

(2018) 09 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 445 of 2017

Atam Singh

APPELLANT

Vs

State of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 14-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 375, 376, 376(2), 420, 494, 495, 506
Code Of Criminal Procedure, 1973 — Section 164, 313

Citation : (2018) 09 SHI CK 0033

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Rajesh Mandhotra, S.C Shurma, Dinesh Thakur, Amit Kumar Dhumal

Final Decision : Partly Allowed

Judgement

Sandeep Sharma, J.

1. Challenge in the present appeal is to the judgment dated 24.8.2016, passed by the learned Additional Sessions Judge-I, Kangra at Dharamshala,

District Kangra, H.P., in Sessions Case No. 20-D/VII/2014, whereby learned court below while holding the appellant-accused guilty of having

committed offence punishable under Sections 376, 494 and 495 of IPC, convicted and sentenced him to undergo imprisonment as per description given

herein below:-

Under Section 376 of IPC To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 10,000/- and in default of

payment of fine, to further undergo rigorous imprisonment for a period of six months.

Under Section 494 of IPC To undergo simple imprisonment for a period of three years and to pay a fine of Rs. 5,000/- and in default of payment of

fine, to further undergo simple imprisonment for a period of three months. Under Section 495 IPC The convict is also sentenced to undergo simple

imprisonment for a period of three years and to pay a fine of Rs. 5,000/- and in default of payment of fine, he shall further undergo simple

imprisonment for a period of three months.â??

2. The prosecution version as emerges from the record is that complainant-prosecutrix filed a complaint Ext.PW2/A alleging therein that in the year,

2006, she was married to a person namely Ranjeet Singh and out of their wedlock, a daughter was born. Above named person Ranjeet Singh died

about four years ago, whereafter prosecutrix started residing in the house of her parents at Paniala, Tehsil Indora, District Kangra, H.P. In the month

of July, 2013, Ramesh i.e. PW-5, a relative of prosecutrix telephoned her with regard to match for re-marriage of the prosecutrix and asked her to

come to Nurpur. Prosecutrix, her brother and mother came to Nurpur and met person namely Ramesh PW5 and Kirpal Singh PW6, whereafter

accused was called. Accused disclosed that his wife had died 13 years ago and he is serving in Army. The maternal aunt of the prosecutrix Rano

Devi also came to the Nurpur and engagement was finalized. Allegedly, prosecutrix insisted to see the house of the accused, but accused disclosed

that he is in army and is going to Ambala. On 14.8.2013, accused came to village Paniala and insisted for the marriage on the same day and as such,

their marriage was solemnized at Sug Bhatoli. Accused stayed with the prosecutrix in her house. Prosecutrix alleged that about three months ago,

accused left the house of the prosecutrix and asked the prosecutrix not to get her daughter admitted in the school as she will be admitted in the school

of his village Tharu, Tehsil Shahpur.

But since accused did not return, the prosecutrix got suspicious and on 8.6.2014, she went to the house of the accused at Village Tharu, where she

came to know that wife of the accused is alive and he has children. Allegedly, when the accused saw the prosecutrix and her mother, present in

house, he ran away and subsequently, threatened the prosecutrix over the phone with dire consequences. Accused also threatened prosecutrix that he

will commit suicide in case matter is reported to the police. Complainant-prosecutrix alleged that accused had deceived her and committed rape on

her, as a consequence of which, she became pregnant. On the basis of aforesaid

complaint, having been filed by the prosecutrix, formal FIR Ext.

PW18/A came to be registered against the accused at police station Indora. During investigation, police also got prosecutrix medically examined at

Community Health Centre, Indora, District Kangra, H.P., wherein she was reported to be pregnant. Police also got statement of the prosecutrix

recorded under Section 164 Cr.PC before the Magistrate. During investigation, police also found that accused had induced the prosecutrix to give him

Rs. 60,000-70,000/- on the pretext of illness. After completion of investigation, police presented the challan in the competent court of law, who on

being satisfied that prima-facie case exists against the accused, charged the accused for having committed offences punishable under Sections 376,

494, 495, 420 and 506 of the IPC, to which he pleaded not guilty and claimed trial.

3. Prosecution with a view to prove its case examined as many as 19 witnesses, whereas accused in his statement recorded under Section 313 Cr.PC

denied the case of the prosecution in toto and claimed himself to be innocent, however, he did not lead any evidence in his defence despite opportunity

afforded to him.

4. Learned Additional Sessions Judge on the basis of material adduced on record by the prosecution held the accused guilty of having committed

offence punishable under Sections 376, 494 and 495 of IPC, and accordingly, vide judgment dated 24.8.2016, convicted and sentenced him as per

description given herein above, however fact remains that learned court below acquitted the accused of the offences punishable under Sections 420

and 506 IPC. In the aforesaid background, appellant-accused has approached this Court in the instant proceedings, praying therein for his acquittal

after setting aside judgment of conviction recorded by the court below.

5. I have heard learned counsel for the parties as well carefully gone through the record.

6. Having heard learned counsel for the parties and perused the record, this Court is in agreement with the submission made by Mr. Dinesh Thakur,

learned Additional Advocate General that the impugned judgment of conviction recorded by the court below is based upon proper appreciation of

evidence and there is no scope of interference as far as this Court is concerned. Careful perusal of evidence available on record, be it ocular or

documentary, suggests that prosecution successfully prove beyond reasonable doubt that appellant-accused induced the prosecutrix to solemnize marriage with him during the subsistence of his earlier marriage and thereafter, performed sexual intercourse with prosecutrix, as a consequence of which, she became pregnant. Factum with regard to the appellant's having solemnized marriage with the complainant-prosecutrix on 14.8.2013, stands duly proved. Similarly, this Court finds that there is cogent and convincing medical evidence adduced on record by the prosecution to prove that the prosecutrix and accused are biological parents of the male child.

7. Mr. Rajesh Mandhotra, learned counsel representing the appellant-accused fairly conceded before this Court that there is ample evidence adduced on record by the prosecution to prove that appellant accused during the subsistence of his earlier marriage induced the complainant-prosecutrix to marry with him and thereafter, committed sexual intercourse with her. Mr. Mandhotra, further admitted that there is evidence to the effect that appellant accused is biological father of the baby born from the womb of the prosecutrix after the alleged marriage held on 14.8.2013. However, Mr. Mandhotra, while inviting attention of this Court to the evidence led on record by the respective parties, made a serious attempt to persuade this Court to agree with his contention that factum with regard to the earlier marriage of the appellant accused was very much in the knowledge of the complainant prosecutrix and as such, appellant accused could not be held guilty of having committed offence punishable under Section 376 IPC. While placing reliance upon the judgment rendered by the Honâ??ble Apex Court in case titled Bhupinder Singh v. Union Territory of Chandigarh (2008) 8 SCC 531, Mr. Mandhotra, argued that sentence imposed by the court for having committed offence punishable under Section 376, 494 and 495 IPC, needs to be reduced, especially when there is evidence available on record suggestive of the fact that prosecutrix had prior knowledge that appellant accused is already married to somebody else i.e. PW8. Mr. Mandhotra, further contended that accused is behind bars for the last more than 4 years and in case sentence awarded by the court below is not modified/reduced, great prejudice would be caused to the other family members of the accused, who are totally dependent upon the accused.

8. Prosecutrix PW2 while deposing before the court below deposed that her

previous marriage was solemnized with Raneet Singh in the Year, 2006, and out of their wedlock, one daughter was born. She further stated that her previous husband Ranjeet Singh expired in the year, 2010, whereafter, she was expelled from her-in-laws house and she started residing with her parents at village Paniala. She deposed that in the month of July, 2013, Ramesh Chand proposed for her re-marriage with the accused, whereafter she alongwith her mother, brother and sister-in-law went to Nurpur for the negotiations of remarriage. She stated that Ramesh Chand, Kirpal Singh and the accused too came for negotiations of remarriage and the accused told them that he is serving in Army at Ambala and is earning Rs. 42,000/- per month. In the month of August, 2013, accused came to her house and asked to perform marriage and accordingly, her marriage was solemnized with the accused at a temple at Sug Bhatoli. After solemnization of the marriage, accused left her in her village Paniala and the accused used to meet her in her village Paniala and never took her to his native village Tharu. She deposed that accused used to commit sexual intercourse with her after the marriage. Accused directed her not to admit her daughter in the school in her native village on the pretext that she would be admitted in a school at Ambala, but the accused neither took her to Ambala nor to his house. She further stated that when she expressed her intention to live with the accused, he made excuses, whereafter on 3.6.2014, she along with her mother went to the house of the accused at village Tharu and found the first wife of the accused living with her children. She also deposed that she became pregnant from the accused in February, 2014 and gave birth to a male child. She also stated that accused had disclosed his fake name as Ashok Kumar and she came to know about his real name from some document. In her cross-examination, she admitted that Ramesh Chand is brother in law of her maternal uncle. She also stated that accused disclosed that all his relatives had died. She admitted that neither horoscopes were matched nor photographs of the marriage were taken. She also could not tell the name of the Pandit, who performed the marriage ceremony. She specifically denied suggestion put to her that before marriage, she had knowledge that the accused had wife and son. PW1 Vidya Devi, mother and PW3 Bhawna, sister-in-law of the prosecutrix (PW2), corroborated the aforesaid version of the

prosecutrix.

9. PW4 Ramesh Singh, who is the resident of the village of the prosecutrix, deposed that prosecutrix was married to Ranjeet Singh in the year, 2000, who expired in 2010 and thereafter, prosecutrix came to village Paniala alongwith her daughter. He deposed that in the month of August, 2013, he came to know that accused has solemnized marriage with the prosecutrix. The accused disclosed his name as Ashok Kumar and was working in Army. This witness also stated that accused used to reside with the prosecutrix in her house at village Paniala after the marriage, but subsequently, he came to know that real name of the accused is Atam Singh. He also stated that accused disclosed to him that his first wife had expired and he is alone, however, subsequently, he came to know that the accused is having wife and children at village Tharu. He also stated that prosecutrix became pregnant from the accused and gave birth to a male child. In his cross-examination, this witness admitted that he came to know whereabouts of the accused after his remarriage with the prosecutrix.

10. PW5 Ramesh Singh, who had proposed for the marriage of the accused with the prosecutrix, deposed before the court below that he proposed the marriage at the instance of his colleague Kirpal Singh, who disclosed that first wife of the accused had expired and he intends to perform second marriage. He further stated that he suggested Kirpal Singh for the engagement of the accused with the prosecutrix and contacted the mother of the prosecutrix through his sister Sano Devi, whereafter the accused was called at Nurpur. This witness stated that he alongwith prosecutrix, Vidya Devi, Sano Devi, Bhawna, Dinesh and Ramesh Chand came to Nurpur for engagement, where accused disclosed his name as Ashok Kumar, however subsequently, he came to know that his actual name is Atam Singh and he is not serving in Army. He stated that he came to know about his first wife and children in his native village. It has also come in the statement of this witness that accused had committed sexual intercourse with the prosecutrix by cheating, misrepresenting and concealing the true facts and the prosecutrix also gave birth to a male child from the loins of the accused. This witness in his cross-examination admitted that when he came to know about the false antecedents of the accused, he refused for the marriage. He also admitted that marriage was not solemnized in his presence. If the statement

having been made by PW6 Kirpal Singh is read juxtaposing statement of PW5 Ramesh Singh, he also deposed on the similar lines save and except one statement which he made in his cross-examination that address of the accused was not found to be correct.

11. Though prosecution examined 19 witnesses to prove the guilt of the accused, but scrutiny of the statements made by all witnesses may not be very relevant at this stage, especially in view of the limited argument advanced by the learned counsel for the appellant-accused, whereby he while

conceding that it stands duly proved on record that appellant accused solemnized marriage with the prosecutrix during the subsistence of his earlier

marriage, claimed that complainant-prosecutrix was in the know of earlier marriage of the accused. To ascertain the correctness and genuineness of

the aforesaid argument of Mr. Mandhotra, learned counsel representing the appellant, this Court is only required to go through the statements of PW1

to PW6, who were actually in one way or the other involved in talks of re-marriage of the prosecutrix with the appellant-accused. If the statements of

PW1, PW2 and PW3 are read in conjunction, it clearly suggests that proposal for the re-marriage of the prosecutrix with the appellant-accused was

made

by PW5 Ramesh Singh. It has been categorically stated by PW1 Vidya Devi, mother of the prosecutrix, PW2(prosecutrix) and PW3 Bhawna (sister-

in-law of the prosecutrix) that in the month of July, 2013 Ramesh Chand, PW5 proposed for re-marriage of the complainant-prosecutrix with the

accused and then, they all went to Nurpur for negotiations of re-marriage. It has also come in the statement of aforesaid witnesses that Ramesh

Chand PW5 and Kirpal Singh PW6 had also come for the negotiations along with the accused at Nurpur. Having carefully read/examined statements

having been made by the PWs 1 to 6, this Court is inclined to accept the contention having been raised by Mr. Mandhotra, that prosecutrix along with

her, brother and sister-in law had come to Nurpur to meet the accused on the askance of PW5 Ramesh Singh. PW5 Ramesh Singh in his statement

before the Court below deposed that he had proposed for the re-marriage of the prosecutrix at the instance of his colleague Kirpal Singh PW6, who

had disclosed him that first wife of the accused had expired and he intends to perform second marriage. In his examination in chief, this witness

deposed that accused disclosed his name as Ashok Kumar and later, we came to know that the name of the accused is Atam Singh and also, he was not serving in the Army. This witness also stated that he came to know that accused was having his wife and children in his native village. Most importantly, in his cross-examination, this witness while stating that he is serving in the forest department, Nurpur for the last 25 years, deposed that when he came to know about the false antecedents of the accused, he refused to perform the marriage. He also admitted that no marriage took place in his presence.

12. If the statement having been made by this witness is read in its entirety, it certainly compels this Court to draw inference that factum with regard to subsistence of earlier marriage of the accused and his not serving in the army had come to the notice of the prosecutrix and other family members, prior to solemnization of her marriage with the accused. This witness (PW5) in his cross-examination has categorically stated that when he came to know about the false antecedents of the accused, he refused to perform the marriage, meaning thereby, that he after having discovered that accused is not a truthful person, had cautioned the prosecutrix not to solemnize marriage with the accused. It is also admitted by this witness that marriage did not take place in his presence. Similarly, PW6 Kirpal Singh, who had actually made PW5 Ramesh Singh to meet with the accused also admitted in his cross-examination that address of the accused was not found correct prior to marriage, meaning thereby, proper inquiry was made by the prosecutrix and her family members with regard to the antecedents of the accused before solemnization of marriage, but they despite having acquired knowledge that accused is already married, proceeded to solemnize the marriage of prosecutrix with the accused.

13. At this juncture, this Court wishes to take note of statement made by PW2 prosecutrix, wherein she stated that in the month of August, 2013, accused came to her house and asked to perform marriage and accordingly, her marriage was solemnized with the accused in the temple at Sug Bhatoli. There is nothing in the statement of prosecutrix (PW2) as well as her mother (PW1) that after having met the accused for the first time at Nurpur, they had made any attempt to ascertain the antecedents of the accused, rather evidence available on record clearly suggests that prosecutrix

and her family members solely relied upon PW5 Ramesh Singh and PW6 Kirpal Singh, who had actually proposed for their marriage. As has been

taken note herein above, Ramesh PW5 after having noticed false antecedents of the accused had refused to perform the marriage and they actually

did not participate in the marriage. PW5 in his cross-examination has categorically stated that when he came to know about the false antecedents of

the accused, he refused to perform the marriage, meaning thereby, he had cautioned the prosecutrix and her family members with regard to the false

antecedents of the accused. Similarly, PW6 Kirpal Singh in his cross-examination admitted that address of the accused was not found correct prior to

the marriage and he did not participate in the marriage.

14. Having carefully perused the evidence available on record especially the statements of PW5 and PW6, this Court is compelled to conclude that

prosecutrix and her family members had prior knowledge with regard to the earlier/subsisting marriage of the accused, but despite that marriage inter-

se accused and prosecutrix came to be solemnized in the month of August, 2013.

15. At the cost of repetition, it may be stated here that there is overwhelming evidence suggestive of the fact that at the time of solemnization of

marriage inter-se accused and the prosecutrix, earlier marriage of the accused with PW8 Nirmala Devi was in existence. Similarly, there is un-

rebutted medical evidence on record suggestive of the fact that accused is the biological father of the male child born from the womb of the

prosecutrix. Similarly, marriage inter-se prosecutrix and accused also stands duly proved and since appellant-accused solemnized marriage with the

prosecutrix during subsistence of his earlier marriage, conviction recorded by the court below under Sections 494 and 495 IPC, cannot be interfered

with. Argument advanced by Mr. Mandhotra, learned counsel for the accused that since the complainant knew that accused was a married man, yet

she consented for sexual intercourse with him, clause â??fourthlyâ? of Section 375 of IPC, could not be attracted, though appears to be very

attractive, but cannot be accepted in the peculiar facts and circumstances of the case.

16. It is not in dispute that accused was already married and as such, subsequent marriage, if any, has no sanctity in law and is void-ab-initio.

Appellant accused being already married could not have lawfully married the

prosecutrix, which is quite apparent from the bare reading of the provisions contained under Section 494 and 495 of the IPC. Mr. Mandhotra, argued that when complainant knew that accused was a married man, clause "fourthly" of Section 375 of the IPC, has no application, but aforesaid argument is not tenable and same is without any substance and as such, deserves to be rejected. At this stage, it would be apt to reproduce Section 375 herein below:-

375 Rape - A man is said to commit "rape", who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

xxx xxx xxx Fourthly - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married."

17. Even if it is presumed that complainant had prior knowledge that accused is already married person and he has living spouse, that will not improve

the situation as far as the accused is concerned because he was already married, subsequent marriage, if any, has no sanctity in law and is void-ab-

initio and as such, in any event, accused could not have lawfully married with the complainant. It stands duly proved on record that accused after

having solemnized marriage with the complainant- prosecutrix, committed sexual intercourse with the prosecutrix, which definitely falls within the

provision of clause "fourthly" of Section 375 IPC and as such, learned court below rightly held him guilty of having committed rape. In this regard,

reliance is placed upon the judgment passed by the Hon'ble Apex Court in Bhupinder Singh case Supra, which has also been taken note of by the

court below. Relevant para of the aforesaid judgment is reproduced herein below:-

16. Though it is urged with some amount of vehemence that when complainant knew that he was a married man, Clause "Fourthly" of Section 375

IPC has no application, the stand is clearly without substance. Even though, the complainant claimed to have married the accused, which fact is

established from several documents, that does not improve the situation so far as the accused-appellant is concerned. Since, he was already married,

the subsequent marriage, if any, has no sanctity in law and is void ab-initio. In any event, the accused-appellant could not have lawfully married the

complainant. A bare reading of Clause ""Fourthly"" of Section 375 IPC makes this position clear.

18. However, taking note of the peculiar facts and circumstances of the case, wherein it stands duly proved on record that complainant had prior

knowledge with regard to the subsisting marriage of the accused, this Court is persuaded to agree with the contention of Sh. Rajesh Mandhotra,

learned counsel that sentence imposed by the court below deserves to be modified/reduced being harsh and excessive.

19. Bare reading of Section 376 IPC clearly provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be

punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which

may extend to ten years and shall also be liable to fine. Definitely, case at hand does not fall under Sub-Section 2 of Section 376 IPC and as such,

learned court below while holding accused guilty of having committed offence punishable under Section 376 of IPC, convicted and sentenced him to

undergo imprisonment for 7 years. But proviso to aforesaid provision of law provides that court may, for adequate and special reasons to be mentioned

in the judgment, impose a sentence of imprisonment of either description for a term of less than seven years. Section 376 of IPC as well as its Proviso

are reproduced herein below:-

â??376. Punishment for rape.â??

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term

which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless

the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for

a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the

judgment, impose a sentence of imprisonment for a term of less than seven years.â??

â??Proviso:-

376. Punishment for rape: (1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of

either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall

also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with

imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and

special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.â??

20. No doubt, subsequent marriage contracted by the accused during the subsistence of his earlier marriage has no sanctity in law and he could not

have lawfully married with the prosecutrix but as has been discussed in detail herein above that there is overwhelming evidence available on record

indicative of the fact that prosecutrix as well as her family members were aware of the subsisting marriage of the accused with Nirmala Devi (PW8)

at the time of marriage of prosecutrix with the accused and as such, it is difficult to accept that appellant-accused cheated the prosecutrix and

fraudulently, induced her to solemnize marriage with him. This Court having perused evidence on record has reason to believe that prosecutrix had

prior knowledge about the subsisting marriage of the accused, but yet she consented for marriage and thereafter, sexual intercourse and as such, this

case is a fit case for reduction of sentence and award of compensation.

21. At this stage, it would be profitable to take note of following paras of the judgment passed by the Honâ??ble Apex Court in Bhupinder Singh case

supra:-.

â??9. On 16.4.1994, she was admitted in General Hospital and gave birth to a female child. She informed Bhupinder Singh about this as he was father

of the child. But Bhupinder Singh did not turn up. On this complaint, case was registered for the offence punishable under Sections 420/376/498-A

IPC. It was investigated. Investigating Officer, during investigation, collected many documents showing the accused-Bhupinder Singh and prosecutrix

Manjit Kaur as husband and wife. After investigation, challan was presented. Accused-appellant faced trial. After trial, he was convicted and

sentenced as aforesaid. He filed an appeal before the High Court. On behalf of the complainant, a Criminal Revision was filed for enhancement of

sentence. Further a Crl. Misc. Application was also filed for awarding

compensation under Section 357 of the Code of Criminal Procedure, 1973 (in short 'Code').

10. The High Court referred to the evidence of the witnesses, more particularly, Harvardhan (PW2), the Registrar, Births & Death, U.T. of

Chandigarh wherein it was recorded that complainant Manjit Kaur had delivered a female child on 16.4.1994 in General Hospital, Sector-16,

Chandigarh and accused-appellant's name was mentioned as the father. Reference was also made to the evidence of Mal Singh (PW10) in whose

house the appellant and the complainant used to stay.

11. In his statement under Section 313 of the 'Code' the appellant took the stand that he started knowing the appellant after his marriage with Gurinder

Kaur. The complainant was known to his wife before her marriage with him and she had come along with her mother to their place in 1988 in Sector

23, Chandigarh where her mother requested him to get her a job as she had finished the studies and wanted to get a job. The complainant stayed in

their house for six months. Thereafter, he arranged a job for her. However, she had shifted and being of loose morals, entertained many people. When

he learnt that she was of loose morals and was going out with different persons at odd hours, he objected and told the complainant to mend her ways.

But she started fighting with him and demanded money which he does not pay and, after delivery of the child, she filed a false complaint. Gurinder

Kaur (PW 20) stated that he knew the complainant prior to her marriage. Documents were also produced to show that in official documents, accused-

appellant had shown the complainant as his wife and nominee.

12. The High Court found that the case at hand was covered by Clause ""Fourthly"" of Section 375 IPC and, therefore, was guilty of the offence and

was liable for

punishment under Section 376 IPC. Accordingly, the conviction, as done, was upheld. But taking into account the fact that the complainanthad

knowledge about his marriage, and had yet surrendered to him for sexual intercourse, held this to be a fit case for reduction of sentence and award of

adequate compensation. Accordingly, custodial sentence of three years rigorous imprisonment was imposed in place of seven years rigorous

imprisonment as was done by the trial court. The compensation was fixed at Rs.1,00,000/- which was directed to be paid within three months. It was

indicated that in case the compensation amount was not paid, the reduction in sentence would not be given effect to.

13. Learned counsel for the accused-appellant submitted that when the complainant knew that he was a married man and yet consented for sexual intercourse with him, Clause ""Fourthly"" of Section 375 IPC would have no application. It was also submitted that the fact that the complainant knew about his being a married man, is clearly established from the averments made in a suit filed by her where she had sought for a declaration that she is the wife of the accused. The sentence imposed is stated to be harsh. It was, however, pointed out that the compensation, as awarded by the High Court, has been deposited and withdrawn by the complainant.

14. Learned counsel for the State submitted that it is a clear case where Clause ""Fourthly"" of Section 375 IPC is applicable. Learned counsel for the complainant submitted that this was a case where no reduction in sentence was uncalled for. The High Court proceeded on an erroneous impression that the complainant knew that the accused was a married man. It was also submitted that the compensation as awarded, is on the lower side.

15. Clause ""Fourthly"" of Section 375 IPC reads as follows:

375 Rape - A man is said to commit ""rape"", who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

xxx xxx xxx Fourthly - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. xxx xxx xxx

16. Though it is urged with some amount of vehemence that when complainant knew that he was a married man, Clause ""Fourthly"" of Section 375 IPC has no application, the stand is clearly without substance. Even though, the complainant claimed to have married the accused, which fact is established from several documents, that does not improve the situation so far as the accused-appellant is concerned. Since, he was already married, the subsequent marriage, if any, has no sanctity in law and is void ab-initio. In any event, the accused-appellant could not have lawfully married the complainant. A bare reading of Clause ""Fourthly"" of Section 375 IPC makes this position clear.

17. It is pointed out by learned counsel for the appellant that the date of knowledge claimed by the complainant is 6.3.1994, but the first information report was lodged on 19.9.1994. The complainant has explained that she delivered a child immediately after learning about the incident on 16.4.1994 and, therefore, was not in a position to lodge the complaint earlier. According to her she was totally traumatized on learning about the marriage of the accused-appellant. Though the explanation is really not satisfactory, but in view of the position in law that the accused was really guilty of the offence punishable under Section 376 IPC, the delayed approach of the complainant cannot, in any event, wash away the offence.

18. The appeal filed by the accused is dismissed. The High Court has reduced the sentence taking note of the peculiar facts of the case, more particularly, the knowledge of the complainant about the accused being a married man. The High Court has given sufficient and adequate reasons for reducing the sentence and awarding compensation of Rs.1,00,000/-. The reasons indicated by the High Court do not suffer from any infirmity and, therefore, the appeal filed by the complainant is without merit and is dismissed. Both the appeals are, accordingly, dismissed.â??

22. It may be noticed that the appellant-accused is behind bars since the registration of the FIR i.e. 10.6.2014, for the last four years and three months.

23. Consequently, in view of the discussion made herein above as well as law relied upon, the appeal is partly allowed and impugned judgment is modified to the extent that the accused is sentenced to undergo imprisonment for the period he has already undergone qua all the offences he has been convicted by the court below. Besides that, he shall be liable to pay compensation to the tune of Rs. 1.00 lac to the prosecutrix within a period of two months. The accused be set free forthwith, if not required in any other case. Release warrants be prepared accordingly. However, it is made clear that in case amount of Rs. 1 lac is not paid within the stipulated period, judgment rendered by the court below shall revive and accused shall be taken into custody to serve out the remaining sentence in terms of the judgment passed by the learned court below. Appeal is disposed of in the aforesaid terms.