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(2008) 07 SC CK 0107

In the Supreme Court Of India

Case No : Criminal Appeal No. 1047 of 2008 (Arising out of S.L.P. (Criminal) No. 1411 of 2007) and Criminal Appeal No. 1048 of 2008 (Arising out of SLP (Criminal) No. 6796 of 2006)

Bhupinder Singh — APPELLANT

Vs

U.T. of Chandigarh — RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Penal Code, 1860 (IPC) — Section 375, 376, 417, 420, 498A

Citation : (2009) 1 ALT(Cri) 44 : (2008) CriLJ 3446 : (2008) 10 SCALE 3 : (2008) 8 SCC 531

Hon'ble Judges : P. Sathasivam, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Jasbir Singh Malik, R.K. Tripathi, P.K. Singh, Dharam Bir Raj Vohra, Jaspreet Gogia and Vipin Gogia, for the Appellant; Ajay Pal, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Heard learned Counsel for the parties.

2. Leave granted.

3. Though in SLP (Crl.) No. 6796 of 2006, notice has not been issued, at the request of and with the consent of the parties, the same was taken up along with SLP (Crl.) No. 1411 of 2007 where notice had been issued.

4. Challenge in these appeals is to the judgment of a learned Single Judge of the Punjab and Haryana High Court in Criminal Appeal No. 698-SB/1999. The appellant- Bhupinder Singh (hereinafter referred to as the `accused') had filed the appeal before the High Court against the judgment dated 20.9.1999 passed by learned Additional Sessions Judge, Chandigarh, convicting him for offences punishable under Sections 376 and 417 of the Indian Penal Code, 1860 (in short `the Code'). He was sentenced to undergo rigorous imprisonment for seven

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years and to pay a fine of Rs. 10,000/- with default stipulations for the first offence and rigorous imprisonment for nine months in respect of the second offence.

5. The prosecution version, as unfolded during trial, is as follows:

Complainant-Manjit Kaur filed a complaint stating that she was employed as Clerk in All Bank Employees Urban Salary Earners Thrift Credit Society Ltd. and worked as such till September, 1991. She was daily commuting from Naraingarh District Ambala, where her sister was residing. Accused-Bhupinder Singh was employed as Data Entry Operator in the State Bank of Patiala, Sector 17-C, Chandigarh. He used to come to her office and developed intimacy and then asked her to marry after disclosing himself as unmarried person. Accused-Bhupinder Singh insisted upon her to get married at the earliest in a Gurudwara through simple ceremony and said that permission from the parents can be taken later on and that thereafter marriage would be solemnized with great pomp and show. Then she agreed to the proposal of the accused. Then on 4.12.1990, Manjit Kaur and Bhupinder Singh got solemnized their marriage in Gurudwara after exchanging garland before the holy Granth Sahib. At that time, one Sohan Singh, husband of her cousin sister Joginder Kaur was also present. Then she stayed with the accused in H. No. 3166, Sector 22-C (Top Floor), Chandigarh, where accused was residing jointly with one J.P. Goel, who was working in the same bank. Then they had gone to Kasauli for honeymoon on 27.12.1990 and stayed in a hotel. Then her office was shifted from Sector 17 to Sector 42, Chandigarh. She and the accused shifted to H. No. 1110, Sector 42-B, Chandigarh and stayed in a rented accommodation owned by one Pritam Singh. Even landlord had lodged a report in Police Station, Sector 36, Chandigarh, showing them as husband and wife and prior to that a form was duly filled by Bhupinder Singh and same was handed over to the landlord to establish the fact of their being husband and wife. Accused had also taken a loan of Rs. 5000/- from a society at Panchkula in May 1991, where he had nominated her as his wife. She became pregnant. But accused got her aborted from Kaushal Nursing Home against her wishes. She had left the service in September 1991 under the pressure of the accused. In the year 1992, accused-Bhupinder Singh was transferred from Chandigarh to Ropar and they shifted to Ropar and stayed in House No. 111, Street No. 8, Malhotra Colony, Ropar. They came back to Chandigarh again and started living in H. No. 859, Sector 38, Chandigarh and accused-Bhupinder started going to Ropar daily from Chandigarh. She got re-employment in May 1993 in Punjab University, Chandigarh on daily wages as Clerk and visited H. No. C-146, Sector 14, Punjab University, Chandigarh, on the eve of Diwali in 1993. She again became pregnant in July 1993 and their relations remained cordial till March, 1994.

On 6.3.1994 when she had gone to Rose Garden, she met Devinder Kumar Bansal and Vinod Sharma, who were friends of her husband Bhupinder Singh. Those persons told her that accused-Bhupinder Singh was already married with

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one Gurinder Kaur and was having children from the said wedlock. She asked them as to why they had not told her about the previous marriage of her husband. But they avoided answering. She was shocked to learn this and after reaching the residence, she asked about Bhupinder Singh, who on the same day had left for Patiala on the pretext of attending some training course and did not return till 13.3.1994. She went to the house of Devinder Bansal to know whereabouts of accused-Bhupinder Singh and there Bhupinder Singh along with his wife Gurinder Kaur came and started fighting and then Manjit Kaur tried to inform the police. But Daljit, husband of sister of Bhupinder Singh brought her and left her in her house. 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 420/376/498A 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 u/s 357 of the Code of Criminal Procedure, 1973 (in short `Code').

6. 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. In his statement u/s 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.

7. The High Court found that the case at hand was covered by Clause "Fourthly"

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of Section 375 IPC and, therefore, was guilty of the offence and was liable for punishment u/s 376 IPC. Accordingly, the conviction, as done, was upheld. But taking into account the fact that the complainant had 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.

8. 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.

9. 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.

10. 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

11. 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

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"Fourthly" of Section 375 IPC makes this position clear. 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 u/s 376 IPC, the delayed approach of the complainant cannot, in any event, wash away the offence.

12. 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.

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