



Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.65 OF 2015

The State of Maharashtra]
(Through Dindori Police Station,]
Taluka – Dindori, District Nashik,]
Vide C.R. No.27 of 2013)] Appellant
(Orig. Complainant)

Versus

Vijay Bhika Dive]
Age: 36 years,]
R/o – Kochargaon,]
Taluka – Dindori,]
District. Nashik] Respondent
(Orig. Accused)

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Ms. G.P. Mulekar, A.P.P, for Appellant-State.

Mr. Rajesh B. Parab, for Respondent.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 22nd DECEMBER, 2023.
PRONOUNCED ON : 15th JANUARY, 2024.

JUDGMENT:

1. State has taken an exception to a judgment and order dated 9th December, 2013 passed by Ad-hoc Additional Sessions Judge, *Nashik* in Session Case No.201 of 2013 by which respondent-accused was acquitted of the offences punishable under Sections 363, 366A of the Indian Penal Code, 1860 (for short “I.P.C”) and

Section 5 of The Immoral Traffic (Prevention) Act, 1956 (for short “Act of 1956”).

2. Facts in brief, are as follows.

3. Victim was a 14 years old girl and the daughter of the first informant. She was prosecuting her studies in a *Ashram* School in 9th standard situate at *Gayachiwadi*. It was a Boarding School. Her parents were residents of *Nashik*. Victim’s brother - Rajendra and his wife were residing at *Kochargaon Taluka Dindori*, District *Nashik* along with their children. The respondent-accused was a neighbour of Rajendra. Since families of the victim and the respondent-accused were acquainted, victim and other siblings used to call the respondent as “*Mama*” (maternal uncle).

4. Due to Holidays to the School, the victim had been to her brother Rajendra on 16th February, 2013. On 21st February, 2013, around 7.00 p.m, the victim had visited the house of the respondent-accused. At that time, wife of the respondent informed the victim that they would be visiting the temple of Goddess *Saptashrungidevi* on the following day, upon which, the victim

expressed her willingness to accompany wife of the respondent along with her younger sister. The respondent, however, stated that the victim should not bring her younger sister. When victim returned to the house of her brother Rajendra and informed his wife about her intention to accompany with the wife of the respondent to go to *Vani*, Rajendra's wife asked the victim not to accompany with the respondent and his wife.

5. However, on the next day, the victim had been to the house of the respondent who took her to *Nashik* under the pretext of purchasing clothes and *Chappal*. After reaching *Nashik*, the respondent took the victim to *Thakare Galli*, which is a red light area having brothels. The respondent met a woman and informed her that he had brought a girl. The said woman, after noticing the victim abused the respondent. The respondent thereafter approached another woman, a prostitute, and demanded a room. He asked the victim to enter into the said room immediately after it was provided to him by the said woman. No sooner did the victim enter into the room, she got scared as she noticed several cots kept in the said room. She started weeping and ran away from the said place. A few women met her on the way and asked as to what had

happened with her. The victim narrated the incident to the said women who were Social Workers of one “*Disha Sanstha*” which takes care of welfare of the prostitutes. Said women informed the Police. Subsequently, the victim and the respondent were taken to *Bhadrakali* Police Station, *Nashik*. The victim again narrated the incident to the Police and gave phone number of her father and brother. Her father arrived at the Police Station and lodged a report against the respondent.

6. A crime was registered bearing C.R. No.27 of 2013 under Sections 363, 366A of the I.P.C and Section 5 of the Act of 1956 with *Dindori* Police Station on 22nd February, 2013.

7. P.W.7- Vilas Wamanrao Kohinkar, who was attached to *Dindori* Police Station as a Inspector held investigation into the crime. He recorded statements of the witnesses, drew *panchanama* and referred the victim for medical examination. After the investigation, he laid a charge-sheet against the respondent.

8. A charge was framed against the respondent by the Ad-hoc Additional Sessions Judge, *Nashik* on 27th June, 2013 under the

Sections referred hereinabove. The respondent pleaded not guilty and claimed a trial. The respondent has denied the commission of the offences alleged against him raising a defence that the victim accompanied him at the behest of her brother and his wife. He did not kidnap the victim from the lawful guardianship of her brother and his wife.

9. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), he stated that some women residing in *Thakare Galli* tried to snatch money from his pocket and upon his resistance, they took him to the Police Station and lodged a false report. According to him, he was going to *Nashik* to take his children to home when the victim's brother and his wife sent the victim with him. Despite his reluctance to take the victim with him, her brother and his wife prevailed upon him to take the victim with him. No defence evidence has been adduced on his behalf.

10. Learned Additional Sessions Judge, after going through the evidence of the prosecution and after hearing the respective sides, by the impugned judgment and order gave benefit of doubt and acquitted the respondent as above.

11. I heard Ms. Mulekar, learned A.P.P at length as well as Mr. Parab, learned Counsel for the respondent-accused.

12. Learned A.P.P would argue that un-disputedly the victim had accompanied the respondent as she was enticed by him which is evident from her testimony. My attention is invited to the testimony of P.W.3 – Sushila Rajaram Ghanwate, who runs a Brothel and knew the respondent very well as he used to bring women to her for immoral trafficking. Learned A.P.P would argue that the conduct of the respondent in taking the victim to the red light area itself is sufficient to attract ingredients of Section 5 of the 1956 Act as well as Section 366A of the I.P.C. She submits that there is no reason to disbelieve P.W.3 – Sushila Ghanwate as there is no reason for her to depose against the respondent as regards his conduct and the fact that he brought the victim to her under the pretext of buying clothes and *Chappal* for her. The learned A.P.P has also emphasized on the fact that even another witness P.W. 4 – Latabai Babasaheb Kapse, who is a Social Worker with “*Disha Sevabhavi Sanstha*” has testified about the incident and the fact that the respondent was inquiring about a room on rent in the red light area.

13. It is submitted that the trial Court has swayed away with the false defence raised by the respondent during trial. It is further submitted that the prosecution had proved its case beyond all reasonable doubts against the respondent and, therefore, the impugned judgment is nothing but a wrongful acquittal of the respondent ignoring the clinching evidence brought forth by the prosecution during trial. It is submitted that merely because brother of the victim and his wife were not examined would not *ipso facto* mean that the prosecution has failed in proving the charge against the respondent beyond all reasonable doubts.

14. Per contra, Mr. Parab supported the impugned judgment by inviting my attention to the cross-examination of the victim wherein certain vital admissions, according to the learned Counsel would disprove the prosecution's case as regards kidnapping of the victim from lawful guardianship. The Counsel would argue that the victim on her own accord volunteered to accompany the respondent despite his reluctance and, therefore, it would not be a case of kidnapping from lawful guardianship or even a case for procurement of a minor girl under the age of 18 years with an intention to force or seduce her to illicit intercourse with another person.

15. Mr. Parab would further argue that the Court should be slow while interfering in the judgment of acquittal. He also pointed out that non examination of brother of the victim and his wife is fatal to the prosecution's case.

16. P.W. 1 – first informant is the father of the victim. His evidence indicates that he was acquainted with the respondent-accused and his children used to call him as “*Mama*” (maternal uncle). His evidence further reveals that he came to know about the incident on 22nd February, 2013 when he received a phone call from his son Rajendra. He approached *Bhadrakali* Police Station where the victim and the respondent-accused were sitting. The victim narrated the incident as to how she came to the Police Station. His evidence is of hearsay nature, however, he categorically testified that his daughter informed him as to how she was brought to *Nashik* by the respondent when, in fact, the respondent's wife had informed the victim that they would be going to *Vani* on the following day. She also narrated the fact that she was brought to *Nashik* under the pretext of purchasing clothes and *chappal*. However, the respondent took her to *Thakare Galli* and thereafter women from the Social Organization noticed the frightened victim

and, therefore, she was brought to the Police Station. During his cross-examination, nothing has been elicited which would render his evidence unbelievable. The cross reveals that at the time of the incident, victim and her sister were staying at *Kochargaon* with her brother Rajendra. This witness, however, denied a suggestion that the victim was sent with the accused by his son Rajendra and his wife. He also stated that there was no dispute between him and the respondent-accused prior to the incident.

17. Evidence of the victim would be important in this case who was 14 years old at the time of giving evidence. She testified that at the relevant time, she was in 9th standard in a *Ashram* School situated at *Gayachi Wadi*. Her brother Rajendra was resident of *Kochargaon*. Since it was a Saturday, the 16th of February, 2013, she had been to the house of her brother Rajendra. As already stated, the victim used to call the respondent as *Mama* and, therefore, on 21st February, 2013, she along with her sister had been to his house. Wife of the respondent had informed that they would be going to *Vani* on the next date. The victim told her that she would bring her younger sister, upon which, the respondent asked her not to bring her younger sister. The victim thereafter informed her brother's

wife about her plan to accompany the respondent to *Vani*. On the next date, she visited the house of the respondent. The respondent asked the victim to walk up to a bridge and thereafter he would come and pick her up. Accordingly, the respondent arrived on a motorcycle and asked her to occupy it. The respondent took her to Village *Girnare*. At *Girnare*, the victim and the respondent noticed cousin of the victim. The respondent asked the victim not to show herself to her cousin. The respondent thereafter brought her to *Nashik* in a Jeep. He thereafter took her to a building in an unknown area after passing through lanes. There was a woman to whom the respondent had stated that he had brought a girl with him. The woman asked the respondent to bring her. The respondent took the victim to the said woman. The said woman thereupon abused the respondent by saying that “काय रे मुर्खा, जास्त माजला का?” The respondent thereafter slapped on the head of the victim. The respondent had demanded a room on rent from another woman and asked the victim to enter into the said room immediately. Upon entering into the said room, the victim noticed several cots over there. She got scared and started running away from that place, however, five to six women intercepted and inquired with her, whereupon she told them about the incident.

Thereafter, some persons arrived over there and had beaten the respondent and was taken to the Police Station.

18. In her cross-examination, the victim admits that on the day of the incident, she accompanied the respondent on a Motorcycle which belonged to one Ashok Lilke who is her uncle. It has been reiterated that the respondent took the victim towards Village *Girnare*. The *mens rea* of the respondent is writ large which is evident from the evidence of P.W.3 – Sushila Ghanvate.

19. The cross-examination further reveals that from a river near Village *Kochargaon*, the respondent took the victim to *Girnare* on another Motorcycle of one Karanjlikar. From Village *Girnare*, the respondent took the victim in a Jeep wherein there were 15 to 16 passengers. The victim further testified that two children of the respondent were taking education at *Ashram* School at *Nashik*, however, she denied a suggestion that the respondent – accused had been to *Nashik* to take his children since those were holidays viz: Saturday and Sunday. It is further suggested that the respondent wanted to purchase clothes for his children and that the victim had also asked him that she wanted to purchase clothes from *Nashik*.

20. Cross-examination of the victim further indicates that she had not asked the Driver of the Jeep as regards fare and place where the Jeep was going. After reaching *Nashik*, all the passengers alighted from the Jeep. The victim was unaware of the place at *Nashik* where she had alighted. The cross further reveals that the respondent took her to *Thakare Galli* after about one hour. She denied the suggestion that while they were walking, few women obstructed them and started snatching mobile from the pocket of the respondent. She also denied the suggestion that the respondent stated that they all were bad persons and that the victim should accompany with him fast.

21. Thus, it can be seen even from the cross-examination of the victim that instead of taking her to *Nashik*, the respondent took her to Village *Girnare* first and thereafter to *Nashik* in a Jeep. If the respondent was to visit *Saptashrunji Vani*, it is difficult to digest as to how he would take the victim to *Nashik* and that too, in an area which is known as “*Thakare Galli*”. It is admittedly a red light area where Brothels are run. Even if the story of the respondent that the victim, despite his reluctance, voluntarily accompanied him would not absolve him from the offence of kidnapping her from lawful

guardianship as provided in Section 361 of the I.P.C as it is evident from the evidence of the victim itself that she was admittedly below 16 years of age and she was enticed by the respondent without the consent of her lawful guardians namely her brother Rajendra and his wife. This is for the simple reason that the respondent had asked the victim to accompany him on a Motorcycle near a bridge and not directly from his house. It is not the contention of the respondent that he took the victim in good faith and was indeed taking her to *Saptashrungidevi* temple as it has not been suggested to any of the witnesses by the defence. Since the victim was 14 years of age, her act of alleged voluntarily accompanying with the respondent would be insignificant as it would indeed amount to kidnapping from her lawful guardianship. As such, the offence of kidnapping from the lawful guardianship has been established and proved by the prosecution.

22. Having considered the evidence of the victim as well as other witnesses, it is explicit that the respondent had an intention right from the beginning to bring the victim to *Nashik* in order to procure purpose of her prostitution in the red light area. It is evident that on 21st February, 2013 itself when the victim expressed

her desire to accompany with the respondent along with her younger sister, the respondent asked her not to accompany with her sister. Secondly, if the victim was to be taken to the temple of Goddess *Saptashrungi* at *Vani*, why she was taken to *Nashik*. Thirdly, why the respondent asked the victim to walk up to the bridge and, thereafter, carried her on a motorcycle. Fourthly, upon noticing cousin of the victim at Village *Girnare*, why respondent asked the victim not to show herself to the cousin. The motive of the respondent, his preparation as well as his previous conduct in view of section 8 of the Evidence Act is quite relevant in the given set of circumstances. These are all the relevant facts which cannot be lightly brushed aside. The intention and *mens rea* of the respondent is writ large which is even evident from the evidence of P.W. 3 – Sushila Ghanwate and P.W. 4 – Latabai Kapse. The respondent is not an innocent person as tried to be demonstrated by the defence in light of the fact that he has been frequent visitor of the red light area of *Nashik* where he used to bring women for trafficking.

23. To that end, testimony of P.W. 3 – Sushila Ghanwate would be relevant. She testified that she is a resident of *Thakare Galli, Nashik*

where she has been running a Brothel for 35 years. The respondent always used to bring women. At the relevant time, the respondent had brought the victim around 11.00 a.m to 12.00 noon who was aged about 14 to 15 years. Her evidence further indicates that the said girl was frightened and was weeping. At that time, the respondent had asked for a room whereupon this witness called P.W. 4 – Latabai Kapase and one Parvin Shaikh. P.W. 3- Sushila Ghanwate informed them that the respondent had brought a girl. At that time, one Alka Gurav was also present. They called the Police by making a phone call. Evidence of this witness further indicates that when she asked the victim as to the place from where she was brought, the victim informed her that the respondent had brought her under the pretext of purchasing *chappal* for her. Thereafter, Police had obtained phone number of the victim's father and brother and they were called. This witness along with other women accompanied the victim and the respondent to the Police Station where their statements were recorded.

24. Interestingly, it has been substantiated in the cross-examination that P.W. 3 – Sushila Ghanwate has been running a Brothel illegally for 35 years. She also admits that the Police always

used to conduct raids at her Brothel and there are several cases against her for which she was required to attend the Courts. She admits that she has good relations with the Police. It was suggested to this witness that she has falsely deposed against the respondent as regards bringing the victim and asking for a room. She also denied the suggestion that she had falsely deposed about the frequent visits of the respondent to the Brothel who used to bring women. She admits in the cross-examination that at the opening of *Thakare Galli*, there are stalls of clothes on the road. She also admits that she used to give rooms to other girls. She has denied a vital suggestion that if a person refuses to become her customer, she would snatch his money.

25. Her evidence has not been shattered in the cross-examination in so far as the fact of bringing the victim to her Brothel and the conversation which she had with the respondent at the relevant time. It has also been proved that the respondent not only took the victim at the red light area, especially to the said witness, but even asked for a room. This act, indeed, would attract ingredients of Section 5 of the Act of 1956, which reads thus;

“5. Procuring, inducing or taking [person] for the sake of prostitution.-

(1) Any person who -

(a) procures or attempts to procure a [person], whether with or without [his] consent, for the purpose of prostitution; or

(b) induces a [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 [person], or causes a [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 [person] to carry on prostitution;

[shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a terms of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,-

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

26. The evidence of P.W. 3 – Sushila Ghanwate coupled with the evidence of the victim and the evidence of P.W.4 – Latabai Kapse who spoke in tune with P.W. 3 – Sushila Ghanwate would precisely attract ingredients of Section 366A of the I.P.C as it has been established that the respondent induced the victim by taking her with an intention to seduce her to illicit intercourse. There is every reason to construe that the respondent had full knowledge and intention that because of his conduct of procuring the victim, she would be likely to be seduced to illicit intercourse with another person.

27. Even, P.W. 4 – Latabai Kapse, a Social Worker with *Disha Sevabhavi Sanstha* testified that she received a call in February, 2013 from Alka Gurav to which P.W. 3 – Sushila Ghanwate had already made a reference informing this witness about the incident in *Thakare Galli*. This witness reached *Thakare Galli* within 10 minutes. She had seen the victim with the respondent. Other women present over there told this witness that the accused was demanding a room on rent and, therefore, the said women called this witness. Thereafter, this witness along with those women, victim and the respondent had been to the Police Station. The

victim told the Police about the incident as to how she was brought to *Nashik* by the respondent on the pretext of purchasing *Chappal* and clothes. The victim was quite frightened. Subsequently, she has given phone number of her father.

28. Evidence of P.W. 4 – Latabai Kapse also remained unshattered and un-rebutted during cross. Rather, it has been substantiated that P.W. 4 – Latabai Kapse is a Secretary of *Disha Sanstha* which was a registered organization. She always visits Police Station in connection with social work. The defence has tried to suggest that this witness was an accused in a crime for which she was in Central Jail, *Nashik* for 20 days, which she had denied in clear terms. Interestingly, it is suggested to this witness that she was lodged in Central Jail at *Nashik*, she had a visit with the respondent which essentially means that the respondent was also in *Nashik* Jail, perhaps in connection with a crime involving women trafficking or some other crime which strengthens the testimony of P.W. 3 – Sushila Ghanwate as regards his frequent visits to her brothel with women. It can reasonably be inferred from the facts and evidence as well as from the attending circumstances that he is not at all an innocent person. He rather feigned innocence.

29. P.W. 5 – Alka Raghu Gurav is another important witness who testified that on 22nd February, 2013 around 11.00 a.m, the respondent had brought a girl in *Thakare Galli*. This witness is also resident of *Thakare Galli, Nashik*. Admittedly, this witness is also a prostitute for last 30 years. Her evidence further reveals that the respondent was demanding a room from P.W. 3 – Sushila Ghanwate. The victim was about 13 to 14 years of age which is an undisputed fact. When P.W. 3 – Sushila Ghanwate called this witness and informed about demand of the accused, who had brought a girl, this witness had called some other women. They gave a call to *Disha Sanstha* and thereafter Parvin Shaikh and P.W. 4 – Latabai Kapse came over there. They had called the Police. She categorically testified that the respondent tried to escape from the spot but he was caught and thereafter was handed over to the Police. This witness had also categorically deposed that the victim had informed them that she was brought by the respondent to *Nashik* under the pretext of purchasing clothes and *Chappals*. This witness had signed *panchanama* which was prepared by the Police at the house of P.W. 3 – Sushila Ghanwate which is at **Exhibit – 20**.

30. Merely because certain crimes were registered against P.W. 5 - Alka Gurav by the Police in light of her profession of prostitution does not *ipso facto* mean that her evidence is to be viewed with suspicion as I find no reason to disbelieve her. Rather, it is praiseworthy and laudable that despite being in the profession of prostitution, these witnesses namely P.W. 3 – Sushila Ghanwate, who was aged about 65 years, P.W. 4 – Latabai Kapse who was 42 years and this witness who was 45 years at the time of recording evidence successfully prevented a futile attempt of the respondent to put the victim into the business of prostitution who was just 14 years of age. The candor with which the witnesses testified leaves no doubt in my mind about the veracity and truthfulness of their evidence, if juxtaposed with the evidence of the victim and the attending circumstances.

31. The fact that the victim was enticed and brought to *Nashik* under the pretext of purchasing clothes and *Chappals* is proved to be an omission, nevertheless, it would not be a material omission in view of discussion made hereinabove.

32. P.W. 6 – Aarati Khetmali was working as P.S.I at the relevant time with *Bhadrakali* Police Station. The sum and substance of her evidence is that on 22nd February, 2013, pursuant to receipt of a phone call from the workers of one *Disha Sanstha* in connection with the victim and the respondent, she had sent some Policemen, who brought the respondent and the victim at the Police Station. This witness inquired with the victim and also obtained phone number of her father. The complaint was written by this witness which is proved at **Exhibit – 27**. She identified the respondent to be the same person with whom the victim accompanied. The crime was subsequently transferred to *Dindori* Police Station. Transfer letter is at **Exhibit 28**. There is nothing in her cross-examination by the defence except the admission that there were chapter cases against the said *Disha Sanstha* at *Bhadrakali* Police Station.

33. P.W. 7 – Vilas Kohinkar was attached to *Dindori* Police Station as Police Inspector at the relevant time. Initially, on 22nd February, 2013, C.R. No.00/2013 was registered with *Bhadrakali* Police Station which was transferred to *Dindori* Police Station. This witness had directed P.S.I Shaikh to register a crime and to conduct investigation. However, this witness himself conducted further

investigation in this case. Spot *panchanama* was prepared which is at Exhibit – 20. The evidence of this witness is relevant only to the aspect as to how the investigation was conducted and nothing more in light of the proof of other material facts.

34. Extract of attendance register of the Ashram School which is at Exhibit 24 proved the fact that the victim was absent from the School at the relevant time.

35. The impugned judgment is perverse and is in total ignorance of the clinching evidence of the victim as well as P.W. 3 – Sushila Ghanwate, P.W. 4 – Latabai Kapse and P.W. 5 – Alka Gurav as the learned trial Court has not correctly appreciated and discussed the testimonies of these important witnesses. The learned Judge, though in paragraph 9 of the impugned judgment, while describing the admitted facts that the respondent had brought the victim to *Nashik* and took her to *Thakare Galli* at the brothel, conveniently ignored this important aspect in later part of the judgment as to why the respondent took the victim in the red light area where Brothels were situated. The learned trial Judge has committed a grave error in observing that as prosecution did not examine brother of the

victim and his wife and, therefore, concluded that it was the victim who voluntarily accompanied the respondent to *Nashik*. According to the learned Judge, the respondent – accused could not get an opportunity to bring the fact on the record that brother of the victim himself had asked the respondent to take her with him. The learned Judge, on that count, raised doubt about the authenticity of the evidence of the victim to the extent of her kidnapping by the respondent. No acceptable and plausible reasons were assigned by the learned Judge to disbelieve the testimony of the victim as well as P.W. 3 – Sushila Ghanwate, P.W. 4 – Latabai Kapse and P.W. 5 – Alka Gurav.

36. The view taken by the trial Court, in no circumstance, can be said to be possible and probable view on the basis of the evidence adduced by the prosecution. It would be apposite to place reliance on a judgment of the Supreme Court in the case of **Hakeem Khan and others Vs. State of Madhya Pradesh**,¹ wherein the the Supreme Court has held that;

“Reiterated, possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion - A view taken by a court lower in

1 (2017) 5 Supreme Court Cases 719

hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement - But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view - Correctness or otherwise of any conclusion reached by a court has to be tested on basis of what superior judicial authority perceives to be correct conclusion - A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact whether it is agreed upon or not by the higher court - The fundamental distinction between the two situations have to be kept in mind - So long as the view taken by trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, view taken by trial court cannot be interdicted and that of High Court supplanted over and above the view of trial court.”

37. It is well settled that the High Court shall not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. The High Court can interfere in an appeal against acquittal only if appreciation of the evidence by the trial Court is capricious or its conclusions are without evidence that the High Court may reverse the order of acquittal. The impugned judgment and order of acquittal by the trial Court is indeed not in accordance with law and the approach of the trial Court has in fact, led to miscarriage of justice.

38. I am fully satisfied that the incident in question cannot be explained except on the basis of the guilt of the respondent and is inconsistent with his innocence. I am also conscious of the fact that there is presumption of innocence in favour of the respondent. However, the impugned judgment is based on surmises and conjunctures. The Court below has ignored cogent, trustworthy and reliable evidence of the victim, P.W. 3 – Sushila Ghanwate, P.W. 4 – Latabai Kapse and P.W. 5 – Alka Gurav.

39. As such, the view taken by the trial Court is an impossible view in the given set of facts and circumstances. Having re-appreciated and reviewed the entire evidence on record, I am constrained to take a view that the decision of the trial Court will have to be reversed by interdicting to meet the ends of justice. There is every likelihood of the respondent being a pimp. However, there is absolutely no scope of any doubt creeping in, in the light of the discussion made hereinabove.

40. The respondent, therefore, is found guilty and stands convicted of the offences punishable under sections 363 and 366A of the I.P.C and Section 5 of the Act of 1956.

41. The respondent will have to be heard on the point of sentence before awarding the same.

[PRITHVIRAJ K. CHAVAN, J.]

15TH JANUARY, 2024

42. The respondent – accused is produced before me today at 2.30 p.m by an Officer of *Dindori* Police Station. Unfortunately, on the last date i.e on 12th January, 2024, when this matter was fixed for hearing the respondent – accused on the point of sentence, Counsel appearing for the respondent – Mr. Parab was absent. Even today, the learned Counsel representing the respondent is absent which is not a healthy practice.

43. I heard the respondent – accused on the point of sentence. He submits that he has four children aged about 24, 21, 14 and 10. He is the only earning member of the family. This is his first offence. He, therefore, prays for a lenient view and to award minimum sentence.

44. Learned A.P.P, on the other hand, submits that looking to the nature and seriousness of the offence, the respondent – accused be awarded maximum sentence.

45. The offences committed by the respondent – accused are indeed serious and have its impact on the society. He took the victim under the garb of buying clothes and *chappals* for her in the red light area of *Nashik* and made an attempt to put her into the business of prostitution. It appears that the victim had reposed trust upon the respondent – accused since she used to call him as *Mama*.

46. Of late, there is a rise in the cases under The Immoral Traffic (Prevention) Act, 1956. The said Act is a stringent legislation in order to curb the menace of human trafficking, especially, when a child or minor is induced or carried for the purpose of prostitution. There respondent – accused herein had indeed committed the aforesaid offences and, therefore, he does not deserve sympathy. In order to curb such social evil, some deterrence is required and, therefore, having considered the entire evidence and the facts on record, following sentence would meet the ends of justice.

: ORDER :

- (a) Appeal is allowed.

- (b) The Judgment and order dated 9th December, 2013 passed by the Additional Sessions Judge, *Nashik* in

Session Case No.201 of 2013 is reversed and set aside.

(c) Respondent – Accused - Vijay Bhika Dive is convicted of an offence punishable under Section 363 of the I.P.C.

He is sentenced to undergo rigorous imprisonment for seven (7) years and shall pay a fine of Rs.25,000/-.

In default of payment of fine, he shall undergo simple imprisonment for six (6) months;

(d) He is convicted of an offence punishable under Section 366A of the I.P.C.

He is sentenced to undergo rigorous imprisonment for ten (10) years and shall pay a fine of Rs.25,000/-.

In default of payment of fine, he shall undergo simple imprisonment for six (6) months;

(e) He is convicted of an offence punishable under Section 5 (1) (i) of the Immoral Traffic (Prevention) Act, 1956.

He is sentenced to undergo rigorous imprisonment for ten (10) years;

(f) The substantive sentences shall run concurrently.

- (g) Whole of the fine amount be paid to the victim as a compensation in view of Section 357 (1) of the Cr. P.C, if recovered;
- (h) Registry is directed to certify the judgment to the Sessions Court, *Nashik*;
- (i) Sessions Court, *Nashik* shall thereupon make further compliance as per sub-section (2) of Section 388 of the Cr. P.C;
- (j) Record and Proceeding be remitted to the Sessions Court, *Nashik*.
- (k) Appeal stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]