Lalita Tamang Vs State of H.P.

Court: High Court of Himachal Pradesh

Date of Decision: May 28, 2004

Acts Referred: Immoral Traffic (Prevention) Act, 1956 â€" Section 13, 5, 6
Penal Code, 1860 (IPC) â€" Section 109, 34, 365, 368, 376

Citation: (2004) 2 ShimLC 188

Hon'ble Judges: M.R. Verma, J

Bench: Single Bench

Advocate: Y.P.S. Dhaulta, for the Appellant; H.K.S. Thakur, Dy. A.G., for the Respondent

Judgement

M.R. Verma, J.
This appeal is directed against the judgment dated 12.9.2003 whereby the Appellant-accused (hereafter referred to as

"the accused") has been convicted and sentenced by the learned Sessions Judge, Kinnaur Sessions Division at Rampur, as under:

Sentence imposed

Section under which convicted

Rigorous imprisonment for 7 years and fine of 5,000 and in default of payment of fine further rigorous

1. Section 365 read with Section 34, IPC

imprisonment for one year.

Rigorous imprisonment for seven years and fine of 5,000 and in default of payment of fine further

2. Section 368 read with Section 34, IPC

rigorous imprisonment for one year.

3. Section 109 read with Rigorous 376, Rigorous imprisonment for seven years and fine of 5,000 and in default of payment of fine further

IPC rigorous imprisonment for one year.

4. Section 5 of Immoral Traffic Rigorous imprisonment for seven years and fine of 2,000 and in default of payment of fine further

(Prevention) Act, 1956 rigorous imprisonment for one year.

5. Section 6 of Immoral Traffic Rigorous imprisonment for seven years and fine of 2,000 and in default of payment of fine further

(Prevention) Act, 1956 rigorous imprisonment for one year.

2. Case of the prosecution in brief is that Golu Ram (PW-1) on 29.3.2002 lodged FIR Ex. PW1 /A at Police Station Jhakri complaining that his

daughter (PW-13), who was married to Govind Singh (PW-8) four or five years before and had two daughters, used to reside with her husband in

village Mori in Solan. Co-accused Shiv Chand Negi, a resident of Meeru village in Kinnaur also used to reside with them. On 8.10.2001, the

prosecutrix alongwith said Shiv Chand came to her in-laws house as per the wishes of PW-8. The prosecutrix resided in her in-laws house till

11.11.2001 and on 12.11.2001 proceeded to her Bua''s house alongwith one of her daughters but disappeared at the behest of co-accused Shiv

Chand Negi. On 29.3.2002, PW-1 was informed by his villagers on the basis of a newspaper report that his daughter and daughter''s daughter

were in Mumbai in some prostitution centre. On the basis of the FIR, investigation followed and a police party headed by ASI Puran Chand (PW-

18) proceeded to Bombay where he requisitioned the assistance of Bombay Police and with such assistance the premises known as Room No.

101 (Kotha) in Street No. 12, Kanthipura, were raided. On search of the premises, the prosecutrix (PW-13) was recovered from the Kotha

alongwith her minor daughter. The prosecutrix and her daughter were identified by Parshotam Dass (PW-12) and a Memo. Ex. PW 3/A was

accordingly prepared. The custody of the prosecutrix and her daughter was handed over to PW-12 vide Memo. Ex. PW 4/A. Accused Lalita

Tamang was arrested vide Memo. Ex. PW 3/B. Search of the residential premises of co-accused Shiv Chand Negi was conducted and during

such search photographs marked ''A'' to ''C and letters Ex. PW 10/A to 10/ D were taken in possession vide Memo. Ex. PW 10/E. The

prosecutrix was got medically examined and the MLC about such examination conducted by Dr. Hemant Kumar (PW-11) is Ex. PW 11/A. The

co-accused Shiv Chand Negi was also arrested and was got medically examined and the MLC about such examination is Ex. PW 7/A. The

investigation reveals that the prosecutrix was enticed by co-accused Shiv Chand Negi with the help of certain other accomplices whose identity

does not appear to have been established was removed to Bombay. After committing rape on her by co-accused Shiv Chand Negi she was

handed over to one Maya who further handed her over to Kalpana and she was finally brought to Kotha No. 101 to Bombay in which she was

confined and forced into the flesh trade by accused Lalita Tamang. One Bhagta Bahadur was also found as an accomplice but sufficient evidence

was not available against him. On the basis of the material collected, the Investigating Agency found involvement of co-accused Shiv Chand Negi

in the commission of offences punishable under Sections 365, 376, IPC and Section 5 of Immoral Traffic (Prevention) Act, 1956 and the accused

was found having committed offences punishable u/s 368, IPC and Sections 5 and 6 of the Immoral Traffic (Prevention) Act, 1956. Accordingly, a

charge-sheet was submitted against the accused and her co-accused Shiv Chand Negi. Co-accused Shiv Negi absconded at the stage of

committal, therefore, after committal only the accused was tried on a charge under Sections 365 and 368 read with Section 34, IPC, Section 109

read with Section 376, IPC and Sections 5 and 6 of the Immoral Traffic (Prevention) Act, 1956.

3. To prove the charge against the accused, prosecution examined as many as 18 witnesses. The accused was examined u/s 313, Cr.P.C, wherein

she admitted her arrest by the police but denied the correctness of the prosecution case and claimed to be innocent and having been falsely

implicated in the case. The accused, however, did not lead any defence.

4. On consideration of the material on record, the trial Court convicted and sentenced the accused as aforesaid. Hence, this appeal.

5. I have heard the learned Counsel for the accused and the learned Deputy Advocate General for the Respondent-State and have also gone

through the records.

6. It was contended by the learned Counsel for the accused that there is no cogent, reliable and confidence inspiring evidence on record to prove

the charge against the accused and in fact the conviction is based on "no evidence", therefore, the impugned conviction and sentence cannot be

sustained.

7. On the other hand, the learned Deputy Advocate General, while supporting the reasoning and the conclusions of the trial Court, as given in the

impugned judgment, contended that the charge against the accused is fully proved and the impugned conviction and sentence do not call for any

interference.

8. It may be pointed out at the very outset that conviction and sentence of the accused under Sections 5 and 6 of the Immoral Traffic (Prevention)

Act, 1956 (hereafter referred to as "the Act") cannot be sustained and are liable to be set aside for the reason that investigation in these offences

has not been conducted by the officer authorised and competent to investigate such offences.

9. Section 13 of the Act reads as under:Ã¯Â¿Â½ .

13. Special police officer and advisory body.Ã¯Â¿Â½(1) There shall be for such area to be specified by the State Government in this behalf a special

police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of

the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred onÃ¯Â¿Â½

(a) a retired police officer unless such officer at the time of his retirement, was holding a post not below the rank of an Inspector;

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer;

(3) For the efficient discharge of his functions in relation to offences under this ActÃ¯Â¿Â½

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever

practicable) as the State Government may think fit; and the State Government may associate with the special police officer a non-official advisory

body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to

advise him on questions of general importance regarding the working of this Act.

(4) The Central Government may for the purpose of investigating any offence under this Act or under any other law for the time being in force

dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police

officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the

modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

10. It is evident on a bare reading of the above provisions that the Act provides for investigation of the offences thereunder by special police

officer(s) appointed by the Central Government or the State Government or invested with the powers of a special police officer by the concerned

District Magistrate and, thus, makes special provisions for investigation of the offences under the Act.

11. In the case in hand, investigation has admittedly been carried out by A.S.I. Puran Chand (PW-18) who neither held the rank of an Inspector

nor he is appointed or invested with the powers of a special police officer u/s 13 of the Act nor he is shown to be assisting a special police officer

in conducting the investigation. Thus, the investigation into the offences under the Act by PW-18 is violative of the provisions of Section 13 supra.

12. It was contended by the learned Deputy Advocate General that in the matter of investigation by an officer other than those contemplated by

Section 13 the conviction will not be bad unless prejudice is shown to have been caused to the accused. To support his submission, he has relied

on State Vs. Mainabai,

13. In Mainabai''s case (supra), the Bombay High Court held as under:Ã¯Â¿Â½

There is nothing in this Act which makes Section 156(2) and Sections 529 and 537 of the Code inapplicable. This being so, we must hold that

illegal or improper investigation and arrest does not in any manner affect the jurisdiction of the Magistrate to take cognizance of the offence. This

aspect of the case was not presented before their Delhi Administration Vs. Ram Singh, . We must, therefore, consider whether any prejudice is

caused to the accused by reason of the illegality of the investigation and the arrest. In the present case the answer is clearly No. The accused

admits the facts alleged against her and these facts clearly make out an offence with which she is charged.

14. A contrary view, however, has been taken by the Allahabad High Court in Gita and Ors. v. State of Uttar Pradesh and Anr. 1966 (2) Cri.L.J.

161, wherein it was held as under:Ã¯Â¿Â½

18. I also do not agree with the contention of Sri Kamal Narain Singh that even if Sri Bhupendra Singh was not competent to take action against

the Petitioners the charge-sheet submitted by him could not be quashed and the proceedings pending before the City Magistrate, Allahabad are not

vitiated.

15. In Delhi Administration Vs. Ram Singh, which has been relied upon by the Allahabad High Court in Gita''s case (supra), the Apex Court while

dealing with the subject held as under:Ã¯Â¿Â½

14. The Act creates new offences provides for the forum before which they would be tried and the orders be passed on conviction of the

offenders. Necessary provisions of the Code of Criminal Procedure have been adopted fully or with modifications. The Act provides machinery to

deal with the offences created and its necessary implication must be that new machinery is to deal with those offences in accordance with the

provisions of the special Act and, when there is no specific provision in such Act, in accordance with the general procedure and that no other

machinery is to deal with those offences. It does not appear reasonable that the investigation of offences would have been left unprovided and was

to be done by the regular police, in accordance with the regular procedure laid down under the Code.

It was further held:Ã¯Â¿Â½

22. If the power of the special police officer to deal with the offences under the Act, and therefore to investigate into the offences, be not held

exclusive, there can be then two investigations carried on by two different agencies, one by the special police officer and the other by the ordinary

police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to co-ordinate the

activities of the regular police with respect to cognizable offences under the Act and those of the special police officer.

23. The special police officer is a police officer and is always of the rank higher than a Sub-Inspector and therefore, in view of Section 551 of the

Code, can exercise the same powers throughout the local area to which he is appointed as may be exercised by the officer in charge of a police

station within the limits of his station.

24. We are therefore of the opinion that the special police officer is competent to investigate and that he and his assistant police officers are the

only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot

investigate the offences under the Act even though they are cognizable offences. The result is that this appeal by the Delhi Administration fails and is

hereby dismissed.

16. In view of the above position in law, as laid by the Apex Court the conviction of and sentence awarded to the accused under Sections 5 and 6

of the Act is invalid and cannot be sustained.

17. The accused has been convicted u/s 376 with the aid of Section 109 IPC. To sustain a conviction with the aid of Section 109 IPC it has to be

proved that the accused had instigated the commission of the offence or had communicated with one or more other persons in a conspiracy to

commit such offence and pursuant to that conspiracy some act or illegal omission had taken place or he had intentionally added the commission of

an offence by an act or illegal omission. In the case in hand, the substance of the head of charge u/s 109 read with Section 376 IPC is that the

accused abetted the'' commission of the offence u/s 376 in furtherance of common intention with co-accused Shiv Chand and abetted the

prosecutrix to commit illicit intercourse against her will and consent. The head of charge, as framed, apparently is partially absurd because in the

facts and circumstances of the case or in law ""to abet the prosecutrix to commit illicit sexual intercourse against her will and consent"" will not

amount to abetting the offence punishable u/s 376 IPC. The abetment must be of the accused and not of the victim. In any case there is not even an

iota of evidence that the accused in any manner whatsoever by any act or omission or her part abetted the co-accused to commit rape on the

prosecutrix. There is stray statement of the prosecutrix that co-accused Shiv Chand committed rape on her at Bombay. However, before the

alleged commission of the rape by co-accused Shiv Chand he is not shown to have ever met the accused at any point of time. What emerges from

the evidence in this regard even if believed to be true is that co-accused Shiv Chand enticed the prosecutrix, took her to Bombay, committed rape

on her and then handed her over to one Maya. Said Maya handed over the prosecutrix to one Kalpana and Kalpana further brought her to the

Kotha of the accused at Bombay. There is not even an iota of evidence that the accused had any connection or concern with co-accused Shiv

Chand or he was acting on her behalf or on her asking. Thus, the conviction of the accused u/s 109 read with Section 376 IPC is illegal and liable

to be set aside.

18. The accused has been convicted u/s 365 with the aid of Section 34 IPC. The dominant feature of Section 34 IPC is the element of

participation in actions and common intention which implies acting in concert, thus, it requires a pre-arranged plan. Before a person can be

vicariously convicted u/s 34 for the criminal act of another, the act must have been done in furtherance of the common intention of the accused

persons, therefore, it has to be established that there had been a prior meeting of minds. There must be general intention shared by all persons

concerned in the commission of the offence. It follows that common intention is an intention to commit a crime actually committed and everyone of

the accused should have participated in that intention. There will be no liability by reason of Section 34 IPC when there is no common intention to

commit a particular offence which was actually committed. There can hardly be any direct evidence to prove intention of a person, therefore,

intention has to be inferred from his act or conduct or other relevant circumstances of the case.

19. In the case in hand, as already stated hereinabove, there is not even an iota of evidence to prove that the alleged enticing of prosecutrix by co-

accused Shiv Chand was in furtherance of the common intention of the accused and co-accused Shiv Chand. There is no evidence that they have

ever met or planned the alleged abduction of the prosecutrix either by discussing it face to face or by way of communications addressed to each

other. What cuts at the roots of the alleged common intention between the accused and the co-accused apart from the above is that even after co-

accused Shiv Chand had taken the prosecutrix to Bombay he is neither shown nor alleged to have ever met the accused before or after having

committed the alleged offence of abducting the prosecutrix and raping her at Bombay. He handed her over to one Maya. Said Maya is not shown

to be an agent of the accused or acting for and on behalf of the accused. Thus, if at all there was a common intention of abducting the prosecutrix,

on the basis of the statement of the prosecutrix herself, it is attributable to co-accused Shiv Chand and Maya and cannot be attributed to the

accused who was the third person to receive the prosecutrix in her Kotha from one Kalpana to whom the prosecutrix was handed over by Maya.

Thus, in the absence of any cogent and reliable evidence on record even by an inferential process it cannot be said that the prosecutrix was

abducted by co-accused Shiv Chand in furtherance of common intention shared by him and the accused. Therefore, even the conviction and

sentence of the accused u/s 365 read with Section 34 IPC is unsustainable.

20. The accused has further been convicted u/s 368 read with Section 34 IPC. The head of charge on this count, as framed by the trial Court, is

that the accused and her co-accused Shiv Chand in furtherance of their common intention concealed and confined the prosecutrix who was

kidnapped and abducted in furtherance of their common intention in Kotha No. 101, Street No. 12, Kamathipura, Police Station, Nagpara,

Bombay with the intention to force her to indulge in illicit sexual intercourse.

21. For the reasons stated hereinabove, the accused could not be convicted under this head of charge with the aid of Section 34 IPC because

there is no evidence that while she confined the prosecutrix in the Kotha she shared any common intention with co-accused Shiv Chand. It seems

to be a case of framing of charge without due application to the material on record because according to the prosecution case the accused

knowing it that the prosecutrix was an abudcted woman kept her concealed/confined in the Kotha to force her to indulge in illicit sexual

intercourse. It is not the case of the prosecution at all that the accused had any common intention with co-accused Shiv Chand in wrongfully

concealing or confining the prosecutrix. However, all the essential constituents of an offence punishable u/s 368, IPC, are contained in the head of

charge i.e. that the prosecutrix was kidnapped/abducted woman and so knowing the accused concealed and confined her in the Kotha.

Furthermore, the accused who had received the copies of the charge-sheet including the supporting material thus was fully aware that one of the

allegations against her was that knowing that the prosecutrix was abducted from District Solan, confined her in the Kotha. Therefore, if these

allegations are proved by the prosecution on record and no prejudice thereby is shown to have been caused to the accused, the mere absurdity in

framing the charge as pointed out hereinabove, will not invalidate the conviction of the accused for the offence u/s 368, IPC.

22. Section 464 of the Code of Criminal Procedure clearly provides that mere error, omission or irregularity in the charge will not invalidate the

findings, sentence or order of a Court of competent jurisdiction unless it is shown that such error, omission or irregularity has caused prejudice to

the convicted person. Even vagueness in the charge will not render the trial illegal in the absence of prejudice to the accused. Once a charge is

understood by the accused and the accused had not complained at any stage of the trial about his not having understood, as to what for he was

tried, the findings, sentence or order will not be rendered illegal. It is only in a case where the charge framed was such which created confusion and

be wilderness in the mind of the accused to understand it correctly that prejudice can be said to have been caused to the accused in defending him

and findings, sentence or order on such charge will be invalid.

23. In K. Damodaran Vs. The State of Travancore-Cochin, the Hon''ble Supreme Court held as under:

Indeed, the particulars and details were all on the record before the charges were framed and A1 could not have been misled in any way. The fact

that he had no difficulty in knowing what case he had to meet is fully proved by the fact that no grievance was made by him or his Advocate on this

score before the Special Tribunal. In our judgment the High Court was clearly right in holding that the irregularity complained of did not cause any

real prejudice to the Appellant and did not vitiate the trial.

24. In Prem Chand and Another Vs. State of Haryana, the Apex Court held as under:

6. Before adverting to the submission with regard to the question of sentence we would like to point out that there is misjoinder of charges on

account of a joint trial of these two Appellants with Ravi Shankar. As rightly pointed out by Mr. Tewatia, no objection to the joint trial has been

raised by these two Appellants either at the trial stage or at the appellate stage or even before this Court, nor the Appellants had shown any

prejudice having been caused to them by such a trial. However, as contemplated u/s 464 Cr. P.C. in absence of proof that failure of justice had

occasioned by the joint trial, the finding and the sentence recorded by the competent Court cannot said to be invalid.

25. In Willie (William) Slaney Vs. The State of Madhya Pradesh, the apex Court while dealing with the question of prejudice held that in judging

the question of prejudice in a criminal trial, the court must act with a broad vision and look to the substance and not of the technicalities and their

main concern may be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be

established against him were explained to him fairly and clearly and whether he was given full and fair chance of defending himself.

26. In the case in hand, as already stated hereinabove, the case of the prosecution as per the charge-sheet submitted is that the accused knowing

that the prosecutrix was an abducted woman, confined her in the Kotha. These essential ingredients of an offence punishable u/s 368, IPC, are

mentioned in the relevant head of the charge framed against her on the basis of the allegations of confinement of the prosecutrix by her. There could

not be any confusion in the mind of the accused regarding the allegations against her, constituting an offence u/s 368, IPC, because she had already

been supplied the copies of the charge-sheet containing the allegations constituting the said offence. At the trial she or her counsel had not objected

of any confusion or their having been misled by the charge as framed. But for certain superfluous contents the head of charge contained all the

material particulars constituting the offence. Therefore, there being no prejudice to the accused merely because of the absurdity in the head of the

charge, and the conviction of the accused u/s 368, IPC, will not be rendered invalid if otherwise it is proved that she has committed an offence u/s

368, IPC.

27. According to the prosecution, the prosecutrix was recovered from the Kotha at Bombay which was managed by the accused and where she

was running a brothel. The fact that at the relevant time prosecutrix was in Bombay has not been disputed in the cross-examination of any material

witness. On the contrary, the suggestion put in the cross-examination of the material witnesses including the prosecutrix is that the prosecutrix had

gone to Bombay voluntarily. These suggestions have been denied by the witnesses. The prosecution case that on search of Kotha No. 101

managed and used as brothel by the accused finds full support from the statements of the prosecution witnesses in this regard. HC Dilbagh Singh

(PW-3) has stated that the police party recovered the prosecutrix and her minor daughter from Kotha No. 101 and she was identified by

Parshotam brother of the prosecutrix. Said Parshotam (PW-12) has stated that he accompanied the police officials to Bombay where they went to

Kotha No. 101, Gali No. 12. The Kotha was run by the accused and his sister, the prosecutrix, was recovered from the Kotha alongwith her

daughter and he identified her regarding which Memo. Ext. PW 3/A was prepared and her person was handed over to him by the police at Jhakri

vide Memo. Ext. PW 1/A. This version is corroborated by the prosecutrix (PW-13) about her recovery from the Kotha. Sunil Vasudev (PW-15),

who was declared hostile, also admits in his cross-examination that on search of the Kotha of the accused one girl was recovered who was

brought to Himachal Pradesh by the H.P. Police officials though he could not identify the girl so recovered. The prosecution version about the

recovery of the prosecutrix from the said Kotha by the police is further supported by ASI Puran Chand (PW-18). It may be pointed out here that

it has not been suggested to any of these witnesses that the prosecutrix was not recovered by the police from the Kotha.

28. It is stated by the prosecutrix that she could not state about the person who used to reside in the house adjoining the Kotha because she was

not allowed to go outside the Kotha. She has further stated that she could not even state about the storeys of the building in which she was kept

because she was not allowed to leave the Kotha. She has further stated that she was taken outside the Kotha room only once and she did not see

the entire building because she was escorted by other women. There are certain suggestions in the cross-examination of the witnesses that the

Kotha was used as a dancing place for entertainment purposes only but the suggestions have been denied by the witnesses. It is, however, not

suggested in the cross-examination of the prosecutrix that she was not confined in the Kotha or there were no restraints on her movement and she

was free to go*anywhere she liked. Thus, the statement of the prosecutrix that she was not permitted to move out of the Kotha and when once she

was taken out she was escorted by other women remained unchallenged. In view of this evidence it is established that the prosecutrix was confined

in Kotha No. 101.

29. At the time of the search, the accused was arrested from the said Kotha. Neither any contrary suggestion has been put to the material

witnesses nor the accused in her statement u/s 313, Code of Criminal Procedure has disputed her arrest from the Kotha nor she has claimed in her

statement that she had nothing to do with the Kotha. The trend of the cross examination is that the Kotha was used as a dancing place for

entertainment for which the licences are issued, however, no such licence has been produced. Thus, it is also established that the accused was in

control and management of the said Kotha and thus the prosecutrix was confined in the Kotha as alleged by the prosecutrix.

30. Now the question arises whether the accused was aware that the prosecutrix had been abducted by co-accused Shiv Chand and she confined

the prosecutrix having this knowledge. There is no evidence showing complicity or acquaintance between co-accused and the accused but the

recovery of the prosecutrix from the confinement of the accused by itself is indicative of the fact that the prosecutrix was not a voluntary lodger in

her Kotha.

31. For practical and legal purposes ""knowledge"" means the state of mind entertained by a person with regard to the existing facts which he has

himself observed or the existence of which has been communicated to him by persons whose veracity he has no reason to doubt. The accused may

or may not know the actual abductor by name because in cases of kidnapping done by a gang it may not be possible to pinpoint the abductor but

the accused must know that person whom he is wrongfully confining or concealing was kidnapped or abducted. This can be a matter of proof or

presumption being a mental state and it can be proved by the evidence of the kidnapped person or may be inferred from the facts evidencing the

kidnapping/abduction.

32. It is indisputably established that the prosecutrix remained in the Kotha for considerable time. If the accused had no knowledge that the

prosecutrix had been abducted there was no reason for her to confine the prosecutrix as stated hereinabove. In the facts and circumstances, it

cannot be inferred that it was because of mercy and with a view to protect the prosecutrix, that the accused had given shelter to her in the Kotha.

It is improbable to conceive that the accused never came to know that the prosecutrix belonged to Himachal Pradesh and the accused never made

inquiries from Maya or Kalpana with whom the prosecutrix was kept for some time as to how the prosecutrix was procured. From all these

circumstances it can be legitimately inferred that the accused knew that the prosecutrix had been abudcted from Himachal Pradesh and had been

handed over to Maya who handed her over to Kalpana who in turn handed over her to the accused and it was the fear of divulging the commission

of offences against her by the-prosecutrix and the treatment meted out to her in the Kotha which led to her confinement by the accused.

33. The prosecutrix has stated that for one month she was kept by accused Lalita Tamang in the Kotha without any work and then forced her to

commit "galat kaam". Men used to visit the Kotha for "galat kaam" and the accused used to take Rs. 210 for "galat kaam" for a single time and in

case the duration was of one hour she used to charge Rs. 300. On refusal of the prosecutrix to indulge in sexual intercourse (galat kaam) with the

males who visited the Kotha she was beaten up by the accused. She has further stated that there were about 12 other girls in the Kotha indulging in

the flesh trade. In this regard no contrary suggestion has been put to the prosecutrix except that the Kotha was not owned by the accused.

However, it has already been held hereinabove that the Kotha in question was under the control and management of the accused. The statement of

the prosecutrix that the girls detained in the Kotha were forced into flesh trade by the accused is fully corroborated by Shanta Devi (PW-7) who

had suffered the ordeal of being forced into flesh trade. The purpose of confinement of the prosecutrix, thus, evidently was to force/ compel her to

commit sexual intercourse without her consent and against her will with the visitors to the Kotha for which the accused would charge money from

the visitOrs.

34. In view of the above, all the essential ingredients of an offence punishable u/s 368, IPC, are made out though this offence is not proved to have

been committed in furtherance of the common intention of the accused and co-accused Shiv Chand. The accused, therefore, cannot escape

punishment for the commission of an offence punishable u/s 368, IPC.

35. In view of the above discussion, the accused is liable to be acquitted of the other heads of charge but liable to be convicted and sentenced for

the offence punishable u/s 368, IPC.

36. As a result, this appeal is partly allowed and the impugned conviction and sentence as imposed by the trial Court are set aside but the accused

is convicted u/s 368, IPC and is sentenced to rigorous imprisonment for 7 years and fine of Rs. 5,000 and in default of payment of fine to further

rigorous imprisonment for one year.