddique deposed that she had to undertake prostitution activities for which she was paid money and she on her own called up the accused and expressed her willingness to be in prostitution business.

It is in these circumstances she was called to Goa, where she reached on her own, by train and was taken to Vasco. As per PW3, she had rested that day and on the next day, the accused called up the person and she went with the man with whom she had sex but no money was paid to her. Thereafter, as per her version, two more men were sent by the accused who had sex with her but she was not paid, and the accused collected the money and this continued for around two to three days. She was told that she will be paid money after her stay for a few more days and thereafter she decided to return to Mumbai as she received a phone call from her daughter, which compelled her to return.

8. As far as incident of 28.12.2012 is concerned, she deposed that as she along with the accused, was walking up to Canara Bank, Vasco a man approached the accused and started taking to her, but since she was feeling hungry she told the accused that they will have something to eat at a hotel which was situated nearby and at that time the police arrived at the spot and took her to the hotel room from where several articles belonging to her including some condoms from her bag were seized.

9. From the reading of the evidence of PW3, one thing is clear that she was aware that she was in prostitution and she had not objected to the same nor did she make any grievance against the accused that she was forced into prostitution. She has rather deposed that the accused had assured her to pay the money after her stay in Goa would come to an end.

The prosecution, therefore, cannot solely rely upon this witness as nowhere she has stated that she was forced into prostitution.

10. Another important witness of the prosecution is PW2 Sandeep Gawas, Senior Manager at Vasco Residency, who identified the accused by stating that she had checked in at Vasco

Residency on 26.12.2012 along with one woman named Noorbanu and on 28.12.2012, both of them were to check out. According to him both had left the room in the morning, and in the evening at around 7.00 p.m, both of them were brought to the hotel by a woman police and they were taken in room no.222 and it was informed by the police that the accused is involved in illegal trafficking.

The police checked the register of the hotel and the identification document produced by the accused and the register is brought on record (Exh. 20).

The said document placed at page no.50 had two names scribbled at serial no. 536 and 537 but at the serial no. 536, to the naked eye, the overwriting is evident and moreover there is inconsistency in the version of this witness who stated that they have checked in on 26.12.2012 and they were to checked out on 28.12.2012 but according to the version of Pw3, she was there for two to three days.

11. PW4 Vijayshree Irrakar, is the member of an NGO appointed by Goa Police for anti- human trafficking and she was present when the trap laid to apprehend the accused, who was

assisting the women to solicit customers and she has deposed in sync with the panchanama, which speaks of the events right from the information received till the search and seizure from the room, which the duo was allegedly occupying.

12. PW5 Dattaram Naik, is the head constable attached to CID branch who was informed by PI about information received from the women police station about the prostitution activities going on and he, along with head constable Vijaykumar Salgaonkar, as well as head constable Ms Ashwini Dessai, approached women police station and met PW8 Ezilda D'Souza in presence of PW4.

13. In order to attract Section 4 of the Immoral Traffic (Prevention) Act, 1956, it is necessary to establish that the person knowingly lives, wholly or in part, on the earnings of the prostitution by any other person and such act is made punishable under Section 4. The provision definitely carries a presumption in form of sub section (2) to the following effect:-

*“(2) Where any person over the age of eighteen years is proved—
(a) to be living with, or to be habitually in the company of, a prostitute; or
(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or
(c) to be acting as a tout or pimp on behalf of a prostitute,*

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1)."

14. Section 5 of the Immoral Traffic(Prevention) Act, 1956, punishes an act of:-

*"(a) procures or attempts to procure a 4[person], whether with or without his consent, for the purpose of prostitution; or
(b) induces a 4[person] to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
(c) takes or attempts to take a 4[person], or causes a 4[person] to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or(d) causes or induces a 4[person] to carry on prostitution;"*

15. For attracting offence under Section 4 of the Immoral Traffic(Prevention) Act, 1956, it is necessary for the prosecution to establish that the accused person was knowingly living, wholly or in part, on the earnings of the prostitution of any other person. However, the solitary incident with respect of which the secret information was received and a raid was conducted is insufficient to establish the case. The appellant/accused may have accompanied PW3 in prostitution, but, for attracting offence under Section 4, it is necessary to prove that she was living on her earnings, which prosecution has failed to establish by bringing cogent evidence on record. Apart from this, Section 5 is attracted when a person procures or attempts to procure a person with or

without his consent for the purpose of prostitution or induce the person to go from any place with an intent that he may indulge into prostitution or a person take or attempts to take a person or causes a person to be taken from one place to another for carrying on prostitution or one causes or induces a person to carry on prostitution. None of the ingredients of the aforesaid provision have been established by the prosecution, when it laid its case before the trial Court.

16. Considering that the necessary ingredients of the offence under Sections 4 and 5 of Immoral Traffic (Prevention) Act, 1956, are not proved, the Appellate Court has rightly acquitted the accused of the charges. While appreciating the evidence in an appeal against acquittal, it is a well-settled position that the Court shall not brush and set aside the order of acquittal unless it is found that the reasons recorded are non-existent, extraneous, perverse, or totally ill-founded or wholly misconceived.

In an appeal against acquittal, the decision cannot be disturbed even if two views are possible, as the presumption of innocence in favour of the accused person, which is available in the trial court continues even up to the appellate stage and the

Appellate Court is expected to give due weightage to the opinion of the trial Court, which has recorded order of acquittal.

With limited scope of interference in dealing with the appeal against acquittal, where the presumption of innocence is re-enforced by the order of acquittal and unless and until, the finding recorded by the Court which has acquitted the accused is found to be completely unsustainable, the interference in a judgment of acquittal is warranted.

On reading the impugned judgment, the conclusion reached by the Appellate Court cannot be said to be totally unfounded, as on appreciating the evidence placed, the Court has expressed its view that the conviction cannot be sustained and has converted the conviction into an acquittal.

I have no convincing reason to interfere and therefore, being unconvinced by the arguments advanced by Mr Faldessai, on behalf of the prosecution, I am of the view that the appeal has no merit and hence the appeal is dismissed.

BHARATI DANGRE,J.