

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Crl. Appeal D-988-DB of 2015
Date of Decision: September 3, 2015**

Anita and another

.....Appellants.

Versus

Sombir and others

..... Respondents

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

Present : Mr. Vikas Bishnoi, Advocate for
Mr. Sumit Jain, Advocate for the appellants.

T.P.S.MANN, J.

The appellants have filed the present appeal for challenging the judgment and order dated 16/17.3.2015 passed by the Additional Sessions Judge, Bhiwani, to the extent of acquitting respondents Begh Singh, Sandeep @ Shetty and Naveen of the charges under Sections 363, 366-A/34, 120-B and 328 IPC besides acquitting accused-Begh Singh of the charge under Section 216 IPC. The appellants have also prayed for enhancing the sentence of imprisonment and fine imposed upon accused-Sombir by the trial Court and for disbursing the amount of fine to them as compensation.

The case of the prosecution, in nutshell, is that on

15.4.2013, appellant-Jagmohan submitted application Ex.P4 before Sub-Inspector Ajit Singh, who alongwith Constable Dharam Singh was present at village Tigrana, in connection with official work. In the said application, appellant-Jagmohan expressed suspicion against accused-Sombir of having enticed away his minor niece.

The trial Court acquitted accused Begh Singh, Sandeep @ Shetty and Naveen of all the charges against them. However, accused-Sombir was convicted under Section 363 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-. In default of payment of fine, he was directed to undergo simple imprisonment for three months. He was further convicted under Section 366-A IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo simple imprisonment for six months. He was also convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.20,000/- and in default thereof, to undergo simple imprisonment for one year. All the sentences were ordered to run concurrently.

After hearing learned counsel for appellants, this Court finds that in the application Ex.P4, appellant-Jagmohan did

not name Begh Singh as an accused. Five days later i.e. on 20.4.2013, SI Ajit Singh recorded the supplementary statement of appellant-Jagmohan, who alleged that accused Begh Singh had provided money and shelter to accused-Sombir. However, during her examination under Section 164 Cr.P.C., the prosecutrix did not state anything about the involvement of Begh Singh in the commission of crime in any manner. Under these circumstances, no fault can be found in the impugned judgment passed by the trial Court to the extent of acquitting accused-Begh Singh of the charges against him.

As regards the case of accused Sandeep @ Shetty and Naveen, their participation in the crime was also not stated in application Ex.P4. Even in the supplementary statement made by appellant-Jagmohan recorded by SI Ajit Singh, the names of these two accused were not disclosed. After recovery of the prosecutrix, her statement Ex.P3 was recorded by the police but she did not level any allegation against accused Sandeep @ Shetty and Naveen. However, it was only on 24.4.2003 when the statement of prosecutrix was recorded under Section 164 Cr.P.C. that for the first time, she named accused Sandeep @ Shetty and Naveen as the accused in the case. Keeping in view the contradictory evidence, the trial Court was justified in acquitting accused Sandeep @ Shetty and Naveen of the

charges against them.

In view of the above, the appeal in so far as it pertains to acquittal of Begh Singh, Sandeep @ Shetty and Naveen, is without any merit and deserves to be dismissed.

The appellants have prayed for enhancement of sentence of imprisonment and fine imposed upon accused-Sombir for committing the offences under Sections 363, 366-A IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012. However, the appeal to that an extent is not maintainable. Proviso to Section 372 Cr.P.C., grants right to the victim to prefer an appeal against any order passed by the lower Court acquitting the accused or convicting him for a lessor offence or for imposing inadequate compensation. No appeal has been provided either for enhancement of sentence of imprisonment or for grant of compensation.

Faced with the above, learned counsel for the appellants has submitted that he may be allowed to withdraw the present appeal in so far it pertains to prayer of the appellants for enhancement of the sentence of imprisonment and fine of accused-Sombir with liberty to avail any other remedy available to them under the law.

The appeal is, hereby, dismissed qua respondents No.

2 to 4, i.e. Begh Singh, Sandeep @ Shetty and Naveen.
However, the appeal qua respondent No. 1-Sombir is dismissed
as withdrawn with liberty to the appellants to seek any other
remedy available to them under the law, if so advised.

**(T.P.S. MANN)
JUDGE**

September 3, 2015
amit rana

**(GURMIT RAM)
JUDGE**