

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

CRL.A. 231/2020 and CRL.M.(BAIL) 358/2020

Reserved on : 13.09.2021

Date of Decision: 01.10.2021

IN THE MATTER OF:

MUMTAZ

..... Appellant

Through: Mr. Mukesh Kalia and Mr. Chetan Pangasa,
Advocates

Versus

THE STATE OF N.C.T. OF DELHI

..... Respondent

Through: Mr. Panna Lal Sharma, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present appeal has been preferred under Section 374 Cr.P.C. on behalf of the appellant challenging the judgment on conviction dated 27.01.2020 and the order on sentence dated 30.01.2020 passed by the learned Special Judge (POCSO Act)/ASJ-05 (Central), Tis Hazari Courts, Delhi in Session Case No. 28307/2016 arising out of FIR No. 280/2012 registered under Sections 344/366A/373/34 IPC, Sections 3/4/5/6/7(1) of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the 'ITP Act'), Sections 4/6 of the POCSO Act, 2012 read with Section 16 of the POCSO Act and Sections 23/26 of the Juvenile Justice Act, 1986 at Police Station Crime Branch, Delhi, whereby the appellant was convicted for the offences punishable under Sections 3/4 of the ITP Act and sentenced to undergo Rigorous Imprisonment for a period of 01 year for the offence punishable under Section 3 of the ITP Act along with

payment of fine of Rs.2,000/-, in default whereof to further undergo Simple Imprisonment for a period of 02 months, and to undergo Rigorous Imprisonment for a period of 07 years for the offence punishable under Section 4 of the ITP Act. All sentences were directed to run concurrently. The benefit of Section 428 Cr.P.C. was also directed to be extended to the appellant.

2. The brief facts, as noted by the Trial Court, are as under:-

“1. It is the case of the prosecution that on 08.12.2012 at about 4 p.m., social welfare officer from 'STOP' NGO, namely, Ms. Sapna and Ms. Poonam Chaudhary alongwith Sh. 'SS' - father of the victim, namely, SK (names of victim and her father are withheld to protect their identity) came in the office of SOS / Crime Branch Kotwali, Darya Ganj, Delhi and informed that daughter of the 'SS', namely, 'SK' aged about 16 years who had been missing for about two years from her village, was being forcibly confined at Kotha No. 57, first floor, G.B. Road, Delhi and forced into the prostitution. On receipt of the aforesaid information, a raiding team comprising of Inspector Satyabir Singh, SI Samar Pal, HC Devender, HC Narender, HC Pramod, Ct. Yashvir, W/Ct. Sarabhjeet and Ct. Amar Pal alongwith officials of NGO and father of the victim was constituted and raided at the aforesaid Kotha. All the girls at the said Kotha were gathered and interrogated. During the course of interrogation, 'SS' has identified the victim 'SK' as her daughter who has been missing for about 2 years. Her recovery memo was prepared. One NGO official Ms. Kaisur-Un-Nisha also arrived at the said place and the victim was got counselled by the Counsellor of 'STOP' NGO.

2. IO Inspector Satyabir Singh has recorded the statement of the victim, namely, 'SK' wherein she stated that she belonged to West Bengal (complete address of the victim is withheld to protect her identity) and was having 05 sisters and one 01 brother besides her. She further stated that she had been studying in IX class two years back in her native village (name of the school of the victim is withheld). She further stated that one day, she met two girls and one boy near the school gate and they gave her roti with dahi which she ate as she was hungry. She further stated that they had also given her cold drink, after consuming when she slept. It is stated that when she regained consciousness, she found herself in a house which was

subsequently revealed to be located at Seelampur, Delhi owned by one Rekha who told her that she had purchased her for Rs. 30,000/-. She further stated that Rekha has asked her to earn the said amount after indulging in flash trade and when she refused, she was given beatings by her and Rekha also threatened to kill her. She stated that Rekha got her involved into prostitution and she used to send customers to her and they established forcible sexual relations with her. In lieu of the forcible sexual relation, Rekha used to take money from the customers and she was not allowed to go outside the house.”

3. After completion of investigation, the Trial Court vide order dated 06.02.2018 framed charge against the appellant under Sections 109/370/366A/373/370A/376(2)(n)/506/344 IPC read with Section 120B IPC, Sections 6/16 of the POCSO Act, Sections 3/4/5/6 of the ITP Act read with Section 120B IPC and Sections 23/26 of the Juvenile Justice (Care & Protection of Children) Act, 2000 read with Section 120B IPC.

4. During investigation, the prosecution examined a total of 11 witnesses. The child victim ‘SK’ was examined as PW-10. The father of the child victim ‘SS’ was examined as PW-9. The independent witness *Deen Mohd.* was examined as PW-2. The head master of the school where the child victim ‘SK’ had studied was examined as PW-8. *Dr. Sreenivas*, Professor Forensic Medicine, MAMC, Delhi, who exhibited the opinion of the medical board with respect to the age of the child victim, was examined as PW-1. *Ms. Kaisur-Un-Nisha* and *Ms. Poonam*, Social Workers attached with the ‘STOP NGO’, were examined as PW-3 and PW-4 respectively. *Inspector Satyabir Singh*, the Investigating Officer, was examined as PW-11.

5. The appellant had admitted under Section 294 Cr.P.C. the following documents filed alongwith the charge sheet:-

- (i) Statement of the child victim recorded under Section 164 Cr.P.C.;

(ii) The factum of registration of FIR No. 280/2012 alongwith certificate under Section 65B of the Indian Evidence Act;

(iii) MLC dated 09.12.2012 and

(iv) MLC dated 08.12.2012

6. I have heard learned counsels for the parties and gone through the material placed on record.

AGE OF THE CHILD VICTIM

7. As per the prosecution case, the child victim's date of birth is 10.02.1996. The child victim during her in-Court-examination stated that she was in Class 8 in the year 2010 and two years prior to her rescue she was studying in Class 9 at the concerned school. The father of the child victim during his deposition also stated that at the time of her leaving the village, the child victim was studying in Class 9. The prosecution had also examined the headmaster of the concerned school where the child victim was studying. He deposed that as per the school record, the child victim was admitted in his school in Class 5 on 08.05.2006 and her date of birth in the admission register is mentioned as 10.02.1996. He also stated that at the time of admission, a certificate from previous school showing the same date of birth was produced. The witness exhibited admission register as well as certificate from the previous school. During the trial, a medical board was constituted by the Medical Superintendent, Lok Nayak Hospital, Delhi for determination of age of the child victim. *Dr. Sreenivas* exhibited the opinion of the board wherein the age of the child victim was estimated to be between 15 and 16 years on the date of her examination.

8. During his arguments, learned counsel for the appellant has not disputed the age of the child victim. Accordingly, this Court concurs with the findings of the Trial Court that on the date of the incident, the victim was less than 16 years

of age and as such she is a 'child' and 'minor' within the meaning of Sections 2(aa)/(cb) of the ITP Act and Section 2(d) of the POCSO Act.

ANALYSIS

9. The child victim during her examination in Court stated that one day after the school, she went to a shop where one girl gave *roti* to her. After eating the *roti*, when she was on the way to her house, a person who was sitting in a car parked over there called her and asked about a place. While she was telling him about it, she was made to sit in the car and a handkerchief was put on her mouth, whereafter she became unconscious. When she regained her consciousness, she found herself at a *kotha* in G.B. Road, Delhi (later identified as '*kotha no. 57, G.B. Road*') and hereinafter referred to as the '*kotha*'). She came to know that she was sold but did not remember the name of the person who had paid for her. She stated that she was made to do *galat kaam* with customers in the *kotha* where she stayed for a number of years. One day, she took the mobile phone from one of the customers and called her father, who came with police officials and rescued her. In course of her examination, she was asked to identify the accused in the Court but she stated that the appellant was not the woman who had purchased her in the *kotha*.

10. She was cross-examined by the learned Public Prosecutor wherein she admitted that she was rescued from the *kotha* and identified her signatures on the statement given to the police. She admitted that two years prior to her rescue from the *kotha*, she was studying in Class 9 in a school. She denied the suggestion that after gaining consciousness, she found herself in a house which she was later informed about as belonging to one *Rekha* in *Seelampur, Delhi* or that she was told by said *Rekha* that she had been purchased for an amount of Rs.30,000/- and she would have to compensate by selling her body. She also

denied the suggestion that *Rekha* used to send customers to her who forcibly established physical relations with her and paid money in exchange which was retained by *Rekha*. She also denied the suggestion that said *Rekha* on the pretext of taking her home took her to one *Saira* at the *kotha* and left her there. She also denied the suggestion that at the *kotha* she was told by *Saira* and her sister *Mumtaz* (the present appellant) that they had purchased her from *Rekha* for Rs.50,000/- and that she would have to earn by selling her body like all other girls, failing which she was given beatings and threatened for life. She denied having stated so in her complaint. She further denied the suggestion that *Saira* and *Mumtaz* used to send her to customers at *kotha* who forcibly established physical relations with her and the money received against the same was distributed amongst *Saira* and *Mumtaz*. She also denied that *Saira* and *Mumtaz* used to get done the same work from other girls and did not allow any one of the girls to go outside. She denied stating so in her complaint. The Public Prosecutor also confronted her with the contents of her statement recorded under Section 164 Cr.P.C., but the same were also denied. She admitted that one day a boy aged about 19 years came as a customer and on his second visit, she narrated her story to him. When he visited again, she used his mobile phone and gave a call to her father, and at his asking, to her *fufa* (uncle) residing in Delhi. She stated that on the next occasion, the said boy visited alongwith her *fufa* (uncle) who pretended to be a customer. She narrated all the facts to her *fufa* (uncle) who called her father from the village. Thereafter, her father and *fufa* (uncle) met the police and rescued her from the *kotha*. She again denied the suggestion that the present appellant was the accused or that she had been won over by the appellant. In cross-examination by learned counsel for the appellant, she denied the suggestion that she was not rescued from *kotha* or that she was falsely deposing.

11. Mr. 'SS', the father of the child victim, deposed that after about one year of his daughter going missing, he received a telephonic call from her daughter telling him that she was in a problem and needed his help. The child victim also told that she was living at a *kotha* in G.B. Road, Delhi. He further deposed that the child victim also had a conversation with his brother-in-law (husband of his sister) and also told him about the number of *kotha* where she was residing at that time. He alongwith his brother-in-law met a person in Delhi who helped them by taking them to another person who ultimately took them to police. Thereafter, the police rescued his daughter. In cross-examination, he denied the suggestion that his daughter was not rescued from G.B. Road, Delhi.

12. *Deen Mohd.*, an independent person, deposed that his in-laws' house was in West Bengal and that the father of the child victim was a neighbor of his father-in-law. He further deposed that he was informed by his father-in-law that the child victim had called at her home and told that she had been compelled for prostitution at a *kotha*. He also deposed that he received a call from the father of the child victim who requested him to visit the said *kotha* to see if the child victim was there or not. He stated that he had asked the father of the child victim to ask the person, from whose mobile phone the initial call was received, to call him. He further stated that he received a call from a boy who made him speak to the child victim. He deposed that he visited the *kotha* on the next day alongwith the said boy. He also deposed that the said boy arranged a meeting with the child victim, in consequence of which he (i.e., *Deen Mohd.*) paid Rs.1500/- to one lady, who was sitting in that *kotha*, for one night with the girl. He identified the appellant as the lady to whom he had paid Rs.1500/-. He deposed that the child victim requested him to rescue her and thereafter he informed the father of the child victim about the presence of his daughter at the aforesaid *kotha*. He also deposed that he alongwith the father of the child victim had visited an NGO and

thereafter, the child victim was rescued from the aforesaid *kotha*. It was stated that he was not a part of the rescue operation. In cross-examination, he stated that he came to know the father of the child victim after his marriage, but did not have any visiting terms with him. He also stated that he did not know the details of the family members of the father of the child victim. He denied the suggestion that he was a planted witness cited to plug the loopholes in the prosecution case.

13. Ms. Kaisur-Un-Nisha and Ms. Poonam, social workers from the 'STOP NGO' deposed that they were working with 'STOP NGO', Chattarpur, Delhi. They further deposed that they were part of the rescue team and that the child victim was rescued from the aforesaid *kotha*.

14. Inspector Satyabir Singh deposed that on 08.12.2012, two officials from 'STOP NGO' alongwith the father of the child victim came to the office of SOS, Crime Branch, Kotwali, Delhi and disclosed that the child victim was being detained at a *kotha* and forcibly made to do the work of prostitution. He further deposed that the child victim was rescued from the first floor of the *kotha*. Later, on receipt of secret information, the appellant was arrested on 12.12.2012 while she was climbing the stairs at the *kotha*. He also deposed that the appellant had refused to participate in the TIP proceedings. The testimony of Inspector S.P. Singh (PW-6) and W/Ct. Sarabjeet (PW-5), who had assisted in the investigation is cumulative to the testimony of the Investigating Officer.

15. Mr. Mukesh Kalia, learned counsel for the appellant, has made the following submissions:-

(i) that the appellant was acquitted of all the other offences and was convicted only for the offences punishable under Sections 3 and 4 of the ITP Act.

- (ii) that on appraisal of the evidence, the ingredients of the offences punishable under Sections 3 and 4 of the ITP Act are not made out.
- (iii) that the prosecution has failed to connect the appellant with the case inasmuch as the child victim has not identified the appellant as the person who had purchased her or forced to do the work of prostitution.
- (iv) that the prosecution has neither examined the boy whose phone was used by the child victim to make the alleged call nor were any CDR details collected.
- (v) that while the FIR was registered on 08.12.2012, the first statement of the independent witness *Deen Mohd.* under Section 161 Cr.P.C. (Ex. PW-2/DA) was recorded after 63 days i.e., on 09.02.2013.
- (vi) that the independent witness *Deen Mohd.* nowhere stated that he was the *fufa* (uncle) of the child victim nor did the child victim or her father state that *Deen Mohd.* was the said *fufa* (uncle).

16. Before proceeding further, I take note of the fact that the appellant has been convicted only under Sections 3 and 4 of the ITP Act which read as under:-

“3. Punishment for keeping a brothel or allowing premises to be used as a brothel. —(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof

with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

²³*[(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,—*

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person].

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

4. Punishment for living on the earnings of prostitution.—*(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of ²⁴[any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both ²⁵[and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].*

²⁶*[(2) where any person over the age of eighteen years is proved—*

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling his prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).]”

17. Insofar as the conviction of the appellant under Section 3 of the ITP Act is concerned, the Trial Court has relied upon the testimony of *Deen Mohd.* to hold that it is proved beyond reasonable doubt that the appellant was running a brothel at the *kotha*. The term ‘brothel’ has been defined under Section 2(a) of the ITP Act which reads as under:-

“(a) ‘brothel’ includes any house, room, ⁶[conveyance], or place or any portion of any house, room, ⁷[conveyance], or place, which is used for purposes ⁸[of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes;”

18. Section 3 of the ITP Act provides punishment for keeping a brothel or allowing the premises to be used as brothel. The provision makes it obligatory on the part of the prosecution to show from evidence that a person accused of an offence thereunder was (i) *keeping or managing, or acting or assisting in the keeping or management of, a brothel*, or (ii) *was allowing the particular premise to be used as a brothel*. For proving an offence under Section 3 of the Act, it follows that it must be proved that the accused was managing/keeping the place with the *knowledge* that same is being used for the purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

19. In connection therewith, it is worthwhile to note that the child victim was examined in Court on 13.12.2019 when she was 24 years of age. She deposed that she was sold at a *kotha* and was made to do 'galat kaam' with customers at the said place. She further deposed that at the said *kotha*, many girls were residing and 'galat kaam' used to be done. She also deposed that she had stayed at the said *kotha* for years and one day, she made a call from the mobile phone of one of the customers to her father who ultimately managed to rescue her from the said *kotha*. A suggestion that she was not rescued from the *kotha*, was denied. The testimony of the child victim's father 'SS', social workers from the 'STOP NGO' (*Kaisur-Un-Nisha* and *Poonam*) as well as police officials including the Investigating Officer corroborated that she was rescued from the *kotha*. In the opinion of this Court, it has been established that the said *kotha* was used as a brothel.

20. However, to establish the commission of the offence under Section 3 of the ITP Act against the appellant, the prosecution is required to prove the basic ingredients as outlined above. As per the order framing charge, cognizance was taken against the appellant for having conspired with co-accused *Saira* to act/assist in keeping the *kotha* and accordingly charge under Section 3 of the ITP Act read with Section 120B IPC was framed. However, a perusal of the Trial Court Record would show that neither any oral evidence was led nor any document was placed on record to establish the charge. Admittedly, co-accused *Saira* was never arrested. The appellant was not even present at the *kotha* at the time of rescue of the child victim. She came to be arrested four days later i.e., on 12.12.2012. In addition, while answering question No. 32, the appellant denied having been arrested while climbing stairs of the *kotha*. The prosecution case is that she was arrested from the staircase of the said *kotha* on 12.12.2012 at about 4:30-5:00 p.m. on the basis of secret information. But the appellant has stated

that she was called to Police Station Kamla Market by the Investigating Officer and was arrested there. It is noted that despite prior information, no public witnesses were attached in the arrest proceedings. Further, it is not the prosecution case that the appellant is the owner of the said *kotha*. In fact, it has come in the testimony of the Investigating Officer that during investigation the persons whose names appeared in the BSES and MCD record pertaining to the property, i.e., the *kotha*, could not be traced. In the memo of arrest, the appellant has been shown to be a resident of a flat in *Rohini, Delhi*. As such, the Investigating Officer did not place any material on record which could show the appellant's possession, occupancy or ownership of the said *kotha*. To the contrary, the child victim has not identified the appellant as the person who had purchased her or made her work as a prostitute at the said *kotha*. She deposed that she could identify the woman who purchased her, and on seeing the appellant in Court, she specifically denied that the appellant was the woman who had purchased her. For reason unknown, the investigating agency has neither cited *Rekha* as a witness from whom the child victim was allegedly purchased for Rs.50,000/- nor the boy from whose mobile phone the child victim is stated to have called her father. Even the mobile phone details of the said boy, the father of the child victim as well as *Deen Mohd.* was not collected during investigation.

21. The only evidence cited to connect the appellant with the *kotha* is the testimony of *Deen Mohd.*, who has stated that he made a payment of Rs.1500/- to the appellant for one night with the child victim but not claimed that she was running the *kotha*. However, the creditability of this witness has been doubted by the learned counsel for the appellant by contending that he in his testimony has nowhere stated that he was the *fufa* (uncle) of the child victim. It was further contended that he was not identified as *fufa* (uncle) by either the child victim or

her father in their respective testimonies. Besides, *Deen Mohd.* was not present at the *kotha* at the time of rescue. The first statement of *Deen Mohd.* came to be recorded after 63 days of the registration of the FIR i.e., at the time when the charge sheet was likely to have been submitted for scrutiny with the prosecution branch.

22. The contention raised by learned counsel for the appellant is that the prosecution has failed to establish the identification of *Deen Mohd.* as the *fufa* (uncle) of the child victim or the person who had visited the said *kotha* and paid Rs.1500/- to the appellant for spending one night with the child victim.

23. In this regard, it is noted that *Deen Mohd.* himself has not identified himself as the *fufa* (uncle) of the child victim, nor has he given any description of the *kotha* owner in any of his statements including the statement recorded under Section 161 Cr.P.C.

24. The testimony of *Deen Mohd.* has to be analysed in the light of the testimony of the child victim and her father. The child victim has deposed that she made a telephonic call to her *fufa* (uncle) residing in Delhi at the asking of her father. The father of the child victim deposed that the victim, after speaking to him, also had telephonic conversation with his brother-in-law (husband of his sister). He has further deposed that he alongwith his brother-in-law, had gone to meet other persons who helped them report the matter to the police. The prosecution has not examined the persons who were initially contacted by the father of the child victim. It is also worthwhile to note that neither the witnesses from the NGO nor any police witness in their testimonies have mentioned about the presence of *Deen Mohd./fufa* (uncle) of the child victim or that he accompanied the father of the child victim at the time of her rescue.

25. In view of the above, it is discernible that the prosecution has not succeeded in establishing the essential ingredients for prosecution under Section 3 of the ITP Act against the appellant.

26. Insofar as the offence punishable under Section 4 of the ITP Act is concerned, the prosecution is required to prove against an accused that they being over 18 years of age were knowingly living, wholly or in part, on the earnings of prostitution of another person, in order to establish commission of the alleged offence. A person is presumed to '*knowingly live*' in terms of Section 4(1), if they being over 18 years of age are found (a) to be habitually in the company of the prostitute, or (b) to have exercised some sort of influence over her movements in a way that shows that the prostitution was aided, abetted or compelled by said influence, or (c) to be acting as a tout or pimp on behalf of the prostitute, unless the contrary is proved.

27. As noted earlier, the only evidence cited against the appellant is the testimony of *Deen Mohd.* who is stated to have paid Rs.1500/- to the appellant for one night with the child victim. Though he has identified the appellant as the person to whom the aforesaid payment was made, his own identity as the *fufa* (uncle) of the child victim is full of doubts and not established, as concluded earlier. At the cost of repetition, it bears mention that he had not accompanied the rescue team and the appellant was also not found present at the *kotha* or arrested from there on the date of rescue of the child victim. The Call Data Records (CDR) of *Deen Mohd.* were not collected and placed on record. The boy from whom he allegedly received the said call was not traced and cited as a witness. His presence is not spoken about by any of the NGO or police witnesses. As a result, I find considerable force in the contention raised by the learned counsel for the appellant that *Deen Mohd.* was brought into picture to fill up the lacuna in the prosecution case.

28. The aforementioned conclusion becomes material in the light of the further fact that the child victim has herself not identified the appellant as the person who had purchased her or took money for forcing her to work as a prostitute or was owning or running the said *kotha*. A suggestion was given to her during cross-examination that the earnings from the work of prostitution done by her were taken by *Saira* and *Mumtaz*, however the same was also denied. The stated facts and circumstances cast serious aspersions on the prosecution case and fail to establish the charge under Section 4 of the ITP Act against the appellant.

CONCLUSION

29. In view of the discussion undertaken hereinabove, this Court is of the opinion that the prosecution case is full of gaping holes. It is based primarily on the sole testimony of *Deen Mohd.*, which is not reliable. There is no documentary proof whatsoever to connect the appellant with the *kotha*. More importantly, the child victim herself has not supported the prosecution case. The chain of evidence is broken inasmuch as neither the boy whose mobile phone was used to contact the father of the child victim was examined, nor any other girl from the said *kotha* was cited as a witness. No documentary evidence in the form of CDR was brought on record either.

30. Keeping in view the above analysis of the evidence available on record, this Court is of the opinion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Accordingly, the appellant is given the benefit of doubt. The appeal is allowed and the judgment on conviction and the order on sentence passed by the Trial Court are set aside. The appellant is acquitted of the charges framed against her and is directed to be set free unless required in any other case.

31. With the above directions, the appeal is disposed of alongwith the pending application.

32. A copy of this judgment be communicated electronically to the Trial Court as well as to the concerned Jail Superintendent forthwith.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 01, 2021

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