

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

**RESERVED ON : 27th SEPTEMBER, 2016
DECIDED ON : 24th OCTOBER, 2016**

+ CRL.A.626/2014

TEENA Appellant

Through : Mr.Joginder Tuli, Advocate with
Ms.Joshini Tuli, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through : MsMeenakshi Dahiya, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 19.04.2014 of learned Addl. Sessions Judge in Sessions Case No.93/2013 arising out of FIR No.78/2013 PS Kamla Market by which the appellant - Teena was held guilty for committing offences punishable under Sections 368/120B IPC and Sections 3/4/5/6 of Immoral Traffic (Prevention) Act, 1956 (In short 'ITP Act'). By an order dated 19.04.2014, she was sentenced to undergo various prison terms with fine.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 09.05.2013 at around 07.15 p.m. a raid was conducted by the police of PS Kamla Market at Kotha No.56, GB Road, Delhi. The victim 'X' (Assumed name) along with another girl 'G' (Changed name)

were rescued. After recording victim's statement (Ex.PW-2/A), the Investigating Officer lodged First Information Report. The appellant was arrested. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant in the Court. In order to establish its case, the prosecution examined nine witnesses in all. In 313 Cr.P.C. statement, the appellant denied her involvement in the crime and pleaded false implication. The Trial resulted in conviction as aforesaid. It is pertinent to note that the appellant was acquitted of the charges under Sections 366/34 IPC and 376 read with Section 109 IPC and the State did not challenge it.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the prosecutrix was recovered from the second floor of Kotha No.56, GB Road, Delhi on 09.05.2013 in a raid conducted by the police of PS Kamla Market in the presence of victim's brother Taibur and Subir Roy (PW-3) and Ms.Jyotsana from NGO. Taibur had informed the police of PS Kamla Market about the presence of his sister at the said 'kotha' after she had gone missing from West Bengal for which DD No.920 was lodged at PS Diamond Harbour, Distt. South, 24 Pargana, West Bengal. When the raiding team arrived at Kotha No.56, first floor, GB Road, victim's brother was unable to identify his sister among the girls present there. When raiding team went to the second floor of Kotha No.56, Taibur identified his sister to be among the girls found there.

4. The appellant has not denied her presence in the 'kotha' at the relevant time. Her only plea in 313 Cr.P.C. statement is that she used to work as 'maid' to prepare food for the inmates of the 'kotha'. No such evidence, however, has been produced on record to substantiate this defence.

The appellant did not elaborate as to since when she was working there as maid and what salary she used to get. She did not reveal her any other residential address. She did not examine any of her family members to corroborate and prove her version about her being present there as 'maid'.

5. Crucial testimony is that of PW-2, the victim, 'X'. The instant case was registered on her complaint (Ex.PW-2/A) on 10.05.2013. In her complaint she gave graphic detail as to how and under what circumstances she was brought to Delhi from her native place after kidnapping by two individuals named Raju and Ravi. Subsequently, two more individuals joined them at Delhi and pushed her in prostitution. She also disclosed that she was sold to the appellant and she brought her to Kotha No.56, GB Road. Another inmate Timple was also present there. They both forced her to indulge in prostitution to earn income. When she declined to do so, she was beaten and threatened. She further disclosed that the appellant and her associate Timple used to snatch money given by the customers to have physical relations with her. In her 164 Cr.P.C. statement, the victim reiterated her version and implicated the appellant and her associate Timple for the crime.

6. In her Court statement identifying the appellant to be one of the perpetrators of the crime, she attributed specific and definite role to her in forcing her into prostitution. She deposed that in the month of January, 2013, when she was roaming on the road near her house, she was abducted by two 'boys' who threw a piece of cloth on her face, as a result of which she became unconscious. On regaining consciousness, she found herself in a house in Delhi where four boys - Raju, Raja, Rajeev and Ravi were present. They forced her to indulge in prostitution and threatened to kill her

in case she did not obey them. She further deposed that one day the appellant and her husband were called there and she were forced to accompany them. Thereafter, she was brought to Kotha No.56, GB Road by the appellant and her husband. The appellant and Timple forced her to do the work of prostitution. When she declined to do, they threatened to sell her. She further deposed that the customers used to pay ₹300/- and the said money was snatched by the appellant and Timple. She was not allowed to keep any money with her; even the tips given by the customers were taken away by them. She was confined in the said 'kotha' forcibly by the appellant and Timple and was not permitted to leave it. After about three months, a Bengali boy who came to the 'kotha' was apprised of her ordeal and he informed her brother Taibur Roop Mandal about her presence at the 'kotha'. In the cross-examination, the victim reiterated her version and despite lengthy cross-examination, nothing material could be extracted to disbelieve her version. No ulterior motive was assigned to the victim for making false allegations against the appellant with whom she had no prior acquaintance. In the absence of any animosity or ill-will, the victim aged around 18 years a complete stranger to Delhi was not expected to level serious allegations against the appellant. The appellant did not explain as to why and for what purpose the victim was kept for three months at the 'said kotha'. She did not divulge as to how and when the victim was brought to the 'kotha' and by whom. It was not put to her that she was a consenting or willing party. Minor discrepancies or improvements highlighted by the appellant's counsel are immaterial and inconsequential as they do not affect the core of the prosecution case. It has come on record that the victim was a student of 10th standard before her kidnapping. She was brought at a remote

place far away from her residence and was confined at Kotha No.56, GB Road where she was forced to indulge in prostitution. She disclosed in her evidence that after she was rescued, she rejoined school. This Court has no valid or sound reasons to disbelieve the statement of the prosecutrix / victim.

7. I do agree with the appellant's contention that provisions of Section 3 of ITP Act have not been substantiated or proved. It has come on record that the appellant was one of the inmates at the said 'kotha'. The Investigating Officer did not collect credible and cogent evidence to show if the appellant had any nexus with the ownership of the 'kotha' or she was in the control and management of the said kotha. In the cross-examination, PW-9 (Pramod Joshi), the Investigating Officer, admitted that electricity bill furnished by BSES showed that one Padma Devi was the owner of the said 'kotha'. He did not reveal as to what proceedings were initiated against Padma Devi. He also admitted that complete ownership proof of the 'kotha' could not be found. So the prosecution was unable to establish that the appellant alone was running the said place as 'brothel'. Conviction under Section 3 of ITP Act thus cannot be sustained and is set aside.

8. PW-3 (Subir Roy), Director of Programme and Project, Shakti Vahini NGO, has supported and corroborated the version given to the prosecutrix. He also deposed regarding her recovery from the kotha No.56, GB Road on the second floor and her identification by his brother Taibur. Non-examination of Taibur is not fatal as he was a witness only to the recovery of the prosecutrix from the said 'kotha' which is not under challenge.

9. The conviction based upon fair appreciation of the evidence cannot be faulted and is affirmed on other counts.

10. Regarding sentence, the appellant has been sentenced to undergo various prison terms with fine. Nominal Roll dated 16.10.2014 reveals that she has undergone one year, three months and eight days incarceration besides remission for one month and twelve days as on 15.10.2014. She was aged around 27 years and is not a previous convict. She is not involved in any other criminal case. Her overall jail conduct is satisfactory. As observed above, she was not running the brothel. It appears that she was also under the control of owner of the 'kotha', may be Padma Devi. She has been acquitted of charges under Section 376 read with Section 109 IPC and under Sections 366/34 IPC. Considering the mitigating circumstances, the sentence order is modified and substantive sentence awarded i.e. RI for seven years under Section 368 IPC and 6 of ITP Act each is altered / reduced to RI for five years each. Other terms and conditions of the sentence order are left undisturbed.

11. The appeal stands disposed of in the above terms.

12. 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

OCTOBER 24, 2016 / tr