

(2012) 08 BOM CK 0237

In the Bombay High Court

Case No : Criminal Appeal No"s. 437 with 424 of 1997

State of Maharashtra

APPELLANT

Vs

Upkarsing Samshersing Arora and etc.

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Suppression of Immoral Traffic in Womemand Girls Act, 1956 — Section 3, 4, 5

Citation : (2013) 2 ABR 580

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : S.R. Shinde, app, for the Appellant; Mukhtar Khan, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—State has preferred both the aforesaid appeals against the judgment and order dated 13th March, 1997 passed by the learned Additional Sessions Judge, Pune, acquitting of each of the respondent in respective appeal from the charge of the commission of offence punishable under Sections 3, 4 and 5 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 by reversing finding of a guilt for commission of such offences by each of the respondent in aforesaid appeal arrived by JMFC Court No. 3, Pune, in RCC No. 136/1995 of the said Code and awarding sentence of RI for one year with payment of fine of Rs. 1000/- by each of them and in default of payment of fine, ordering them to suffer RI for three months. The prosecution of each of the respondent for commission of such offences has arisen out of the charge-sheet submitted by PW5 PI Pir Mohammed Abdul Gaffar Japharbhair of Bund Garden Police Station, Pune, on 27th September, 1995 for commission of such offences and the offence u/s 66-B of the Bombay Prohibition Act as a result of the investigation of CR No. 295/95 registered with said police station upon the complaint dated 28th August, 1995 (Exhibit 29) for commission of such offences lodged by him.

2. According to the said complaint, PW5 while at Bund Garden Police Station, Pune, received an information from his informant that the respondent in Criminal Appeal No. 437/97 along with his wife respondent in Criminal Appeal No. 424/97 by calling and providing young girls to male customers for illicit intercourse runs a brothel under the guise of massage in Jogan Beauty Parlour, Koregaon Park, Pune, in a flat in Gurudatta Avenue Building in front of Popular Heights. PW5 after verification of the information apprised Shri. D.R. Shejal, ACP of Lakshar area about information received. ACP Shejal forthwith visited Bund Garden police station and verified about the information. Immediately one PW2 Jaykumar Digambar Shinde, resident of Tarachand Hospital Servant Quarters, Pune, was called for acting as a bogus customer and he was apprised about the import of the information received. PW2 showed the willingness for acting as a customer. Two respectable persons PW1 Maruti Deokar and one Kadir Ahmed Khan passing on the road were called and apprised about the import of the information received and both of them agreed to act as panch witnesses. They were asked to take the search of PW5 and PW2. During the search, no money was found with PW2. PW5 left the cash amount with him in the office and gave Rs. 450/- comprised of four currency notes of the denomination of Rs. 100/- and one of Rs. 50/- and bearing numbers as stated in the complaint to PW2 after obtaining initials of ACP Shejal and gave PW2 instructions regarding the raid to be effected including the timing at which he was to give a signal to PW5. The panchnama (Exhibit-14) to such effect was drawn in presence of ACP of Lakshar Vibhag. After drawing of the panchnama, ACP Shejal (PW5), API Pawar, PSI Patil, PHC 1292 Wahile and PHC 2797 Markad from the Surveillance Squad, unarmed Lady Police Constables Surekha Kale (PW4) and Vina Turke, fake customer PW2 and panch witnesses in civil dress by police jeep left the Bund Garden police station and via Mangaldas police chowky went to Yerwada Pumping Station. After halting the jeep at the said place except the police driver all of them walked upto Popular Height building. From the said place, fake customer was asked to go with money to the beauty parlour and after he had gone, accordingly, all of them waited nearby the staircase on the ground floor.

3. After some time ACP Shejal and the raiding party members rang the bell and they explained purpose of the raid to respondent in Criminal Appeal No. 424 of 1997 and asked her to take search of the raiding party member but she refused and agreed to give the cooperation. Two more girls were present in the flat. After hearing the signal by fake customer, ACP Shejal and PW5 and Panch witnesses entered in the room and found naked PW2 and one woman-PW3 Sunita wearing only nicker and bra embarrassing. After as asked they wear the clothes and came in the front room, police searched them. As PW2 told that he had given marked currency notes to the respondent in Criminal Appeal No. 424 of 1997 sitting at the counter, the lady constable searched her and found an amount of Rs. 1960/- within it containing marked currency notes with her. The said amount was seized by the police. The police also found some liquor and beer in one room of the said flat denoting that both the respondents used to sell the said liquor to

the customers. The same was seized by the police by drawing panchanama Exh. 14. PW5 arrested the respondents and charge-sheeted them.

4. Both the respondents pleaded not guilty to the charge framed against them. The prosecution examined the above referred five witnesses at the trial. The defence of the respondent was that of total denial and false implication. The trial Court after appreciation of the prosecution evidence by the judgment and order dated 15.6.1996 convicted both the respondents and sentenced each of them to undergo R.I. for one year and pay the fine of Rs. 1,000/-. During the said judgment amongst others trial Court concluded that the evidence of PW1 and PW2 had remained unshaken. In the appeal preferred by the respondents against the said judgment and order, the Appellate Court at Pune by the Judgment and Order delivered on 13.03.1997 set aside the order of conviction and acquitted the respondents.

5. Mr. Sandip Shinde, the learned A.P.P. urged that the Appellate Court without in cogent reasons reversed the order of conviction and sentence passed by the trial Court. He urged that the Appellate Court gave unnecessary importance to the discrepancies arising in the evidence of PW1 and PW2 and discarded their evidence regarding the raid. It was urged that the Appellate Court failed to appreciate the prosecution evidence in proper perspective and missed the important circumstances established by the said evidence. He urged that the judgment given by the Appellate Court cannot be legally sustained and the same is liable to be quashed and set aside.

6. The learned counsel for the respondents by taking through the evidence adduced by the prosecution and so also judgment delivered by both the Courts supported the judgment delivered by the Appellate Court. He urged that the Appellate Court had properly appreciated the evidence on record and set aside erroneous finding arrived by the trial Court which was not warranted upon the evidence surfaced. He urged that since the said judgment given by the Appellate Court cannot be termed as a perverse or dehors the record, no interference with the same is required in State appeal against the judgment and order of acquittal.

7. Thoughtful consideration were given to the submission advanced and the record and proceedings were carefully considered to ascertain merits of the said submissions. After such a consideration it is difficult to accept that the Appellate Court committed an error in coming to the conclusion that the prosecution evidence and particularly that of PW1 and PW2 is full of discrepancies and contradictions and fails to establish the case beyond doubt. Considering the prosecution evidence it is difficult to find fault with the observations made by the trial Court that the respondent in Criminal Appeal No. 437 was not found in the flat in which the raid was effected. The judgment delivered by the Appellate Court also reveals that due consideration was given to the case of the prosecution that ACP Shejal was instrumental and present for the said raid and said to have signed the currency notes given to PW2 was not examined by the prosecution nor any explanation was given for his non-examination. The perusal

of the evidence of PW4 who had taken search of respondent in Criminal Appeal No. 424 of 1997 reveals that the Appellate Court was very much right in observing that the said witness admitted of handing over the currency notes to ACP Shejal after raid hence it is difficult to find fault with the observation of the trial Court that examination of ACP Shejal was necessary.

8. Since careful consideration of the evidence of PW2 and PW3 reveal that the same do not establish that they were found in compromising position, it is difficult to find any fault with such a conclusion arrived by the trial Court after appreciation of their evidence. In the said context the evidence of PW2 reveals that after taking PW3 in the room he had closed the same from inside and thereafter he had asked her to remove her clothes and then he has removed his own clothes and embarrassed her. The evidence of PW1 reveals that the room in which PW2 and PW3 were found was bolted from inside. The said evidence thus makes it difficult to accept that the raiding party could have seen both of them in compromising position as alleged. The same adversely affect claim of PW4 who deposed that PW2 was in full naked condition and lady was standing next to him. Significantly PW4 even did not claim of having seen both of them in compromising position. The close look at the evidence of the said witnesses and so also that of PW5 reveals irreconcilable variance in their evidence regarding the situation in which both of them were found. Needless to say that the evidence of PW3 is adverse to the claim stake by PW2 as she did not accept that either PW2 had asked her to remove the clothes or they were found in compromising position. Her evidence is confined to rushing of the persons in the room and taking them to the police station. The observations made by the Appellate Court that during the cross-examination of PW3 it was not elicited as to who was engaged in the prostitution or found in compromising position with PW2 is also in consonance with her evidence.

9. Similarly, it was rightly contended by the learned counsel for the respondent that there exists variance regarding the vehicles used for the raid as Panchanama Exh. 15 denotes user of a single Government vehicle while that of PW5 speaks of user of two Jeeps by all while PW4 claimed of Shejal alone coming by a separate jeep. Without reproducing the claim stake by each of the witnesses regarding said aspect it can be safely said that there occurs variance in their evidence creating a grave doubt of the raid having occurred in a manner as claimed by the prosecution. The same is the case regarding the evidence of PW2 and PW1 regarding the place at which and the manner in which currency notes were initialed by ACP Shejal. There also exists the variance regarding handing over of the notes to PW2 i.e. ACP Shejal. PW1 and PW2 claimed that the notes were signed by PW5.

10. Resultantly, the close scrutiny of the prosecution evidence of which only few illustrations are narrated hereinabove, leads to the conclusion that the conclusion drawn by the Appellate Court of the said evidence being full of variance of contradictions and not establishing guilt of the respondents beyond fail of doubt,

is apparently correct and based upon proper appreciation of the prosecution evidence. In the said circumstances, it is difficult to accept the submission of the learned A.P.P. that the Appellate Court had not properly appreciated the prosecution evidence and without cogent reasons altered the judgment and order of conviction passed by the trial Court. As a matter of fact the perusal of the said judgment reveals cogent reasons recorded by the Appellate Court in reversing the finding and setting aside the order of conviction not warranted upon the prosecution evidence and erroneously arrived at by the trial Court. In the premises aforesaid, there are no merits in the appeal preferred and the same deserves to be and accordingly is dismissed.