IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

CRA 150 of 2018

with

CRAN 1 of 2018 (Old No. CRAN 1736 of 2018)

IJARUL MALLICK @ EJARUL MALLICK

VS.

THE STATE OF WEST BENGAL

Before: The Hon'ble Justice Apurba Sinha Ray

For the Appellant	:	Mr. Ranadeb Sengupta, Adv. Mr. Sachit Talukdar, Adv.
For the State	:	Mr. Kallol Mondal, Ld. P.P. Mr. Pritam Roy, Adv. Ms. Triparna Ray, Adv.
Reserved on	:	23.09.2026
Judgment on	:	09.10.2026

Apurba Sinha Ray, J.

1. Challenging the judgment and order of conviction dated 26.02.2018 and 28.02.2018 passed by the learned Additional District and Sessions Judge, Mekhliganj, Cooch Behar in Sessions Trial No. 5 (1) of 2017 arising out of Sessions Case No. 05 of 2017 convicting the appellant under

Sections 370 (2) and 370 A (2) of Indian Penal Code, Mr. Ranadeb Sengupta learned Counsel of the appellant, has argued that the victim herself eloped with the appellant wilfully. No case of trafficking is made out under Section 370 IPC and there is no ingredient of offence punishable under Section 370 A (2) of IPC. Although 11 witnesses were examined, the evidence of the vital witnesses appears to have improved the prosecution version during trial and such evidence is full of blemishes and improbabilities and, therefore, cannot be relied upon.

2. Mr. Sengupta has further submitted that the de facto complainant being the father of the victim was examined as PW 1. Mr. Sengupta has argued that there was no concrete allegation in the written complaint that the daughter of the de facto complainant was actually engaged in prostitution by the appellant. Had PW 1 and daughter both narrated the allegations against the appellant to the scribe, it is not clear how it was mentioned in the FIR that the appellant wanted to engage the daughter of the de facto complainant into prostitution. According to Mr. Sengupta, the victim was married to another person and was having a son, alongwith whom she lived her paternal home abode. Having regard to the facts and circumstances, it cannot in any manner be said that the daughter of PW 1 was trafficked by the appellant. The cross-examination of PW 1 reveals that even after having received an information about his daughter that she was in great difficulty, PW 1 did not bother to intimate the concerned Police Station regarding the same. Moreover, PW 1did not even inform his son-in-law about the departure of his daughter from her paternal home. Hence, according to Mr. Sengupta, the attending circumstances do not in

any manner give an impression that the victim was trafficked. The evidence of PW 3 reveals that on the relevant morning, the de facto complainant had requested the appellant to continue to live with PW 2. This clearly shows that the father who had come to rescue his daughter who had allegedly been trafficked stayed at his daughter's residence overnight. Therefore, the evidence of PW 1 is shrouded with doubts. His evidence is absolutely in contradiction to the written complaint lodged by him.

3. Mr. Sengupta has drawn the attention of this Court to the deposition of PW 2, the victim, who according to the defence is the star witness of the prosecution. PW 2 clearly deposed that she did not give a second thought to her departure from her paternal home with the appellant and visiting places, despite the fact that she was married to another person. Such evidence of PW 2 demolishes the first part of the prosecution case which alleged that PW 2 was trafficked by the appellant. Furthermore, it also does not appear from any corner of the evidence that she was forcibly confined at any place where they stayed. PW 2 stated in her cross-examination that the place called Chyangrabada is famous for prostitution but PW 3, the landlady was not involved in it. This particular part of the evidence gives an impression that no illegal or unlawful activity was carried out in the house of PW 3 where the victim lady allegedly stayed with the appellant. It is also the argument of Mr. Sengupta that PW 2 in order to probabalise the charge under Section 370A (2) of the Indian Penal Code stated in her cross-examination that during the course of investigation she had divulged to the Investigating Officer about the

appellant having several addictions and also assaulting her. She also deposed that she had stated to the Investigating Officer about her prayer to appellant not to force her into prostitution. In his deposition the IO being PW 11 denied such statement from PW 2. Therefore, whatever PW 2 deposed before the Court the same was for the first time after the commencement of the investigation. This renders the testimony of PW 2 absolutely unreliable and in this regard Mr. Sengupta has relied upon ***Sunil Kumar Sambhudayal Gupta (Dr.) and others vs. State of Maharashtra*** reported in ***2011 (2) SCC (Cri) 375*** and ***Darshan Singh vs. State of Punjab*** reported in ***2024 SCC Online SC 17***.

4. According to Mr. Sengupta, PW 2 happens to be the vital witness of the case. In a case like this, the testimony of the victim deserves to be kept on the highest pedestal provided the same inspires confidence. In view of the improvement made by her during trial the evidence of PW 2 cannot be relied upon. PW 2 being the co-maker of the written complaint and the vital witness in this case did not consider it prudent to divulge the vital facts in the written complaint as well as in her statement before the IO. It is a fact that an FIR cannot be the encyclopaedia of the minute details but if the vital facts on which the prosecution is trying to rely for bringing home the charges framed against the appellant are missing in the FIR, then, such omission of important facts affects the probabilities of the prosecution case and becomes relevant under Section 11 of the Evidence Act. In support of his contention Mr. Sengupta has drawn the attention of this Court to the judgment of ***Ram Kumar Pandey vs. State of Madhya***

Pradesh reported in ***AIR 1975 SC 1026*** and ***Sujit Biswas vs. State of Assam*** reported in **(2013) 12 SCC 406**.

5. Mr. Sengupta has also submitted that the evidence of PW 3 Munni Mitra being the land lady of the alleged premises at Chyangrabada is not reliable since she has improved the version of the prosecution case during trial. The evidence of PW 3 with regard to the victim lady being forced into prostitution was negated by the Investigating Officer when he was specifically cross-examined in the issue. The evidence of PW 4 being the husband of PW 3 is hearsay in nature. The scribe, who according to Mr. Sengupta was examined as PW 6 is not of much help to the prosecution since the same was drafted at the Mekhliganj Police Station.

6. Mr. Sengupta has vehemently argued that if evidence of PW 7 the doctor who medically examined the victim lady, is considered in its letter and spirit then the prosecution case is nowhere. The specific written argument of Mr. Sengupta in this regard is as hereunder:

> "*PW.7 is the doctor who medically examined the victim lady. In the examination in chief of PW.7 it appears that PW.2 had refused to get her private parts examined. Such conduct of PW.2 assumes importance, as in his cross examination, the doctor PW.7 has specifically stated that if he had examined the private parts of the victim lady, then he would have been able to give an opinion if she had in fact been sexually assaulted repeatedly against her will. Furthermore, it appears from the cross examination of PW.7, that the victim lady had not stated before him as to how she had sustained the injuries on her face, meaning thereby the injuries*

which were detected by PW.7 on the face of PW.2 were not attributed to the appellant. This particular piece of evidence from an independent formal witness i.e., a doctor again negates the charge under Section 370A(2) of the Indian Penal Code against the appellant. A reading of the evidence of PW.7 clearly shows that the prosecution has miserably failed to prove its case beyond reasonable doubts. The evidence adduced by prosecution be it oral or documentary was not of unimpeachable character and were full of vital omissions, contradictions and anomaly. In the criminal justice system prevailing in our country, the prosecution has to prove its case beyond reasonable doubt. The expression beyond reasonable doubt means the evidence adduced by the prosecution should be of unimpeachable character, the same should be free from major contradictions and when read together would culminate into a finding towards the guilt of the appellant. It is when the prosecution has discharged the said burden, the burden of proof shifts to the accused to establish his innocence. In the instant case the evidence adduced by the prosecution witnesses were not in consonance with each other. The prosecution witnesses either contradicted themselves or belied the prosecution case completely. It is humbly reiterated that unless the guilt of the accused is proved beyond all reasonable doubt the accused cannot be convicted of the charges so framed against him. Reference may be made to the case of Rang Bahadur

Singh versus State of Uttar Pradesh (reported in 2000 SCC (Cri) 703: 2000 (3) SCC 454 - Relevant paragraph 22).”

7. Mr. Sengupta has further submitted that the evidence of PW 11 shows that material witnesses have improved the version of the case and as such the prosecution case does not deserve any merit without consideration. Following judgments were cited from the side of the appellant.

1. Sunil Kumar Sambhudayal Gupta & Ors. -vs- The State of Maharashtra (2010(13) SCC 657: 2011(2) SCC(Cri) 375 - Relevant Paragraphs 30-37)

2. Darshan Singh -vs- State of Punjab (2024 SCC Online SC 17- Relevant Paragraphs 25,28 32)

3. Ram Kumar Pandey -vs- State of Madhya Pradesh (AIR 1975 (SC) 1026 - Relevant Paragraphs 9-10)

4. Sujit Biswas -vs- State of Assam (2013 (12) SCC 406: 2014(1) SCC (Cri) 677 - Relevant Paragraph 24)

5. Lahu Kamlakar Patil & Another -vs- The State of Maharashtra (2013 (6) SCC 417: 2013 (4) SCC (Cri)528- Relevant Paragraphs 21, 26, 27)

6. Rang Bahadur Singh -vs- State of Uttar Pradesh (2000 (3) SCC 454: 2000 SCC (Cri) 703 - Relevant Paragraph 22)”

8. Mr. Sengupta has further stated that examination of the appellant under Section 313 Cr.P.C. was not properly done. The documents under Section 164 Cr.P.C. or the medical reports were not properly explained to

the appellant. In this regard, he has again relied upon the judgment of ***Sujit Biswas (supra).***

9. Learned Counsel, Mr. Pritam Roy appearing for the State, has argued that the prosecution has been able to prove the case against the accused beyond all doubts and the judgment of conviction and sentence was passed after taking into consideration all material facts.

10. Mr. Roy has given the chronological events as hereunder:

a. The accused came into contact with the victim;
b. the accused induced the victim to accompany him;
c. the accused took her to different places;
d. the accused brought her to Changrabandha, which is a red-light area;
e. the victim stayed there with the accused and her minor son;
f. There were repeated quarrels between the accused and the victim, as the accused used to bring customers and force the victim into prostitution.
g. the victim was subjected to assault;
h. the victim disclosed her distress and sought the intervention of her father;
i. PW-3 contacted the father;
j. the father came to Changrabandha;
k. the police thereafter intervened;
l. the victim was medically examined
m. the victim gave a statement under Section 164 Cr.P.C.;
n. PW-3 independently gave a statement under Section 164 Cr.P.C.

11. Mr. Roy has categorically argued that there was an inducement from the side of the appellant and thereafter, PW 2 alongwith her minor child was trafficked and thereafter transported to Changryabada. The allegation of exploitation was palpable in the evidence of the parties. The conduct of the victim immediately before the rescue operation provides substantial corroboration to her testimony regarding the exploitation through misplaced trust, fraud, deception, force, coercion etc. The learned Counsel

Mr. Roy has further submitted that PW 2 being the victim lady has given direct evidence regarding the sexual exploitation inflicted upon her. Mr. Roy has further drawn the attention of this Court to the deposition of the PW 3 wherein she stated that several persons used to enter the room of the victim and the accused used to sit outside and the door of the room remained closed. The prosecution case, according to Mr. Roy, is that the accused herself was the person who controlled the victim and facilitated the entry of other persons into her room. According to the evidence of PW 2, the accused was himself actively involved in sending other persons in her room. The alleged conduct, therefore, directly connects him with the sexual exploitation. The Court should not divide the occurrence into artificial and isolated instances. The circumstances began with the accused gaining the confidence of the victim taking her from one place to another, bringing her to Chyangrabadha, keeping her there, exercising control over her and thereafter subjecting her to sexual exploitation. Accordingly, Mr. Roy submits that the ingredients of Section 370A (2) of the IPC have been made out. The medical evidence corroborates physical assault. Further rescue of the victim was a material circumstance. Conduct of the appellant is also to be taken into consideration. Mr. Roy has relied upon 3 judgments namely: -

1. Nirmal Premkumar and Anr vs. State represented by Inspector of police *reported in* ***(2024) 20 SCC 293 (Page 14-26, Para 20-24,43)***

2. Deepak Kumar Sahu vs. State of Chhattisgarh *reported in* ***2025 SCC OnLine SC 1610 (Page 27-36 Para-5.5,5.6,5.6.2)***

3. Madan Singh vs. state of NCT of Delhi in CRAL.A 1344/2011 (page 37-58, para 42).

Court's view:

12. It is clear from the evidence on record that the victim, an adult woman, accompanied the convict to various places before being taken to a rented premises owned by PW 3 at Chyangrabandha, Jalpaiguri.

13. The process of human trafficking cannot be encapsulated in a rigid or straightjacket formula. Traffickers employ diverse strategies to achieve their illicit objectives, at times resorting to physical force or coercion, and at other times employing deceptive ploys, such as feigning romantic interest. By feigning love, traffickers entice victims away from their abodes and, once control is firmly established, reveal their true motives.

14. Therefore, the mere fact that the victim accompanied the convict to various locations, and ultimately to Chyangrabandha, a known red-light area in North Bengal, does not imply that she voluntarily consented to engage in sex work. Under Section 370 of the Indian Penal Code (IPC), the consent of the victim is explicitly rendered immaterial in establishing the offence of trafficking. Consequently, the defence's contention regarding the victim's alleged willingness to accompany the convict lacks any foundation in law.

15. It is undisputed that the victim was a married woman. The defence has raised questions as to why a married woman would travel across various places with the convict. Whether the victim failed to discharge her marital duties or obligations toward her husband is entirely irrelevant to the adjudication of the present appeal. The sole issue before this Court is whether a married woman was trafficked.

16. A review of the testimony of PW 2 (the victim) reveals that upon learning of her marital status, the convict inquired about her relationship with her husband. Upon being informed that her husband was a habitual drunkard, the convict, himself a married man and a father of three, offered to marry PW 2, promising her a life of happiness. This Court must consider whether this was a genuine romantic gesture or a calculated ploy by a seasoned trafficker. The deposition of PW 2 further establishes that the convict solemnized a marriage with her before a Kazi at Malda, fixing the Den Mohar at ₹10,000/-. Thereafter, she was taken to various places and eventually brought to a rented room owned by PW 3 at Chyangrabandha. It was in this room that the convict forcibly compelled PW 2 into commercial sexual exploitation.

17. In defence, the appellant/convict contends that no force was ever exerted to push the victim into prostitution. The defence asserts that the entire prosecution narrative was concocted by PW 2, driven by her desire to sever ties with the convict. Furthermore, learned Counsel for the appellant highlighted that despite prosecution allegations of multiple instances of sexual exploitation facilitated by the convict, the victim refused a gynecological/medical examination of her private parts.

Referring to the testimony of the examining medical officer (PW 7), the defence argues that a thorough physical examination would have conclusively determined whether the victim was subjected to multiple sexual assaults as alleged.

18. It remains unexplained why the victim withheld consent for a complete medical examination. While PW 2 was explicit and unwavering in her testimony regarding being forced into sex work at Chyangrabandha by the convict, her refusal to undergo a detailed medical examination raises a crucial evidentiary query, particularly when such medical findings could have corroborated or disproved the allegations of sexual exploitation. Undoubtedly, medical evidence constitutes a vital component of proof in such allegations, and, therefore, its absence warrants careful scrutiny. Accordingly, it is prudent to analyze the specific testimony of the medical officer, PW 7.

> *"I am a doctor currently posted as Medical Officer-Specialist at Mekhliganj Sub-Divisional Hospital, District Coochbehar. On 02.09.2016 also I was posted at the same place and on the same post. On that day I had examined one Sahanaz Parvin in connection with Mekhliganj P.S. case no. 252/2016 dated 02.09.2016 u/s 498A/370/370A(2) of the IPC on the requisition made by the police. This is the carbon copy of the said requisition sent by the police to me and this is my signature with seal on it and I had also written 'received' on the said requisition. The writing of the witness along with his signature and official seal on the requisition dated 02.09.2016 made by the police requesting for medical examination of the victim lady Sahanaz Parvin*

is marked as Exhibit-6. The victim lady had been brought before me and identified by lady constable (LC-480) namely Alpana Roy. I had taken the consent of the said victim lady before examining her and she had signed on the medical examination report in my presence. She had been examined in presence of the staff nurse Rubina Sultana who had also, signed on the medical examination report as a witness in my presence. The victim lady had complained that she was married with some Ejarul Mallick two months back. One month back she had been taken to Changrabandha and forced into prostitution and further that she had been forced to meet multiple sexual partners since last one month. She was previously married to some Safiqul Islam and had stayed with him for five years. She is having one son with her first marriage. On examining her I had found her to be conscious alert and co-operative and her vital signs were within normal limits. She was having one bruise with sub-conjunctival haemorrhage in her left eye lid and peri orbital region. The victim lady had refused to get her private parts examined. This is the medical examination report prepared by me on that day and this is my signature on this report along with my official seal. The medical examination report dated 02.09.2016 is marked as Exhibit-3/2. Police had interrogated me regarding the incident."

19. In view of such deposition, this Court has no hesitation in holding that PW 2 (the victim), who was otherwise vocal and explicit regarding the alleged acts of sexual exploitation by multiple customers, withheld the

best available evidence by refusing a medical examination. Consequently, an adverse inference must be drawn against her and the prosecution under Section 114 (Illustration g) of the Indian Evidence Act.

20. It is true that PW 3 (the landlady) deposed to having seen several customers entering the victim's room while the convict sat outside with the victim's son. However, such testimony fails to inspire confidence, taking into account the victim's unexplainable refusal to undergo a physical and gynecological examination. Furthermore, the credibility of PW 3's testimony is substantially eroded by material omissions and improvements, as elicited during the cross-examination of the Investigating Officer (PW 11).

21. Additionally, while PW 1 (the victim's father) purportedly went to rescue his daughter from the custody of the convict, the deposition of PW 3 indicates that PW 1 instead implored the convict to reconcile, put the past behind them, and continue cohabiting with the victim, a request which the convict declined.

22. Mr. Roy, learned Counsel appearing for the State, contended that taking into consideration the prevailing socio-economic realities, a father whose daughter had already suffered a failed first marriage would face severe social stigma and distress if he was required to take her back into his household. Thus, it was argued, PW 1's request to the convict to maintain the marital relationship was a natural paternal reaction under social duress and should not be viewed with suspicion.

23. This Court finds such a submission difficult to accept. If a father were genuinely aware that his daughter was being coerced into commercial

sexual exploitation while in the convict's custody, no person of reasonable prudence would willingly abandon his daughter to such a perpetrator. This circumstance lends credence to the defense theory that the dispute arose out of domestic friction rather than trafficking, thereby necessitating closer scrutiny of the evidence on record. Crucially, the deposition of PW 1 itself fails to substantiate that he ever asked the convict to retain custody of his daughter despite knowing she was being forced into sex work.

24. Furthermore, during cross-examination, PW 2 explicitly admitted that she disclosed being pushed into commercial sexual exploitation to PW 3 on the very first day. This admission significantly weakens the prosecution's narrative that the victim was systematically forced into sex work over an extended period and sexually exploited by numerous customers.

25. The evidentiary material on record suggests that while PW 2 might have been subjected to pressure, any continuous forced prostitution without substantial resistance appears improbable. Her statement that she informed PW 3 on day one and asked her to contact her father, when coupled with her explicit refusal to submit to a medical examination of her private parts, contradicts the claim that she was forcibly subjected to commercial sexual exploitation over several days. These circumstances further belie the reliability of PW 3's testimony.

26. In ***Nirmal Premkumar v. State***, the Hon'ble Supreme Court reiterated the settled legal principle that the uncorroborated testimony of a victim can form the sole basis of conviction, provided it is wholly reliable

and trustworthy. The Apex Court categorized oral testimony into three distinct classes:

1. *Wholly reliable,*
2. *Wholly unreliable, and*
3. *Neither wholly reliable nor wholly unreliable.*

Relying on precedent, including Rai Sandeep v. State (NCT of Delhi) [(2012) 8 SCC 21] and Krishan Kumar Malik v. State of Haryana [(2011) 7 SCC 130], the Supreme Court in Nirmal Premkumar reaffirmed that a court may convict on the sole testimony of a victim as a "sterling witness" without requiring corroboration, provided the quality and credibility of the witness are exceptionally high. To qualify as a sterling witness, the testimony of the victim must remain consistent and cogent from the initial statement to trial examination (barring minor, inconsequential discrepancies), without leaving any room for reasonable doubt in the prosecution case. In the present case, the victim's conduct and material contradictions fail to meet this expected standard.

27. In **Deepak Kumar Sahu (supra),** the Hon'ble Apex Court has been pleased to hold in paragraph 5.5 as hereunder:

> *"**5.5.** In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would*

prevail. In State of Punjab v. Gurmit Singh [(1996) 2 SCC 384] it was observed:

> *In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case."*

28. In **Madan Singh (supra)** the Hon'ble Apex Court has also relied upon the evidence of the victim as she appeared to be truthful and trustworthy and she had disclosed all the facts at the very first instance to the Police and to the doctor as well. The excerpt of Paragraph 43 is quoted hereinbelow:

> *"**43.** Prosecutrix has reported that she was raped and a condom was used thus, the traces of semen were not found. Nevertheless the MLC Ex. PW 1/A and Ext. PW 1/B corroborates the version of the prosecutrix. The FSL results Ext. PW 1/C and Ext. PW 1/D further fortifies it. And so far as the testimony of the victim is concerned, the same is otherwise aboveboard except for her statement under Section 164 CrPC, which too does not absolves the Appellant, but presents a different picture of her being traumatized and harassed by the Appellant. She is a truthful and trustworthy witness as she disclosed all the facts at the very first instance to the police and to the Doctor as well. She was candid*

and truthful which can be inferred from her narrative to the police and Doctor. Her initial PCR call contains information about rape by a boy (Ex. PW 9/E). She was taken to the Hospital where she not only names the Appellant as the perpetrator of crime, but tells about her fiance, names him and also told about her first sexual activity four months back in Assam with her fiance. There was no occasion for her to give details. She told the Doctor that she had scratched the assailant as also about the use of condom. The corresponding injuries were found on the person of the Appellant as can be seen in the MLC Ex. PW 5/A of the Appellant. Four fresh injuries were noticed by Dr Akhilesh Raj (PW 5) all of which were on the upper body parts on neck, chest, etc."

29. I have also considered the judgments as cited from the side of the appellant. In ***Sunil Kumar Sambhudayal Gupta (Dr.) (supra),*** the Hon'ble Apex Court has been pleased to hold that while appreciating the evidence, the Court has to take into consideration whether such contradictions/omissions had been of such magnitude that they may materially affect the trial. It is further laid down that mere marginal variations in the statement cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited.

30. In **Darshan Singh (supra),** the Hon'ble Supreme Court has been pleased to observe as hereunder:-

> *"**32.** Of course, PW 3 claims to be an illiterate witness and therefore, her testimony must be interpreted in that light. We are cognizant that the appreciation of evidence led by such a witness has to be treated differently from other kinds of witnesses. It cannot be subjected to a hyper-technical inquiry and much emphasis ought not to be given to imprecise details that may have been brought out in the evidence. This Court has held that the evidence of a rustic/illiterate witness must not be disregarded if there were to be certain minor contradictions or inconsistencies in the deposition."*

31. In **Ram Kumar Pandey (supra),** the Hon'ble Supreme Court has dealt with the effect of omission of narrating vital facts in the First Information Report. It is profitable to quote paragraphs 9 and 10 for understanding.

> "*9. No doubt. an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9.15 p.m. on 23-3-1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the F.I.R. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.*
>
> *10. Even Joginder Singh, PW 8, was not an eye witness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by*

opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened Pappi had stated that Suresh and Pandey had injured him. It is clear from the F.I.R. that Joginder Singh had met Uttam Singh before the F.I.R. was made. Uttam Singh did not mention there that any dying declaration indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh. The omission to mention any injury inflicted on Harbinder Singh by the appellant in the F.I.R. seems very significant in the circumstances of this case. Indeed, according to the version in the F.I.R., Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside."

32. In **Sujit Biswas (supra),** the Hon'ble Supreme Court has reiterated the above principle in Paragraph nos. 24 and 25:-

"24. Undoubtedly, the FIR lodged has disclosed the previous statement of the informant which can only be used to either corroborate or contradict the maker of such statement. However, in the event that the informant is a person who claims to know the facts, and is also closely related to the victim, it is expected that he would have certainly mentioned in the FIR, all such relevant facts. The omission of important facts affecting the probability of the case, is a relevant factor under Section 11 of the Evidence Act to judge the veracity of the case of the prosecution. (Vide Ram Kumar Pandey v.

State of M.P. [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026])

25. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself."

33. In **Lahu Kamlakar Patil and another (supra),** the Hon'ble Supreme Court has considered the unnatural conduct of interested witness. Paragraph 26 of the said judgment is quoted hereinbelow:

*"**26.** From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded."*

34. In ***Rang Bahadur Singh*** **(supra),** the Hon'ble Court has once again reiterated the age-old principle that the prosecution must prove its case beyond reasonable doubts. In this regard, it profitable to quote the paragraph no. 22 of the said judgment.

> "***22.*** *The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime."*

35. It is true that the First Information Report (FIR) does not contain the entirety of the factual matrix. The defence contends that while the initial FIR lodged by PW 1 merely alleged an attempt by the convict to push the victim into commercial sexual exploitation, the prosecution witnesses subsequently improved upon their initial version during trial. Specifically, the FIR omitted details regarding multiple customers entering PW 2's room at the convict's behest, the convict sitting outside with her child, or the victim being subjected to repeated sexual exploitation. Furthermore, the

role of PW 3 (the landlady), as detailed during trial, was conspicuously absent in the FIR.

36. Upon an appraisal of the record, the deposition of PW 2 falls into the category of testimony that is neither wholly reliable nor wholly unreliable. It is a settled proposition of law that the uncorroborated testimony of a victim of sexual assault or human trafficking can form the foundation of a conviction, provided it is trustworthy, cogent, and unimpeachable. In the present case, the prosecution has established beyond reasonable doubt that the convict transported the victim to Chyangrabandha, Jalpaiguri, and housed her in rented premises situated within a red-light area in North Bengal which is corroborated by PW 3.

37. Had the convict harboured no dishonest or criminal intent to push the victim into sex work, no plausible explanation exists as to why he chose to secure accommodation specifically in a red-light area when numerous other residential locations were available across West Bengal. While the prosecution has failed to establish beyond reasonable doubt that the victim was actually sexually exploited by multiple customers—largely due to her own stiff resistance against entering commercial sexual exploitation—the convict's diabolical intent and preparatory acts stand conclusively proven. Even in the absence of absolute proof of completed acts of prostitution with customers, the core ingredients of Section 370 of the Indian Penal Code (IPC) are fully satisfied: the victim was transported from Murshidabad to Chyangrabandha through deception and fraudulent

promises, with the clear object of engaging her in commercial sexual exploitation.

38. The impugned judgment reflects that the learned Trial Judge meticulously analyzed the testimony of all prosecution witnesses. The Trial Court explicitly addressed the alleged contradictions in the statements of PW 1, PW 2, and PW 3. In distinguishing the decision in Subhash v. State of Haryana [(2011) 2 SCC (Cri) 689], relied upon by learned Counsel for the accused, the Trial Court correctly held that the principles therein do not advance the defence's case. Regarding the alleged discrepancies in the depositions of PW 2 and PW 3, the learned Trial Judge rightly observed that both witnesses had recorded their statements under Section 164 of the Code of Criminal Procedure (Cr.P.C.) before the learned Judicial Magistrate at Mekhliganj shortly after the incident, wherein they detailed the occurrence in clear terms.

39. This Court has independently scrutinized the Section 164 Cr.P.C. statements of PW 2 and PW 3. After taking into consideration that these statements were recorded within a few days of the occurrence, the Trial Court was justified in concluding that the minor variations do not amount to material contradictions. It is well settled that an FIR need not be an encyclopedia of every minute detail. Despite minor omissions in the initial FIR, the core prosecution case—that the victim was fraudulently transported to a red-light area at Chyangrabandha for the purpose of forced prostitution—remains unshaken and proved beyond reasonable doubt.

40. It is true that during his 313 Cr.P.C. examination, the relevant questions concerning the witnesses' 164 Cr.P.C. and contents of the medical evidence were not brought to the notice of the convict. However, such failure does not cause any prejudice to the convict and, therefore, the prosecution case cannot be disbelieved, so far as, Section 372 IPC is concerned.

41. In closing the present discussion, I would like to state that after considering all materials on record I have found that prosecution has failed to prove the charge against the appellant under Section 370 A (2) of IPC since this Court is not convinced about the allegation of sexual exploitation of the victim at the instance of the multiple customers as alleged. There is a serious doubt as to whether the convict was actually able to engage her in flesh-trading in spite of his best effort. Therefore, in my view, the charges against the accused under Section 370 A (2) of IPC were not proved beyond reasonable doubt and accordingly, the convict is acquitted from the charge under Section 370 A (2) of IPC and the sentence for imprisonment of 5 years and to pay a fine of Rs. 5000/- in default to undergo simple imprisonment of one month is hereby set aside.

42. However, in light of the evidentiary material on record, this Court holds that the prosecution has successfully established the charge under Section 370 (2) of the IPC against the convict beyond reasonable doubt. Consequently, no ground is made out to interfere with the well-reasoned findings of the learned Trial Court. The order of conviction under Section 370 (2) IPC and sentence passed against the appellant is hereby affirmed.

43. Accordingly, the present appeal, being CRA 150 of 2018, is dismissed in part on contest. Connected application, if any, stands disposed of.

44. The judgment and conviction and order of sentence dated 26.02.2018 and 28.02.2018 passed by the learned Additional District and Sessions Judge, Mekhliganj, Cooch Behar in Sessions Trial No. 5 (1) of 2017 arising out of Sessions Case No. 05 of 2017 convicting the appellant under Sections 370 (2) and 370 A (2) of Indian Penal Code with the modification as indicated above, are hereby confirmed. The convict who is on bail is directed to surrender before the learned Trial Court within 30 days from this day and on his surrender the learned Trial Court shall commit him to the concerned Correctional Home for serving out the remaining sentence under Section 370 (2) IPC. The relevant bail order of suspension of sentence is hereby cancelled. If he does not surrender within the period indicated above, the learned Trial Judge shall issue warrant of arrest against him and proceed thereafter in accordance with law. The Trial Court Records alongwith a copy of this judgment be sent to the learned Trial Court for information and necessary action.

45. All parties shall act on the basis of the server copy of this order downloaded from the official website of this Court.

46. Urgent photostat certified copies of this judgment, if applied for, shall be supplied to the parties upon compliance with all necessary formalities.

(APURBA SINHA RAY, J.)