

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

RESERVED ON : 2nd JUNE, 2016
DECIDED ON : 1st AUGUST, 2016

+ **CRL.A.1536/2013**

PADMA

..... Appellant

Through : Mr.Mohit Mathur, Sr.Advocate with
Mr.Amitabh Narendra &
Mr.Mohd.Shahrukh Hussain,
Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Tarang Srivastava, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 25.09.2013 of learned Addl. Sessions Judge in Sessions Case No.16/2012 arising out of FIR No. 94/10 PS Kamla Market by which the appellant – Padma was held guilty for committing offences punishable under Section 368 IPC and Sections 5 & 6 Immoral Traffic (Prevention Act), 1956 (in short 'ITP Act'). By an order dated 27.09.2013, she was sentenced to undergo RI for seven years with fine ₹5,000/- under Section 368 IPC; RI for ten years with fine ₹2,000/- under Section 5(d) of ITP Act; and, RI for seven years with fine ₹3,000/- under Section 6 of the ITP Act. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 06.08.2010, PW-9 (Insp. Surenderjeet Kaur) along with Insp.Brijesh Mishra was on patrolling duty in the area. When they reached at Police Booth Division No.IV at around 03.30 p.m. Smt.Meera Naidu – victim’s mother and Bapi Mondal, her maternal uncle met her and produced a missing report (Ex.PW-9/A) lodged by them at Police Station Sonarput, West Bengal about ‘X’ (assumed name). PW-3 (SI Jaswant Singh) also reached the spot. Kotha No.5211 GB Road was raided. The victim ‘X’ was recovered from the said kotha. After recording her statement (Ex.PW-1/A), the Investigating Officer lodged First Information Report. ‘X’ was medically examined; she recorded her 164 Cr.P.C. statement. Statements of the witnesses conversant with the facts were recorded. On 09.08.2010, the appellant was arrested from the said ‘kotha’. Upon completion of investigation, a charge-sheet was filed against the appellant for committing offences punishable under Sections 363/366/368/373 IPC; under Section 109 IPC read with Section 376 IPC and Sections 3, 4, 5 and 6 of ITP Act. In order to establish its case, the prosecution examined ten witnesses. In 313 Cr.P.C. statement, the appellant pleaded false implication and denied her complicity in the crime. After considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court, convicted the appellant for committing the offences under Section 368 IPC and Sections 5(d) & 6 of ITP Act and acquitted her under Sections 363/366/373 IPC, Section 109 IPC read with Section 376 IPC and Sections 3 and 4 of ITP Act. It is pertinent to note that the State did not challenge her acquittal under the said Sections.

3. I have heard the learned counsel for the parties and have examined the file. At the outset, it may be mentioned that the prosecution was unable to establish the exact age of the victim on the day of incident. The Trial Court in the impugned judgment was of the view that the prosecution was unable to prove if 'X' was minor. The prosecution had only produced Transfer Certificate (Ex.PW-9/H) to establish the victim's age. However, it could not produced or examine any witness to prove its authenticity. No ossification test to ascertain her approximate age was conducted. The plea that the victim was of 16 years of age was not accepted by the Trial Court.

4. The prosecutrix belonged to village Acharya Praful Nagar, Distt. South 24 Pargana, West Bengal. In her complaint (Ex.PW-1/A), she informed that on 02.07.2010, she had gone to witness a 'mela' in her native village along with her two friends Suchitra and Sovik. At the 'mela', they met two boys and thereafter all of them came at Suchitra's house. Suchitra and Sovik left her alone with the said 'boys'. She was confined in the room by the said two 'boys'. Thereafter, on next day, she was brought to Delhi by Howra train. The said two 'boys' took her in a TSR to some place where a lady met her; she took her upstairs to a kotha where she was forced to indulge in prostitution. It is apt to note that Suchitra is Proclaimed Offender; Sovik could not be arrested. During trial, it revealed that Suchitra was in judicial custody in case FIR No.455/10 PS Sonarpur Distt. South 24 Pargana. It is, however, unclear if she was convicted or acquitted in the said case.

5. The victim did not name the two 'boys' who had allegedly met her in the 'mela' and had brought her to Delhi. She did not give their broad

features for identification purpose. The Investigating Agency was unable to establish their identity and to bring them to book. The Trial Court in the impugned judgment was constrained to record her displeasure for not making sincere efforts to apprehend the said two 'boys'. The fact remains that the victim never raised hue and cry about her alleged kidnapping or abduction. She travelled in a crowded train for about two days covering a long distance to reach Delhi. She stayed at the said 'kotha' for about two months. At no stage, she attempted to contact her parents. The story presented by her to have gone to a 'mela' along with her friends Suchitra and Sovik and then roaming with the two boys on motorcycle creates serious doubt. The Investigating Agency did not ascertain as to where the prosecutrix was confined by the said two boys. The motorcycle on which the victim and the two boys had travelled was not seized. She did not object when allegedly she was asked to wear a 'burka' to travel in the train. She did not object when she was taken to a stranger lady who in turn left her at the 'kotha'. Possibility of the victim being a consenting party cannot be ruled out.

6. The appellant's conviction is primarily based upon the sole testimony of the prosecutrix / victim. In her statement (Ex.PW-1/A), she did not name the appellant to be the individual who had pushed her into prostitution. She disclosed that she was unaware of the name of the lady who used to force her to indulge in prostitution and used to beat her on her denial to do so. In her Court statement as PW-1, she disclosed that in the evening, the 'lady' had taken her to the 'kotha' to hand over her custody to the appellant. She was kept in the 'kotha' run by her where she forced to have sexual intercourse with different persons; she used to give her beatings

on her refusal to obey her. The victim, however, did not explain as to why the appellant was not named in the initial statement (Ex.PW-1/A). Only in her 161 Cr.P.C. statement recorded on 09.08.2010, the victim named the appellant to be the perpetrator of the crime. In the cross-examination, she gave an inconsistent version that on the day of her recovery from the 'kotha' she had informed the police appellant's name who used to compel her to do prostitution. The Investigating Officer admitted that on 06.08.2010 at the time of raid on the 'kotha', the appellant was not present there. Admittedly, she could be arrested only on 09.08.2010 on the X's identification from the said 'kotha'. Again contradictory version has been narrated about the date and place of appellant's arrest. The police officials have claimed that the appellant was arrested from the 'kotha' on the victim's identification on 09.08.2010 in the evening hours. The victim in her examination-in-chief stated that on 09.08.2010, she accompanied the police to kotha No.5211 GB Road from where the appellant was arrested vide arrest memo (Ex.PW-1/B). In the cross-examination, she introduced a new story and informed that on 09.08.2010, she had gone to the police station during day time and the appellant was already present there. Changing her version she again stated that the appellant came there later on. Upon being questioned by the Court, she stated that she did not remember whether the accused was already present in the police station when she reached there or not. Apparently, the victim is not very sure if the appellant was arrested on her identification, and if so, where and at what time.

7. Victim's statement has not been corroborated by any other independent public witness. Number of other girls were found at the time of raid in the said 'kotha'. However, statement of no such girl was recorded to

substantiate the victim's plea that she was forced to indulge in prostitution or was given beatings any time. How many girls were found present at the spot is not clear. Soon after her recovery from the said 'kotha' 'X' was medically examined vide MLC (Ex.PW-6/A). As per MLC, no external injuries whatsoever were found on her body. It ruled out if the victim was tortured or subjected to beatings prior to her recovery.

8. Another glaring feature of the case is that no clinching evidence emerged on record to ascertain if the appellant had any nexus with the 'kotha' i.e. if it was owned by her or she was running it on her own and if so, since when. PW-9 (Insp. Surenderjeet Kaur), the Investigating Officer admitted in the cross-examination that no documentary proof of ownership of 'kotha' No.5211 was collected during investigation. She admitted that during investigation it was revealed that Baby had taken it on rent from one Begum Rather, owner of the premises. She elaborated that after her arrest, Baby gave the premises to the accused to supervise and management. Baby was not the owner of the premises, she was its 'manager'. No evidence has come on record to show as to when Baby was arrested in some other case or when the supervision and management of the 'kotha' was handed over by her to the appellant. The Investigating Officer did not record statement of any witness to substantiate her version. She merely stated that this information was based upon the disclosure by the accused. In the absence of any cogent document on record, it cannot be inferred that the appellant was owner or in control of the 'kotha', and if so, since when. No incriminating document / article whatsoever was collected from the spot at the time of raid. No customer was found inside the 'kotha' that time. The earnings allegedly retained by the appellant due to prostitution were not recovered. It

has come on record that in July, 2010 in a raid at the said kotha No.5211 at GB road, its owner Baby was arrested. Undisputedly, the victim was brought in the said 'kotha' in July, 2010, so it cannot be inferred with certainty that the appellant was in-charge of the said kotha when 'X' was brought there. The prosecution has not furnished outcome of the said FIR against Baby. Admittedly, at the time of raid, the appellant was not present at the 'kotha'. The prosecution has not explained as to who else was controlling the affairs of the 'kotha' in her absence. She remained missing and could be arrested only on 09.08.2010. The prosecution did not gather any evidence as to who in the absence of the appellant used to take care of inmates of the 'kotha'. PW-4 (HC Baljeet) gave a contrary statement that he had seen the appellant on 06.08.2010.

9. PW-2 (Bapi Mondal), victim's maternal uncle disclosed that after getting a call on his mobile No.9836306531 on 25.07.2010, they had arrived in Delhi. When they reached GB road after 3 or 4 days of the receipt of information and made a call to the said individual, it was not answered. When his sister Meera Naidu started weeping, some police officials came and enquired about her crying. They narrated the facts to police who took them inside a building where 'X' was recovered. In the cross-examination, he disclosed that this mobile number was in the name of his sister Meera Naidu. He was unable to recollect the number from where the call was received. The Investigating Agency also did not verify as to whom the said mobile belonged. PW-2 (Bapi Mondal) and Meera Naidu did not contact the police soon after arriving at Delhi. This witness was confronted with statement (Ex.PW-2/DA) on various facts which did not find mention therein. No explanation has been given for material omissions. The

prosecution did not examine victim's mother. Narrating a different version, PW-9 (Insp. Surenderjeet Kaur) stated that when they were present on patrolling duty, Smt.Meera Naidu – victim's mother and her maternal uncle Bapi Mondal met her and produced a missing report (Ex.PW-9/A); they expressed their apprehension about the presence of 'X' at G.B.Road.

10. Considering the above referred discrepancies, inconsistencies and omissions, appellant's conviction on the uncorroborated testimony of the prosecutrix was considered deficient by the Trial Court to base conviction under Sections 363/366/373 IPC, Section 109 IPC read with Section 376 IPC and Sections 3 and 4 of ITP Act. The appellant deserves benefit of doubt.

11. Resultantly, appellant's appeal is accepted. The conviction and sentence are set aside. The appellant shall be released forthwith if not required to be detained in any other case. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent Jail for information / compliance.

(S.P.GARG)
JUDGE

AUGUST 01, 2016 / tr