

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

**C.R.A. 353 of 2015
Ramjan Molla @ Pintu Molla @ Rupchand @ Raju
- Versus -
The State of West Bengal
With
C.R.A. 198 of 2014
Nazim Sk. @ Nazim Shake @ Roni & Ors.
-Versus-
The State of West Bengal**

For the Appellants:

Mr. Surojit Basu,
Mr. Arun Kumar Halder,
Ms. Jacika Alam.

For the State in CRA 198 of 2014:

Dr. Pradip Banerjee, Ld. APP,
Ms. Shalu Gupta.

For the State in CRA 353 of 2015:

Mr. Kallol Mondal, Ld. Public Prosecutor
Mr. Ayan Basu,
Mr. Gautam Banerjee.

Heard on:

July 21, 2026 and July 23, 2026.

Judgment on:

July 23, 2026.

Rajasekhar Mantha, J.:

1. These appeals are directed against the judgment and order of conviction dated 21st February, 2014, 24th February, 2014, 28th April, 2015 and 29th April, 2015, passed by the learned Additional Sessions Judge, Diamond Harbour, South 24 Parganas in Sessions Trial No. 1(11)2013 arising out of Sessions Case No. 22(8)2013.

2. The appellants in both the appeals were sentenced to rigorous imprisonment for 7 years and a fine of Rs.2,000/- under Section 366A of the IPC. They were further sentenced to rigorous imprisonment for 5 years and a fine of Rs.2,000/- under Section 363 of the IPC; rigorous Imprisonment for 7 years and a fine of Rs.4,000/- under Section 370 of the IPC; rigorous imprisonment for 20 years and a fine of Rs.4,000/- under Section 376D of the IPC; rigorous imprisonment for 3 years and a fine of Rs.1,000/- under Section 5 of the Immoral Traffic (Prevention) Act; rigorous imprisonment for 7 years and a fine of Rs.4,000/- under Section 6 of the Immoral Traffic (Prevention) Act; rigorous imprisonment for 7 years and a fine of Rs.4,000/- under Section 9 of the Immoral Traffic (Prevention) Act. The sentences were directed to run concurrently.

3. Before the Trial Court, it was alleged that the appellant no.1, Nizam Molla, was a minor. DW-1 and DW-2 were examined to that effect. No conclusive evidence either from the Prodhan or the school where the said Nizam Molla attended, namely, Majerpara Abaitanik Prathamik Vidyalaya, has come on record. The Trial Judge therefore proceeded against Nizam Molla, as if the appellant no.1 was a major.

4. A Co-ordinate Bench of this Court, however, by an order dated 14th October, 2015 directed the age of Nizam Molla to be ascertained. Accordingly, the Trial Court ordered ossification test. Based on the said test and report, the Trial Court opined that the appellant no.1 Nizam Molla was a major.

THE PROSECUTION CASE:

5. On 25th March, 2013, the victim girl, aged about 17 years, a permanent resident of Bisheswarpur, South 24 Parganas under Mograhat Police Station, left her house to visit her brother, at Kalyanpur. The brother was a fruit seller at Kalyanpur Railway Station.

6. The victim told her sister-in-law, wife of Hafi Sk, that she was going to Diamond Harbour to purchase a garment called “orna”. The victim never returned thereafter. Upon the victim’s mother calling up Hafiz Sk. and another brother Sabir Ali Sk., she was informed that the victim had gone to Diamond Harbour.

7. The evidence on record indicates that the family of the victim would ordinarily never allow her to travel to Diamond Harbour alone.

8. Upon failing to trace the whereabouts of the victim, the family informed the father of the victim, (PW-1), who was a utensil vendor in Kolkata. PW-1 immediately returned to his village and the family started searching for the victim at the house of their relatives at various places nearby. The victim remained untraceable since 25th March, 2013. The victim’s family claimed that they had lodged a complaint with the Mograhat PS thereupon.

9. About 15 days later on 13th April, 2013 the victim’s father is stated to have received a telephone call allegedly from Delhi. The caller identifying himself as Pintu told PW 1 that he has rescued

the victim from sex trafficking. PW-1 requested the said caller Pintu to return the girl to her residence at Bisheswarpur. The caller is stated to have assured PW-1 that he will do so and also gave an address at Delhi, where he is alleged to have kept the victim.

10. PW-1 went to Mograhat Police Station and informed them about the said mobile phone call. PW-5, another brother of the victim went to Delhi to the address given by the said Pintu. He could not find anyone thereat. The said PS made enquiries after obtaining the permission of the Superintendent of Police, South 24 Parganas in that regard and ultimately detected that the said call came from a cellphone tower located at Gandhidham, Gujarat.

11. PW-2 along with one S.I. Sanjay Ghosh, Constable Dilip Sarkar and Constable Sanjay Ram and two lady Constables, namely, Saswati Paul and Mina Naskar left for Gandhidham via Ahmadabad Express from Howrah. They were accompanied by PW-3, Ohab Sk. to identify the victim girl at Gandhidham with the help of local police.

12. The aforesaid PWs and police officers reached a red light area where the victim girl was found along with the appellant nos.1 and 2, namely, Nazim Sk. and Nizam Molla. Ramjan @ Pintu was also there. Ramjan Molla @ Pintu Molla @ Rupchand @ Raju, tried to drag away the victim and escape. The victim was held by her leg by the police. The victim sustained injuries in the tug of war.

Ultimately, Mograhat Police Station was able to rescue the victim but Ramjan Molla @ Pintu Molla @ Rupchand @ Raju escaped.

13. The two appellants, namely, Nazim Sk. and Nizam Molla were produced before the local Magistrate at Gandhidham and a transit remand was obtained. The victim was identified by Ohab Sk. (PW-3), her paternal uncle. They were brought back to Mograhat.

14. The victim was initially produced before the Additional Chief Judicial Magistrate at Diamond Harbour and kept in a State Home for women. She was later returned to the custody of PW-1 her father. The appellant nos.1 and 2 were remanded to Police custody.

15. FIR No.150 of 2013 was registered by Magrahat Police Station on 23rd April, 2013 against a formal complaint of P.W.-1 Abdul Hai Sk. under Sections 363, 366, 370 of the Indian Penal Code.

16. The appellant in CRA 353 of 2015 Ramjan Molla @ Pintu Molla @ Rupchand @ Raju was declared absconding. Charges were framed against Nazim Sk @ Nazim Sk @ Roni, Nizam Molla and Siraj Gazi @ Sabir after the latter was apprehended from Baidyapara Jilarchat under Raidighi Police Station on 15th May, 2013,

17. The trial commenced against these appellants and charges were framed against them under Sections 363, 366A, 370 of the Indian Penal Code and under Sections 6 and 9 of the Immoral Traffic (Prevention) Act, 1956.

THE FIRST TRIAL

18. **P.W.-1** was the father of the victim. He narrated the incident as per the prosecution case. He confirmed that the victim girl went to Kalyanpur to visit her brother namely Hafiz Sk. He further deposed about the phone call received by the family on 13th April, 2013 based on which **P.W.-5**, another brother of the victim, visited Delhi, but could not trace out the victim.

19. He further deposed that he lodged a formal complaint with the Magrahat Police Station that was scribed by another person. The complaint and the FIR were exhibited in the Trial Court. He further came to know and confirmed that Pintu was involved in the business of trafficking of girls.

20. **P.W.-2** was the victim girl herself. She narrated the entire episode and turn of events from the time she left to Kalyanpur to go to Diamond Harbour. She stated that she was acquainted with appellant No.1 and had left along with him.

21. At Diamond Harbour, she deposed that she was joined with appellant No.2 Nizam Molla and appellant No.3 Siraj Gazi. In the second trial held after Ramjan Molla was apprehended, she deposed that she also met with Pintu at Diamond Harbor. She deposed that she was given a cold drink and a sweet at Diamond Harbour and was at a half unconscious stage.

22. From Diamond Harbour, she was taken to Howrah Railway Station where they boarded a train to Delhi. At Howrah Railway Station she was given some tea. After consuming the tea, she lost her consciousness and woke up at Delhi eventually.

23. From Delhi she was taken to Jaipur by the four appellants and sold to a brothel for a week. She deposed that at the brothel she was ravished by at least ten men throughout the day and night.

24. She further deposed that after a week she was brought back to Delhi by the appellants. On her protesting, she was assaulted by two of the appellants including Ramjan Molla and forcibly taken to Gandhidham, Gujarat. She was eventually recovered from Gandhidham as already stated hereinabove by the police.

25. **P.W.-3**, was the paternal uncle of the victim girl. He accompanied the Magrahat Police and personally went to Gandhidham, Gujarat, and identified the victim. His deposition corroborated the evidence of P.W.-2 that the victim was traced out in a red-light at Gandhidham in Gujarat and the escape of Pintu therefrom. He also confirmed that the appellant Nos.1 and 2 were arrested at Gandhidham. He was a rickshaw puller.

26. **P.W.-4**, was the younger brother of **P.W.-1**. **P.W.-5 Sabir Ali Sk** was a teacher of Darul Fathim Madrasha. He confirmed that he went to Delhi to look for his sister after receiving the phone call allegedly made by Pintu from Delhi but could not find the victim

thereat and returned to Kalyanpur. **P.W.-6**, was mother of the victim. She deposed that her daughter was 17 years old.

27. **P.W.-7 Dr. Prodip Kumar Ghosh**, who examined the victim and stated that she was 17 years of age. He also deposed that no injury was found on the body of the victim. He also deposed that she was pregnant and had physical relations on several occasions. The said view of the P.W.-7 was based on the physical examination of the victim.

28. **P.W.-8 Dr. Anowar Hossain** was examined the appellants Nazim Sk, Nizam Molla and Siraj Gazi @ Sabir.

29. **P.W.-9 Madhabi Halder**, who was a local resident, was declared hostile.

30. **P.W.-10 Alokesh Das** was a Judicial Magistrate of the 3rd Court, Diamond Harbour, who recorded the statement of the victim girl under Section 164 of the Criminal Procedure Code.

31. **P.W.11 Noor Nabi Molla** was the A.S.I. of the Magrahat Police Station, who received the complaint from the P.W.-1 and drew up the formal FIR.

32. **P.W.-12 Dipak Kr. Sen**, SI of the Magrahat Police Station, who was the investigating officer of this case. He narrated the entire course of investigation, which included the journey to Gandhidham to Howrah and the rescue of the victim girl thereat and the apprehension of the appellant Nos.1 and 2. He narrated

the entire process of investigation and confirmed having filed the charge sheet.

THE SECOND TRIAL

33. The second trial was held after Ramjan Molla @ Pintu Molla @ Rupchand @ Raju was arrested. He was found involved in four other criminal cases in four different police stations.

34. Each of the prosecution witnesses were examined afresh including the original **P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5, P.W.-6, P.W.-7** and **P.W.-8**. **P.W.-9** was the brother of the victim with whom she came to stay at Kalyanpur.

35. **P.W.-10, P.W.-11 and P.W.-12** were also examined again. **P.W.-10 Alokesh Das** the Judicial Magistrate before whom the victim girl recorded the statement under Section 164 of the CrPC.

36. **P.W.-11 Noor Nabi Molla**, A.S.I. of the Magrahat Police Station, who received the complaint. In course of examination for the second time **P.W.-12, Dipak Kr. Sen**, SI of the Magrahat Police, disclosed in addition to what he deposed earlier that Siraj was apprehended by him on 15th May, 2013.

37. Based on the evidence on record, the Trial Judge convicted the appellants under Sections 363, 366A, 376D, 370 of the Indian Penal Code and under Sections 5, 6 and 9 of the Immoral Traffic (Prevention) Act.

ANALYSIS OF THIS COURT :

38. Learned counsel for the appellants would argue that there are several gaps in the investigation and the finding of the Trial Court of the guilt against the appellants cannot be sustained.

39. He argues that the victim girl has been changing her version and contradicting herself from the statements made under Section 164 of the CrPC before the Magistrate, the version in the first trial and her version in the second trial. He further argued that none of the statements were made before the investigating officer. Based on the above, he submits that no charge could have been labelled against the appellants much less a finding of the guilt by the Trial Court.

40. It is next argued that the recovery of the victim from Gandhidham, Gujarat does not find place in the records or the exhibits filed in the Trial Court. The genesis of the offences against the appellants is, therefore, not proved.

41. He further argued that the arrest of the appellant Ramjan Molla is nowhere reflected in the evidence on record. The presence of Ramjan Molla at Delhi or for that matter at Diamond Harbour or Howrah has not been established in any form by the prosecution. He argued that it is difficult to believe that the victim never protested during the entire journey from Diamond Harbour to Howrah, Howrah to Delhi, Delhi to Jaipur and back to Delhi and from Delhi to Gandhidham, Gujarat.

42. He argued that the journey from Howrah to Delhi was taken by train. There were several passengers surrounded, if not the police officials. Even at Delhi there were several passengers including the police where the victim could have either raised alarm or alert the police. She could have protested in her journey to Jaipur and back to Delhi and to Gandhidham was undertaken by Bus.

43. It is argued that she could have alerted any of the other passengers in the bus of being wronged by the four appellants herein. The entire story of her being forcibly taken away from lawful custody of her parents and/or brother to Delhi, Jaipur, Gujarat are concocted.

44. It is next argued that even assuming for the sake of argument that the victim girl was taken to these places by the appellants she had so gone voluntarily and no offences under Sections 363, 366 of the Indian Penal Code or under the provisions of the Immoral Traffic (Prevention) Act can be maintained against the appellants.

45. This Court carefully heard the arguments advanced by the learned counsel for the appellants and the learned counsel for the State. Admittedly, the victim was 17 years of age. There is no contrary evidence produced to suggest that she was a major at the relevant point of time. Therefore the victim was a minor and was under the natural and lawful custody of her parents.

46. The very fact that she was a minor and was taken away from Diamond Harbour to Howrah, Delhi, Jaipur and Gandhidham without the consent of her natural guardians namely her father, mother or her brother would attract the penalties under Sections 363, and 366 of the Indian Penal Code. In **Kavita Chandrakant Lakhani v. State of Maharashtra, reported in (2018) 6 SCC 664**, it was held as follows :

16. In order to constitute the offence of “abduction”, a person must be carried off illegally by force or deception, that is, to compel a person by force or deceitful means to induce to go from one place to another. **The intention of the accused is the basis and the gravamen of an offence under this section. The volition, the intention and the conduct of the accused determine the offence;** they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. **Once the necessary intent of the accused is established, the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented to the marriage or the illicit intercourse.**

17. Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, **that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction.** Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, **it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse** or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the court cannot hold the accused guilty and punish him under Section 366 IPC.

Emphasis applied

47. The victim drank tea at the Howrah railway station after which she became unconscious. She next woke up in Delhi. The tea was purchased and provided by the appellants. The appellants, therefore, resorted to deceitful means to keep the victim under their uncontested control.
48. The appellants initially sold the victim to a sex- trafficker at Jaipur for one week, where she was exploited for about 7 days by at least 10 persons day and night. She was then sold to another sex trafficker and was recovered from a red light area in Gandhidam. Therefore, the appellants abducted the victim with a view to selling her and earning money therefrom. The ingredients of Section 363 and Section 366, therefore have been clearly established in this case in terms of the decision in **Kavita Chandrakant (supra)**.
49. This Court, based on the evidence on record, is of the view that the victim was acquainted with the appellant Nizam Molla. She may have wanted to elope with him. Nizam Molla may have initially wanted to take the victim to Delhi but the other appellants had nefarious plans.
50. The other appellants most likely have forced Nizam Molla to join them in trafficking the victim girl and selling her to a brothel for seven days at Jaipur and later to Gandhidham.
51. In so far as the conviction of the appellants under Section 376 D of the IPC, the victim has deposed that she was ravaged by the appellants themselves at Delhi by turns. The victim was in a much

weaker position than the appellants who were in their control. The deposition of the victim is acceptable and believable. It is now well settled that a conviction under Section 376 D of the IPC can be based on the sole evidence of the victim. The facts and surrounding circumstances under which the victim was ravaged by each of the appellants fall into place in the chain of events narrated by the victim.

52. What, however, is mysterious is the object and purpose behind the telephonic call allegedly made by Ramjan Molla @ Pintu from Delhi. The evidence on record indicates that Ramjan Molla @ Pintu was known trafficker of girls and was wanted in connection with four FIRs of different police stations.

53. The evidence against Ramjan Molla @ Pintu being the kingpin of the offence in the instant case against the victim girl cannot be brushed aside.

54. The telephonic call was most likely made by appellant Nazim Sk, who may have developed a conscience. He was masquerading as Ramjan Molla @ Pintu when he called the victim girl's father and allowed to victim to talk to her father.

55. It cannot also be ruled out that the victim has trusted the other appellants because the latter were known to Nazim Sk, with whom she may have planned to elope. The appellants, therefore, may have used Nazim Sk as a conduit to take the victim to Jaipur, Delhi and Gujarat and sell her at the red light area. The appellants, therefore,

are clearly guilty of applying deceitful means to gain the physical and mental control of the victim, an essential ingredient of Section 363, IPC.

56. The said call was definitely made from Gandhidham not from Delhi as per the CRD collected and exhibited in the Trial Court. This was the trigger to trace out the victim in the first place. This could be at best a mitigating factor in favour of Nazim Sk.
57. In so far as the changing version of the victim is concerned, one has to note the psychological condition of the victim. The victims of trafficking are generally reluctant to come back to their places of residence out of embarrassment.
58. Families of victims generally do not accept back girls, who have been trafficked and forced into prostitution. The psychological condition of the victim, at the initial stages after she was brought back, must have been traumatic, for which she did not disclose what she stated in the trial to the investigating officer.
59. The victim must have been encouraged by the Judicial Magistrate to recollect some portions of her trauma which she did to an extent by the time the first trial started. The victim was in a much better psychological condition in course of second trial where she has deposed against Ramjan Molla @ Pintu Molla @ Rupchand @ Raju. It is for this reason that the victim's version was improving and additions were being made of her traumatic incident.

60. It therefore cannot be said that the victim contradicted herself at any stage in trial. The victim was only making improvements, which she was justified and entitled to do so both psychologically as well as in reality. In ***State of Punjab v. Gurmit Singh and Others reported in (1996) 2 SCC 384***, it was held that in case of sex-trafficking against minor girl, the Court should consider the totality of the circumstances in background of the crime suffered by the minor girl as follows:-

“21.....We must remember that a rapist not only violates the victim’s privacy and personal integrity, **but inevitably causes serious psychological as well as physical harm in the process.....**The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. **They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix**, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. **The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.**”

Emphasis Applied

61. In so far as the omission on the part of the investigating officer to indicate when Ramjan Molla was apprehended, one can infer from the several cases against him that he was most likely in judicial or police custody in connection with the other cases and was produced from such custody in course of trial. The actual date of arrest of

Ramjan Molla becomes immaterial when it proved that he was arrested in accordance with law and was remanded to police custody and thereafter to judicial custody.

62. This Court, therefore, sees no serious contradictions or omissions on the part of the prosecution indeed. The Investigating Officer, however, ought to have clarified the same in course of trial.
63. The charges against the appellants are clearly proved beyond any reasonable doubt. The appellant i.e. Ramjan Molla @ Pintu Molla @ Rupchand @ Raju in CRA 353 of 2015 and the appellant Nos.2 and 3 i.e. Nizam Molla and Siraj Gazi @ Sabir in CRA 198 of 2014 shall serve the sentences imposed on them. The impugned judgement and order of conviction does not call for any interference and is hereby confirmed except as modified hereinbelow.
64. In so far as the appellant No. 1, Nazim Sk @ Nazim Sk @ Roni in CRA 198 of 2014, is concerned, this Court is of the view that the very rescue of the victim girl having occurred at the instance of the Nazim Sk and the phone call that he had made from Gandhidham calling himself, Pintu Molla. shall serve the sentence of 15 years in total on all the charges leveled against him.
65. With the aforesaid observations, CRA 353 of 2015 is dismissed and CRA 198 of 2014 is allowed to the very limited extent indicated hereinabove. Consequently, all pending connected applications, if any, shall stand disposed of in terms of this judgment.
66. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

67. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)