

(2022) 08 CAL CK 0019
In the Calcutta High Court

Case No : Criminal Appeal No. 181 Of 2020, CRAN 1, 2/2020 (Old No. CRAN 3384/2020)

Khadem Sk @ Sekh Khadem

APPELLANT

Vs

State Of West Bengal & Others.

RESPONDENT

Date of Decision : 12-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164
Indian Penal Code, 1860 — Section 120B, 360, 368, 370, 370A, 373, 376
Immoral Traffic (Prevention) Act, 1956 — Section 2(a), 3, 3(2), 4, 4(1), 4(2), 5, 5(1)
(a), 6, 7, 9, 13(1), 15, 15(1), 15(2)
Evidence Act, 1872 — Section 154

Citation : (2022) 08 CAL CK 0019

Hon'ble Judges : Debangsu Basak, J; Bibhas Ranjan De, J

Bench : Division Bench

Advocate : Jayanta Narayan Chatterjee, Nandini Chatterjee, Nazir Ahmed, . Jayashree Patra, Sreeparna Ghosh, Dipanwita Das, Sudip Ghosh, Apurba Kumar Datta

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. The appellant has assailed the judgement of conviction dated March 2, 2020 and the order of sentence dated March 4, 2020 passed by the learned Additional Sessions Judge, Fast-Track Court, Haldia in Sessions Trial No. 96 of 2016 arising out of Sessions Case No. 06 (03) of 2016.

2. By the impugned judgement of conviction and the order of sentence, the appellant has been convicted under Sections 370/373 of the Indian Penal Code, 1860 and under Sections 3(2)/4 (1) (2)/5 (1) (a) and Sections 6 and 7 of the Immoral Traffic (Prevention) Act, 1956 for various period of rigorous imprisonment and various amounts of fine. The sentences had been directed to run concurrently.

3. The impugned judgement of conviction and order of sentence have been rendered in respect of a police case which was initiated on the basis of a first information report being Mahisadal Police Station Case No. 283 of 2015 dated August 24, 2015. The first information report had been lodged against 5 accused persons inter alia on the allegation that the accused persons were procuring and forcibly kidnapping women and coercing such women to participate in flesh trade. The police had submitted a charge sheet being No. 323 dated November 18, 2005 and a supplementary charge sheet being No. 01/16 dated January 21, 2016. The trial Court had framed charges against nine accused for offences punishable under Section 368/370/370A/373/376/120B of the Indian Penal Code, 1860 and Sections 4/6/7/9 of the Act of 1956. The appellant and the other accused persons had pleaded not guilty before the trial Court and claimed to be tried. They had been tried. Eight out of the nine accused persons had been acquitted. The appellant had been convicted.

4. Learned advocate appearing for the appellant has submitted that, numerous circumstances and situations surfaced during the examination of the prosecution witnesses which suggest that the prosecution failed to bring home or substantiate the allegations against the appellant. Broadly speaking, he has classified such circumstances and situations to be, absence of independent witnesses, disputed ownership of the hotel, hotel, the composition of the raiding team and as to whether, all the persons claiming to be part of the team raiding the place were actually there, faulty search and seizure, and contradictions in the statements of the victims.

5. Elaborating on the contention that, the prosecution has failed to bring forth any independent witnesses, learned advocate appearing for the appellant has submitted that, since the prosecution did not bring forth any independent witnesses, their evidence should be discarded. He has classified the witnesses into 3 categories. He has contended that, the witnesses examined by the prosecution can be classified as a police personnel, hostile witnesses and other witnesses. None of the witnesses, according to him, can be said to be independent witnesses.

6. Learned advocate appearing for the appellant has submitted that, the place where the raid and search and seizure was carried out was inhabited. He has submitted that, there was a place of worship, a school, a primary school, a public building and a public thoroughfare well within 200 m of the place of occurrence. Despite the place of occurrence being within a populated area, the prosecution has failed to produce any independent witnesses. He has submitted that none of the neighbours of the place of occurrence had been examined at the trial. He has referred to the listing of prosecution witness No. 13 who stated that, there were two independent witnesses namely Chiranjit Roy and Rabin Pal. However, none of them have been examined at the trial.

7. Referring to the hotel cum brothel he has submitted that, the prosecution has not placed any evidence to show that the appellant was the owner of the same.

He has referred to the evidence of the prosecution witness No. 2 who is the Block Land and Land Reforms Officer who stated that, the land belonged to the Public Works Department. He has referred to the evidence of prosecution witness No. 5 was the Indane Gas Supplier who stated that, the gas connection standing in the name of the appellant was a domestic connection. He has also referred to the evidence of prosecution witness No. 9 who was the Assistant Engineer and Station Master of West Bengal State Electricity Development Corporation Ltd who stated in his testimony that, 1 electric metre connection was given to the appellant. He has referred to the cross examination of such witness where such witness stated that he did not personally visit the premises and did not know whether the premises was a hotel or a residential area. He has also referred to the evidence of prosecution witness No. 10 who was the Pradhan of the Gram Panchayat. Such witness had stated that, the Gram Panchayat did not issue any trade license in favour of the appellant. He has submitted that, none of the prosecution witnesses were able to establish that, the appellant was the owner of the plot in question. He has referred to the evidence of prosecution witness No. 13 and 6 in this regard.

8. On the aspect of the raiding party, learned advocate appearing for the appellant has submitted that, the prosecution witnesses had failed to establish that they were part of the raiding team. In particular, he has referred to the evidence and deposition of prosecution witness Nos. 3, 4, 6, 12 and 13.

9. Learned advocate for the appellant has contended that, the search and seizure was faulty. He has contended that, the search and seizure affected was not in accordance with the law. In support of such contention, he has relied upon the deposition of prosecution witness Nos. 3,4,6 and 12.

10. Learned advocate appearing for the appellant has drawn the attention of the Court to the evidence of prosecution witness No. 17 and 8. He has submitted that prosecution witness Nos. 1 and 8 were declared hostile. In fact, he has submitted that, out of 13 prosecution witnesses, 4 turned hostile at the trial. 7 out of 13 prosecution witnesses that the prosecution had examined at the trial, were police personnel. Only 2 were other witnesses who were inconsequential. He has highlighted the deposition of prosecution witness Nos. 1, 7 and 8.

11. Learned advocate for the appellant has submitted that, the police did not register a first information report prior to conducting the raid. He has contended that, the police personnel did not take prior permission of the superior officers for conducting the raid. He has submitted that, the police have a tendency to ensure that, their investigations and the police case fructifies into a conviction. The conduct of the police personnel should be viewed through such prism. He has relied upon 1975 Supreme Court Cases 219 (Balak Ram vs. State of Uttar Pradesh) in support of his contention. He has contended that, no test identification parade was conducted by the police in respect of any of the accused persons. He has pointed out that, the police did not record any statement under Section 164 of the Criminal Procedure Code, 1973 of any of the

prosecution witnesses during investigations. According to him, the police have failed to establish the link between the appellant and the so-called brothel cum hotel. The police have failed to establish that the appellant was the gainer in respect of the alleged business alleged to be carried out at the place of occurrence.

12. Learned advocate appearing for the appellant has relied upon 1997 Volume 4 Supreme Court Cases 420 (Bir Singh and Others vs. State of Uttar Pradesh) in support of the contention that, corroboration between disinterested witnesses are required. According to him, in the facts of the present case there is no corroboration of the evidence given by disinterested witnesses.

13. Relying upon 1976 Volume 1 Supreme Court Cases 15 (Bhagwan Singh vs. State of Rajasthan) learned advocate appearing for the appellant has submitted that, the search, seizure and arrest were done in presence of CID officers with no independent witness being present although, two witnesses were taken from Kolkata. He submits that, such conduct raises questions of genuinity and honesty of the police officers. Consequently, according to him, the entire investigation process is not free from doubt.

14. Learned advocate appearing for the appellant has referred to the various provisions of the Indian Penal Code, 1860 and the provisions of the Immoral Traffic (Prevention) Act, 1956 and submitted that, none of the provisions thereof have been satisfied in the facts of the present case for an order of conviction and an order of sentence to be passed as against the appellant. He has contended that, the appeal should be allowed and the appellant should be acquitted of the charges levelled against him.

15. Learned advocate appearing for the state has submitted that, the police case was initiated against 5 accused persons on the allegation that the accused persons were procuring and forcibly kidnapping women and causing such women to participate in flesh trade. The brothel cum hotel which had been raided was also raided on two earlier occasions but the appellant was able to flee on the two previous occasions. He has referred to the charges framed against the accused. He has referred to the evidence of the various prosecution witnesses.

16. Learned advocate appearing for the state has submitted that by a notification dated September 25, 1996, all officers not below the rank of Inspector of Police of West Bengal Police and Kolkata Police were empowered to act as special officers under the provisions of the Act of 1956. In the present case, the police personnel conducting the raid were therefore adequately authorized under the provisions of the Act of 1956 to conduct the raid. In any event, he has submitted, relying upon 1969 Volume 1 Supreme Court Cases 43 (Bai Radha vs State of Gujarat) that, non-compliance of Section 15 of the Act of 1956 is not an illegality but mere irregularity.

17. Learned advocate appearing for the state has submitted that, the possession of the appellant over the hotel cum brothel was established by the evidence of

the evidence of Indane Gas Distributor and the Station Manager of the electricity distribution company.

18. Learned advocate appearing for the state has submitted that, the appellant was running a brothel at the place of occurrence as will appear from the evidence of prosecution witness Nos. 7 and 8. He has contended that, merely because a witness was declared hostile, the entirety of the evidence of such witness is not required to be discarded. He has relied upon 1976 volume 1 Supreme Court Cases 389 (Bhagwan Singh versus State of Haryana) and 1997 volume 6 Supreme Court Cases 514 (State of Gujarat versus Aniruddhsingh and another) in support of his contention that, the evidence of a hostile witness can be considered by the Court.

19. Learned advocate appearing for the state has relied upon 1997 volume 8 Supreme Court Cases 114 (Gaurav Jain versus Union of India and others) and Section 2 (a) of the Act of 1956 to contend that, the place of occurrence was a brothel within the meaning of the Act of 1956. He has therefore, submitted that, the appeal should be dismissed and the impugned judgement of conviction and the order of sentence should be upheld.

20. At the trial, the prosecution had examined 1 of the recovered victim girls as the prosecution witness No. 1. She had turned hostile. In examination in chief, she had stated that, there was an incident about 1 year ago. While she was on the way to the Mahisadol Hospital she had stopped seeing a gathering of persons when she was apprehended by the police and interrogated. She had been taken to the Court for giving a statement before the learned Magistrate. She had not been confronted with the statement she had recorded before the learned Magistrate by the prosecution after she was declared hostile. In cross examination, she had stated that she was 23 years of age.

21. An employee of the Block Land and Land Reforms Office had deposed as the prosecution witness No. 2. He had produced the searching slip in respect of the plot in question being plot No. 98/521. He had tendered such searching slip as Exhibit 1. He had stated that, the plot of land in question was recorded in the name of the Public Works Department. The land had been classified as Noyanjuli which he had explained in cross examination to mean low water land side of high road.

22. A police personnel forming part of the raiding team had deposed as prosecution witness No. 3. He had stated that, some documents, Aadhaar Card, bottle of wine were recovered. He had claimed that the appellant was the owner of the brothel and that the appellant and his daughter ran the business. In cross examination, he had stated that the appellant was arrested from the brothel. He had identified the accused in Court. He had stated that he did not put his signature on the seizure list or on any paper.

23. Another police personnel involved in the raid had deposed as prosecution witness No. 4. He had stated that, some females were rescued and that a

number of male persons were arrested. He had also stated that various articles were recovered from the brothel. He had claimed that, at the hotel, the business of prostitution was going on. He had claimed that, the accused had engaged females on the plea of providing good job. He had identified the accused in Court. In cross examination, he had stated that, the local police station was two minutes distance from the hospital crossing. He had also stated that, 1 team visited the local police station. He has said that, he did not put any signature on any paper. He had claimed that the investigating officer was not with the raid party on the date of the raid.

24. The distributor of Indane Gas had deposed as prosecution witness No. 5. He has stated that, the appellant was a consumer and that the appellant was enjoying a gas connection at the address of Terepekhyia under police station Mahishadal. He had tendered exhibit 2 being the computer printing bearing his signature at the trial. In cross examination, he has stated that, the gas connection was a domestic connection and that Terepekhyia was a large area.

25. The then Inspector, Protection of Women's and Children's Cell, Criminal Investigations Department (CID), West Bengal had deposed as prosecution witness No. 6. He had lodged the complaint Suo Motu. He had conducted the raid at the roadside hotel cum brothel.

26. In his examination in chief, the prosecution witness No. 6 had stated that, he had received secret information as well as a direction by the superior officer to conduct the raid along with Lady Officers and other Police Forces. He had described the place of occurrence. He had described how on seeing police personnel, some people succeeded in fleeing away from the locale. He had stated that, 13 victim girls were found. 5 male persons were also found. The 5 male persons were detained. He stated that the police had searched the hotel and found small diaries containing name of victim girls and their accounts, exercise books containing expenses account of brokers, voter ID card, Aadhaar Card, a receipt of gas connection, and other materials. He had asked the victim girls about their involvement when they confided him that they were being sexually exploited in the hotel in lieu of money. The victim girls had disclosed that, the appellant and his daughter were the owners of the hotel. They had also disclosed the names of the managers. He had tendered the seizure list which was marked as Exhibit 3 at the trial. He had also tendered the material Exhibit I, at the trial. He had tendered the first information report which was marked as exhibit 4. He had identified the appellant along with another accused in Court.

27. In cross examination, the prosecution witness No. 6 has stated that, he conducted the search and seizure without having a search warrant. He has stated that, the owner of the premises had not been stated in the seizure list. He had claimed that, he was appointed as a Special Police Officer for conducting the duties in the whole of the State of West Bengal.

28. Prosecution witness No. 7 is another victim woman who had turned hostile at

the trial. Before she had been declared as hostile, she claimed in her evidence that, on the date of the incident, she was proceeding towards the marketplace when she found a number of police personnel assembled on the road with regard to an incident of assault in the locality. The police had questioned her and brought her to the police station and thereafter forwarded her to the Home. She had claimed that she did not know the persons who were arrested by the police. After being declared as a hostile witness, she had stated that she told the police that 1 female who identified herself as Didi allured her for employment in lieu of money. She had stated that she voluntarily used herself in the flesh business at the subject hotel. She had stated that the police recovered her along with 10 to 12 other females. The police had taken her before the learned Magistrate for recording her statement under section 164 of the Criminal Procedure Code. In cross examinations she had stated that her age was about 22 years.

29. A third lady who had been rescued from the locale on the date of the incident, had deposed as prosecution witness No. 8. She had also been declared hostile at the trial. Before she had been declared as hostile, in her examination in chief, the prosecution witness No. 8 has stated that, a broker brought her to the hotel for business of flesh. She had voluntarily engaged herself in sexual business at the subject hotel with customers in lieu of money. She used to call the customer for the flesh business. There had been about 12 to 13 ladies involved in the prostitution at that place. She had recorded a statement under Section 164 of the Criminal Procedure Code before the learned Magistrate. The accused had declined to cross examine the prosecution witness No. 8.

30. The station manager of the electricity distribution company had deposed as prosecution witness No. 9. In his examination in chief, he had stated that, two electric metres with electric connections were standing in the name of the hotel owned by the appellant and his daughter. He had identified the consumer Nos. and the meter Nos. of the two connections. He had tendered the letter he had written as Exhibit 6. In cross examination, the accused could not elicit anything favourable for him.

31. The Panchayat Pradhan had been examined as prosecution witness No. 10. He had stated that, the appellant did not hold any trade license to run the hotel business. He had tendered the certificate that he issued to the officer in charge of the anti-human trafficking unit as Exhibit 7. He had also been declared hostile. In cross examination, he had stated that, the plot No. was not stated in the certificate.

32. The prosecution witness No. 11 is a police personnel who had stated in his evidence that he did not take part in the raid. The accused had declined to cross examine him.

33. Another police personnel had been examined as prosecution witness No. 12. He had taken part in the raid. He had described the manner in which the raid was conducted. He has stated that, various articles were seized from the local and

that this is a list in respect thereof was prepared. He has stated that, the appellant was the owner. He had identified the appellant in Court. He has stated that, out of 13 females who were recovered, four were minors. In cross examination, the accused could not elicit anything favourable for them.

34. The investigating officer had been examined as prosecution witness No. 13. She had stated that, the police case had been endorsed to her for investigation. She had described the manner in which she conducted the investigations. She has stated that, arrangements for ossification test of the four minor victim girls were made. She had taken the details of the land ownership as well as the electricity connection. She had also investigated with regard to the gas connection at the place. She had consulted the panchayat with regard to the trade license. She had recorded the statement of a social worker in home, where one of the victim girls had confided about the activities at the hotel. She had prepared an audiovisual compact disc with regard to the recording of such statement. She had tendered such compact disc as a material exhibit which was marked as material exhibit No. II.

35. In cross examination, the investigating officer had stated that, plot No. 98/421 did not belong to the appellant. She had volunteered and said that the hotel of the appellant was situated on the pavement of PWD land. The appellant had encroached upon PWD land and constructed the hotel where flesh business was being carried on. She has stated that the distance between the hotel and the local police station was about 10 minutes by walking. She had denied the suggestion that she could not investigate into the case.

36. The police had conducted a raid on August 24, 2015 at a hotel cum brothel at Terepekhyia village, Khirishtal, near Mahishadal Hospital Crossing which was on the side of the main road. In such raid, 13 females had been rescued out of which four were minors. 5 accused persons had been arrested. Various articles had been seized.

37. The factum of the raid has been established by the prosecution on the basis of the evidence of the prosecution witnesses. Even the ladies who had been rescued in the raid and who had deposed as prosecution witnesses and who had turned hostile at the trial had in their testimonies stated that there was a raid held on August 24, 2015. The police personnel forming the raid party namely, prosecution witness Nos. 3, 4, 6, 11, 12, and 13 had stated about the raid in their testimonies. The hostile prosecution witnesses being prosecution witness Nos. 1, 7 and 8 had also stated about the police presence at the place of occurrence. Such prosecution witnesses had described the place of the raid. The place of the raid has not been disputed on behalf of the appellant.

38. In the course of hearing of the appeal, written notes on argument of the appellant had been submitted in Court which had been taken on record. In the written notes an argument the place of the raid has not been disputed. It has also not been disputed that, the place of the raid was located in a populated area

with there being a place of worship, a public school, a primary school, gram panchayat office, Utsab Bhawan and a public thoroughfare located within 200 metres of the place of the raid. What has been contended is that, the prosecution had failed to establish the connection between the appellant and the place of the raid.

39. The appellant had been arrested from the place of the raid. Prosecution witness Nos. 3, 4, 6, 7, 8, 10, 11, 12, and 13 have described the place of raid as either a hotel or a hotel cum brothel. What has not been disputed on behalf of the appellant is that, there was a hotel at the place of the raid. What has been contended on behalf of the appellant is that, the appellant has no connection with such hotel and is not the owner thereof.

40. The appellant had been found guilty under sections 370 and 373 of the Indian Penal Code, 1860 read with sections 3/4/5/6/7/9 of the Act of 1956. None of the provisions of section 370 and 373 of the Indian Penal Code, 1860 or the provisions of sections 3/4/5/6/7/9 of the Act of 1956 requires the prosecution to establish the ownership of the place of the incident.

41. In order to establish the link between the appellant and the hotel cum brothel where the raid was conducted, the prosecution has relied upon the electricity connections standing in the name of the appellant, the gas connection again standing in the name of the appellant and the search document relating to the plot in question, the arrest of the appellant from the place of occurrence, and the seizure of his voter identity card and the Aadhaar Card from the place of occurrence.

42. The employee of the Block Land and Land Reforms Office who had deposed as prosecution witness No. 2 had stated that the plot in question was bearing plot No. 98/521. The plot has been classified as Noyanjuli, meaning low water land side of high road. The plot had an area of 3 acres and 4 cent of land. Such facts stand established by the testimony of prosecution witness No. 2 and Exhibit 1 which he had tendered in his evidence.

43. Prosecution witness No. 5 had established that the appellant was enjoying a gas connection at the hotel. Prosecution witness No. 9 being the Station Manager of West Bengal State Electricity Development Corporation Ltd had established that, the appellant was enjoying an electricity connection in his name at the hotel. The police had seized the Voter identity card as well as the Aadhaar Card of the appellant from the hotel at the time of the raid as will appear from exhibit 3 being the seizure list.

44. Plot No. 98/521 had a hotel by the name of Khadem Thek This fact has been established by the prosecution witnesses. The appellant had been known to be the owner of the hotel. At the very least the appellant can be said to be occupier of the plot of land. The hotel had been erected by encroaching upon land belonging to the Public Works Department.

45. Such evidences produced by the prosecution have established beyond reasonable doubt that, the appellant was connected with the hotel. As has been noted above, the provisions of the law under which, the appellant has been found guilty, does not require the prosecution to prove the ownership of the hotel.

46. At the trial, the prosecution had examined 13 witnesses out of which, 4 had turned hostile. Out of the 13 witnesses that the prosecution had examined, 6 were police personnel. The balance 7 had no connection with the police. It has been contended on behalf of the appellant that, although, the place of the raid was located in a highly populated area, no person from the locality had come forward to give evidence at the trial. Prosecution witness No. 6 had stated in his cross examination that, in his written complaint he noted that he requested the neighbouring people at the place of occurrence to witness the search and seizure. However such local people had declined to stand as witness. He had also stated in his cross examination that, he knew that, if local persons denied to be witness then, the persons accompanying the raid party or the police officers can become witnesses and put their signature on the seizure list. The appellant has not been able to draw the attention of the Court to any material on record to suggest that the Court should either disbelieve or disregard the testimony of the prosecution witness No. 6. That apart, the prosecution had produced cogent and reliable evidence on record to establish the raid, search and seizure, rescue of victims, arrest of persons, as well as the connection between the appellant and the place of occurrence.

47. It has been contended on behalf of the appellant that, the police personnel who had deposed as prosecution witnesses, were not part of the raid party and that, in any event, the prosecution had failed to establish such fact. In the facts of the present case, such contention is specious as, the police personnel in their testimonies in unison had stated that, they had proceeded from the Criminal Investigation Department, Kolkata to the place of occurrence and conducted the raid at the place of occurrence when the victims were recovered, accused were arrested, documents and articles were seized. The prosecution having placed such evidence on record, the contention of the appellant that, such prosecution witnesses did not form part of the raid party, cannot be accepted.

48. It has been contended on behalf of the appellant that, the search and seizure was faulty. The seizure of the articles belonging to the appellant had been made by the police from the place of occurrence on August 24, 2015 by the seizure list dated August 24, 2015. Such seizure list had been marked as Exhibit 3 at the trial. It had been witnessed by two independent witnesses. The factum of the seizure as well as the descriptions of the articles seized had been incorporated in the prayer for lodging the first information report made by the prosecution witness No. 6 to the officer in charge of the local police station. Such prayer for lodging the first information report had been tendered in evidence and marked as Exhibit 4. Exhibit 3 and 4 had been tendered in evidence by the prosecution witness No. 6. Such documents had been marked as exhibits without any

objection on behalf of the accused. The appellant has not drawn the attention of the Court to any fact on record or any law which prevents the Court from considering Exhibits 3 and 4 or they suffer from any infirmity. In such circumstances, we cannot accept the contention of the appellant that there was any fault in the search and seizure or with Exhibits 3 and 4.

49. It has been contended on behalf of the appellant that, the statement of the victims are contradictory to the claims of the prosecution. 13 ladies had been rescued during the raid held on August 24, 2015. Out of 13 ladies so rescued on August 24, 2015, three had deposed as prosecution witnesses being prosecution witness Nos. 1, 7 and 8. All three had been declared hostile at the trial.

50. Prosecution witness No. 1 had claimed in examination in chief that she was on the way to Mahisadal Hospital crossing when she stopped seeing a gathering. She had been apprehended by the police there and taken to the hospital and thereafter taken to the Home. She had stated that she gave a statement to the learned Magistrate. She has stated that she had given her left thumb impression on such statement. She had thereafter been declared hostile on the prayer made by the prosecution. On cross examination after being declared as hostile, she was not confronted with the statement she recorded before the learned magistrate under section 164 of the Criminal Procedure Code by the prosecution. Cross examination of her had elicited her age to be 23 years at the time of the incident. Her evidence therefore has not helped the prosecution.

51. Prosecution witness No. 7 in her examination in chief has stated that, on the date of the incident, she was proceeding towards the marketplace through the road and found a number of police personnel assembled on the road with regard to an incident of assault in the locality. The police had arrested her and brought her to the police station and thereafter forwarded her to the Home. She had been declared hostile on the prayer of the prosecution. After she had been declared hostile, she had stated that he told the police that on August 24, 2015 one female identifying herself as Didi allured her for employment in view of money. She had stated that she voluntarily used herself in the flesh business at the subject hotel. She had also stated that she had been rescued by the police along with 10 and 12 other females. She had stated that, she had recorded her statement under section 164 of the Criminal Procedure Code before the learned magistrate. She had identified a statement recorded under section 164 of the Code of Criminal Procedure positive for and her signature therein which were marked as Exhibit 5 and Exhibit 5/1 respectively. She had volunteered and stated that one person engaged her for flesh business. The defence has not been able to elicit anything favourable for them in the cross examination of such witness.

52. Prosecution witness No. 8 is another lady who had been rescued by the police on August 24, 2015. She has stated in her examination in chief that, she had been brought by a broker to the subject hotel for the business of flesh. She had stated that, she voluntarily engaged herself for sexual business in the subject hotel in lieu of money. She had also claimed that, she called the

customers herself for the flesh business. There had been 12 to 13 ladies involved in the prostitution. The police had conducted a raid, rescued the ladies and arrested the male persons. The police had produced her before the learned magistrate for recording a statement under section 164 of the criminal. Court. She had been declared hostile by the prosecution under section 154 of the Indian evidence act, 1872. The accused had declined to cross examine her.

53. In Bhagwan Singh (supra) Court has held that, when the Court gave permission to the prosecutor to examine his own witness under section 154 of the Indian Evidence Act, 1872, thus characterising such witness as the hostile witness, it does not completely efface the evidence of such witness. The evidence of the hostile witness remains admissible in the trial and there is no legal bar to base a conviction upon the testimony of such hostile witness if corroborated by other reliable evidence.

54. In Anirudhsing (supra) the Supreme Court has observed as follows with regard to the evidence of hostile witness: –

“29. In view of the above settled legal position, merely because some of the witnesses have turned hostile, their ocular evidence recorded by the court cannot be held to have been washed off or unavailable to the prosecution. It is the duty of the court to carefully analyse the evidence and reach a conclusion whether that part of the evidence consistent with the prosecution case, is acceptable or not. It is the salutary duty of every witness who has the knowledge of the commission of crime, to assist the State in giving evidence; unfortunately for various reasons, in particular deterioration in law and order situation and the principle of self-preservation, many a witness turn hostile and in some instances even direct witnesses are being liquidated before they are examined by the Court. In such circumstances, it is high time that the Law Commission looks into the matter. We are informed that the Law Commission has recommended to the Central Government to make necessary amendments to the CrPC and this aspect of the matter should also be looked into and proper principles evolved in this behalf. Suffice it to state that responsible persons like Sub-Divisional Magistrate turned hostile to the prosecution and most of the responsible persons who were present at the time of flag-hoisting ceremony on the Independence Day and in whose presence a ghastly crime of murdering a sitting MLA was committed, have derelicted their duty in assisting the prosecution and to speak the truth relating to the commission of the crime. However, we cannot shut our eyes to the realities like the present ghastly crime and would endeavour to evaluate the evidence on record. Therefore, it is the duty of the trial Judge or the appellate Judge to scan the evidence, test it on the anvil of human conduct and reach a conclusion whether the evidence brought on record even of the witnesses turning hostile would be sufficient to bring home the commission of the crime. Accordingly, we undertake to examine the evidence in this case.”

55. Evidence of a witness who had been declared hostile by the prosecution need not be discarded in its entirety purely on the ground that the witness had been

declared as hostile. Testimony of a witness who had been declared hostile at the trial, has to be evaluated in the context of the entire gamut of the evidence on record so as to find out whether any portion of the testimony of the hostile witness is reliable so as to establish the case of the prosecution or not. Such portion of the evidence of the hostile witness which has been found to be reliable can form the basis of conviction.

56. In the facts of the present case, prosecution witnesses No. 7 and 8 have stated that they were engaged in the flesh trade at the subject hotel. They have stated that, prostitution was being carried out at the subject hotel. Exhibit 3 being the seizure-list of the articles and documents seized at the place of occurrence being the subject hotel corroborates his statement that a business of prostitution was being carried out thereat. The subject hotel therefore has been established to be a place where offences punishable under the Act of 1956 were occurring. The appellant has not drawn the attention of the Court to any material on record so as to discredit such portion of the testimony of the prosecution witnesses which establishes violations of the provisions of the Act of 1956 and Sections 360 and 373 of the Indian Penal Code, 1860.

57. The authority of the Inspector who had conducted the raid on August 24, 2015 has been questioned on behalf of the appellant. It has been contended that, such Inspector was not authorized to conduct the raid. The Inspector had deposed as prosecution witness No. 13. The state of West Bengal, had, in exercise of powers conferred under section 13 (1) of the Act of 1956 appointed all officers not below the rank of Inspector of Police of the West Bengal Police as well as Special Officers under the provisions of the Act of 1956. A Special Officer under the Act of 1956 has been empowered and under such Act of 1956 to conduct raids.

58. Gaurav Jain (supra), has considered Section 2 (a) of the Act of 1956 and observed as follows: –

“17. Section 2(a) of the Immoral Traffic (Prevention) Act, 1956 (for short “the ITP Act”) defines “brothel” to mean any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes. The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase “for the purpose of” indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and asks for girls, where the person is shown girls to select from and where one does engage or offer her body for promiscuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case. Sexuality has got to be established but that

does not require the evidence of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that there should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel."

59. In the facts of the present case, a raid had been conducted at the subject hotel on August 24, 2015 whereupon, various articles were seized, 13 ladies were rescued, and five accused were arrested. The documents and articles seized during the raid, being Exhibit 3 corroborates the fact that a business of sexual exploitation was being carried out at that place. The evidence of prosecution witness No. 7 and 8 establishes that, the place had been used for sexual exploitation. The place of the raid, being the subject hotel, is therefore, a brothel within the meaning of section 2 (a) of the Act of 1956.

60. Bai Radha (supra) has considered the provisions of section 15 of the Act of 1956 and observed as follows: –

"10. In conclusion it may be observed that the investigating agencies cannot and ought not to show complete disregard of such provisions as are contained in sub-sections (1) and (2) of Section 15 of the Act. The Legislature in its wisdom provided special safeguards owing to the nature of the premises which have to be searched involving inroads on the privacy of citizens and handling of delicate situations in respect of females. But the entire proceedings and the trial do not become illegal and vitiated owing to the non-observance of or non-compliance with the directions contained in the aforesaid provisions. The court, however, has to be very careful and circumspect in weighing the evidence where there has been such a failure on the part of the investigating agency but unless and until some prejudice is shown to have been caused to the accused person or persons the conviction and the sentence cannot be set aside. It may not be out of place to reiterate what was said in H.N. Rishbud and Inder Singh v. State of Delhi [1955 (1) SCR 1150] that a defect or an illegality in the investigation, however serious, has no direct bearing on the competency or the procedure relating to cognizance or trial of an offence and that whenever such a situation arises, Section 537 of the Code of Criminal Procedure is attracted and unless the irregularity or the illegality in the investigation or trial can be shown to have brought about a miscarriage of justice, the result is not affected."

61. Absence of a search warrant does not vitiate the raid held under the aegis of a Special Officer empowered as such under the provisions of the Act of 1956. In the facts of the present case, the raid had been conducted by a Special Officer so empowered under the Act of 1956.

62. Although the appellant has not challenged the findings of learned Trial Judge

that minors were involved in the prostitute at the brothel, during arguments of the appeal, we have deemed it appropriate to consider such aspect in view of the involvement of conviction under Section 370 of the Indian Penal Code, 1860. The learned Trial Judge had taken judicial notice of the ossification test of the females rescued from the brothel on the date of the raid being March 24, 2015. The learned Trial Judge has relied upon Supreme Court authorities for the proposition that ossification test reports are not sacrosanct and that there can be a duration of two years from actual age of the person concerned.

63. The Investigating Officer, who had deposed as prosecution witness No. 13, referred to one particular minor, namely, Salma Khatun in her deposition. She had stated that, she had consulted the head master of the school where Salma Khatun studied in her childhood. She had seized the admission register and also recorded a statement of the head master of such school under Section 161 of the Criminal Procedure Code. She had stated that, according to the admission register, the date of birth of Salma Khatun was December 22, 1997. The appellant has not drawn the attention of the Court to any material record so as to disbelieve such date of birth of Salma Khatun. That being the position, taking the date of birth of Salma Khatun being December 27, 1997, as on the date of the raid being March 24, 2015, Salma Khatun was a minor.

64. In Balak Ram (supra) it has been alleged that, there was a second dying declaration to have been made to the investigation officer. In such context, the Supreme Court has observed that, investigation officers are keenly interested in fruition of their efforts. It has also observed that it would not be prudent to pass the conviction on a dying declaration made to an investigating officer. Facts scenario in the present case is different.

65. In the context of a murder trial, the Supreme Court in Bir Singh and Others (supra) has observed that, although prosecution was not obliged to examine each and every witness it is not entitled to withhold any witnesses where evidence of witnesses produced by it suffers from infirmities and is not reliable unless properly corroborated. The fact scenarios in the present case are different. The prosecution witnesses have corroborated each other.

66. In a case involving an offence of bribe the Supreme Court in Bhagwan Singh (supra) has noted that, the entire case of the prosecution solely rested on the testimony of police constables with no independent witness being available. The fact scenarios in the present case are different. Independent witness albeit some of them turning hostile had proved the case of the prosecution beyond reasonable doubts

67. In view of the discussions above, we have not found any ground to interfere with the judgement of conviction and order of sentence. We, therefore, affirm the same.

68. Trial Court records along with a copy of this judgement be remitted to the appropriate Court forthwith.

69. CRA No. 181 of 2020 is dismissed. All pending applications stand disposed of.
70. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.
71. I Agree.