

(2023) 01 CAL CK 0056

In the Calcutta High Court

Case No : Criminal Appeal No. 538 Of 2018, CRAN 2 Of 2019, 3 Of 2020, 4 Of 2022 (Old CRAN 2685 Of 2019, 4533 Of 2020)

Sabitri Chakraborty

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 344, 366A, 372, 373
Code Of Criminal Procedure, 1973 — Section 164, 428

Citation : (2023) 01 CAL CK 0056

Hon'ble Judges : Joymalya Bagchi, J;Ajay Kumar Gupta, J

Bench : Division Bench

Advocate : Krishnendu Bhattacharya, Priyankar Ganguly, Simontini Bhadra, Saswata Gopal Mukherjee, Partha Pratim Das, Manasi Roy, Eshita Dutta

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J

1. Appeal is directed against the judgment and order dated 31.08.2018 and 01.09.2018 passed by the learned Additional District and Sessions Judge, Bench - II, City Sessions Court, Bichar Bhawan, Calcutta in Sessions Trial No. 01 (07) of 2013 arising out of Sessions Case No. 31 of 2013 convicting the appellant and one Manowar Bibi for commission of offence punishable under Sections 344/120B and 366A/120B of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for three years each and to pay fine of Rs.3,000/- each, in default, to suffer simple imprisonment for three months more for the offence punishable under Section 344/120B of the Indian Penal Code and also to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for one year more for the offence punishable under section 366A of the Indian Penal Code; both the sentences to run concurrently.

2. On 30.11.2012 Joint C.P., Crime received a complaint from one Hasina Begum and her husband Noor Islam that their minor daughter had been bought by the

appellant and was being used for prostitution. On the basis of such complaint a raid was organised. The raiding team was led by one Tapan Saha and comprised of a number of officers including Tandrima Gupta (PW 8). The team went to 52/1, Rafi Ahmed Kidwai Road popularly known as Bata More. Office of a NGO named CINIASHA was situated near the spot. A member of NGO joined the raiding party. Upon entering the premises the raiding party went to the first floor and knocked the door. Appellant opened the door. The raiding party found the floor was divided in small cubicles. In one of the cubicles three girls who appeared to be minor were sitting. On query they disclosed their identities. They stated that they had been brought to the premises on the pretext of giving job as domestic workers. They were detained by the appellant and utilised for prostitution. Monowara Bibi and her husband Yaqub were also complicit in the crime.

3. Statement of one of the victims was recorded and treated as F.I.R. The victims were recovered and various articles were seized from the place of occurrence. Victims were medically examined and were found to be minors. Their statements were recorded under Section 164 of the Code of Criminal Procedure.

4. In conclusion of investigation charge-sheet was filed against the appellant and Monowara Bibi @ Yeasmin. Charges were framed against them under Sections 344/366A/372/373/120B of the Indian Penal Code. They pleaded not guilty and claimed to be tried.

5. In the course of trial, prosecution examined eight witnesses including two victims viz. PW 1 and PW 2 and exhibited a number of documents. Defence of the appellant was one of innocence and false implication.

6. In conclusion of trial, learned trial Judge by the impugned judgement and order dated 31.08.2018 and 01.09.2018 convicted and sentenced the appellant and Monowara Bibi, as aforesaid. They were acquitted of the charges under Sections 372/373/120B of the Indian Penal Code. Hence, the present appeal.

7. Mr. Bhattacharya, learned Counsel appearing for the appellant submits prosecution case has not been proved beyond doubt. One of the victims i.e. de facto complainant was not examined. Her statement which was treated as F.I.R had not been proved. Initial complaint to the police also did not see the light of the day. He submits ingredients of the offence punishable under Section 366A of the Indian Penal Code have not been proved. He contends there were number of tenants in the premises and appellant cannot be said to be in sole occupation of the premises. He prays for acquittal.

8. Mrs. Roy, learned Counsel for the State submits prosecution case stood proved through the evidence of the victims PWs 1 and 2. PW 6, medical officer, who examined the victims stated they were 15 to 17 years and 16 to 18 years respectively at the time of occurrence. Hence, the appeal is liable to be dismissed.

9. PWs 1 and 2 are the victims. PW 1 (victim girl) deposed she was brought to

Kolkata by her relations to work as domestic servant. She was taken to a house by her "Pisa"(uncle). She met Yaqub and Monowara Bibi. Yaqub handed her over to the appellant who kept her in the premises. She saw the girls. She felt scared. She was directed to change her clothes. Appellant asked her to wear scanty clothes and entertain customers. Appellant used to receive money for such purpose. One day police came to the house and they were rescued. She made statement before Magistrate. She was medically examined.

10. PW 2 is the other victim. She deposed her father-in-law and mother-in-law sold her to the appellant for prostitution. Appellant used to bring customers. Police recovered her from the place. She was kept in a home. She also made statement before Magistrate and was medically examined.

11. PW 6 (Nabanita Adhikary) examined the two victims. She deposed from the radiological report it appears PW 1 was between 15 to 17 years and PW 2 was between 16 to 18 years. She proved the report.

12. PW 7 (Subrata Banerjee), an Inspector of the Kolkata Municipal Corporation produced certified copy with regard to the ownership of the premises.

13. From the aforesaid evidence it appears both PW 1 and PW 2 had been procured by the appellant from their relations for the purpose of prostitution. They were detained in the premises and had to cater to customers. Appellant took money from the customers for such activities. Radiological examination of the victims shows they were below 18 years at the time of occurrence. In view of the aforesaid clinching evidence on record that the appellant had procured the minor victims for prostitution I am unable to accede to the submission of Mr. Bhattacharya that the ingredients of the offence punishable under Section 366A of the Indian Penal Code have not been proved.

14. Non-examination of the other victim who is the defacto complainant does not affect the unfolding of the prosecution case. Similarly, non-production of the initial complaint to Joint CP does not improbabilise the raid at the house of the appellant leading to the recovery of the minor victims. On the other hand, evidence of the minor victims viz. PWs 1 and 2 recovered from the house of the appellant proves the prosecution case beyond doubt.

15. In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellant.

16. The appeal is, accordingly, dismissed. In view of dismissal of the appeal connected applications are also dismissed.

17. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon her in terms of Section 428 of the Code of Criminal Procedure.

18. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

19. Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.