

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 380 of 2019

***Tania Mondal @ Tania Khatoon @
Tania Begum @ Hazra
Vs.
State of West Bengal***

With

***C.R.A. 356 of 2019
Ahammad Ali @ Ahmed Ali
Vs.
State of West Bengal***

For the Appellant In CRA 380/2019	:	Mr. Pratip Kumar Chatterjee, Adv. Mr. Tirthankar Dhali, Adv.
For the Appellant In CRA 356/2019	:	Ms. Anasuya Sinha, Adv. Mr. Avishek Sinha, Adv.
Amicus Curiae	:	Mr. Sumanta Ganguly, Adv.
For the State In CRA 380/2019	:	Mr. Swapan Banerjee, Adv. Mr. Suman De, Adv.
For the State In CRA 356/2019	:	Mr. Madhusudan Sur, Id. A.P.P., Adv. Mr. Manoranjan Mahata, Adv.
Heard on	:	30.08.2023 and 05.09.2023.
Judgment on	:	05.09.2023.

Joymalya Bagchi, J. :-

1. Appeals are directed against judgment and order dated 29.05.2019 and 31.05.2019 passed by the learned Additional District and Sessions Judge, Fast Track Court-I, City Sessions Court, Bichar Bhavan, Calcutta in Sessions Case No. 38 of 2016 convicting the appellant viz. Tania Mondal @ Tania Bibi @ Tania Khatun @ Hazra for commission of offence punishable under Sections 366B/370 IPC read with Section 120B IPC and under Sections 3/5/6 of the Immoral Traffic (Prevention) Act, 1956 and sentencing her to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 366B IPC, to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 370 IPC read with Section 120B IPC, to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for one month more for the offence punishable under Section 3 of the Immoral Traffic (Prevention) Act, to suffer rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for one month more for the offence punishable under Section 5 of the Immoral Traffic (Prevention) Act and to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months

more for the offence punishable under Section 6 of the Immoral Traffic (Prevention) Act.

2. Appellant viz. Ahammad Ali @ Ahmed Ali was convicted and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 370 IPC read with Section 120B IPC.

Genesis of the prosecution case:-

3. Prosecution case as alleged against the appellants is as follows:-

The victim is a minor girl who hailed from Khulna, Bangladesh. Her family lived in acute financial stress. Tania Mondal @ Hazra (Appellant in CRA 380 of 2019) was known to the family. She promised the victim employment in Kolkata. Accordingly, the victim left her residence in Bangladesh with the help of the mother of Tania Mondal @ Hazra.

4. After entering India, she was handed over to one Ahammad Ali @ Ahmed Ali (appellant in CRA 356 of 2019). Ahmed Ali handed over the victim to Tania Mondal @ Hazra who kept her on the top floor of premises No.97, Durga Charan Mitra Street. Victim saw women in scanty clothes in the said house. She was told by Tania Mondal @ Hazra and her husband that she should not disclose her identity to outsiders. She should say she had come from Dankuni and was aged 20-22 years.

5. Two days later, Tania Mondal @ Hazra brought a person who sexually exploited her. On that day i.e. 14.12.2015 PW 10 conducted a raid with the help of non-governmental organization at the preemies. She

recovered the victim. Statement of the victim was recorded which was treated as First Information Report and Burtola P.S. Case No.431 of 2015 dated 14.12.2015 under Sections 366B/370/120/372 IPC read with Sections 3/4/5/6/7 of the Immoral Traffic (Prevention) Act was registered for investigation.

6. During investigation, the victim made statement before Magistrate. She also gave out the physical features of Ahmed Ali who had trafficked her. A sketch was prepared and Ahmed Ali was arrested. During T.I. Parade examination, victim identified Ahmed Ali.

7. Upon charge sheet being filed, charges were framed under Sections 366B/120B/370 IPC and under Sections 3/4/5/6/7 of the Immoral Traffic (Prevention) Act against Tania Mondal @ Hazra and under sections 370/120B IPC against Ahmed Ali.

8. They pleaded not guilty and claimed to be tried.

9. In course of trial, prosecution examined ten witnesses and exhibited a number of documents. T. I. Parade report was exhibited on admission.

10. In conclusion of trial, trial Judge by the impugned judgment and order dated 29.05.2019 and 31.05.2019 convicted and sentenced the appellants, as aforesaid.

Arguments at the Bar:-

11. Learned Advocate for the appellant viz. Tania Mondal @ Hazra submits version of the victim before police officer, Magistrate and in Court are contradictory. In Court she failed to give the date when she had

been trafficked. But in the FIR she claimed she had been trafficked two days prior to her recovery i.e. on 12.12.2015. Hence, there is a defect in the charge wherein it is alleged that the victim had been trafficked on 14.12.2015. Manner and circumstances in which the victim was trafficked and subjected to sexual exploitation have also undergone improvements. She is silent with regard to rape before police officer as well as Magistrate. Place and manner of recovery have also not been proved. It is unclear whether Tania Mondal @ Hazra was present at the time of recovery. Seizure list shows articles of Tania Mondal @ Hazra were recovered from 94, Durga Charan Street whereas recovery of the girl was from 97, Durga Charan Mitra Street. Mother of the victim though present during trial has not been examined. Her age has not been proved beyond doubt. Appellant is entitled to an order of acquittal.

12. Learned Advocate for the appellant viz. Ahammad Ali @ Ahmed Ali submits appellant is not named either in the FIR or before Magistrate. Subsequent statement before police has not been produced. One arm of Ahmed Ali was missing. No precaution was taken when he was put up in T. I. Parade. Evidence on record does not show Ahmed Ali was aware that the victim was a Bangladeshi minor and was being trafficked for sexual exploitation. Ingredients of offence of criminal conspiracy have not been proved. In addition, he adopted the submissions made on behalf of Tania Mondal @ Hazra.

13. Per contra, learned Advocates for the State submit PW1 was a minor. Report of PW6 Medical Officer shows she was between 16-18 years

at the time of occurrence. She was a Bangladeshi girl and had been trafficked by the appellants. At the time of recovery she was deeply traumatized. Hence, she was unable to come out with entire facts before police. In Court, she identified the appellants and disclosed their respective roles in trafficking. Her evidence and the attending circumstances clearly establish the series of acts leading to her procurement and confinement in the brothel. She was also sexually exploited. Hence, prosecution case is proved beyond doubt.

Evidence on record:-

14. The instant case depicts the sordid saga of sexual exploitation of a Bangladeshi girl. Her family lived in abject poverty. Taking advantage of the situation, Tania Mondal @ Hazra, a friend of the family seduced the victim to come to Kolkata on the false promise of giving employment.

15. The victim (PW 1) has graphically narrated the distressing conditions which gave an opportunity to the appellants to lay the trap and traffic her to a brothel for sexual exploitation. In her deposition, the witness stated mother of Tania Mondal @ Hazra brought her to India. She came to India in a bus. Therefrom she was handed over to a person named Ahmed Ali. She identified Ahmed Ali in Court. Ahmed Ali took her from the bus stand and handed her over to Tania Mondal @ Hazra near a petrol pump. Therefrom she was taken to a house. There she saw various women in scanty clothes. She was kept inside a room. She found persons having sexual intercourse. She was told by Tania Mondal @ Hazra and her husband Sandip Singh not to disclose her identity. She was taught to

say she is 20-22 years old and lived in Kolkata. On the next day, Tania Mondal @ Hazra brought a male person who committed rape on her. After some time, a number of persons came to the house. They enquired whether she was a new comer. Thereafter, they told her they were police personnel. She disclosed her name and address. She narrated the incident which was recorded into writing. After recovery she was medically examined. She made statement before Magistrate. She was taken to a childrens' home. Subsequently, Ahmed Ali was arrested. She identified him during T. I. Parade examination.

16. PW 2 (Madhuja Nandi), PW 3 (Chaya Halder), PW 4 (Shaktipada Mondal) and PW 5 (Samir Dey) were present at the time of recovery of the victim (PW 1). They corroborated her deposition. PW 2 also deposed a diary, pan card, makeup box, photograph were seized from Tania Mondal @ Hazra by police. PW 2 signed on the seizure list.

17. PW 10 (Annapurna Das Sarkar) is a police officer. On 14.12.2015 she was posted at D.D.I.T. Section, Lalbazar as Inspector of Police. She received source information that prostitution was being carried on with minor girls at 97, Durga Charan Mitra Street. She conducted raid at the premises. She recovered the victim who disclosed her identity. She detained Tania Mondal @ Hazra at the time of recovery. She recorded the statement of the victim which was treated as FIR. She sent the victim to a childrens' home for safe custody. She arrested Tania Mondal @ Hazra. She could not trace out her husband Sandip Singh. She went to 94, Durga Charan Mitra Street and seized personal belongings of Tania

Mondal @ Hazra. She identified the personal belonging i.e. pan card, note book, photographs, mobile phone etc. in Court. She examined the victim again. As per her narration, a sketch map of co-accused was prepared by PW 8. Pursuant to such information, she arrested Ahmed Ali. Victim identified Ahmed Ali during T.I. Parade examination. Victim was medically examined to determine her age. She also made statement before Magistrate.

18. PW 8 (Arup Kumar Sarkar) is an ASI of Police. He was attached to DD Lalbazar. He deposed as per description of PW 1 he prepared portrait of the male accused. He exhibited the portrait in Court (Ext.8).

19. PW 9 (Purba Kundu) is the Judicial Magistrate. She recorded the statement of the victim under Section 164 of the Code of Criminal Procedure (Ext.5/1).

Defect in charge-sheet – whether fatal:-

20. Firstly, it is argued the charge is defective. In the charge, it is stated victim was trafficked on 14.02.2015 whereas in evidence she stated she was trafficked two days prior to her recovery on 14.12.2015. In FIR, victim stated she had come to Kolkata two days earlier. During trial, she did not state the date when she was trafficked. However, reading her evidence as a whole it appears she was trafficked a day prior to her recovery. Evidence on record shows she was trafficked one or two days prior to recovery. Appellants were fully aware of the prosecution case. They extensively cross-examined the victim but could not shake the foundation of the prosecution case that the victim was trafficked from

Bangladesh to Kolkata and was recovered from a brothel on 14.12.2015. Incorrect date in the charge-sheet has not misled the appellants in their defence in any manner. Nor has it caused any miscarriage of justice and vitiated the trial.

Is the victim (PW 1) reliable:-

21. Learned Advocates for the appellants have also seriously challenged the deposition of PW 1 on a number of counts. It is contended the witness embellished her version in Court. She did not disclose the role of Ahmed Ali in the FIR or before Magistrate. Hence, her version ought not to be relied upon.

22. PW 1 was a young Bangladeshi girl. She had been brought to Kolkata on the promise of giving employment. After coming to Kolkata she had been detained in a room at premises No.97, Durga Charan Mitra Street. She saw various scantily dressed women in the house. She also noticed sexual activity between unknown persons. She was told not to disclose her identity. She was afraid and extremely apprehensive at the turn of events.

23. On the next day, Tania Mondal @ Hazra brought a man who forcibly had sexual intercourse with her. Soon thereafter, a couple of women came to the premises. They detained PW 1 as well as Tania Mondal @ Hazra. Naturally, these events had traumatized PW 1. She was a foreigner and wholly unacquainted with her settings. Her hopes of good employment which lured her to India had already been dashed. In all likelihood, when she was detained she may have been apprehensive that

she may be booked for illegally entering the country. These aspects need to be borne in mind when one appreciates the deposition of the hapless victim. Due to trauma and fear, she was unable to come out with the entire facts. Hence, omission in her earlier statements be it before police or Magistrate cannot be a ground to discredit her version in Court. During trial, the victim identified the appellants and narrated their roles in the crime. Version of the victim is credible and does not suffer from patent improbabilities. She is a victim of sex trafficking and her deposition which remains unshaken during cross-examination is sufficient to prove the roles of the appellants in the crime beyond doubt.

Recovery of the victim and apprehension of Tania Mondal @ Hazra:-

24. Recovery of the victim from the brothel is also proved beyond doubt. PW 10 who conducted the raid, stated on 14.12.2015 she had raided premises No.97, Durga Charan Mitra Street. She recovered the victim who disclosed her identity as a Bangladeshi girl. She also apprehended Tania Mondal @ Hazra whom the victim called as '*didi*'. Personal articles of Tania Mondal @ Hazra were recovered from an adjoining house.

25. PW 10's version is corroborated by independent witnesses viz., PWs 2 to 5 herein. One of them PW 4 was a member of non-governmental organization who accompanied the police in the raid. These independent witnesses have proved the recovery of the victim from the brothel where she had been detained for sexual exploitation.

26. Apprehension of Tania Mondal @ Hazra from the place of occurrence has been proved by these witnesses. A wholesome reading of the evidence on record leaves no doubt that PW 1 a Bangladeshi girl had been brought to a brothel at premises No.97, Durga Charan Mitra Street for sexual exploitation. Ingredients of the charged offences are proved beyond doubt against Tania Mondal @ Hazra.

Involvement of Ahmed Ali:-

27. Learned Counsel for the appellant Ahmed Ali submits his role in the crime has not been proved. He argued his client has not been named either in the FIR or before the learned Magistrate. His identification in the test identification parade is doubtful as he had a missing arm. No precaution was taken in that regard.

28. I have already discussed the traumatic state of mind of the victim at the time of her rescue. As a consequence she took time to come out with the nitty-gritty of the entire chain of trafficking till her arrival at the brothel. Only when she attained some composure she divulged the role of Ahmed Ali. She gave a description of the appellant Ahmed Ali which helped the police to prepare a portrait. Portrait of the appellant was exhibited during trial without objection. These circumstances have remained unrefuted which clearly corroborates the identification of Ahmed Ali in Court.

29. It is also argued there is nothing to show that appellant Ahmed Ali was aware the victim was trafficked for sexual exploitation. Charge levelled against the said appellant is of criminal conspiracy to traffic the

victim girl. To prove a charge of conspiracy it is not necessary that the prosecution must establish that each of the conspirator was aware of the illegal act committed by all the other conspirators. A meeting of mind between the conspirators and acts done pursuant thereto are sufficient to establish the charge. Evidence of PW 1 shows she was trafficked into India by the mother of Tania Mondal @ Hazra. This lady handed over the victim to Ahmed Ali and he, in turn, handed her over to Tania Mondal @ Hazra. Finally Tania Mondal @ Hazra took her to the brothel where the victim was detained.

30. The chain of events so narrated by PW 1 proves Ahmed Ali played a part in the trafficking of the victim. Manner and circumstances in which Ahmed Ali was present at the bus stand where the victim was brought by the mother of Tania Mondal @ Hazra leads to the irresistible inference that Ahmed Ali knew the victim would be brought at the spot at the material point of time. Similarly, Ahmed Ali's handing over the victim to Tania Mondal @ Hazra at the pre-determined spot, i.e. the petrol pump also indicates a prior meeting of minds and pre-arranged plan between the appellants to traffic the victim.

31. It is common knowledge conspiracies are not hatched in the dark. Hardly one would get direct evidence to prove conspiracy. Acts and/or omissions of the conspirators, their conduct when tested on the anvil of normal course of human events are relevant factors to establish a charge of conspiracy. Viewed from this angle the seamless manner in which the appellants operated and handed over the victim from one to another

shows prior meeting of minds and establishes the charge of conspiracy beyond doubt.

Whether victim was a minor?

32. Finally it was argued that prosecution has not been able to prove the victim was a minor. Learned Counsels for the appellants submit prosecution failed to lead the best evidence and withheld the mother of the victim from the Court. On the first blush, this is an attractive argument but if one examines the records it would appear the prosecution was wise not to do so. Mother of the victim had made a prayer for the victim's custody which was opposed by the prosecution presumably on the ground that she was hand in glove with the traffickers.

33. In this backdrop, I cannot find fault with the decision of the prosecution not to propose the mother of the victim as a witness.

34. Prosecution relied on the following evidence to prove the age of the victim:-

- (i) PW 10 deposed when she recovered her, the victim stated she was 16 years old;
- (ii) PW 6, medical officer who conducted radiological examination stated the age of the victim was between 16 to 18 years.

35. It is argued medical opinion with regard to the age is an approximation and may vary two years on either side. Reference was made to ***State of Rajasthan vs. N.K. The Accused***¹ in support of such plea.

¹ (2000) 5 SCC 30

It is true medical opinion with regard to assessment of age is not exact. The opinion would indicate a range based on the physical, radiological and other features of the victim. PW 6 (Nabanita Adhikary) undertook the physical, dental and radiological examination of the victim. She noted the status of the lower ends of the radius and ulna and found that the epiphysis had not fused. Accordingly, she came to a conclusion with regard to an approximate range i.e. 16 to 18 years. She did not indicate the exact age but acknowledging the approximate nature of scientific evidence proposed a range between 16 to 18 years. When the medical officer had proposed a range of two years, further addition of two to three years is not prescribed either in law or in practice. Facts in the ***State of Rajasthan*** (Supra) are distinguishable. In the said case the medical officer initially proposed the age to be below 15 years and thereafter changed his version and claimed victim was 16 years old. He had proposed a fixed age unlike the present case where PW 6 proposed a range as in this case keeping in mind the approximate nature of determination of age through medico-legal examination.

36. The approximate range opined by PW 6 i.e. 16-18 years corroborates the deposition of PW 10 that the victim stated she was 16 years old at the time of the incident. Prosecution has been able to prove that the victim was below 18 years and was a minor at the time of incident.

Conclusion:-

37. In the light of the aforesaid discussion, I am of the opinion that prosecution has been able to prove its case beyond reasonable doubt.

38. Conviction and sentences of the appellants are upheld.

39. Bail bond of the appellant viz. Ahammad Ali @ Ahmed Ali is cancelled and he is directed to surrender forthwith and serve out the remainder of the sentence in accordance with law.

40. In the event he fails to do so trial court shall issue appropriate processes for his apprehension and execution of the sentence.

41. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of section 428 of the Code of Criminal Procedure.

42. Appeals are accordingly dismissed.

43. Copy of the judgment along with Lower Court Records be sent down to the trial Court at once for necessary compliance.

44. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)