

\$~R-46

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

+ **CRL.A. 915/2005**

SITA

..... Appellant

Through: Mr. Sumeet Verma, Adv with
Ms. Preeti Jakhar, Advocate.

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, APP for
State with SI B.R. Tyagi, PS
Kamla Market.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

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12.06.2018

ANU MALHOTRA, J.

1. In terms of proceedings dated 04.06.2018, the nominal roll has been received from the Superintendent Central Jail, Tihar New Delhi indicating that the appellant has undergone the entire period of seven years of Rigorous Imprisonment and has also undergone the in default sentence of one year and three months of Rigorous Imprisonment for the non deposit of the composite sum of Rs.15,000/- as imposed vide the impugned order on sentence dated 11.05.2005 and after having served the entire sentence with the sentence in lieu of fine, has been released from jail on 31.05.2010.

2. The appellant as per the impugned judgment is indicated to have been convicted for the commission of the offences punishable under Section 342/368/373/376 r/w 109 of the Indian Penal Code, 1860 and Section 3,4,5 & 6 of the ITPA and vide the impugned order on sentence dated 11.05.2005 was sentenced to undergo Rigorous Imprisonment for period of 6 months for the offence punishable under Section 342/34 of the Indian Penal Code, 1860 and was further sentenced to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for two months qua the offence punishable under Section 368/34 of the Indian Penal Code, 1860 and further sentenced qua the offence punishable under Section 373/34 of the Indian Penal Code, 1860 to undergo Rigorous Imprisonment for a period of 7 years, to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo Rigorous Imprisonment for five months with the appellant having also been sentenced qua the offence punishable under Section 376/109 of the Indian Penal Code, 1860 to undergo Rigorous Imprisonment for 7 years, to pay a fine of Rs.5,000/- and in default of the payment of the fine, to further undergo Rigorous Imprisonment for a period of five months with the appellant having also been sentenced qua the offence punishable under Section 3 of the I.T.P. Act to undergo Rigorous Imprisonment for a period of one year, to pay a fine of Rs.1,000/- and in default of the payment of the fine to further undergo Rigorous Imprisonment for a period of one month. The appellant is also vide the impugned order on sentence indicated to have been sentenced qua

the offence punishable under Section 4 of the I.T.P. Act to undergo Rigorous Imprisonment for a period of two years and to undergo Rigorous Imprisonment for a period of 7 years qua the offence punishable under Section 5 of the I.T.P. Act with the appellant having also been sentenced to undergo Rigorous Imprisonment for a period of 7 years, to pay a fine of Rs.1,000/- and in default of the payment of the fine to further undergo Rigorous Imprisonment for a period of one month with all the sentences having been directed to run concurrently with the benefit of Section 428 of the Cr.P.C and the period of detention already undergone by the appellant be directed to be set off.

3. The appellant as per the nominal roll is indicated to have earned one year, four months and three days of remission. As per the impugned judgment there were three other co-accused in the instant case, i.e., Geeta, Sadhu Ram & Mishri Lal who have since been declared proclaimed offenders as per the charge of allegations framed against the appellant which *inter alia* indicates to the effect that the appellant one month prior to 25.08.2003 in furtherance of her common intention with the co-accused, i.e., the proclaimed offenders Geeta, Sadhu Ram & Mishri Lal purchased or otherwise obtained the possession of prosecutrix Ms. X under the age of 18 years with the intention that she at any stage be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful immoral purpose or knowing it to be likely that she will at any stage be employed or used for any such purpose and that in furtherance of the common intention with other co-accused, i.e., the proclaimed offenders had wrongly confined the prosecutrix, Ms.X apart from

having caused hurt to her and had committed an offence under Sections 323/34 of the Indian Penal Code, 1860.

4. The charge of allegations framed against the appellant *inter alia* to the effect that she in furtherance of her common intention with three other persons, i.e., the proclaimed offenders named hereinabove knowing that the prosecutrix had been kidnapped, wrongfully concealed and confined her in order that she will be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse and she, i.e., the appellant also abetted the crime of rape on the prosecutrix by different persons in furtherance of her common intention with the other three accused, i.e., the proclaimed offenders and that the appellant also in furtherance her the common intention with the three proclaimed offenders managed the brothel at 59, 3rd Floor, Left side, G.B. Road, Delhi and that she along with the co-accused, i.e., the proclaimed offenders lived wholly or in part on the earning of the prostitution of the prosecutrix, Ms.X a minor and had committed an offence punishable under Section 4 of I.T.P. Act, 1956 and that allegedly the appellant along with the three co-accused had procured the prosecutrix for the purpose of prostitution, caused or induced her to carry on prostitution and had committed an offence punishable under Section 5 of the I.T.P. Act, 1956 and under Section 373/34, 323/34, 368/366/34, 376/109/34 of the Indian Penal Code, 1860.

5. *Inter alia* the charges framed against the appellant were also to the effect that she in furtherance of common intention with the co-accused, i.e. the proclaimed offenders Geeta, Sadhu Ram & Mishri Lal

had detained the prosecutrix at the premises at the brothel at 59, 3rd Floor, Left side, G.B. Road, Delhi and had committed an offence punishable under Section 6 of the I.T.P. Act, 1956.

6. Vide the impugned judgment dated 10.05.2005 the appellant was convicted qua the offences punishable under Sections 392/368/373/376/109 of the Indian Penal Code, 1860 and Sections 3/4/5/56 of the Immoral Traffic (Prevention) Act, 1956.

7. On a perusal of the testimony of the prosecutrix, Ms.X examined as PW-14 and the other prosecution witnesses examined, the allegations levelled against the appellant of the commission of the offences punishable under Section 366/368/376/109/342/34 of the Indian Penal Code, 1860 and Sections 3,4,5 & 6 of the I.T.P. Act, 1956 are brought forth beyond a reasonable doubt and it is apparent that there is no infirmity in the impugned judgment dated 10.05.2005 to that extent.

8. On behalf of the appellant, it has been contended by the learned counsel which is also not refuted on behalf of the State that the allegation qua the alleged commission of the offence punishable under Section 373/34 of the Indian Penal Code, 1860 against the appellant are not brought forth inasmuch as qua the applicability of Section 373, which provides as follows:-

“373. Buying minor for purposes of prostitution, etc.—
Whoever buys, hires or otherwise obtains possession of any 1[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be]

employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. 2[Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution. Explanation II.—“Illicit intercourse” has the same meaning as in section 372.]”

the age of the prosecutrix had necessarily to be below the age of 18 years on the date of the alleged commission of the offence which is apparently not borne out through the testimony of the prosecutrix herself nor from the ossification test conducted as also reflected through the impugned judgment through the testimony of PW-13 Dr. Anil Kumar who has examined the X-Ray of the prosecutrix had opined her age to be between 18-20 years as also brought forth through the report, i.e., Ex.PW13/A and the statement of the prosecutrix herself with her statement recorded on 28.05.2004 when she had stated that she was 30 years of age and coupled with the factum that the testimony of the prosecutrix indicates that the incident had taken place sometime 10 years before the recording of her testimony when apparently she would be 20 years of age atleast and thus the testimony of the prosecutrix itself is an indicator that at the time of the commission of the offences, the prosecutrix was above the age of 18 years. Even the testimony of PW-7, Dr. Anju Goyal, Senior Surgeon, Department of Obstetrics and Gynae, Lok Nayak Hospital indicates that the prosecutrix had stated that she had been brought

from Karnataka on 20.07.2003 for marriage and which also indicates that the prosecutrix was above the age of 18 years on the date of the alleged commission of the offence in view of the ossification test on the record through Ex.PW13/A.

9. In view thereof, the conviction of the appellant qua the alleged commission of the offence punishable under Section 373/34 of the Indian Penal Code, 1860 is thus set aside. The impugned judgment dated 10.05.2005 and the impugned order on sentence dated 11.05.2005 are modified to this extent. The impugned judgment and the impugned order on sentence in relation to the convictions of the appellant and sentences imposed for the commission of the offences punishable under Section 342/368/376/109 of the Indian Penal Code, 1860 and Section 3,4,5 & 6 of the I.T.P Act, 1956 in relation to FIR No. 285/03 PS Kamla Market in Sessions case no. 1/04 are thus upheld.

10. In reply to a specific court query, it is stated by SI B.R. Tyagi, PS Kamla Market that the brothel at premises 59, 3rd Floor, Left side, G.B. Road, Delhi is in a sealed condition.

11. The present appeal is disposed of accordingly.

12. Copy of this judgment be sent to the Superintendent Jail, Delhi.

ANU MALHOTRA, J

JUNE 12, 2018/NC