

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

RESERVED ON : 9th MAY, 2016

DECIDED ON : 26th JULY, 2016

+ **CRL.A.899/2013, CRL.M.A.Nos.13642/15, 11752/15 & 816/15**

SUNIL KUMAR JHA & ANR. Appellants

Through : Mr.Dinesh Malik, Advocate.

versus

STATE THROUGH CBI Respondent

Through : Ms.Sonia Mathur, Standing Counsel
with Mr.Sushil Dubey, Mr.Abhishek
Chauhan & Mr.Rakshit Thakur,
Advocates.

AND

+ **CRL.A.819/2013**

RAM PAL @ TITU Appellant

Through : Ms.Arundhati Katju, Advocate with
Mr.Himanshu Suman, Ms.Abha Sinha
& Mr.Suyash Singh, Advocates.

versus

THE STATE (GOVT OF NCT, DELHI) Respondent

Through : Ms.Sonia Mathur, Standing Counsel
with Mr.Sushil Dubey, Mr.Abhishek
Chauhan & Mr.Rakshit Thakur,
Advocates.

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

S.P.GARG, J.

1. The appellants impugn a judgment dated 09.04.2013 of learned Addl. Sessions Judge in Sessions Case No. 16/13 arising out of case RC-7(S)/ 2010/SIU-I/CBI/SC.I PS Special Cell whereby Sunil Kumar Jha (A-1), Jhalki Devi (A-2), Subhash (A-3) and Rampal @ Titu (A-4) were held guilty for committing offence punishable under Section 120B read with Sections 344/354/366A/376/506 IPC and in addition A-1 and A-2 under Sections 506/344/366A IPC; A-3 and A-4 under Section 344 IPC and A-4 under Section 376 IPC were convicted. By an order dated 15.04.2013, the appellants (A-1, A-2 and A-4) were awarded various prison terms with fine. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that initially a case vide FIR No.174/2010 was registered at PS Bindapur. This Court in Crl. Writ Petition No. 484/2010 transferred the investigation to CBI vide order dated 26.05.2010. It led to the re-registration of case No. RC-7(S)/ 2010/SIU-I/CBI/SC.I New Delhi on 07.06.2010 under various offences.

3. FIR No.174/2010 was registered on 25.05.2010 on the basis of complaint lodged by 'X' (assumed name) (PW-2). In her complaint dated 25.05.2010, 'X', aged around fifteen years, gave graphic account of the incident. The Investigating Officer lodged First Information Report by making endorsement over it. After the investigation was handed over to CBI, comprehensive investigation was carried out. Statements of the witnesses conversant with the facts were recorded. The prosecutrix 'Y' was recovered from a village in Distt.Jind (Haryana). She was medically examined; she recorded her 164 Cr.P.C. statement. The accused persons

were apprehended and medically examined. Upon completion of investigation, a charge-sheet was filed against the appellants and A-3 for commission of various offences. In order to establish its case, the prosecution examined twenty-eight witnesses in all and relied on various exhibits. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been filed by them. It appears that A-3 did not challenge the conviction.

4. Allegations against the appellants primarily were that in between 10.02.2010 to 03.03.2010, A-1 and A-2 deceitfully procured a minor girl namely 'Y' (assumed name) from the lawful custody of (PW-8) Nepal Sardar under the garb of keeping her as 'maid'. She was illegally confined and threatened. It is further alleged that during the period from January, 2010 to May, 2010, the appellants hatched conspiracy, pursuant to which, the prosecutrix 'Y' was sold by A-1 and A-2 to A-4 through A-3 for monetary consideration of ₹55,000/- knowing that she would be subjected to molestation, physical torture, illegal confinement and would be forced to have illicit intercourse with A-4. After the prosecutrix was sold to A-4, she was illegally confined by A-3 and A-4. During this period, A-4 committed rape upon her without her consent.

5. I have heard the learned counsel for the parties and have examined the file. At the outset, it may be mentioned that learned counsel for A-1 and A-2, on instructions, informed that A-1 and A-2 have opted not to challenge findings of the Trial Court on conviction. He, however, prayed to take lenient view taking into consideration the mitigating circumstances.

He further urged that the sentences in case FIR No.174/2010 and in the instant case be ordered to run concurrently.

6. Learned counsel for A-4 urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Ingredients of Section 376 IPC are not attracted / proved as legal marriage between prosecutrix and A-4 had taken place with her consent. No harm was caused to the prosecutrix during her stay with A-4 for about two and a half months.

7. Learned counsel for CBI urged that the impugned judgment based upon fair appreciation of evidence needs no intervention. The prosecutrix and other witnesses have fully supported the prosecution case and there are no valid reasons to disbelieve their testimonies. Sentence awarded is reasonable as trafficking racket was being run by A-1 and A-2 to sell minor girls for marriage purposes.

8. Since A-1 and A-2 have opted to give up challenge to the findings on conviction voluntarily in the presence of overwhelming evidence, their conviction is affirmed. It has not been disputed and denied that prosecutrix 'Y' aged around seventeen years [Exact date of birth 14.02.1993 as per birth certificate (Ex.PW-12/A)] was brought from her native place by PW-8 (Nepal Sardar), who used to run a placement agency under the name and style of M/s.Krishna Radha Placement Agency in Delhi. A-1 and A-2 had procured 'X' from the said agency in January, 2010 for which various documents – Service Charge Receipt dated 25.01.2010 (Ex.PW-5/A), Registration Receipt dated 25.01.2010 (Ex.PW-8/A) and Advance Salary receipt (Ex.PW-8/B) were executed. When in February, 2010, A-1 brought the prosecutrix 'Y' from the said agency, again various documents – Ex.PW-5/B, Ex.PW-8/C, Ex.PW-8/D, Ex.PW-5/C and Ex.PW-

8/F were executed. These are not under challenge. Admittedly, 'Y' was brought at house No.F-7/199, First floor, Sector-16, Rohini, where A-1 and A-2 used to live. Subsequently, they took their residence at D-134, Bhagwati Vihar, Delhi without any information to PW-8 (Nepal Sardar) and shifted 'Y' there.

9. Ample evidence has come on record that subsequently 'Y' was sold for ₹55,000/- by A-1 and A-2 to A-4 through the intervention of A-3. Crucial testimony is that of PW-17 (Ram Kunwar). He deposed that Kaushalya, Balbir's wife had approached his wife to arrange a girl for marriage with her brother (A-4). Accordingly, one Naresh Kumar (PW-11) was contacted to do the needful. Naresh Kumar told that his maternal uncle (A-3) would arrange the girl for a sum of ₹60,000/-. Subsequently, the amount was settled to ₹55,000/-. After two days of the settlement of the amount of ₹55,000/- to be paid for procurement of the girl, they all i.e. A-4, his elder brother Prem, PW-11 (Naresh Kumar) and A-3 gathered at the house of his brother-in-law PW-15 (Balbir) at Barwala to go to Delhi to take the girl. When they reached at Peeragarhi chowk in a taxi, A-3 talked to A-1 on mobile. While they sat in the taxi, A-3 talked with A-1 who was present along with his wife A-2 at some distance. After some conversation, A-3 informed them that the girl was not available that time and they should leave for Rohtak. He further informed that the girl would be available next day at Rohtak Bus-stand. Next day, they all including his wife Kaushalya again gathered at Balbir's house at Barwala. A-4 handed over ₹55,000/- to A-3 to procure the girl. They all reached at Rohtak Bus-stand at 11.00 a.m. in the said taxi. They waited there till 04.00 p.m. A-1 and A-2 appeared along with a girl (later on identified as 'Y') and handed over her custody to them

after accepting ₹55,000/-. She was directed to sit in the taxi. They all left for the village along with 'Y'. On the way, they enquired from 'Y' whether she was ready for marriage with A-4 to which she totally denied. A-3 got down from the taxi near Meham and they all halted at Barwala at PW-Balbir's house for taking tea. Thereafter, they went to village Khedar. Again 'Y' was asked if she was agreeable to marry A-4, to which she declined and insisted to be sent back to Delhi. On the next day, he left 'Y' on his motorcycle to Naresh Kumar's house as she declined to marry and live with A-4. Thereafter, Naresh Kumar called his maternal uncle A-3 on phone and apprised him about Y's unwillingness to marry A-4. Request was made to return the money. A-3 sought some time either to return money or persuade the girl to marry A-4. Thereafter, he left 'Y' again at Naresh Kumar's house and returned to his village Khedar along with A-4. He further deposed that after 2 or 3 days, he received a telephonic message from A-3 that 'Y' was ready to marry A-4. Thereafter, marriage between A-4 and the prosecutrix took place by exchange of garland etc. 'Y' lived at A-4's house happily for about a month. In the cross-examination, the facts stated by him remained unchallenged. This independent public witness related to A-3 and A-4 is not expected to make a false statement. No ulterior motive was assigned to him for deposing falsely.

10. Statement of PW-17 (Ram Kunwar) has been corroborated in material particulars by PW-15 (Balbir), A-4's brother-in-law. He elaborated that A-4 along with his other brother-in-law Prem had approached him in connection with his marriage. After that, A-4 and one Naresh Kumar came to his house and talked about A-4's marriage on payment of ₹55,000/-. After that Naresh Kumar gave ₹55,000/- to A-3. In the evening they

brought one girl identified 'Y'. He was informed that the girl was brought after marriage with A-4. The witness has not been questioned in the cross-examination on relevant facts. PW-11 (Naresh Kumar) has also deposed on similar lines. He testified that his maternal uncle A-3 had performed his marriage and the marriage of his brother with the girls from Jharkhand and Assam. Ram Kunwar, his grand-father in relation had asked him to arrange a girl for A-4's marriage. On that, he contacted his maternal uncle A-3, who assured to arrange a girl within a day or two. Thereafter, they visited Peeragarhi where A-3 had a talk with A-1 and A-2. They assured to arrange a girl for ₹55,000/- next day. On the next day, he along with A-4, his brother, A-3, Ram Kunwar and his wife reached Rohtak at around 10.00 a.m. On 04.00 p.m., A-1 and A-2 brought a girl 'Y' and handed over her custody to them after accepting ₹55,000/- from A-3. 'Y', however, declined to marry A-4. Subsequently, she was persuaded by A-1 to marry A-4, to which she agreed. Thereafter, they lived together for sufficient duration before her recovery by the Delhi Police. In the cross-examination, he informed that ₹20,000/- were not given by him in connection with his marriage. He revealed that initially the amount settled was ₹60,000/- but later on it was reduced to ₹55,000/- which was given to A-3 by A-4 in his presence. PW-9 (Anil Kumar @ Babu), the taxi driver, has deposed about his visits to Peeragarhi, Delhi and Rohtak in his taxi Tata Sumo used by A-3, A-4 and their relations. He also identified A-1 and A-2 to be the individuals who had met them at Rohtak along with a girl. The said girl was brought by them to village Khedar. PW-1 'Y' has given detailed account in her Court statement as to how she was sold by A-1 and A-2 to marry A-4 against her wishes. No valid reasons exist to disbelieve her testimony. The prosecution

has further brought on record evidence to show that the amount generated by A-1 and A-2 was deposited by them in their bank accounts. The fact remains that 'Y' was sold for ₹55,000/- by A-1 and A-2 to A-4 through the intervention of A-3. She was, thereafter, brought to the village where she declined to marry A-4. Subsequently, when she was persuaded by A-1 on getting information from A-3, she agreed to marry A-4. It has further come on record that A-4 and 'Y' both lived together for about two and a half months in the village and no complaint whatsoever was lodged by her for any ill-treatment. Subsequently, when the case was registered, the police arrested the accused persons involved in the crime and recovered the prosecutrix 'Y' when she was living with A-4 in his house in the village. Admittedly, physical relations took place between the two during this period.

11. The crucial question to be answered is if A-4 can be held guilty for committing offence under Section 376 IPC. Admittedly, the prosecutrix 'Y' was brought to the village after payment of ₹55,000/- to A-1 and A-2 in whose custody she was. Undisputedly, the purpose to bring the prosecutrix to village by A-3 and A-4 was to perform her marriage with A-4. It has further come on record that the prosecutrix was not willing to marry A-4. Nothing has emerged on record to show if before obtaining victim's consent to marry, she was forcibly ravished by A-4. PW-17 (Ram Kunwar), in the examination-in-chief, elaborated that after the prosecutrix was brought from Rohtak, on the way, she was asked of her willingness to marry A-4 which she declined. The prosecutrix, thereafter, was brought at Barwala at Balbir's house where they all took tea. He further deposed that after reaching at his house at Khedar, again, the prosecutrix was enquired if she was willing to

marry A-4. In the evening, she again refused to marry and insisted to be sent back to Delhi. At night, she even came out of the room where A-4 had gone to sleep with her; she was permitted to sleep with PW-17's wife in a separate room. On the next morning, 'Y' was left at PW-Naresh Kumar's house where she declined to marry and live with A-4. She was persuaded to marry A-4 but to no effect. Naresh Kumar contacted his maternal uncle A-3 on telephone and apprised him that 'Y' was not ready to marry A-4. Request was made that in that eventuality the money taken by A-3 be returned and the girl be sent back. A-3 sought 2 – 3 days time either to return the money or to persuade 'Y' to marry A-4. 'Y' was left at Naresh Kumar's house and PW-17 (Ram Kunwar) returned to his village Khedar along with A-4. After 2 – 3 days, A-3 informed that 'Y' was willing and ready to marry A-4. Thereafter, the prosecutrix was brought from Naresh Kumar's house. He and his wife left A-4 and the prosecutrix to village Alewa where they performed marriage by exchange of garland etc. 'Y' lived at A-4's residence happily without any complaint for about a month. At the time of arrest, she was present with A-4 in the house of his Bua at village Belrakha. The facts stated by the witness have not been controverted by the prosecution and he was not declared hostile on these facts.

12. Apparently, before performing so-called marriage with the prosecutrix, A-4 had not established any physical relations with her against her wishes and without her consent. When 'Y' agreed to marry A-4 on being persuaded by her mentors, physical relationship took place between the two in A-4's house where they lived for about more than two months. The prosecutrix (PW-1) in her examination-in-chief also corroborated PW-17 (Ram Kunwar)'s version that before her marriage with A-4, she was not

sexually abused. Though, in her examination-in-chief, she claimed that she was forcibly married against her consent with A-4 and physical relationship took place against her wishes, in the cross-examination, she admitted that during her stay at A-4's residence, she used to have conversation with neighbours. She used to cook food for family members; she also used to serve food to animals. Admittedly, during her stay at A-4's house for about two and a half months, she never raised any alarm; she did not lodge any complaint with the police alleging forcible rape. She was not under confinement; she did not attempt to flee the spot. The house where she was kept was occupied by other ladies of the family; it was not a secluded place. Nothing has come on record to show if during her stay at A-4's residence, she was physically tortured or any visible external injuries were caused to her. She was never medically examined. After her recovery, she was taken for medical examination. However, as per MLC (Ex.PW-22/B), no visible external injuries were found on her body including private parts to infer if she was forcibly raped. Nothing has come on record to show if any time 'Y' offered any resistance to avoid the sexual assault. Physical relationship was apparently with her free consent when she agreed to perform marriage with A-4 on persuasion by her acquaintances. It appears that she had reconciled to her fate. Initially, she was reluctant to marry A-4; she even did not permit A-4 to enter the room where she was sleeping. When A-4 went to the said room, she came out crying and insisted to go back to Delhi. At that time, she was not forced to have physical relation with A-4. A-4 who himself was victim of circumstance being interested to get a wife albeit on payment of certain consideration through his relatives insisted A-3 and his associate either to fulfill their promise of marriage with 'Y' or to return the money

paid by him for that purpose. When the prosecutrix agreed to marry A-4 and she exchanged garlands as a token of marriage, only then A-4 established physical relationship with her. A-4's only fault was that the girl 'Y' was procured to perform marriage on payment of monetary consideration. The prosecutrix was not a willing and consenting party at that stage. A-4 was fleeced by A-1 and A-2 and was given an impression that 'Y' was ready and willing to marry him. A-4 had no occasion to suspect as the prosecutrix was in their company and when they had handed over her custody to them; she did not raise any objection at the time. She did not object to her being taken to A-4's village by the strangers. It appears that A-4 was also aware of the transaction. Since A-1 and A-2 had not taken into confidence PW-8 (Nepal Sardar), who had brought her from West Bengal and she had no talk with him about her marriage with A-4, she declined to marry A-4. A-3 was instrumental in getting such marriages performed earlier also and it had allured A-4 to get a girl in the similar manner on payment of money. She admitted in her examination-in-chief that she had met A-1 and he has permitted her to have a talk to the landlady where A-1 used to reside. She informed the said lady that she was working in Gurgaon. She did not complain if she was ravished forcibly by A-4. From all the circumstances, it cannot be inferred that A-4 was guilty of committing an offence under Section 376 IPC as physical relations at that moment of time were with Y's consent who was above sixteen years of age. At that time, both were living together as 'husband' and 'wife'.

13. Conduct of PW-8 (Nepal Sardar) is also not beyond suspicion. He had brought the prosecutrix from West Bengal. In February, 2010, she was sent to A-1's residence to work as 'maid' on a monthly salary of

₹2,000/-. It is apt to note that prior to that in January, 2010, a girl 'X' aged around fifteen years, a minor, was also sent by him to A-1's residence at Rohini. PW-8 (Nepal Sardar) claimed that through the placement agency run by him under the name and style of M/s.Krishna Radha Placement Agency, he had employed 13 / 14 girls in different houses. He deposed that registration charges ₹500/- were received from A-1 vide receipt (Ex.PW-8/E). Advance salary receipt (Ex.PW-8/F) of ₹4,000/- for two months was executed. Strange enough, at that time, ₹9,500/- were charged by him as 'service charges' vide receipt (Ex.PW-5/C). This exorbitant service charges of ₹9,500/- apparently cannot be for mere supply of a maid at A-1's residence on a monthly salary of ₹2,000/- for two months only. Needless to say, PW-8 (Nepal Sardar) was aware that the prosecutrix would be sold for valuable consideration and for that reason, a hefty amount ₹9,500/- was charged from A-1 while handing over Y's custody to him. PW-8 (Nepal Sardar) did not claim if at any stage any amount either received as 'service charges' or 'advance salary' was ever paid to the prosecutrix or her family members. Similarly in January, 2010 PW-8 (Nepal Sardar) had supplied 'X' to A-1. Ex.PW-3/A is X's bio-data where her age has been reflected as fifteen years. He charged ₹2,800/- vide receipt (Ex.PW-8/B) from A-1 as advance salary for two months on 25.01.2010; ₹500 as registration charges vide receipt (Ex.PW-8/A) and service charges ₹9,500/- vide receipt (Ex.PW-5/A). It has come on record that 'X' did not even work at A-1's residence for two months and left A-1's residence when she was shifted to Uttam Nagar. Nothing is on record to show if any payment whatsoever was ever made to 'X' for the income generated by her. PW-8 (Nepal Sardar) again did not explain as to why ₹9,500/- as 'service charges' were obtained from

A-1 when he had already charged ₹500/- as registration fee and advance salary of ₹2,800/- for two months from him. To obtain a genuine maid for two months on a monthly salary of ₹1,400/-, it is unbelievable that A-1 would pay ₹9,500/- to PW-8 (Nepal Sardar) as 'service charges'. Undoubtedly, these documents were an eye wash and did not reflect the true transactions. Possibility of PW-8 (Nepal Sardar) to have connivance with A-1 and A-2 to sell the prosecutrix for valuable consideration cannot be ruled out. In the whole episode, it was 'Y' who was the victim whose consent was not obtained at the time of handing over her custody to A-4 for marriage. She was sold like an 'object' / chattel without any inkling to her family members. It can be inferred without doubt that A-1 and A-2 along with PW-8 (Nepal Sardar) were all instrumental in the nefarious racket. PW-8 (Nepal Sardar) himself was also beneficiary in the transaction.

14. In the light of above discussion, while maintaining conviction under Section 120B IPC read with Section 366A IPC, A-4's conviction and sentence recorded under Section 376 IPC is set aside. A1 and A-2's conviction under Section 120B read with Sections 344/366A/506 IPC and Sections 344/366A/506 IPC is affirmed.

15. A-1 and A-2 were sentenced to undergo RI for three years with fine ₹3,000/- each for commission of offence under Section 120B IPC; RI for two years with fine ₹1,000/- each under Section 506 IPC; RI for three years with fine ₹3,000/- each under Section 344 IPC and RI for seven years with fine ₹3,000/- each under Section 366A IPC. All the sentences were to operate concurrently.

16. A-1's Nominal Roll dated 03.09.2015 reveals that he has already undergone four years, four months and twenty days incarceration

besides remission for six months and twenty-five days as on 04.09.2015. It is pertinent to note that the appellant was convicted in case RC-7(S)/2010/SIU-I/CBI/SC.I PS Special Cell under Sections 323/344 IPC and was sentenced to undergo RI for two years with total fine ₹26,000/- on 02.04.2012. As per Nominal Roll dated 19.11.2014, the said sentence stood completed on 04.03.2013. He is not involved in any other criminal case and his overall jail conduct is satisfactory.

17. A-2's Nominal Roll dated 16.04.2016 shows that she has undergone five years and twenty-one days incarceration besides remission for eight months and twenty-six days as on 16.04.2016. She was also convicted in case RC-7(S), PS CBI/SC-I/ND under Sections 323/344/34 IPC on 02.04.2012 and was sentenced to undergo RI for two years with total fine ₹26,000/- which stood completed on 05.03.2013. She is also not involved in any other criminal case and her jail conduct is satisfactory.

18. CrI.M.A.No.816/2015 has been filed on behalf of the appellants (A-1 and A-2) to count the period spent by them in custody from 11.08.2010 and to order both the sentences to run concurrently. This is opposed by CBI.

19. Perusal of the file reveals that the appellants who were arrested on 11.08.2010 continue to be in custody since then. As discussed above, they have been convicted in both the cases. Undisputedly, the offences in the instant case and that of the previous one registered on the X's complaint were committed in the course of same transaction. Interest of justice requires that the sentences in both the cases should run concurrently.

20. Since both A-1 and A-2 are in custody since 11.08.2010, needless to say, they have suffered incarceration for about six years besides remission for sufficient duration. Considering the substantial period

undergone by them, they are ordered to be released for the period already undergone by them in both the cases. Of course, they shall deposit the fine (if unpaid) imposed by the Trial Court in both the cases within two weeks and for its non-payment shall suffer SI for six months each in all.

21. Regarding A-4, Nominal Roll dated 27.11.2015 reflects that he has already undergone five years, four months and fifteen days incarceration besides remission for seven months and twenty-five days as on 27.11.2015. He has clean antecedents and is not involved in any other criminal case; he is not a previous convict. Conviction under Section 376 IPC has been set aside. Considering these facts and circumstances of the case, the period already undergone by him in this case is taken as substantive sentence. He shall, however, deposit the fine imposed by the Trial Court within two weeks (if unpaid) and default sentence for its non-payment shall be SI for one month.

22. The appeals stand disposed of in the above terms. Pending applications also stand disposed of.

23. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

JULY 26, 2016 / tr