

**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. (DB) 265 of 2023
(CRAN 1 of 2023)
(CRAN 2 of 2024)***

***Hasina Mondal @ Ritu
-Vs-
The State of West Bengal***

W I T H

C.R.A. (DB) 280 of 2023

***Abdul Kalam Tarafder
-Vs-
The State of West Bengal***

W I T H

***C.R.A. (DB) 297 of 2024
(CRAN 1 of 2024)***

***Golam Mostafa Mondal @ Zafar
-Vs-
The State of West Bengal***

For the Appellant : Mr. Deepak Prahladka, Adv.
[in CRA (DB) 265/2023] Ms. Reshmi Khatun, Adv.

For the Appellant : Mr. Santanu Talukdar, Adv.
[in CRA (DB) 280/2023]

For the Appellant : Ms. Trina Mitra, Adv.
[in CRA (DB) 297/2024]

For the State : Mr. Debasish Roy, ld. Public Prosecutor
Mr. Sanjay Banerjee, Adv.
Ms. Nahid Ahmed, Adv.

For the State : Ms. Anasuya Sinha, ld. A.P.P.
[in CRAN 1 of 2024] Ms. Eshita Dutta, Adv.

Heard on : 04.03.2025

Judgment on : 04.03.2025

Joymalya Bagchi, J. :-

1. Appeals are directed against judgment and order dated 31.07.2023 and 01.08.2023 passed by the learned Additional District & Sessions Judge, Bench-I, City Sessions Court, Calcutta in Sessions Case No.63 of 2017 convicting the appellants for commission of offence punishable under Sections 366B/370(2)/120B of the Indian Penal Code and sentencing them to suffer simple imprisonment for ten years each and to pay a fine of Rs.10,000/- each, in default, to suffer simple imprisonment for six months more for the offence punishable under Sections 366B/120B of the Indian Penal Code and to suffer rigorous imprisonment for ten years each and to pay a fine of Rs.20,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under Sections 370(2)/120B of the Indian Penal Code; both the sentences shall run concurrently.

Prosecution case:-

2. Prosecution case as levelled against the appellants is as follows :

The victim is a 15-year old girl who hails from Bangladesh. One Rajan took her to Jessore on the false promise of giving employment and sold her to Sahajahan. Sahajahan handed her over to his nephew who brought her by a boat to India. She was kept in a house. One Ibadulla Tarafdar took her to Kolkata and kept her in a flat at Kaikhali. Hasina Mondal @ Ritu (*appellant in CRA (DB) 265 of 2023*) interrogated her and took her to a market. She made her wear a new dress. Abdul Kalam Tarafder (*appellant in CRA (DB) 280 of 2023*) took her photographs wearing new dress. On 11.10.2017 Golam Mostafa Mondal @ Zafar (*appellant in CRA (DB) 297 of 2024*) boarded a bus along with her for Howrah station. While they were in the bus, Golam received a message on his mobile phone relating to a ticket in her name from Howrah to Nagpur. The message was seen by a co-passenger in the bus. One of the passengers, namely, Tarun Kumar Halder (PW 4) in the bus interrogated Golam and the victim. He found their replies evasive. Suspecting the victim had been kidnapped, he brought down the victim and Golam from the bus at the gate of the police headquarters at Lalbazar, Kolkata. SI Sumit Mahato (PW 2) and Sergeant Souvik Ghosh (PW 3) were on duty at Lalbazar In-gate Security section. Tarun Kumar Halder (PW 4) reported the matter to the police who in turn informed Hare Street Police Station. Md. Intekhme (PW 11) and SI Shrabanti Ghosh (PW 12) came to Lalbazar.

On interrogation the victim stated she had been tutored and came out with the correct state of affairs.

3. Her statement was treated as FIR and Hare Street Police Station Case No.393 of 2017 dated 11.10.2017 under Sections 120B/366A/366B/370/372/373 of the Indian Penal Code was registered for investigation.

4. During investigation, the victim was again interrogated. Pursuant to her statement police raided the flat at Kaikhali and arrested Hasina Mondal and Ibadulla Tarafdar. Subsequently, Abdul Kalam Tarafder was also arrested. Victim was subjected to radiological examination to determine her age. Ossification report shows she was aged between 15-17 years. Her statement was recorded before Magistrate and charge sheet was filed. Charges were framed under Sections 120B/366B/373/370(4) of the Indian Penal Code against the appellants and one Ibadulla Tarafdar. Appellants pleaded not guilty and claimed to be tried. In course of trial, prosecution examined thirteen witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication.

5. In conclusion of trial, learned trial Judge by impugned judgment and order dated 31.07.2023 and 01.08.2023 convicted and sentenced the appellants and Ibadulla Tarafdar, as aforesaid.

6. Appellants have assailed their conviction and sentence in these appeals. Ibadulla Tarafdar has not appealed against the conviction and sentence.

Arguments at the Bar:-

7. M/s. Deepak Prahladka, Trina Mitra and Santanu Talukdar argue the prosecution case is riddled with numerous contradictions. No investigation was done with regard to circumstances in which the victim is alleged to have come to India. Place where she had first resided has not been identified.

8. Mr. Prahladka strenuously argues apart from purchasing clothes for the victim, no incriminating evidence has surfaced against Hasina Mondal. She cannot be said to be a conspirator in the offence of procurement and trafficking of the victim girl.

9. Mr. Talukdar also argues Abdul Kalam Tarafder had not been apprehended with the victim. He further argues recovery of the minor girl with Golam is a concocted story. No General Diary with regard to PWs.11 and 12 leaving Hare Street Police Station and recovering the victim girl had been exhibited in court.

10. Ms. Trina Mitra submits PW 4 is an unreliable witness. Co-passenger who had read the message on Golam's mobile phone had not been examined. PWs.5 and 6 i.e. the bus driver and conductor claimed the incident occurred in November and not October, 2017. Accordingly, they pray for acquittal of the appellants.

11. Learned Advocate for the State submits evidence on record clearly establishes the crime against the appellants. Accordingly, the appeals are liable to be dismissed.

Evidence on record:-

12. PW 1 is the victim. She narrates the manner in which she was trafficked to India on the false promise of giving employment. She was kept in an unknown house and Ibadulla took her to a flat at Kaikhali. Hasina took her to the market and brought her a new dress. Abdul Kalam Tarafder took her photographs in the new dress. On 11.10.2017 Golam Mostafa Mondal took her in a bus and proceeded towards Howrah station. Enroute he received a message on his mobile phone regarding a train ticket purchased in her name for Nagpur. A co-passenger made enquiries and being suspicious compelled PW 1 and Golam to come down from the bus and handed them over to police at Lalbazar. PW 1 identified the appellants in court and proved her signatures in the medical papers as well as her statement before Magistrate. During cross-examination, she admitted she had not informed any of her relations when she came to India. She had not raised alarm.

13. PW 4 (Tarun Kr. Halder) is one of the passengers of the bus. He deposed he met a man and a woman in the bus. The man told him he ordinarily avails trains and did not travel by bus. He heard the man talking over phone with a person. The said man received a message on his mobile phone. He requested another passenger to read the message.

The said passenger told him the message relates to reservation in Gitanjali Express. He enquired why they were going to Nagpur. The man stated he was talking to his parents who stayed at Nagpur. The girl also stated she was related to the said man. This raised doubt in PW 4's mind. He brought them down at the gate of police headquarters at Lalbazar, Kolkata. He handed them over to police.

14. PW 2 (Sumit Mahato) and PW 3 (Souvik Ghosh) are the police officers who were on duty at Lalbazar In-gate Security Section. They corroborated PW 4 and stated he had handed over Golam Mostafa Mondal with the minor girl to them alleging that Golam had kidnapped her and was taking her to Nagpur.

15. PW 4 also received corroboration from the driver and conductor of the bus who have been examined as PWs.5 and 6.

16. PW 11 (Md. Intekhme) and PW 12 (Shrabanti Ghosh) are police officers attached to Hare Street Police Station.

17. PW 11 is the first investigating officer. He stated he received telephonic intimation that a minor girl along with a man had been detained at the In-gate of Lalbazar police headquarters. He along with PW 13 and police force came to the spot. On primary enquiry, he found both of them were making contradictory statements. He interrogated Tarun Kr. Halder (PW 4). He prepared rescue list, recovered mobile phones and bus tickets at the spot. He recorded the statement of the minor girl which was

treated as FIR. He stated General Diary entries were recorded prior to leaving the police station and after the operation.

18. PW 12 is the second Investigating Officer. She corroborated PW 11. She stated she recorded the statement of the victim. She conducted raid at '*Shiuli Apartment*' at *Kaikhali more* and arrested Hasina Mondal and Ibadulla Tarafdar. Minor victim was sent to women's home. She proceeded along with Golam Mostafa Mondal to arrest Abdul Kalam Tarafder within Gopalnagar police station. Local people intervened. Golam escaped from her custody. Subsequently he was arrested and a separate criminal case was registered. In conclusion of investigation, she submitted charge sheet.

19. PW 7 (Gunju Singh) and PW 8 (Bina Singh) are owners of '*Shiuli Apartment*' at Kaikhali.

20. PW 7 stated Golam Mostafa Mondal and Abdul Kalam Tarafder had taken the flat on rent at Rs.9,000/- per month. They had paid rent of Rs.18,000/- for two months. He obtained the Voter's Identity card, Aadhaar card and PAN card of Abdul Kalam Tarafder. He proved them in court. His deposition is corroborated by his wife Bina Singh (PW 8) and the negotiator who had introduced Golam Mostafa Mondal and Abdul Kalam Tarafder to him viz. PW 9 (Biplab Adhikari).

21. PW 13 (Dr. Nabanita Adhikari) is the medical officer who conducted radiological examination of the victim. She opined victim was aged between 15-17 years. She proved the medical report (Exhbt.8).

Analysis and findings:-

22. I have considered the evidence on record. Appellants along with Ibadulla Tarafdar have been charged for entering into a conspiracy to import a minor girl from outside India and to traffic the said girl for exploitation.

23. Evidence of the minor (PW 1) shows she hails from Bangladesh and had been trafficked from Bangladesh on the false promise of giving employment. After entering India, she was kept in a house at an unknown place. Due to her lack of acquaintance with the local terrain, she was unable to identify the place where she was initially kept. Ibadulla Tarafdar recruited her from the said house and brought her to a flat in Kaikhali, Kolkata. There she met Hasina Mondal and Abdul Kalam Tarafder. Hasina dressed her in a new dress and Abdul Kalam Tarafder took her photographs presumably for circulating them for sexual exploitation. Thereafter, on 11.10.2017 she was taken in a bus by Golam for Howrah station. Enroute a good samaritan (PW 4) noted the suspicious manner in which she was being transported and handed her over along with the trafficker Golam to police at Lalbazar headquarters.

24. Victim's evidence with regard to the manner in which she came to India, thereafter was kept in a flat at Kaikhali, Kolkata and was transported to Howrah remains unchallenged during cross-examination. Apart from eliciting she had not informed her relations when she came from Bangladesh or that she had not raised hue and cry, nothing was put

to her which improbabilises her version. Her deposition leaves no doubt that the victim, a 15-year old girl had been trafficked to India from Bangladesh on the false promise of giving employment.

25. The conspiracy straddles across international borders. While the operators in Bangladesh had recruited the minor victim on the allurement of job, the appellants on the Indian side received her and thereafter were in the process of trafficking her to Nagpur when Golam and the victim were caught and handed over to police.

26. It is true the conspirators in Bangladesh had not been apprehended and put on trial. Conspiracies develop in layers. Though the prosecution has not proved the conspiracy between the operators in Bangladesh with their Indian counterparts; the evidence on record establishes the meeting of minds between the conspirators on the Indian side to procure and traffic the minor Bangladeshi girl for exploitation.

27. The other aspect which has been argued on behalf of Hasina Mondal and Abdul Kalam Tarafder is that they are innocent and cannot be said to have played any role in the procurement and trafficking of the minor girl for exploitation. Hasina was with the minor girl in '*Shiuli Apartment*' at Kaikhali, Kolkata and had purchased wearing apparels for her. Abdul Kalam Tarafder had taken her photographs while she was wearing the new apparels.

28. Learned Advocates contend these innocuous acts would not constitute either procurement or trafficking of the victim.

29. Offence of conspiracy involves a crime between two or more persons to commit an illegal act or a lawful act by illegal means. Conspiracy attracts the principles of agency and act of one conspirator binds the others. In the event prosecution is able to establish existence of conspiracy then act or illegal omission of one conspirator would bind the others¹.

30. Evidence on record shows an orchestrated and pre-planned activity amongst the appellants and Ibadulla Tarafdar in recruiting, harbouring and transporting the minor girl for exploitation. Viewed in a piecemeal manner, act of each of the conspirators may appear to be innocuous. But if they are joined together, they form a sinister vice wherein the victim girl had been entrapped and trafficked.

31. In this web of conspiracy, all the appellants played their individual roles. Hasina Mondal took care of the victim girl and dressed her in new finery in order to make her presentable and a lucrative proposition for exploitation. Abdul Kalam Tarafder took her photographs in new dress for facilitating the process of trafficking and exploitation. The preparatory steps by Hasina and Abdul finally fructified in transporting the victim on 11.10.2017 by Golam. The appellants would have been successful but for the timely intervention of PW 4 (Tarun Kr. Halder) a co-passenger in the bus. PW 4 noticed the suspicious conduct of Golam and the victim who

¹ See Section 10 of Evidence Act

claimed to be related to one another and were proceeding to Nagpur where it was claimed Golam's parents resided.

32. Learned Advocates for the appellants assailed the prosecution case on the premise the message in respect of train ticket to Nagpur received on Golam's mobile had not been exhibited. It is also argued the co-passenger who had read the message and communicated to PW 4 was also not examined.

33. PW 11 is the first Investigating Officer who was summoned to the spot after PW 4 had handed over the victim and Golam to police at Lalbazar headquarters. PW 11 deposed among other things two mobile phones had been seized. Seizure of the mobile phones lend credence to the prosecution case that the message with regard to purchase of train ticket to Nagpur had been received on the said device.

34. Though the co-passenger who had seen the said message first had not been examined, manner and circumstances in which PW 4 came to know of the message and intervened owing to suspicious behaviour of Golam and the victim girl has been corroborated by the bus driver and conductor viz. PWs.5 and 6. Both the witnesses stated there was commotion in the bus and a man and a girl were made to develop at Lalbazar police headquarters. The witnesses had been examined in court after almost 1½ years of the incident. Due to lapse of time it is possible they had forgotten the actual date when the incident deposed and referred the incident had occurred in November instead of October, 2017.

It is common knowledge normal slips come from mouths of truthful witnesses only. Those who are tutored and lie on oath tend to make parrot like narrations.

35. Recovery of the victim from Lalbazar and recording of her statement have been proved by the Investigating Officers viz. PWs.11 and 12. Their deposition remains unshaken in cross-examination. In view of the convincing evidence of the police officers, mere failure to prove the General Diaries does not erode the credibility of the prosecution case.

36. Finally, PWs.7 and 8, owners of '*Shiuli Apartment*' have proved Golam and Abdul Kalam Tarafder had taken the flat on rent for Rs.9,000/- per month and had advanced Rs.18,000/- as rent for two months.

37. It is argued neither the tenancy agreement nor rent receipts were exhibited. But immediately after recovery of the victim girl, Hasina and Ibadulla Tarafdar were apprehended from the said flat by the Investigating Officer, PW 12. This clinching evidence clearly corroborates the version of PWs.7, 8 and 9 that they were in control and possession of the flat wherein the victim had been harboured prior to her transportation towards Howrah station and onward to Nagpur.

Conclusion:-

38. In light of the aforesaid discussion, I uphold the conviction and sentence imposed upon the appellants.

39. Appeals are accordingly, dismissed.

40. In view of dismissal of the appeals, connected applications being CRAN 1 of 2023, CRAN 2 of 2024 and CRAN 1 of 2024 are also disposed of.

41. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

42. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

43. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)