



2026:DHC:2435



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 16.03.2026

Judgment pronounced on:24.03.2026

+ **CRL.A. 448/2020 & CRL.M.A. 1344/2026 &CRL.M.(BAIL)**
1795/2025

SANDEEP BEDWAL

.....Appellant

Through: Mr. Akshay Bhandari, Ms. Megha Saroa,
Mr. Kushal Kumar, Mr. Janak Raj Ambavat
and Mr. Anmol Sachdeva, Advocates.

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for State with SI Pramod
Kumar, Cyber Cell, Crime Branch.
Mr. Faraz Maqbool, Ms. Sana June and Ms.
A. Sahitya Veena, Advocates (DHCLSC) for
respondent no. 2.

+ **CRL.A. 413/2020**

GEETA ARORA @ SONU PUNJABAN

.....Appellant

Through: Mr. Vikas Pahwa, Senior Advocate with
Mrs. Preeti Pahwa, Ms. Neena Nagpal, Mr.
Malak Bhatt, Mr. A. Singh Rawat, Mr.
Jasmeet S. Chadha, Ms. Priyal Jain and Ms.
Nishta Juneja, Advocates.

versus

THE STATE (NCT) OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State with SI Pramod
Kumar, Cyber Cell, Crime Branch.



CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In these appeals filed under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.PC.), the appellants/accused persons, 2 in number, in S.C. No. 190/2018 on the file of the Additional Sessions Judge-04 (PoCSO), South-West, Dwarka Courts, New Delhi, assail the judgment dated 16.07.2020 and order on sentence dated 22.07.2020. *Vide* the impugned judgment and order on sentence, accused no. 1 (A1) has been convicted for the offences punishable under Sections 363, 366, 366A, 370, 372, 376, and 120B of the Indian Penal Code, 1860 (the IPC) and accused no. 2 (A2) has been convicted for the offences punishable under Sections 366A, 370, 372, 373, 328, 342 and 120B IPC.

2. The prosecution case is that on 11.09.2009, PW1, a minor girl aged about 12 years, was kidnapped regarding which



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Crime No. 193/2009 Harsh Vihar, Police Station was registered under Section 363 IPC at the instance of PW8, the father of PW1. It is alleged that A2 had enticed PW1 out of the keeping of the lawful guardianship of PW8 under the pretext of marriage, took her to the house of one Seema at Laxmi Nagar, Delhi and raped her. Thereafter, PW1 was sold by A2 to several persons who forced her into prostitution and sexually exploited her. During the course of such trafficking, PW1 was ultimately sold to A1, who is alleged to have used the victim for prostitution, administered intoxicating drugs to her and charged money from customers for sexual exploitation and sold the victim to other persons, due to which PW1 continued to be sexually exploited and trafficked at different places. As per the chargesheet/final report dated 20.03.2018, the accused persons are alleged to have committed the offences punishable under Sections 328, 342, 363, 366A, 370, 372, 373 and 120-B IPC and Sections 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 (the ITP Act).



3. Based on Exbt. PW1/A FIS/FIR dated 09.02.2014 of PW1, crime no. 104/2014, Najafgarh Police Station, i.e., Exbt. PW11/A, was registered by PW11, Assistant Sub Inspector. PW20, Woman Sub-Inspector, conducted investigation into the crime and on completion of the same, submitted the chargesheet/final report dated 20.03.2018 before the trial court, alleging the commission of the offences punishable under the aforementioned Sections.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.PC. After hearing both sides, the trial court *vide* order dated 24.05.2018 framed a Charge against the accused persons. A1 was charged for the offences punishable under Sections 366A, 370, 372, 373, 328, 342 and 120B IPC and Sections 4, 5 and 6 of the ITP Act and A2 was charged for the offences punishable under Sections 363, 366, 366A, 370, 372, 376 and 120B IPC, which were read over and explained to them, to which they pleaded not guilty.



5. On behalf of the prosecution, PWs.1 to 27 were examined and Exbt.sPW1/A-G, PW1/D1-D8, Mark A1, PW2/A-E, PW3/A-E, PW4/A-F, PW6/A-B, PW7/A, A-1, PW9/A, PW10/A-E, PW11/A-C, PW12/A, PW13/A, PW14/A-I, PW16/A-F, PW17/A-B, A-3 PW18/A-B, PW19/A, PW20/A-C, PW21/A-1, PW21/A-2, PW21/B-F, Mark A, Mark B, PW23/A-B, Mark A-I, PW25/A-C, and PW25/DX1 were marked in support of the case.

6. After the close of the prosecution evidence, the accused persons were examined under Section 313(1)(b) Cr.PC with respect to the incriminating circumstances appearing against them in the evidence of the prosecution. Both the accused persons denied the said circumstances and maintained their innocence. A1 submitted that she had been falsely implicated in the present case and that PW1 had been made a pawn by the police to ensure her incarceration for offences she had not committed. She further stated that she is a known public figure and that the police had been trying to exploit her, and whenever she refused to oblige



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them, criminal cases were falsely registered against her. She also stated that PW1, a false complainant, had filed several FIRs relating to flesh trade during the relevant period. She further stated that at the time of registration of the present crime, she was already in judicial custody and continued to remain in custody even after eight months, yet the investigation against her was not conducted fairly.

7. After questioning the accused persons under Section 313(1)(b) Cr.PC, compliance of Section 232 Cr.PC was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.PC is seen made by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3)KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused persons have no case that



non-compliance of Section 232 Cr.PC has caused any prejudice to them.

8. The accused persons adduced no oral or documentary evidence.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment, convicted A1 of the offences punishable under Sections 363, 366, 366A, 370, 372, 376, and 120B IPC and A2 has been convicted of the offences punishable under Sections 366A, 370, 372, 373, 328, 342 and 120B IPC. A1 has been sentenced under Section 235(2) Cr.PC to undergo rigorous imprisonment for a period of 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 328 IPC; to rigorous imprisonment for 1 year along with fine of ₹1,000 and in default of payment of fine, to simple imprisonment for a period of 1 month for the offence punishable under Section 342 IPC; to rigorous



imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 366A IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 372 IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 373 IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 120B IPC; to rigorous imprisonment for 10 years along with fine of ₹1,000, in default of payment of fine, to simple imprisonment for a period of 1 month for the offence punishable under Section 4 ITP Act; to rigorous imprisonment for 14 years along with fine of ₹2,000, in default of payment of fine, to simple imprisonment for a period of 1 month



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for the offence punishable under Section 5 ITP Act; and to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under Section 6 ITP Act. The sentences under Sections 4, 5 and 6 of the ITP Act has been directed to run concurrently, and thereafter the sentences under Sections 328, 342, 366A, 372, 373 and 120B IPC have been directed to run concurrently, resulting in a total substantive sentence of 24 years rigorous imprisonment with total fine ₹64,000.

9.1. A2 has been sentenced to undergo rigorous imprisonment for 7 years along with fine of ₹5,000, in default of payment of fine, to simple imprisonment for a period of 3 months for the offence punishable under section 363 IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months



for the offence punishable under section 366 IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under section 366A IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under section 372 IPC; to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under section 376 IPC, and to rigorous imprisonment for 10 years along with fine of ₹10,000, in default of payment of fine, to simple imprisonment for a period of 6 months for the offence punishable under section 120B IPC. The sentences under Sections 363, 366, 366A, 372 and 120B IPC have been directed to run concurrently, followed by the sentence for the offence punishable under section 376 IPC, resulting in a total substantive sentence of 20 years rigorous imprisonment with total



fine ₹65,000. Aggrieved, the accused persons have preferred these appeals.

10. It was submitted by the learned counsel for A2 that the conviction of A2, particularly under Section 376 IPC, rests solely on the testimony of PW1, but the said testimony does not inspire confidence. It was argued that neither Exbt. PW1/C Section 164 statement of PW1 nor Exbt. PW1/A FIS/FIR contain any clear allegation attributing rape to A1. The said documents merely contain a vague reference that PW1 was raped without specifying the role of A1. It was further contended that during her deposition before the Court, PW-1 materially improved her version by introducing a new story that she had consumed a cold drink, lost consciousness and later came to know from another person that A2 had committed rape upon her. According to the learned counsel, such testimony is clearly hit by Section 60 of the Indian Evidence Act, 1872 (the Evidence Act) as the alleged knowledge of the



incident is based on what was told to PW1 by another person and not on her own perception. It was emphasized that the allegation regarding administration of an intoxicating drink or loss of consciousness was never stated either in the statement under Section 164 Cr.PC or in the FIS/FIR to the police and therefore constitutes a material improvement which renders her testimony unreliable.

10.1. The learned counsel also relied on the testimony of PW5, the doctor who conducted the medical examination of PW1, who admitted during cross-examination that PW1 had not disclosed the name of any person who had kidnapped or sexually assaulted her. It was argued that had A2 actually committed the alleged offence, his name would ordinarily have been disclosed at the time of medical examination. The prosecution also failed to conduct any Test Identification Parade (TIP) of A2.



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10.2. The learned counsel further submitted that the testimony of PW1 suffers from serious inconsistencies which go to the root of the prosecution case. In her FIS/FIR as well as in her statement under Section 164 Cr.PC, the year of the alleged incident was stated to be 2006, whereas during her deposition before the Court she stated that the incident occurred in the year 2009. According to the learned counsel, such a major contradiction raises serious doubt regarding the veracity of the prosecution story. It was also argued that the conduct of PW1 casts serious doubt on her credibility. The learned counsel pointed out that PW1 had lodged several other FIRs during the pendency of the present case, including FIR No. 1035/2016 registered at Mukherjee Nagar, Police Station and FIR No. 192/2017 registered at New Ashok Nagar, Police Station wherein similar allegations of kidnapping, intoxication and rape were made. In one such case PW1 subsequently withdrew the complaint. According to the learned counsel, these circumstances demonstrate that PW1 cannot be



regarded as a witness of sterling quality and therefore her uncorroborated testimony ought not to have been relied upon by the trial court.

10.3. It was lastly submitted that A2 has been sentenced in two sets of punishments; firstly, concurrent sentences under Sections 363, 366, 366A, 372 and 120B IPC amounting to ten years' rigorous imprisonment and secondly, a consecutive sentence of ten years under Section 376 IPC, resulting in an aggregate sentence of twenty years. It was submitted that A2 has substantially undergone the first part of the sentence and therefore the conviction under Section 376 IPC assumes crucial significance. In these circumstances, it was contended that the prosecution has failed to prove its case beyond reasonable doubt and A2 is entitled to acquittal.

11. The learned Senior counsel appearing for A1 assailed the impugned judgment contending that the conviction recorded by



the trial court is unsustainable both on facts and in law. It was submitted that the entire prosecution case rests on the testimony of PW1 whose evidence, according to A1, suffers from serious inconsistencies and improvements at every stage of the proceedings. The learned Senior counsel argued that the version of PW1 as reflected in her FIS/FIR, her Section 164 Cr.PC statement, and her testimony in the box differ materially in respect of the chronology of events, the persons allegedly involved, and the sequence of the alleged trafficking. Attention of the Court was drawn to a comparative chart placed on record in the appeal which, according to A1, demonstrates that the movement of PW1 through various alleged traffickers has been narrated differently in the FIS/FIR, the Section 164 Cr.PC statement, and the testimony before the trial court. It was argued that several persons allegedly forming part of the chain of trafficking, such as Seema Aunty, Manisha, Khushi and others, were neither properly identified nor apprehended during investigation. According to the learned



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counsel, the inconsistent chronology of events and the failure of the investigating agency to identify or arrest several alleged intermediaries seriously undermines the credibility of the prosecution case. It was further contended that even the role attributed to A1 has shifted materially in the different statements of PW1. In one version certain persons are described as acting in “partnership”, whereas in another version an entirely different sequence of transfers between individuals is narrated. Such shifting versions render the testimony of PW1 unreliable, goes the argument.

11.1. It was further argued that PW1 has not given any consistent timeline regarding the period during which the alleged acts were committed by A1. It was pointed out that in the order on Charge dated 24.05.2018, the trial court observed that PW1 was sexually exploited by A1 between November 2009 and March 2010, whereas in the formal Charge framed on the same day the



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period was mentioned as November/December 2010 to February/March 2011. This discrepancy of nearly one year goes to the root of the prosecution case. It was also submitted that the prosecution has failed to establish any specific date, time or period when PW1 allegedly came into the custody of A1. The learned Senior counsel would also contend that under the scheme of Sections 211 to 214 Cr.PC, the Charge is required to specify the time and place of the alleged offence with reasonable certainty and the absence of such particulars, renders the Charge defective. It was further submitted that A1 had remained in judicial custody during substantial portions of the period when PW1 allegedly claimed to have been in her custody. Reliance was placed upon custody certificates placed on record which, according to A1, demonstrate that she was incarcerated in connection with other cases during the relevant time. It was therefore contended that the prosecution story that PW1 remained in the custody of A1 during the said period is inherently improbable.



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11.2. The learned Senior counsel also referred to the application moved before this Court under Section 391 Cr.PC seeking permission to bring on record the testimony of PW1 recorded in the subsequent trial of certain co-accused who had been apprehended at a later point of time. It was submitted that the said testimony arises out of the same FIR and pertains to the same chain of alleged trafficking events. According to A1, the subsequent testimony further demonstrates inconsistencies in the version of PW1 regarding the timeline of events and the persons involved in the alleged trafficking network. Reliance was placed the decision of the Apex Court in **A.T. Mydeen v. Commissioner of Customs, (2022) 14 SCC 392** to contend that while evidence recorded in a separate trial ordinarily cannot be used against another accused without an opportunity of cross-examination, the appellate court nevertheless possesses the power under Section 391 Cr.PC to take additional evidence where it is necessary for a just decision of the case. The learned counsel submitted that the said



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additional material was sought to be placed on record only for the limited purpose of testing the credibility of PW1 and to demonstrate that her version regarding the sequence of events is not reliable.

11.3. It was also argued that the conduct of PW1 casts serious doubt upon her credibility. During the period when she claimed to have been missing or under threat she had in fact lodged several complaints alleging rape and exploitation against other persons. According to the learned counsel, the said conduct indicates that PW1 cannot be regarded as a witness of sterling quality and her testimony ought not to have been relied upon without independent corroboration. It was further contended that the investigation conducted by the police suffers from serious deficiencies inasmuch as several persons allegedly involved in the trafficking chain were neither identified nor traced and the investigation failed to establish the exact role of A1 in the alleged events.



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11.4. The learned Senior counsel lastly assailed the order on sentence passed by the trial court. It was submitted that the trial court erred in directing the sentences under the IPC and the ITP Act to run consecutively, thereby resulting in an aggregate sentence of twenty-four years. Reliance was placed upon the decision of this Court in **Irfan v. State, 2019 SCC OnLine Del 6908**, wherein it was held that where offences arise out of the same transaction, the sentences ordinarily ought to run concurrently and not consecutively. The learned Senior counsel also placed emphasis on the “single transaction rule”, which governs the exercise of discretion under Section 31 Cr.PC and that consecutive sentences are not warranted where the offences form part of the same transaction. It was therefore submitted that the direction of the trial court directing the sentences to run consecutively is contrary to settled law and hence liable to be set aside.



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12. *Per contra*, the learned Additional Public Prosecutor appearing opposed the appeals and supported the findings recorded by the trial court. It was submitted that the testimony of PW1 is consistent on material particulars and the minor discrepancies pointed out by the defence do not affect the substratum of the prosecution case. The evidence of PW1 clearly establishes that A2 had kidnapped the minor victim and subjected her to sexual exploitation before trafficking her to other persons for prostitution, and that A1 was one of the persons in whose custody the victim was kept and exploited.

12.1. With regard to the contention raised by A2 that the year of the incident was inconsistently mentioned as 2006 and 2009, the learned prosecutor submitted that the discrepancy was sufficiently explained by PW1 during her cross-examination wherein she clarified that she had mistakenly mentioned the year as 2006 earlier whereas the actual incident occurred in 2009. It was argued that such an error is natural considering the traumatic



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circumstances in which PW1 was subjected to repeated exploitation over a prolonged period.

12.2. It was submitted that the statement of PW1 recorded under Section 164 Cr.PC as well as her deposition before the Court clearly establish the role of A2 in abducting the minor victim and thereafter trafficking her for sexual exploitation. It was contended that the testimony of a victim of sexual offences does not require independent corroboration if it inspires confidence, and therefore the absence of a TIP or other corroborative evidence does not weaken the prosecution case.

12.3. As regards the submission of the defence that PW1 had lodged other FIRs during the relevant period, the learned prosecutor contended that such FIRs are wholly irrelevant to the present case and cannot be relied upon to discredit the testimony of PW1 in the absence of any material showing that those complaints were false. It was further argued that the inconsistencies highlighted by A1 regarding the sequence of trafficking or the role



of other intermediaries do not dilute the evidence establishing the involvement of A1 in the exploitation of the victim.

12.4. With regard to the reliance placed by A1 on the decision of the Apex Court in **A.T. Mydeen** (*supra*), the learned prosecutor submitted that the said decision in fact reiterates the principle that evidence recorded in a separate trial cannot ordinarily be relied upon against an accused who had no opportunity to cross-examine the witness. It was therefore contended that the additional testimony sought to be relied upon by A1 from the subsequent trial of the co-accused cannot be used to discredit the prosecution case in the present appeal.

12.5. On the question of sentence, the learned prosecutor submitted that the contention of A1 that all sentences ought to run concurrently is legally untenable. Drawing attention to Section 31 Cr.PC, it was argued that where a person is convicted of multiple offences at a single trial, the punishments consisting of imprisonment ordinarily commence one after the expiration of the



other unless the Court directs that they shall run concurrently, indicating that consecutive running of sentences is the normal rule and concurrency is an exception to be exercised on judicial discretion. Reliance was placed upon the Constitution Bench judgment of the Apex Court in **Muthuramalingam v. State, (2016) 8 SCC 313** to contend that the trial court was empowered to structure the sentences depending upon the gravity and nature of the offences. It was therefore submitted that the conviction and sentence recorded by the trial court do not warrant interference and the appeals deserve to be dismissed.

13. Heard both sides and perused the records.

14. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/accused persons by the trial court, despite PW1, the victim, changing her versions in her FIS/FIR, her Section 164 Cr.PC statement, and her testimony before the trial court is justifiable and can be sustained.



15. The gist of the case of PW1, the victim, in Exbt. PW1/A FIS/FIR dated 09.02.2014 is as follows:-PW1 stated that in the year 2006, when she was studying in the 6th class at D.A.V. School, Raghubarpura, Gandhi Nagar, Delhi, and was about 11 to 12 years old, she became acquainted with a boy named Sandeep (A2) who worked in a buckle-making factory in Gandhi Nagar. Sandeep (A2) professed love for her and lured her with the promise of marriage. During the winter season, he enticed her away from her school and took her to the house of a woman named Seema at Laxmi Nagar, Delhi, near V3S Mall. At the said house, Sandeep (A2) raped her and thereafter sold her to Seema, who forced her into prostitution and administered intoxicating injections. Subsequently, Seema sold PW1 to another woman living near Ganesh Kachori Wala in Laxmi Nagar, who also compelled her to engage in prostitution for several months and later sold her for ₹50,000/- to a woman named Manisha, residing near Geeta Bal Bharti School in Laxmi Nagar. PW1 further stated



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that at each such place several other minor girls and foreign women were also kept and forced into similar acts. Thereafter, Manisha sold PW1 to an elderly man residing near the red-light area in Ashok Vihar, Phase-3, where she remained for about ten days. Subsequently, she was sold to a woman named Khushi, residing on the first floor near Chinese Food Point, Katwaria Sarai, who charged ₹1,500/- from customers and forced PW1 into prostitution. Khushi thereafter sold PW1 to a woman known as Sonu Punjaban (A1) near Saket. PW1 alleged that before sending her to customers, Sonu Punjaban (A1) administered intoxicating substances including Proxyvon and Alprax tablets and injected her with a pink-coloured injection, due to which she would become intoxicated and physically numb. She further stated that Sonu Punjaban (A1) would also give drug-laced cigarettes and would send her to customers in vehicles through a boy named Rohan, charging ₹1,500/- per person. She was kept at different locations including Anand Vihar, near Shahdara Mandi, near ISBT Metro



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Station and behind a hotel named Riasta near Bangla Sahib Gurudwara. After about two to two-and-a-half months, Sonu Punjaban (A1) sold her to a person named Lala, a resident of Lucknow, who kept her near a market police post in Lucknow where several other girls were confined and forced into prostitution. She was subjected to sexual exploitation there for about three months after being administered intoxicating substances. Thereafter, Lala sent her with one Ramesh Mishra of Uttam Nagar, Delhi, who took her in a white EECO car to various places including Janakpuri, Uttam Nagar and Dwarka to show her to customers. When she attempted to escape, she was caught and beaten. After a few days, Ramesh Mishra sold her for ₹50,000/- to a person named Satpal Malik of Uttam Nagar. Satpal Malik kept her with him in Uttam Nagar and forced her into prostitution by bringing customers to her. His brother Rajpal Malik also sexually exploited her and used to take her to customers at Kuber Hotel located on Murthal Road. Thereafter, Rajpal Malik took her to



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village Karor in District Rohtak, Haryana, where she was kept among his family members from the year 2009 onwards. She was thereafter married to Satpal Malik through a lawyer named Pradyuman Siwach and her identity documents were also prepared showing her address at village Karor. Later, due to disputes with the daughters of Rajpal Malik, she left the house and on 07.02.2014 came to Delhi with the help of a neighbour. On 09.02.2014 she reached Najafgarh Police Station and disclosed the above facts to the police, requesting strict legal action against all the persons who had trafficked and sexually exploited her and expressing her desire to be reunited with her parents.

16. In Exbt.PW1/C, the Section 164 statement of PW1, seen recorded on 11.02.2014, she states thus: - “In the year 2006 she was studying in the 6th class at D.A.V. School, Raghubarpura, Gandhi Nagar, Delhi, and at that time she was about 11 to 12 years old. A boy named Sandeep (A2), who worked in a factory making buckles/lids in Gandhi Nagar, took her to the house of an aunty



named Seema. When she asked Seema to send her back home, the latter told her that whoever came there once would not be allowed to go back. Thereafter Seema started beating her and forced her into illicit work and prostitution. Sandeep (A2) sold her to Seema and thereafter left. Seema kept several other girls with her and did not allow any of them to go outside. Thereafter she was handed over to a woman named Manisha, who also forced her to engage in prostitution. According to PW1, she was sold for about ten days for a sum of ₹50,000/-. Boys used to be called to the house and the girls were compelled to have physical relations with them. Manisha and a woman known as Sonu Punjaban (A1) were in partnership and together they used to forcibly send the girls to customers and compel them to have sexual relations. They used to administer intoxicating injections and capsules to the girls, including pink coloured injections. She was repeatedly administered intoxicating substances and forced into sexual relations and was sold from one person to another. Thereafter she



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was sent to Lucknow where a person named Lala kept her at his house and forced her into prostitution. Several persons who came there used to have physical relations with her. She was beaten and administered intoxicating substances. Thereafter she was sent to a girl named Khushi of Moradabad who also forced her into prostitution with several persons. Khushi subsequently sold her to one Ramesh Mishra who resided in Uttam Nagar, who also forced her into prostitution. She was thereafter sold to Satpal and Rajpal. Since Satpal was married, he could not keep her and therefore she was kept with Rajpal and his family. She lived with the family members of Rajpal in Rohtak, which included their children also and that Satpal and Rajpal did not do anything wrong with her and even helped her to get rid of her drug addiction. Her identity documents were prepared there and her marriage was arranged with Satpal. PW1 finally stated that she had no complaint against them and that she had nothing further to say.”



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17.PW1, when examined before the trial court on 08.08.2018, deposed that in the year 2009, while she was studying in Class III or IV at a school in Raghubarpura, she was befriended by A2. She further deposed that A2 eventually took her to the residence of a woman named Seema, on the pretext of celebrating his birthday. According to PW1, after consuming snacks and a cold drink offered by Seema at the said residence, she lost consciousness and regained her senses only the following morning, by which time A2 had already left. Thereafter, Seema informed her that A2 had engaged in physical relations with her during the night and that she was subsequently subjected to physical assault and administered intoxicating injections so as to prevent her from leaving the premises. PW1 further deposed that she was kept confined at the said residence of Seema, situated near V3S Mall, Laxmi Nagar, where she was repeatedly subjected to rape by multiple men.



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17.1. PW1 further deposed that she was thereafter transferred to another unidentified woman near Ganesh Kachoriwala, where she was administered with some injection, due to which she used to be in semi-conscious state and hence was unable to resist and this ordeal of being drugged and sexually assaulted by multiple men continued on a daily basis. She further stated that she witnessed these men paying money to her captors. She further deposed that she was subsequently shifted to the residence of a woman named Manisha, where she was compelled to sleep with various men under the pretext of being their wife. She stated that she was kept segregated from other women at the said premises and was continuously administered injections. She further deposed that after being briefly held and assaulted by an unnamed individual at Madhu Vihar for about 15 to 20 days, she was returned to Manisha and was thereafter handed over to a woman named Khushi and her male companion at Munirka.



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17.2. PW1 further deposed that Khushi used a Lancer car to transport her and other girls to different locations for purposes of forced sexual labour, and that compliance was enforced through beatings and the administration of injections. PW1 further deposed that thereafter, she was left to A1, who compelled her to engage in sexual acts with drivers, filmed these acts so as to blackmail her, and subjected her to extreme physical torture. PW1 further deposed that A1 used to tear her clothes, apply red chilli powder on her chest and into her mouth and also force her to smoke cigarette. She was also forced to use “white powder” (drugs). According to PW1, A1 threatened her that she would engage her sisters also in the same kind of work and never allowed her to go home. She further deposed that one of A1’s drivers, Rohan also established physical relations with her. PW1 further deposed that the injections were of pink colour and Alprex and Proxyvon tablets were given to her.



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17.3. PW1 further deposed that she was thereafter sold to a person in Lucknow, where she was kept in a house near a police booth and compelled into prostitution alongside several other girls. She stated that after being subjected to further degradation and assault at that location, she was sent to two individuals, namely, Ramesh and Mishra in Uttam Nagar, Delhi, who transported her to various customers in an Eeco car. PW1 further deposed that she was ultimately sold to two brothers, Rajpal and Satpal. She stated that while Satpal assaulted her, Rajpal eventually took pity on her and brought her to his residence in Rohtak to help her recover from drug addiction. Following a dispute with Rajpal's children, she stated that she fled to Dwarka and approached the Police Station concerned. She deposed that after senior officers gained her confidence, she disclosed the entire ordeal, underwent a medical examination, and identified the accused, including A1, through photographs and video conferencing. She further stated that she



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could not remember the specific date on which she had come to Delhi and proceeded to the Police Station.

17.4. During the examination-in-chief, the prosecutor is seen to have sought permission to “cross-examine” PW1 on the ground that she was silent on certain material facts, which request was granted. On further examination by the prosecutor, PW1 deposed that both Rajpal and Satpal had exploited her for prostitution, and specifically stated that Rajpal had taken her to Kuber Hotel on Murthal Road for such purposes at the instance of Satpal. She confirmed that Rajpal had arranged a marriage between her and Satpal; however, she denied the suggestion that she had been asked to sign any legal documents in the presence of an advocate at the time of the said marriage. PW1, on her further examination by the prosecutor on 10.08.2018, further deposed that Rajpal had not disclosed to her that Satpal was already married, and denied the suggestion that Rajpal had informed her of this fact at a later stage. PW1 further stated that she had observed A1 and Khushi in her



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own locality when they had come there to contact other individuals engaged in prostitution. She deposed that A1 and Khushi had issued threats against her life, asserting that they would have her killed if she lodged a formal complaint, and had further threatened to have her kidnapped and forcibly returned to prostitution. She deposed that as a consequence of these threats, she had fled her parental home to seek refuge at an undisclosed location. PW1 further admitted that her initial complaint, Exbt. PW1/A, had erroneously recorded the year 2006 instead of 2009 as the year when accused A2 had first taken her to Seema's residence.

17.5. PW1, in cross-examination by counsel for A1, deposed that she had been taken by Rajpal to the residence of an individual referred to as M.K. Sharma in Rohtak prior to her return to Delhi, and that her stay there had been brief. With respect to her period in the custody of Rajpal and Satpal, she deposed that they had kept her in a room in Dwarka before taking her to Rohtak, though she was unable to specify the duration of her stay. She was further



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confronted with discrepancies in her Exbt. PW1/A FIS/FIR concerning the duration of her time with the persons referred to as Ramesh and Mishra, and as to whether they were one individual or two distinct persons. PW1 deposed that she did not state to the police that Ramesh and Mishra is one and the same person. PW1 further deposed that she was kept for a considerable period, spanning two Diwalis, at the residence of a person referred to as Lala in Lucknow, and that she had been transported there by train under a threat of death, which had prevented her from raising any alarm. She further deposed that following her initial complaint at Najafgarh Police Station, she had been sent to Nari Niketan before eventually returning to her parents, and that she had subsequently left her parental home again owing to persistent threats from A1 and Khushi, seeking refuge with the mother of a friend.

17.6. PW1, in her cross-examination by the counsel for A2, deposed that she could not recall the specific date on which her statement had been recorded by the police. She deposed that she



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had been in Class III or IV in the year 2009 when she was taken away, and clarified that her initial statement to the police had erroneously cited the year as 2006. She was confronted with her statement in Exbt. PW1/A FIS/FIR, which recorded her first meeting with accused A2 in the year 2006, but she maintained that the said meeting had in fact occurred in 2009. PW1 further deposed that she did not specifically recall having told the Najafgarh police about being offered snacks and a cold drink that caused her to lose consciousness, but denied the suggestion that she had deliberately embellished her evidence regarding these facts. She deposed that she had been reunited with her parents at the police station after they were summoned by the authorities. She admitted that it was correct that she had left her parental residence again in 2014, though she claimed no knowledge of whether her parents had filed any missing person reports between 2009 and 2014, or specifically on 15.12.2014 at Jagatkpuri Police Station.



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18. PW8, the father of PW1, deposed that in September 2009, during the winter season, he returned home from duty to find that PW1 was missing. He had no knowledge of her whereabouts and was unable to trace her despite his efforts. After a day or two, he proceeded to the Harsh Vihar Police Station to lodge a missing person complaint. The police registered Exbt. PW6/B FIR. Despite registration of the said FIR, PW1 remained untraced for several years thereafter. PW8 further deposed that in February 2014, the exact date of which he could not recall, he received a telephone call from PW20, Woman Sub-inspector, informing him that PW1 had been located at Nari Niketan in Hari Nagar, Delhi. He proceeded to the said facility and successfully identified his daughter. PW20 advised him that he would be required to approach the Dwarka court to obtain formal custody. He deposed that while he was at Nari Niketan, PW1 disclosed to him that A2 had enticed her away, taken her to Laxmi Nagar, and sold her to a woman referred to as 'aunti'. PW8 further deposed that



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approximately one month later, custody of PW1 was formally handed over to him and he brought her home. She remained with the family until December 2014, at which point she left the house again without informing anyone. He searched for her but was unable to find her, consequent upon which he lodged another missing person complaint at the Jagatpuri Police Station. The police there assured him of informing him in the event she was found, but PW1 remained missing for three more years. He further deposed that in December 2017, the exact date of which he could not recall, he received a call from PW21, Woman Sub-Inspector, who informed him that PW1 had been found and was being brought to his residence. After PW1 was dropped off at home, PW21 returned a few days later to record statements from both the witness and PW1. During this visit, the officer showed PW1 several photographs from a file for the purpose of identifying potential suspects. PW1 identified one or two individuals and signed the corresponding photographs. A few days thereafter, the



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officer took PW1 to identify specific locations connected with the case before returning her home the same evening. PW8 deposed that PW1 has resided with the family since then, and that she had informed him that during the period she was away, certain women had administered drugs and injections to her, though she had not disclosed their names.

18.1. PW8, in his cross-examination by the counsel for A2, denied the suggestion that in 2009, when PW1 went missing, the first missing person complaint had been lodged after a delay of ten days. He deposed that he had provided a photograph of PW1 to the police and had visited Harsh Vihar Police Station four or five times to enquire about the case, while the police had in turn visited him two or three times. He admitted that between the time PW1 went missing and the lodging of the complaint on 20.09.2009, he had made enquiries with relatives and friends. PW8 deposed that in February 2014, it was one of his children who had first received the call regarding the tracing of PW1, and that he came to know of



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it after returning home from duty. He clarified that none of his other children had been in contact with PW1 from the time she went missing in 2009 until she was found in 2014. He further deposed that from approximately February or March 2014 until December 2014, he and his wife had visited Najafgarh Police Station at the request of the SHO on multiple occasions, and that during this period the police had not visited their home, shown them any photographs of PW1, or taken her to identify any locations connected with the case. PW8 further deposed that he had no knowledge of whether PW1 had been a complainant or an accused in any legal proceedings during that period, nor could he confirm whether she had married on more than one occasion. He, however, deposed that PW1 was married on 07.02.2018 and has a child from that marriage, and that at the time of his deposition she had been residing with the family for the preceding six to seven months. He denied the suggestions that he had concealed facts



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pertaining to PW1's activities, been indifferent to her missing, or furnished false information to the police.

18.2. PW8, in his cross-examination by the counsel for A2, deposed that PW1 had been attending a government school in 2009 at the time she first went missing. He deposed that after the local police failed to trace her, he had visited the office of the DCP concerned. He further deposed that no written complaint had been lodged between February/March 2014 and December 2014 with respect to the disclosures made by PW1 regarding her condition and the ordeal she had suffered. He deposed that to his knowledge, PW1 had gone missing on two occasions, once in 2009 and again in December 2014.

19. This Court has given its thoughtful consideration to the rival submissions advanced on behalf of the appellants and the learned Additional Public Prosecutor and has carefully perused the entire materials available on record. At the outset, it is to be noted that the entire prosecution case rests substantially on the testimony



of PW1. It is a settled position of law that conviction can be based on the sole testimony of the prosecutrix if it is found to be of sterling quality and inspires confidence in the mind of the Court. [See **Ganeshan v. State (2020) 10 SCC 573**] However, where such testimony suffers from material contradictions, inconsistencies and improvements, the Court is duty bound to seek corroboration before sustaining a conviction.

20. In the present case, a comparative analysis of the versions of PW1 as reflected in her Exbt. PW1/A FIS/FIR; Exbt. PW1/C Section 164 statement and her deposition before the trial court reveal material inconsistencies which go to the root of the prosecution case. In her FIS/FIR as well as in her statement under Section 164 Cr.PC, PW1 stated that the incident occurred in the year 2006, whereas in her deposition before the Court she asserted that the incident took place in the year 2009 and sought to explain the earlier version as a mistake. The trial court accepted the argument of the prosecution that the same is only a minor



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contradiction, which has been explained by PW1 in her subsequent statement made under Section 161 Cr.PC dated 09.12.2017 (Mark A). This finding is apparently erroneous and perverse as statements made under Section 161 are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to Section 162 (1) Cr.PC Under the proviso to Section 162 (1) Cr.PC, such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145 of the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in the Court. (See **Tahsildar Singh v. State of U.P.**, AIR 1959 SC 1012; **Satpal v. Delhi Administration**, 1976 (1) SCC 727 and **Delhi Administration. v. Lakshman Kumar** 1985 KHC 741: (1985) 4 SCC 476).

21. In the facts and circumstances of this case, the discrepancy regarding the year of incident is not a minor



inconsistency but relates to the very genesis of the prosecution case to which aspect I will refer to shortly. Further, the version of PW1 regarding the alleged act of rape attributed to A2 undergoes a substantial change. In her first statement, that is, Exbt. PW1/A FIS/FIR, her case is that A2 had raped her at the residence of one Seema aunty. But in her Exbt. PW1/C Section 164 statement, she has no case that A2 had raped her. However, in her testimony before the Court, PW1 introduced a new version that she had consumed a cold drink, lost consciousness and thereafter came to know from Seema that A2 had committed rape upon her. This version is clearly based on what PW1 was allegedly told by another person and not on her own perception.

22. The deposition of PW1 also contains several material improvements which were not part of her earlier statements, including the administration of intoxicating substances in the manner described, the circumstances leading to her loss of consciousness, and the specific acts of cruelty allegedly committed



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by A1. These improvements are not minor embellishments but introduce entirely new facets to the prosecution story. It is true that when a young girl/woman after being administered drinks laced with intoxicants is subjected to repeated sexual assault by different people at different places, then it may not be possible to recall the entire facts in the correct sequence or recollect the exact dates, months or years. In the case on hand, PW1 has no such case that she is unable to recall the details because of the traumatic experience. As noticed earlier, her version keeps changing with every statement recorded during the course of the inquiry/investigation, and trial of the case.

23. Now even assuming for a moment that the year referred to in the FIS/ FIR as 2006 was a genuine mistake and that the actual year was 2009, still the same does not improve the prosecution case. PW8, the father of PW1, is seen to have given a missing complaint on the basis of which Crime no.193/2009, Harsh Vihar, Police Station, i.e., Exbt. PW6/B FIR was registered



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on 20.09.2009. In the said FIS/FIR, the grievance/complaint of PW8 is that on 10.09.2009 at about 03:00 pm his daughter left for a nearby shop, but has not returned. The FIR is seen registered on 20.09.2009 only, despite PW1, a young girl, going missing on 10.09 2009. No plausible reason is given for the delay of 10 days in reporting the matter to the police. In Exbt. PW1/A FIS/FIR, the case of PW1 is that she was enticed from her school by A2 on the promise of marriage. However in her Section164 statement, she has no such case. On the other hand, she says that A2 took her to the house of one Seema aunty and left her there. There is no case of promise of marriage or enticing. In her testimony before the trial court, her case is that A2 took her to the house of Seema aunty on the pretext of celebrating his birthday.

24. A further inconsistency seen is her version pertaining to the role attributed to two of her assaulters, who were the last in the series of persons who sexually assaulted her, namely, one Satpal and Rajpal. In Exbt. PW1/A FIS/FIR, the case is that after being



sold to Satpal Malik, she was forced into prostitution by him and that his brother Rajpal Malik also sexually exploited her and took her to customers. However, in her statement under Section 164 Cr.PC, PW1 took a completely different stand and stated that Satpal and Rajpal did not do anything wrong with her and, on the contrary, had helped her to get rid of her drug addiction, further stating that she had no complaint against them. This is not a minor inconsistency but a complete *volte-face* on a material aspect of the prosecution story. When examined before the trial court, PW1 once again changed her version. Initially in her examination-in-chief, she stated that Satpal assaulted her while Rajpal took pity on her and helped her, thereby partially exonerating Rajpal. However, upon being further examined by the prosecutor, she deposed that both Rajpal and Satpal had exploited her for prostitution and that Rajpal had taken her to Kuber Hotel for such purposes. In the cross-examination, she again made statements suggesting that she was living with the family of Rajpal for a considerable period



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without clarity as to the nature of her stay. Thus, across the three versions, FIS/FIR, Section 164 Cr.PC statement and the testimony before trial court, PW1 has taken mutually destructive stands regarding the role of Satpal and Rajpal, at one stage alleging sexual exploitation, at another stage completely exonerating them, and thereafter again attributing culpability. Further, in the FIS/FIR she has also a case that Rajpal Malik took her to his village Karor in Rohtak, Haryana, where she was kept along with his family from the year 2009 onwards. She was thereafter married to Satpal Malik through a lawyer named Pradyuman Siwach. She left the house on 07.02.2014 due to disputes with the daughters of Rajpal Malik and came to Delhi with the help of a neighbour. On 09.02.2014 she reached Najafgarh Police Station and gave the complaint. Therefore, going by her version in the FIS/FIR, she was in the house of Rajpal from the year 2009 till she left his house on 07.02.2014. But in the box, PW1 has a case that she was at the house of Rajpal for about 1-1 ½ months only. In the cross-



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examination, PW1 has a case that she was in the custody of A1 for about 1-1 ½ months and in the custody of one Khushi for 2-3 months. But her version in the FIS is that from 2009 till 07.02.2014, she was with Rajpal at his house in Rohtak, Haryana. As per Ext. PW6/B FIR given by her father, PW1 went missing from 10/09/2009 onwards. If that be so, when was the time she was in the custody of all the other persons referred to by her in the FIS/FIR including A1? It is in this background the year and the period of abuse assume importance and the inconsistency in PW1's testimony regarding the year cannot be brushed aside as immaterial, minor or irrelevant.

25. Further, the conduct of PW1, as brought on record, further creates serious doubt regarding her credibility. It has come in evidence that PW1 had lodged multiple FIRs during the relevant period alleging similar acts of kidnapping, intoxication and sexual assault against different persons. From the materials placed on record, three such FIRs assume significance. In Exbt. PW1/D1 FIR



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No.1035/2016 dated 24.12.2016 registered at Mukherjee Nagar, Police Station, alleging commission of offences punishable under Sections 323, 328, 376, 376D, 34 IPC, PW1, described as Payal w/o Manish Panchal, resident of D-57 Gali No.9, Brahmpuri, Delhi 110053, is stated to have been taken away to a flat on 23.12.2016 by one Amit on the pretext of arranging a job, administered an intoxicant and subjected to gang rape by him and his associates, who also video recorded the assault and issued threats for circulation. She was alleged to have escaped from their custody and given the complaint to the police. The accused persons in the said case were stated to be persistently contacting and intimidating her. However, by a subsequent statement dated 12.05.2017, i.e., Exbt. PW1/D2 dated 12.05.2017, addressed to DCP, Mukherjee Nagar, PW1 resiled from the aforesaid allegations and stated that she had gone with the said person voluntarily, and that no wrong act had been committed upon her



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and that she did not wish to pursue the matter or depose against him in court.

26. Exbt. PW1/D6 Complaint, which is undated, was given by PW1 to DCP Seelampur, Shahdra Police Station. In the said complaint, PW1, has described herself as Payal w/o Manish Panchal, r/o 1/10505 Street no. 1 Bahl Gali, Delhi. In the said complaint, it is alleged that on 22.12.2016 at about 02.44 P.M., one Vicky, Bobby, Ram Singh and their associates forcibly entered her house in the absence of her husband, sexually assaulted and outraged her modesty by stripping her and threatened to commit rape and murder her. She was also compelled to vacate the premises. Though she had given a complaint, the police never took any action.

27. In another FIR, namely, Crime No. 192/2017 dated 29.04.2017 registered at New Ashok Nagar, Police Station alleging commission of offences punishable under Sections 376D, 506, 328, 34 IPC, i.e., Exbt. PW1/D3, in which PW1 is described as



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“Riya”, d/o late Darshan Lal, r/o Shadra, the allegation is that on 24.08.2017, she has been lured by one Pankaj on the pretext of a job to New Ashok Nagar, taken to a nearby flat, rendered unconscious using an intoxicant and raped by Pankaj and his associate. They are also alleged to have recorded the act of sexual assault and threatened her. She is alleged to have informed her friend following which, the police intervened. PW1 admits Exbt. PW1/D1 FIR and Exbt. PW1/D3 FIR. She admitted to having made Exbt. PW1/D6 complaint, but denied the contents of the same.

28. In addition to the aforesaid three FIRs, there is one another FIR and a complaint, i.e., Exbt. PW1/D4 and Exbt. PW1/D5 respectively. In Exbt. PW1/D4 FIR, namely, Crime no. 73/2016 dated 27.01.2016, registered at New Ashok Nagar, Police Station the informant/aggrieved is described as “Ruchi Sen”. The offences alleged are under Sections 376 and 506 IPC. In the said case the allegation is that Ruchi Sen, daughter of Bijendra Singh



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Sen, was acquainted with one Pankaj who was known to her for about 10 years or so. He established physical relations with her on the false promise of marriage and took away ₹1,75,000 and gold ornaments and thereafter married another lady. When she demanded the valuables back, Pankaj and his family refused to return them and is alleged to have extended threats, abuse and harassment causing severe mental trauma to the victim. In yet another undated complaint, i.e., Exbt. PW1/D5 addressed to SHO, Badarpur, Police Station, the informant is described as Payal Malik, r/o, Brahmapuri, Delhi. In the said complaint it is alleged that Payal Malik, on 25.11.2017 while seeking employment at Mangla Shoes was lured by an unknown boy to a hotel, administered an intoxicant through a cold drink due to which she lost consciousness. Upon regaining senses the man refused to marry her and hence the complaint. According to A1 and A2, Exbt. PW1/D4 and Exbt. PW1/D5 were also made at the instance of PW1. But PW1 denied the said fact. However, she admitted the



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earlier two FIRs and the complaint. The pattern of allegations in the FIRs and complaint is substantially similar to the allegations made in the present case, namely, inducement, administration of intoxicants and subsequent sexual exploitation.

29. A cumulative reading of the aforesaid FIRs shows that PW1 has, at different points of time, made allegations of a similar nature against different individuals, each time asserting that she was lured, intoxicated and sexually exploited. The fact that in one of the FIRs she subsequently resiled from her allegations and in another she even used a different name (Exbt. PW1/D3), casts a serious doubt on the consistency and reliability of her version. The pattern emerging from the FIR series thus indicates repeated allegations of a similar nature against different persons, coupled with subsequent retraction in at least one case and inconsistency in identity in another. This Court is of the view that such conduct casts a serious shadow on the reliability of PW1 and disentitles her



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from being treated as a witness of sterling quality. [See **Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21**]

30. As regards the submission of the learned counsel for A2 regarding non-mention of the name of accused persons in the MLC is not of much significance. In Exbt. PW1/B MLC, it is recorded thus - *“Pt gives h/o being kidnapped and pushed into human trafficking at around 12 years of age (was in Class 6). h/o sexual contact over the years, last 1 month back.”* It is true that the name of the accused persons is not mentioned in the MLC. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases (See **Pattipati Venkaiah v. State of A.P., 1985 KHC 700: (1985) 4 SCC**). Therefore, the non-mention of the names of the accused persons by the doctor in the MLC cannot by itself be a ground to discard the prosecution case. However, in the present case, in view of the



otherwise unreliable testimony of PW1, the absence of any reference to A2, who is alleged to be the main culprit who started off the series or chain of sexual assault, does appear strange.

31. The investigation in the present case also suffers from serious deficiencies. Several persons allegedly involved in the chain of trafficking, such as Seema, Khushi, Manisha and others, were neither properly identified nor apprehended. It is true that defects in investigation cannot always enure to the benefit of the accused. But in the case on hand, the failure of the investigating agency to trace these crucial links in the prosecution story further weakens the case against the appellants.

32. Now coming to the argument of the learned Senior Counsel for A1 regarding reliance on the testimony of PW1 in SC No. 693/2019 (State Vs. Jitender Kumar@ Lala and Ors.) arising out of the application filed under Section 391 Cr.PC (CRL.M.A7206/2025) and the order dated 24.04.2025 passed by the Predecessor Bench of this Court, whereby the testimony of



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PW1 recorded in a separate trial of co-accused persons, along with the custody certificate, was permitted to be taken on record. From a perusal of the application filed under Section 391 Cr.PC, it is evident that the appellant/A1 sought to contend that the subsequent testimony of PW1 recorded in the trial of co-accused persons, particularly her statement that she was allegedly sent to A1 around Rakhi of the year 2011, when read in conjunction with the custody certificate showing that A1 was in judicial custody during the said period, renders the prosecution case improbable and establishes her innocence. In support of the said submission, reliance was placed on the decisions in **Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158** and **Padam Singh v. State of U.P., (2000) 1 SCC 621** to contend that the appellate court is empowered to take additional evidence and must do complete justice by considering all relevant material.

33. The order dated 24.04.2025 passed by the predecessor Bench, while allowing the application under Section 391 Cr.PC,



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has indeed observed that the additional material arises out of the same FIR may be taken on record to enable effective adjudication. However, the said order itself makes it abundantly clear that the relevancy, admissibility and evidentiary value of such material are to be assessed at the stage of final appreciation and that mere taking on record does not *ipso facto* amount to acceptance of its correctness. The reliance placed on **Zahira Habibulla H. Sheikh** (*supra*) in the said context only underscores the wide amplitude of the powers of the appellate court to do complete justice; it does not dispense with the settled principles governing admissibility and proof of evidence.

34. Section 391 Cr.PC is an enabling provision which empowers the appellate court to take additional evidence where it is necessary for a just decision of the case. However, the said provision is procedural in nature and cannot be invoked to bypass substantive safeguards of criminal jurisprudence. The object of Section 391 is to prevent miscarriage of justice and not to permit



the introduction of material from separate proceedings in a manner that would either prejudice the prosecution or dilute the rigour of proof required in a criminal trial. The decision in **A.T. Mydeen** (*supra*), far from supporting the appellant, reiterates that evidence recorded in one trial can be read only for the purpose of the accused tried in that trial and cannot be used for any accused tried in a separate trial. Each case has to be decided on its own merits, and evidence recorded in one case cannot be used in another case.

35. The custody certificate relied upon by A1 also requires consideration. A perusal of the said document reveals that the appellant had remained in judicial custody during several periods in connection with different cases. However, the custody reflected therein is not continuous and indicates that the appellant/A1 was released on bail during certain intervals. Therefore, the said certificate, by itself, does not conclusively establish the impossibility of commission of the alleged offence. Nevertheless, the relevance of the said document cannot be entirely discarded. In



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the present case, the prosecution has failed to establish any definite or consistent timeline as to when PW1 was allegedly in the custody of A1. The versions of PW1 in her FIS/FIR, her statement under Section 164 Cr.PC and her deposition before the trial court disclose material inconsistencies regarding the period and sequence of events. In such a situation, the custody periods reflected in the certificate assume significance in testing the probability of the prosecution case. When the custody certificate is read in conjunction with the inconsistent and shifting versions of PW1, it further accentuates the doubt as to whether A1 was in a position to have retained custody of the victim during the relevant period. The prosecution having failed to establish a clear and cogent timeline linking A1 with the alleged acts, the benefit of such doubt must necessarily enure to the appellant.

36. Further, going by the prosecution case PW1 went missing or was kidnapped in the year 2009. She appears on her own before the police in the year 2014. Her version as to how she



turned up at the police station also varies. In the FIS/FIR, PW1's case is that on 07.02.2014 she left the house of Rajpal Malik and came to Delhi with the help of a neighbour who gave her ₹150/- to go to Delhi. So, she went to the house of a property dealer viz. M.K. Sharma in whose house she stayed till 08.02.2014 and on 09.02.2014, she reached Najafgarh police station and filed the complaint. But in her testimony her case is that -

“I came to Dwarka from Rohtak but I do not know the exact place of Dwarka where I came. I came by bus to Dwarka from Rohtak. It is wrong to suggest that no bus from Rohtak come to Dwarka, New Delhi. I do not remember to whom I met first after coming to Dwarka. I went to Najafgarh Police Station from Dwarka. /The passers-by told me that Najafgarh Police Station was nearest when I asked them at Dwarka. I do not know what is the distance of the police station Najafgarh from the place at Dwarka where I asked passers-by.”

36.1. In the FIS/FIR, she further states that she did not initially disclose the abuse to the police. She thought that after getting her ID proof from Rajpal Malik work as a sales girl in



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some textile shop. It was only when she was convinced that the police would help her, she revealed the incidents of abuse. True, this aspect is spoken to by PW20, the Sub Inspector, who admits that she conducted investigation only for four days. PW20 deposed that PW1 had appeared before the police with a complaint against her brother-in-law Rajpal Malik. PW1 informed the police that she had come to Delhi from Rohtak after quarrelling with her brother-in-law and she wanted her original documents from him. It is true that PW20 deposed that PW1 did thereafter disclose the abuse. However, the initial conduct of PW1 before the police read with the remaining materials on record also raise doubts regarding the prosecution case.

37. Further, it is quite interesting to note that PW1 again goes missing in December 2014. A very strange explanation is given by her. According to her, she was threatened by A1 and Khushi with dire consequences and hence she left her home without informing her parents and lived in hiding with her friend's



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mother. Thereafter, PW1 again surfaces in December 2017, pursuant to which she is stated to be residing with her parents. PW1 is supposed to have gone into hiding due to threats of A1 and A2. But the materials on record show that she had given several complaints to the police based on which FIRs were registered during the period of 'hiding'. Therefore, the explanation for disappearing again in 2014 is not believable. There are several gaps in the prosecution story for which the materials on record do not give any answers. In these circumstances, it can only be held that the materials on record are insufficient to find A1 and A2 guilty of the offences charged against them. Therefore, the conclusion can only be that the trial court went wrong in relying on such unsatisfactory evidence to find the guilt of the accused.

38. On the question of sentence, although the issue regarding consecutive and concurrent sentences has been raised, this Court is of the view that in light of the findings recorded



hereinabove leading to the acquittal of the appellants, the said issue becomes academic. Nevertheless, it may be observed that Section 31 Cr.PC confers discretion upon the Court to direct sentences to run either consecutively or concurrently, depending upon the facts and circumstances of the case as held in **Muthuramalingam** (*supra*).

39. Before I conclude, it is necessary to refer to an incorrect procedure seen adopted by the trial court during examination of PW1. During the course of examination of PW1, it is seen that the prosecutor sought the permission to ‘*cross-examine*’ her. The request of the prosecutor and the Order of the trial court read-

“at this stage, Ld. Addl. PP for the State requests seeks permission of the court to cross examine the witness as she is silent on certain material facts. Heard. Allowed.”

(Emphasis supplied)

39.1. Section 154(1) of the Evidence Act say that the Court may, in its discretion, permit the person who calls a witness to put



any question to him which might be put in cross-examination by the adverse party. This discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of hostility. It is to be liberally exercised whenever the court from the witness's demeanour temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, think that the grant of such permission is expedient to extract the truth and to do justice. (See **Sat Paul v. Delhi Administration, AIR 1976 SC 294**).

39.2. Before declaring a witness hostile, it is necessary for the court to look into the statement made by the witness before the investigating officer to see whether the witness was actually resiling from the position taken during investigation. The party calling the witness i.e. prosecution must lay a foundation for seeking permission under Section 154 of the Evidence Act to put questions as put in cross examination. The witness must show



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himself to be not only adverse, but hostile to the party calling him by his testimony given. The fact that he has become hostile has to be established by eliciting information such as could give an indication of hostility. (See also **Akhil Das v. State of Tripura**, 1998 KHC 2852; 1998 Cri.LJ 1156; 1997 SCC OnLine Gau 40).

39.3. In the case on hand, the prosecutor is never seen to have laid a foundation for seeking permission under Section 154 of the Evidence Act to put questions as put in cross examination. The prosecutor only had a case that PW1 was “*silent on certain material facts*”. The discretion conferred by Section 154 on the court though unqualified and untrammelled to be liberally exercised, is to be invoked only when it appears to the court that from the witness’s demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, think that the grant of such permission is expedient to extract the truth and to do



justice. Such a situation never arose during the examination of PW1 and so the liberty under Section 154 ought not to have been granted by the trial court because in the further examination of PW1 conducted by the prosecutor, it is seen that several answers favourable to the prosecution were obtained by putting leading questions.

39.4. Further, Sections 137 and 138 of the Evidence Act clearly delineate the stages of examination of a witness, namely, examination-in-chief by the party calling the witness, cross-examination by the adverse party, and re-examination thereafter. The statute does not contemplate a situation where a party may ‘cross-examine’ its own witness. The expression “cross-examination” is specifically defined as examination by the adverse party and therefore, permitting the prosecution to “cross-examine” its own witness is a contradiction in terms. The correct legal position is that where a witness does not support the case of the party calling him, the remedy lies under Section 154 of the



Evidence Act, which enables the Court, in its discretion, to permit the party calling the witness to put such questions as might be put in cross-examination by the adverse party. After such permission is granted, the examination conducted would still be examination-in-chief and not cross-examination.

40. In view of the foregoing analysis, this Court is of the considered opinion that the testimony of PW1 suffers from material contradictions, improvements and inconsistencies and is further weakened by her subsequent conduct in lodging multiple FIRs of a similar nature and resiling from allegations in one such case. In the absence of any independent corroboration, it would be unsafe to sustain the conviction of the appellants on the basis of such testimony.

41. In the result, the appeals are allowed and the impugned judgment of conviction and order on sentence are set aside. The appellants, namely, A1 is acquitted under Section 235(1) Cr.PC of the charges under Sections 363, 366, 366A, 370, 372, 376, and



120B. A2 is acquitted under Section 235(1) Cr.PC of the charges under Sections 366A, 370, 372, 373, 328, 342 and 120B IPC. They are set at liberty and their respective bail bonds shall stand cancelled.

42. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MARCH 24, 2026
mj/p'ma/rs