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I N T H E S E S S I O N S C O U R T , P U N E .

(Before: Smt. L.L.Yenkar, District Judge-14 and
 Additional Sessions Judge, Pune.)

SESSIONS CASE NO. 30/2013

EXH. NO.

State of Maharashtra | **Complainant.**
 Through Faraskhana Police Station,Pune. |

Versus

- 1] Nirmala Raju Nayak,
Age: 32 Years, Occ.: Prostitution,
- 2] Radha Venkatesh Shetty,
Age 40 years, Occ.- Prostitution,

Both R/o. New Sagar Bldg., 3rd floor,
House No. 1035, Budhwar Peth, Pune.
- 3] Sagar Shivaji Khanvilkar,
Age- 32 years, Occ.- Nil,
R/o. Flat No.A/208, Samruddhi Heights,
Behind Bharati Vidyapeeth, Near Hotel
Chandrabhaga, Pune-46.

Accused.

**Charge under sections 343, 366,
 323 and 504 read with section
 34 of I.P.C. and under sections 3,
 4,5,6 and 7 of Immoral Traffic
 (Prevention) Act.**

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Smt. U.A.Raskar, A.P.P. for the State.
 Shri. V. B. Supekar, Advocate for the accused.

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J U D G M E N T
 (Delivered on 11th March, 2016)

The accused have faced this trial for having committed
 offences punishable under sections 343, 366, 323 and 504 read

with section 34 of the Indian Penal Code and under sections 3,4,5,6 and 7 of the Immoral Traffic Prevention Act.

2] Facts of the prosecution case, in brief, are as below :-

On 25-2-2012, at about 12.15 hours, information was received that at New Sagar Building, House No. 1035, Budhwar Peth, Pune, on the third floor, one girl namely Piyarabano Zohirul Haque has been confined since last four days and prostitution business is getting done from her forcibly. She does not want to do such business and she wants to go to her home and she has to be rescued. PSI - Ashwini Jagtap has told about this information to P.I. Bhanupratap Barge. He asked PSI Ashwini Jagtap to prepare raiding party and to effect raid. Smt. Ashwini Jagtap along with police staff and panchas effected raid at the aforesaid spot at about 13.25 hours. There was a brothel on the third floor, new Sagar Building and in the hall of brothel, ten girls were sitting with make up. On asking, those girls, told their names. It was found that the girl Piyarabano Zohirul Haque was not amongst them.

3] Hence, inspection of the brothel was done with the help of the staff. One girl was found hiding herself under the cot in adjoining room. She was taken in custody by police. On asking, she told her name as Piyarabano Zohirul Haque and she told her age as 22 years. She told that one boy by name Prashant brought her to Pune stating that he will get her employed in a good company and then he had given her in the custody of two girls, who were standing near the building. Prashant then went away. The said two ladies had taken her to a room and told that she was given in their custody for the purpose of prostitution business. On her refusal to do such business, she was abused and beaten and she was confined in the room. She was compelled to do prostitution business. The said women kept the amount with them, which was obtained from such business. Piyarabano Zohirul Haque has disclosed the names of these ladies as Nirmala and Radha i.e.

the present accused No.1 and accused No.2. On making enquiry about ownership of the brothel, it was found that Radha Shetty i.e. accused No.2 was the owner of the brothel and she has taken the said house on rent from Sagar Khanvilkar i.e. accused No.3.

4] After effecting raid, PSI Ashwini Jagtap lodged complaint on 25-2-2012. After lodging complaint, investigation was carried out. Panchnamas were prepared. Statements of witnesses were recorded. After completion of investigation, charge-sheet was filed against the accused in the court of J.M.F.C., Court No.2, Pune. Subsequently, the case came to be committed to the Court of Sessions.

5] The accused appeared before the Court of Sessions. Charge was framed against them under sections 343, 366, 323 and 504 read with section 34 of the Indian Penal Code and under sections 3,4,5,6 and 7 of the Immoral Traffic Prevention Act vide Exh.14. Statements of the accused were recorded vide Exh.15, 16 and 17. The accused pleaded not guilty to the charge and they claimed to be tried. Their defence was that of total denial.

6] From these facts, following points arise for determination. I have recorded my findings against them for the reasons stated thereafter.

<u>Sr. NOS.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Does prosecution prove that on 25-2-2012 at 13.25 hours at New Sagar Building, Third floor, House No.1035, Budhwar Peth, Pune, accused No.1 to 3 in furtherance of their common intention, wrongfully confined the girl Piyarabano Zohirul Haque?	In negative.
2]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 in furtherance of their common intention, kidnapped above said girl	In negative.

	Piyarabano Zohirul Haque with intent that she may be compelled or forced or seduced to illicit intercourse?	
3]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 in furtherance of their common intention, voluntarily caused hurt to Piyarabano Zohirul Haque ?	In negative.
4]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 in furtherance of their common intention, intentionally insulted the victim Piyarabano Zohirul Haque and gave her provocation intending or knowing it to be likely that such provocation will cause her to break public peace ?	In negative.
5]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 kept or managed a brothel by keeping the said girl Piyarabano Zohirul Haque ?	In negative.
6]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 lived wholly or in part on the earnings of the prostitution of said girl Piyarabano Zohirul Haque ?	In negative.
7]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 procured the above named girl, without her consent, for the purpose of prostitution ?	In negative.
8]	Does prosecution prove that on the above said date, time and place, accused No.1 to 3 detained the above named girl without her consent with intent that said girl will have sexual intercourse with a person, who is not her spouse ?	In negative.
9]	Does prosecution prove that on the above said date, time and place, accused	In negative.

	No.1 to 3 knowing well that there is a place of worship within 200 metres, carried a brothel at the aforesaid place ?	
10]	What order ?	As per final order.

REASONS

Point No. 1 to 9 :-

7] Points No.1 to 9 are interlinked with each other and revolve around the same incidence. Those are, therefore, preferred to be decided simultaneously.

The prosecution in the instant case in order to prove the charges levelled against the accused, has examined five witnesses in all. One Nalini Sarthe and Sudhakar Deshmukh, who are panch witnesses on panchnama dated 25-2-2012 have been examined as P.W.1 and P.W.2 vide Exh. 22 and 23 respectively. The complainant API Ashwini Mangesh Jagtap has been examined as P.W.3 vide Exh.30. Dy. S.P. Hanumant Sambhaji Bhapkar has been examined as P.W.4 vide Exh.40 and Investigating Officer retired P.I. Anant Rajeshirke has been examined as P.W.5 vide Exh.51.

8] P.W.1 and P.W.2, who are independent panch witnesses in this case turned hostile and they have not stated the fact of preparation of panchnama in their presence and they have not supported the prosecution case. Both these witnesses are cross-examined by learned A.P.P. Smt. Raskar. However, nothing is extracted in their cross examination in support of the prosecution. It is, therefore, needless to state that the evidence of these two witnesses is of no use for prosecution.

9] Thus, it is the evidence of P.W.3, P.W.4 and P.W.5, who are police witnesses, which needs to be considered and it is to be

seen whether their evidence is sufficient to prove the guilt of the accused.

10] Having gone through the evidence of Ashwini Jagtap (P.W.3), it appears that she has narrated the prosecution story as per her complaint and prosecution by examining this witness has proved the complaint Exh.31. She has stated the fact of effecting raid on 25-2-2012 at New Sagar Building, Budhwar Peth, Pune. She has stated that one girl by name Piyarabano Zohirul Haque was found in the brothel and she told that Nirmala and Radha had beaten her, they had threatened her and got the prostitution business done from her.

11] Dy. S.P. Hanumant Bhapkar (P.W.4) and retired P.I. Anant Rajeshirke (P.W.5) appear to be the investigating officers in this case and they have stated as to what has been done by them in the course of investigation in this particular case. Shri. Bhapkar (P.W.4) has stated that on 1-3-2012, he had visited the spot and recorded statement of the victim girl as per her say and further investigation was carried out by P.I. Anant Rajeshirke. It reveals from his evidence that he had not gone to the spot for effecting raid and he, therefore, does not know personally as to in which particular house the raiding party had gone and in which house raid was effected. The evidence of this witness, therefore, does not appear to be of much use for the prosecution.

12] So far as the evidence of P.W.5 is concerned, it appears that P.I. Shri. Barge has prepared panchnama Exh.52 in his presence. This witness has also narrated the story about effecting raid on 25-2-2012 and has supported the prosecution case.

13] Now a question arises as to whether the evidence of these three witnesses, who are all police witnesses, is sufficient to hold the accused guilty. In this regard, Shri. Supekar, the learned counsel for the accused, has submitted in his argument that API –

Ashwini Jagtap (P.W.3) in her evidence has been unable to explain as to where the said building is situated. Dy. S.P. Shri. Bhapkar (P.W.4) had not gone for effecting raid and his evidence does not assist the prosecution case and he has simply recorded the statements of the witnesses. Advocate Shri. Supekar has further submitted that P.I. Anant Rajeshirke (P.W.5), who is an investigating officer in this case, has not collected any information and no documents about the spot are proved by the prosecution. Unless the spot is proved, confinement cannot be proved. Thus, the prosecution has utterly failed to prove any of the charges levelled against the accused. Considering the entire evidence on record, the argument advanced by Advocate Shri. Supekar appears to be acceptable.

14] While arguing this matter, it is also submitted on behalf of the accused that no customer was found on the spot at the time of effecting raid and the evidence of the complainant and the investigating officer is hear-say evidence and there is no compliance of provisions of section 15 of Immoral Traffic (Prevention) Act.

15] P.W.3, P.W.4 and P.W.5 being the police witnesses have stated as to what has been done by them in this particular case. However, their evidence is not supported by any independent witnesses. P.W.1 and P.W.2, who were in raiding party and who were present at the time of preparation of panchnama, have not supported the prosecution case and this fact goes in favour of the accused.

16] Besides, it has to be noted that P.W.3 in her cross-examination has been unable to state as to on which road, New Sagar Building is situated and she has been unable to state as to how many houses were there on the third floor. She has also admitted that on the building, where raid was effected, it was not written as “New Sagar Building”. It is also brought on record in the

evidence of this witness that no any incriminating article was seized from the spot. Thus, considering the entire evidence of P.W.3, it can be said that the prosecution has not been able to prove the spot, where raid was effected and consequently has not been able to prove that the victim girl was confined and was compelled to do prostitution business. The uncorroborated testimony of P.W. 3 to P.W.5 thus cannot be said to be sufficient to prove the guilt of the accused.

17] With this discussion, I have no hesitation to hold that the prosecution has failed to prove any of the charges levelled against the accused, beyond the realm of reasonable doubt. I, therefore, answer Points No. 1 to 9 in the negative.

Point No.10 :-

18] In view of my findings to Points No.1 to 9, the accused are entitled for acquittal. In the result, I pass the following order :-

ORDER

Accused No.1) Nirmala Raju Nayak, 2) Radha Venkatesh Shetty and 3) Sagar Shivajirao Khanvilkar are acquitted for the offences punishable under sections 343, 366, 323 and 504 read with section 34 of the Indian Penal Code and under sections 3,4,5,6 and 7 of the Immoral Traffic Prevention Act.

The bail bonds of the accused stand cancelled.

Accused are set at liberty.

The accused shall furnish P.B. & S.B. of Rs. 15,000/- each for next period of six months as required under section 437-A of Code of Criminal Procedure, 1973.

Date : 11/3/2016. (Smt. L.L.Yenkar)
Additional Sessions Judge, Pune.

I affirm that the contents of this PDF file Judgment are same word to word as per original Judgment.

Name of Steno : Mr. S.R. Shahane.

Court Name : Smt. L.L. Yenkar.

Additional Sessions Judge, Pune.

Date on which the P.O.

Signed the judgment : 11/3/2016

Date of PDF file: 11/3/2016

Judgment uploaded on : 0/3/2016

