

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. AD-92 of 2015

Date of Decision : December 17, 2015

Gian Chand

.....Appellant

VERSUS

Suchrita Sarkar alias Pinki and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. G.C. Shahpuri, Advocate
for the appellant.

T.P.S. MANN, J.

The appellant, who is father of the prosecutrix, has filed the present appeal for challenging the impugned judgment dated 12.8.2015 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby respondent No.1-Suchrita Sarkar alias Pinki, wife of Sachin Kumar Dutta has been acquitted of the charges under Sections 120-B, 363, 366, 366-A, 376(2)(i), 376(2)n) read with Section 120-B IPC; Sections 3, 4, 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

According to the prosecution, on 25.4.2014, complainant-Gian Chand presented an application/complaint before the police that one Hari alias Bengali resided in his neighbourhood and Sachin Kumar Dutta used to visit said Hari alias Bengali. The prosecutrix, who was aged about fourteen years went missing from the house in the morning of 25.4.2014. He had searched for her here and there but could not succeed. He suspected that his daughter had been taken away by

Sachin Kumar Dutta after alluring her for marriage. During investigation of the case, the prosecutrix was recovered on 13.5.2014 from Karnal and her statement under Section 164 Cr.P.C. was got recorded, wherein she stated that she had accompanied Sachin Kumar Dutta on her own and had physical relations with him as she was in love with him, who also intended to marry her. On 23.9.2014, accused Sachin Kumar Dutta was arrested and on interrogation, he suffered a disclosure statement to the effect that earlier he was residing at Delhi where he came in contact with Suchrita Sarkar alias Pinki with whom he performed marriage and they shifted to Yamuna Nagar. They were blessed with two daughters. They had come in contact with one Hari alias Bengali and, accordingly, they had been visiting the house of said Hari alias Bengali. Hari alias Bengali introduced him with the complainant, who resided in his neighbourhood. The prosecutrix, who was the daughter of the complainant, was thirteen years of age and a student of 7th class, to whom he used to see on the way and said Hari alias Bengali arranged his meeting with the prosecutrix in the presence of his wife Suchrita Sarkar alias Pinki. He conspired with Suchrita Sarkar alias Pinki and Hari alias Bengali to take the prosecutrix out of station. In the morning of 25.4.2014, at about 4.00 a.m., he was present at Kamani Chowk, Yamuna Nagar where Suchrita Sarkar alias Pinki and Hari alias Bengali brought the prosecutrix in a three-wheeler and from there he took the prosecutrix to Karnal, whereas Suchrita Sarkar alias Pinki and Hari alias Bengali returned. He hired a house in Karnal and started residing with the prosecutrix where he had sexual intercourse with her regularly. Thereafter, he telephonically called his

wife Suchrita Sarkar alias Pinki and all three of them started residing in one room. He also took the victim to Saharanpur. He further disclosed that his wife Suchrita Sarkar alias Pinki and Hari alias Bengali helped him in taking the prosecutrix with him. On 13.5.2014, the prosecutrix was recovered by the police from his rented house at Karnal, although he succeeded in slipping away. Subsequently, Suchrita Sarkar alias Pinki was arrested on 23.9.2014 and she suffered a disclosure statement to the same effect. However, she gave a clean chit to Hari alias Bengali by alleging that he had no role to play in the occurrence.

The trial Court had convicted Sachin Kumar Dutta, husband and co-accused of respondent No.1-Suchrita Sarkar alias Pinki for committing offences under Sections 363, 366, 376(2)(i) and 376(2)(n) IPC; Sections 3, 4, 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo rigorous imprisonment for ten years. However, respondent No.1-Suchrita Sarkar alias Pinki has been acquitted of all the charges against her. Hence, the present appeal against her acquittal.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that neither Gian Chand, in his statement made before the police nor the prosecutrix in her statement recorded under Section 164 Cr.P.C. by the Judicial Magistrate, any mention was made about the involvement of respondent No.1-Suchrita Sarkar alias Pinki in the commission of the crime. After the FIR had been lodged on 25.4.2014, the prosecutrix was recovered on 13.5.2014. It was only on 23.9.2014 i.e. about five months of the prosecutrix going missing from her house that Sachin Kumar

Dutta, co-accused of respondent No.1-Suchrita Sarkar alias Pinki was arrested and in his statement made during interrogation, he stated for the first time about the involvement of respondent No.1-Suchrita Sarkar alias Pinki in the commission of crime. The said confessional statement suffered by Sachin Kumar Dutta cannot be considered to be substantive evidence and, therefore, cannot be made the basis for convicting Suchrita Sarkar alias Pinki. Even otherwise, it is highly improbable that a wife would conspire with her husband to use a minor girl for sexual exploitation and, that too, by her own husband.

In her first statement made under Section 164 Cr.P.C. before the Judicial Magistrate, the prosecutrix had got recorded that she had accompanied Sachin Kumar Dutta of her own and also developed physical relations with him. She also stated that she was in love with him and he also intended to marry her. Therefore, whatever was stated by the prosecutrix, while appearing before the trial Court as a prosecution witness, is nothing but an improvement.

In view of the above, no case is made out for any interference in the impugned judgment passed by the trial Court to the extent of acquitting respondent No.1-Suchrita Sarkar alias Pinki of the charges against her.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

December 17, 2015