

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

RESERVED ON : 2nd AUGUST, 2016
DECIDED ON : 26th SEPTEMBER, 2016

+ **CRL.A.354/2005 & CRL.M.B. 891/2005**

MEENA @ NIRMALA Appellant

Through : Mr.Pankaj Kumar, Advocate.

VERSUS

STATE Respondent

Through : Ms.Meenakshi Dahiya, APP.

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

S.P.GARG, J.

1. Aggrieved by a judgment dated 29.03.2005 of learned Addl. Sessions Judge in Sessions Case No.122/02 arising out of FIR No.229/02 registered at PS Kamla Market by which she was convicted for committing offences punishable under Sections 368, 109 read with Section 376 IPC and Section 4 Immoral Traffic (Prevention) Act (In short 'ITP Act'); the appellant – Meena @ Nirmala has filed the instant appeal. By an order dated 31.03.2005, she was sentenced to undergo RI for two years with fine ₹1,000/- for commission of offence punishable under Section 4 ITP Act; RI for seven years with fine ₹5,000/- under Section 109 read with Section 376

IPC; and, RI for five years with fine ₹1,000/- under Section 368 IPC. The substantive sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on or before 24.12.2001, the appellant and her associates Neelam @ Akhtar Begum and Mala concealed and confined the victims 'A', 'R' and 'M' (changed name) on the first floor of Kotha No.70 G.B.Road knowing that they have been abducted with the intention to compel and force them to have illicit intercourse. It is further alleged that the appellant and her associates abetted the commission of rape by various customers. They were found running a brothel at Kotha No.70 G.B.Road and procured the girls for the purpose of prostitution.

3. A raid was conducted on 24.12.2001 on the basis of secret information that some minor girls have been kept at various kothas at G.B.Road. During raid, several girls appearing minor were recovered from various kothas. They were taken into protective custody under Section 13 read with Section 19(2) JJ Act. Three minor looking girls namely A, R and M were recovered from Kotha No.70 belonging to co-convict Neelam. The victims were taken for medical examination. They were lodged at OHG after obtaining orders from the concerned Court.

4. On 22.06.2002, 'A' made a complaint (Ex.PW-1/A) during her stay at Nirmal Chaya. The Investigating Officer lodged First Information Report. Statements of the witnesses conversant with the facts were recorded. The appellant and her associates were arrested. Upon completion of investigation, a charge-sheet was filed against the appellant and her associates for committing various offences. In order to establish its case, the prosecution examined eighteen witnesses. In 313 Cr.P.C. statement, the

appellant and her associates denied their involvement in the crime and pleaded false implication. The Trial resulted in conviction. It is relevant to note that the appellant and her associates were acquitted of some charges and the State did not challenge their acquittal for that. It is apt to note that Neelam and Mala have since completed the sentence awarded to them and the appeals preferred by them have since been disposed of as 'infructuous'.

5. I have heard the learned counsel for the parties and have examined the file. Appellant's conviction is primarily based upon the sole testimony of PW-2 'R'. 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.

6. In the instant case, the raid at Kotha No.70 took place on 24.12.2001. There is conflicting version given by the prosecution witnesses as to how many girls were recovered from the said 'kotha'. It has, however, come on record that 'A', 'R' and 'M' were among the girls rescued from the said kotha that day. Admittedly, none of the rescued girls lodged any complaint whatsoever with the Investigating Agency on their recovery or soon thereafter against the appellant and her associates. PW-12 (Ms.Roma Dev Vrat) from NGO 'Stop' was present at the time of the said raid. She did not depose if any complaint whatsoever was made to her against any individual by the girls recovered from kothas No.70 and 71. After a considerable delay during her stay at Nirmal Chaya the victim 'A' made a statement (Ex.PW-1/A) on the basis of which the instant FIR was lodged on 22.06.2002. Delay in lodging the FIR has not been explained.

7. In the complaint (Ex.PW-1/A), the victim 'A' levelled allegations against Neelam (since convicted) and one Sangeeta. She did not utter a word against the present appellant Meena. No role whatsoever was assigned to her in the crime. While appearing as PW-1 'A' did not implicate the appellant Meena for pushing her or other girls recovered from there into prostitution. She merely stated that remaining accused i.e. Mala and Meena were also working from the said room but their owner was some other 'Didi'. Apparently, her statement is of no assistance to establish the appellant's guilt. PW-14 'M' in her Court statement did not support the prosecution and completely resiled from her previous statements including 164 Cr.P.C. statement. She rather claimed that she was a willing and consenting party. She was cross-examined by learned APP after seeking Court's permission. In the cross-examination also nothing material surfaced to point an accusing finger against the appellant.

8. Only PW-2 'R', in her Court statement, implicated the appellant for forcing her to indulge into prostitution. She did not assign any role whatsoever to co-convict Neelam, 'owner' of the said 'kotha'. She did not disclose as to what nexus the appellant had with the said 'kotha'. PW-1 'A' in her Court statement categorically disclosed that the appellant and co-convict Mala were also working from the said room but their owner was some other 'Didi'. Apparently, the appellant had no effective control on the girls or upon the appellant present in the said 'kotha'. No worthwhile evidence has emerged on record as to when PW-2 'R' was brought to Delhi, and if so, by whom. She did not narrate as to how and under what circumstances, she was brought to Delhi from her native village. She remained in the said 'kotha' for about four years prior to her recovery. It has

come on record during this period the police officers used to visit the said 'kotha'. At no stage, 'R' lodged any complaint against the appellant's conduct or behaviour. She did not contact her family members any time. After recovery, she remained in Nirmal Chaya for sufficient duration and no family member of hers contacted her. Her exact age has not surfaced on record. After her recovery, she was taken for medical examination. In the MLC (Ex.PW-11/A) no external injuries whatsoever were found on her person. No incriminating material was recovered at the spot at the time of raid. No male customer was found present there. 'R' did not disclose the name of any specific individual with whom she was forced to have physical relation. Nothing has come on record as to what was the money generated and by whom it was retained. As observed above, inconsistent and conflicting version has been given about the recovery of exact number of girls from the said 'kotha'. 'R' gave name of many other girls Baby, Pooja and Reena to have been recovered from the said 'kotha' that day; none of them has been examined. In the cross-examination, she admitted that co-accused Mala was also indulging in prostitution at the 'kotha' of her own will. She did not elaborate as to who used to share her income. Apparently, Mala was also a victim.

9. PW-5 (Darshan Kumar Raheja) claimed himself to be owner of property No.5476, Plot No.70, Shardanand Marg, Delhi. He disclosed that Anita and Ravinder were tenants on the first floor. Anita sublet the portion in question without his consent to one Neelam (since convicted). He did not state if the appellant had any nexus whatsoever with the said 'kotha'.

10. PW-6 (SI Naveen Chandra) gave a conflicting statement about recovery of six girls from 'kotha' No.70 including 'A', 'R' and 'M'. None

of the witnesses disclosed about the recovery of the six girls from said 'kotha'. In the cross-examination, he admitted that no writing work was done at the 'kotha'. He did not see co-convict Mala in the hall. He volunteered to add that only Neelam was found there. Admittedly, no documents regarding age of the victims were seen by them that day. PW-7 (SI Puran Pant), another member of the raiding team, disclosed that only three girls 'A', 'R' and 'M' were recovered from the 'kotha' of Neelam (since convicted). PW-13 (Insp.G.S.Randhawa) talked about recovery of three girls only from the said 'kotha'. In the cross-examination, he was unable to tell if the appellant was present in the 'kotha' that time. PW-16 (ACP B.K.Singh), in the cross-examination, admitted that only three girls 'A', 'R' and 'M' were recovered from the so-called 'kotha' of 'Mala'. He admitted that he did not go to the room or cabin of any other girl personally. Statements of the girls rescued from the 'kotha' were not recorded and they were directly taken to the Police Station. At the Police Station, he had tried to talk to the girls for some time. He did not depose if any complaint whatsoever was given by the rescued girls against any of the convicts. He further admitted that no other article was recovered from the rooms of the girls; no document was seized.

11. Taking into consideration the above referred deficiencies in the prosecution case and in the absence of cogent and material evidence to prove the guilt of the appellant beyond reasonable doubt, conviction recorded by the Trial Court cannot be sustained. The appellant deserves benefit of doubt. Possibility of victim 'R' on whose statement the conviction is based to be consenting party cannot be ruled out.

12. The appeal is accepted. Judgment and conviction recorded by the Trial Court against the appellant are set aside. Pending application also stands disposed of.

13. 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

SEPTEMBER 26, 2016 / *tr*

