

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

**RESERVED ON : 24th AUGUST, 2015
DECIDED ON : 17th NOVEMBER, 2015**

+ CRL.A. 465/2005

ROMA Appellant
Through : Mr.Bahar U.Barqi, Advocate with
Mr.Brijpal, Advocate.

VERSUS

THE STATE Respondent
Through : Mr.Amit Ahlawat, APP.

AND

+ CRL.A. 494/2005 & CRL.M.B. 1215/2005

KOMAL Appellant
Through : Mr.Bahar U.Barqi, Advocate with
Mr.Brijpal, Advocate.

VERSUS

STATE Respondent
Through : Mr.Amit Ahlawat, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Aggrieved by their conviction under Sections 120B/368 read with Section 366 and 323 IPC by a judgment dated 28.04.2005 of learned

Addl. Sessions Judge, Roma and Komal have preferred the instant appeals. By an order dated 06.05.2005, they were sentenced to undergo RI for five years with fine ₹1,000/- each under Section 368 read with Section 366 IPC and RI for six months with fine ₹500/- each under Section 323 IPC. Both the sentences were to run concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 07.01.2000 a secret information was received by SI V.P.Jha at around 07.30 p.m. to the effect that a girl kept forcibly in Kotha No.54, First Floor, G.B. Road has been forced to indulge in prostitution. On this information, a raiding team went to Kotha No.54, First Floor, G.B. Road. 'X' (assumed name) aged around 26 years came forward and lodged complaint (Ex.PW-1/A). Investigating Officer lodged First Information Report. In her complaint, 'X' implicated Roma and Komal for forcing her to do prostitution. Roma was apprehended from the Kotha. 'X' was medically examined; she recorded her 164 Cr.P.C. statement. During investigation, statements of the relevant witnesses conversant with facts were recorded. Upon completion of investigation, a charge-sheet was filed against both the appellants for committing various offences under Sections 342/363/368/376/323/109/34 IPC and 3, 4, 5, 6, 7 & 8 ITP Act.

By an order dated 24.07.2001, the appellants were charged for committing

offences under Sections 120B/368/323 IPC and 3, 4, 5 & 6 ITP Act. They pleaded not guilty to the charges and claimed trial. In order to bring home its case, the prosecution examined seven witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. They did not examine any witness in defence. The trial resulted in their conviction as mentioned previously. It is pertinent to note that the appellants were acquitted of the charges under Sections 3, 4, 5 and 6 ITP Act and the State did not challenge their acquittal.

3. I have heard the learned counsel for the parties and have examined the file. Recovery of the prosecutrix from Kotha No.54, First Floor, G.B. Road, on 07.01.2000 is not under challenge. Appellants' plea is that 'X' had come voluntarily for prostitution and she was never wrongfully confined. Admittedly, the prosecutrix was aged around 26 years on the day of incident. She was a married lady having two children. She lived in village Kanaipur Colony, PS Uttarpada, Distt. Googli (West Bengal). She left home without informing her husband. A 'Missing Person Report' was lodged by him. The exact date when the prosecutrix left her home is not on record. In her complaint (Ex.PW-1/A), she disclosed that about 9 or 10 months before she had come to Howrah in search of work.

When she was sitting at railway station at around 9 or 10 a.m. a lady subsequently identified as Rekha allured her to accompany her on the pretext to provide her a job. Rekha took her to an unknown place and kept her for ten days there. Thereafter, she was brought by train to Delhi. Rekha handed over her to a lady at Kotha No.54, First Floor, G.B. Road. 'X' further disclosed that subsequently she came to know that Rekha had sold her for ₹20,000/- - ₹25,000/-. Thereafter, she was forced by Roma and Komal to indulge in prostitution. On her refusal, they used to thrash her. She further accused them of sharing the income received by them from the customers. In 164 Cr.P.C. statement (Ex.PW-1/B) recorded on 10.01.2000, she named Rekha to have kidnapped her on the pretext to provide her job. From Howrah, she was taken to Bihar. After about 10 days, Rekha sold her to Roma and Komal at Delhi. When she requested them to allow her to go, she was not permitted to do so. She was pushed into prostitution and on her refusal, she was beaten. Similar is her Court statement as PW-1.

4. Appellants' conviction is primarily based upon the sole testimony of the prosecutrix. Needless to say, conviction can be based on the sole testimony of the prosecutrix provided it lends assurance of her testimony. In case the Court has reasons not to accept the version of the

prosecutrix on its face value, it may look for corroboration. In the instant case, the prosecutrix was major aged around 26 years. She was married and had two children. She had left the matrimonial home without informing her husband who had lodged a 'Missing Person Report'. The prosecutrix did not explain as to why she left the matrimonial home on her own without informing her family members. She allegedly met Rekha at railway station Howrah who took her on the pretext to provide her job to Bihar. 'X' remained there for ten days. At no stage, 'X' claimed to have protested her kidnapping. She did not try to contact her husband. She did not elaborate as to where she was kept for ten days in Bihar. As per her own statement, she travelled from Bihar to Delhi by train. Again, during the long journey, she did not raise alarm or hue and cry for her alleged kidnapping. She voluntarily accompanied Rekha to Delhi. It is not her case that Rekha had used force to confine her any time. At Delhi, she came along with Rekha at Kotha No.54, First Floor, G.B. Road, where she was allegedly sold. There is no evidence if any such transaction took place. The Investigating Officer did not attempt to find out Rekha who was the king-pin; her identity could not be established. No material was collected if 'X' was sold for any consideration by Rekha to the appellants.

'X' lived at the said kotha for about 9 or 10 months before she was

rescued in a police operation on 07.01.2000. At no stage, during her stay in the said kotha, the prosecutrix complained about her alleged wrongful confinement. She lodged the instant complaint only when the said kotha was raided on 07.01.2000. At no occasion prior to 07.01.2000 the prosecutrix came forward to complain her wrongful confinement, though as per PW-3's testimony, the police had visited the said place many a times before.

5. Admitted position is that at the time of raid on the said kotha 8 or 9 other girls were found present there. The Investigating Officer, however, did not examine any of them to corroborate X's version. It has come on record that the prosecutrix was not in confinement in the said kotha and she was present along with other 8 or 9 girls who did not come forward to implicate the appellants for any crime. The Investigating Officer did not collect any evidence to connect the appellants with the ownership and possession of the kotha in question. Admittedly, Komal was not present at the said kotha at the time of raid and she surrendered subsequently in the Court. PW-3 (HC Makhan Singh) in the cross-examination admitted that he had visited the kotha during his posting in the said police station from 1999 to 14.05.2001 and did not find 'X' in the kotha at that time. PW-4 (Lady Const.Dheeraj) disclosed in the cross-

examination that Komal was owner of the kotha as revealed by Roma. However, PW-7 (SI V.P.Jha) in the cross-examination admitted that he did not collect any documentary evidence regarding ownership of the Kotha No.54, G.B. Road. He further admitted that at the time of raid, no male person was present in the kotha. The Investigating Officer did not investigate if the victim was forced to indulge in prostitution. No such customer was identified with whom the prosecutrix was forced to have physical relations. The Investigating Officer did not examine X's husband to ascertain as to how and under what circumstances, she had left the matrimonial home or what steps were taken by him to trace the prosecutrix during the period of 9 or 10 months when she went missing.

6. Soon after the recovery, 'X' was medically examined vide MLC (Ex.PW-5/A). However, no visible injuries were found on her body. It belies her version that on refusal to have physical relations with the customers, she was thrashed by the appellants. In the cross-examination, 'X' informed that her child was with Rekha and she (Rekha) had handed over his / her custody to her husband after the raid. Earlier, 'X' did not apprise the Investigating Agency, if she had left the home with a child. She did not elaborate how and under what circumstances, her child was kept in Rekha's custody. Apparently, Rekha was in touch with 'X' and

soon after registration of the case, Rekha returned the child to X's husband. It seems that 'X' has not presented true facts. Under these circumstances, possibility of the prosecutrix to be a willing party cannot be ruled out.

7. In the light of above discussion, the appellants deserve benefit of doubt. The appeals are allowed and conviction and sentence recorded by the Trial Court are set aside. Pending application also stands disposed of.

8. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

NOVEMBER 17, 2015 / *tr*