

\$~R-1B & R-2B

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on :14.8.2014*
Judgment delivered on : 27.8.2014

+ CRL.A.134/2001

HARISH AGGARWAL Appellant

Through Mr.D.C.Mathur, Sr. Advocate
with Mr.Shishir Mathur,
Advocate.

versus

STATE NCT OF DELHI Respondent

Through Ms.Kusum Dhalla, APP for the
State.

+ CRL.A.149/2001

YOGENDER AGGARWAL & ANR. Appellants

Through Mr.Mohit Mathur and Mr.Badar
Mehmud, Mr. Shailesh Hussain
and Mr. P. Mathur, Advocates.

versus

STATE NCT OF DELHI Respondent

Through Ms.Kusum Dhalla, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There are three appellants before this Court; they are Harish Aggarwal, Yogender Aggarwal and Sumitra Devi.

2 Harish Aggarwal was engaged to be married to the victim 'R'. He has been convicted under Section 376 of the Indian Penal Code, 1860 (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as the 'said Act') and had been sentenced to undergo RI for 5 years and to pay fine of Rs.5000/- in default of payment of fine to undergo SI for 3 months for the offence under Section 376 of the IPC; for the offence under Section 3 of the said Act he had been sentenced to undergo RI for 1 year and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for 4 months. For the offence under Section 4 of the said Act he had been sentenced to undergo RI for 2 years and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for a period of 4 months.

3 Yogender Aggarwal was the elder brother of the accused and Sumitra Devi was his mother. Both of them stood convicted under Section 3 of the said Act and each of them had been sentenced to undergo RI for 1 year and to pay a fine of Rs.10,000/- in default of payment of fine to undergo SI for 4 months. All sentences were to run

Crl. Appeal Nos.134/2001 and 149/2001

concurrently. Benefit of Section 428 of the Cr.P.C. had been granted to all the convicts.

4 Record shows that on 13.7.1997 an information was received vide DD No.16A that a demand of Rs.5 lac was being made by one bridegroom and he was not ready to solemnize the marriage till the amount was paid. Investigation was marked to ASI Jagmal Singh (PW-15) who along with Constable Naresh (PW-6) reached house No.414, Katra Meghram Khari Baoli. Statement of the victim 'R' (PW-1) was recorded. She disclosed that her marriage had been arranged with Harish for 13.7.1997 at the Gola Banquet Hall at G.T.Karnal Road. This arrangement related back to an incident of 23.6.1997 when Harish had come to her house at about midnight stating that his vehicle had gone out of order. Since the family of Harish was known to the family of PW-1, Harish was permitted to sleep in the house of 'R' where her other family members were also residing. Harish was asked to sleep on the roof top. At about 2.00 a.m. Harish requested her for some water; she went upstairs to give him a water bottle and at that point of time Harish committed rape upon her. Harish did not want the matter to be reported to the police. At his request, his

CrI. Appeal Nos.134/2001 and 149/2001 Page 3 of 24

parents and his uncles Mahesh Kumar and Hukum Chand were called in order that some kind of an arrangement could be worked out. One neighbor Kishan Gupta was also called. At that point of time the families of both Harish and PW-1 agreed that to get over this incident, marriage between Harish and 'R' be solemnized which was accordingly fixed for 13.7.1997. In this intervening period, on the demand of Harish and his family which included his mother Sumitra Devi, father Girdhari Lal (since deceased) and Gayatri Devi (sister of Harish who had been released on probation) and Yogender his elder brother, goods worth Rs.4 lacs had already been sent to their house. A fresh demand was made of Rs.5 lacs on the date of the wedding i.e. on 13.7.1997 with a statement that in case this demand was not fulfilled the marriage would not take place. Since the parents of PW-1 could not fulfill this exorbitant demand, a complaint was accordingly lodged with the police station Lahori Gate.

5 In the course of investigation the accused persons were arrested. Girdhari Lal and Yogender produced the dowry articles lying in their house vide memos Ex.PW-13/A and Ex.PW-13/B which included a gold chain, one ring and one air conditioner. The list of local expenses and

CrI. Appeal Nos.134/2001 and 149/2001

the advance receipt of the Gola Five Star Banquet Hall which had been booked by Ram Avtar father of the victim, was also taken into possession. Statement of the victim was recorded under Section 164 of the Cr.P.C. (Ex.PW-11/C). Her MLC was conducted by Dr.Poonam Singh (PW-17) which was proved as Ex.PW-17/A evidencing that the victim had been subjected to sexual intercourse. Father of the victim, Ram Avtar, had been examined as PW-2; her mother Usha Gupta was examined as PW-3.

6 Statements of the accused were recorded under Section 313 of the Cr.P.C. and para 6 of the judgment clearly notes that the fact that Harish and his family were living up to 1996-97 in the neighborhood of PW-1 was admitted. It was admitted that the relationship between the family of the complainant and the family of the accused was cordial and they belong to the same 'gotra'. The other incriminating evidence was denied. Relevant at this stage would it be to point out that file of the trial court had been misplaced and on the direction of the High Court the file was ordered to be reconstructed which was based on the record available with the prosecution and the accused. In the reconstructed file the entire record is available except statement of the accused recorded

CrI. Appeal Nos.134/2001 and 149/2001 Page 5 of 24

under Section 313 Cr.P.C. However, the position as noted supra and detailed in the judgment about the admissions and denials made by the accused in their respective statements under Section 313 Cr.P.C. has not been disputed. The accused in fact had nothing more to add or to subtract even before this Court. In this view of the matter, their statements under Section 313 Cr.P.C. not being a part of the record would not affect the disposal of the appeals on its merits.

7 No evidence was led in defence.

8 On behalf of appellant Harish arguments have been addressed in detail. Learned Senior Counsel for the appellant has pointed out that the statement of the victim (PW-1) suffers from inherent discrepancies. In fact a chart has been placed on record to point out the so-called discrepancies in the three versions given by PW-1 i.e. her statement under Section 161 Cr.P.C. (which had formed the basis of the FIR), her statement recorded under Section 164 Cr.P.C. and her version on oath in court. It is pointed out that there have been material improvements in all the three versions. It would also be impossible to believe that Harish would have known that the victim would come to the roof top at 2.00 a.m. and whereupon the offensive act had taken place. In normal

course, since it was a peak summer month the host would have kept water for the guest and the story built up by the prosecution of the accused asking the victim for water is concocted. Gola Banquet Hall had in fact been booked by PW-2 only for a dinner event; no marriage was to take place between Harish and the victim. The doctor examined as PW-17 has in her cross-examination admitted that she had not stated in her report that the hymen of the victim was ruptured. The medical evidence also does not support the version of PW-1. To support this argument reliance has been placed upon (2012) 7 SCC 171 Narender Kumar Vs. State (NCT of Delhi) submission being that where the version of the prosecution is found to be suffering from infirmities and inconsistencies, the prosecution was making deliberate improvements on material points and there also being no injury upon the victim, such an evidence cannot be relied upon. An adverse inference also has to be drawn for non-examination of a material witness i.e. Padam Goel, the brother of the victim. It is pointed out that as per the version of PW-1 and PW-2 it was Padam Goel who had first gone to the room of his sister where he learnt about the offending act having been committed by Harish upon his sister. This non-examination creates a dent in the

CrI. Appeal Nos.134/2001 and 149/2001

version of the prosecution. To support this submission reliance has been placed upon (2008) 11 SCC 153 State of Uttar Pradesh Vs. Punni and Ors. Submission being that an adverse inference has to be drawn against the prosecution on this count. The next submission of the learned Senior Counsel for the appellant is that since all the accused persons have been acquitted of the offence under Section 406 of the IPC and if breach of trust qua entrusted property has not been established against the appellant, the offence under Section 3 and 4 of the said Act which deals with the giving and the demand of dowry respectively also cannot be sustained; the appellant is entitled to an acquittal of both the offence under Section 3 and 4 of the said Act.

9 On behalf of remaining accused i.e. Yogender Aggarwal and Sumitra Devi, learned counsel for the appellants has highlighted the same submissions; it being reiterated that once the offence under Section 406 of the IPC is not found proved the necessary corollary would be that the offence under Section 3 of the said Act also cannot be sustained. Even on merits, the prosecution has failed to prove its case. Attention has been drawn to the version of PW-2. Submission being that there was no evidence of the giving of any dowry, and who had taken the so-
Crl. Appeal Nos.134/2001 and 149/2001

called dowry articles to the house of the accused has also not been proved. The alternate submission of the learned counsel for the appellants being that even presuming that an air conditioner and a washing machine were given it would only be the comfort of the girl; it would be impossible to imagine that the family of the bridegroom would derive any benefit from such a giving. Conviction of the accused under Section 3 of the said Act is accordingly liable to be set aside.

10 Needless to state that these arguments have been countered. Attention has been drawn to the versions of PW-1, PW-2, PW-3 and PW-17 as also recovery memos Exs.PW-13/A and PW-13/B. Submission of the learned public prosecutor being that the oral testimony of the aforementioned witnesses has been fully corroborative of the documentary evidence which includes the MLC of the victim as also the recovery memos Ex.PW-13/A and Ex.PW-13/B evidencing the recovery effected from the house of Yogender and Sumitra Devi. On no count does the impugned judgment call for any interference.

11 Arguments have been heard and record has been perused.

12 PW-1 is the star witness of the prosecution. She was the victim.

She had on oath deposed that she was living at the aforementioned

accommodation (Khari Baoli) since her childhood along with her parents, two brothers and one sister. She was the third sibling in the family. On 23.6.1997, at about midnight when she along with her family were watching television, Harish came to their house and requested her parents to allow him to stay in their house as his vehicle was not working. He was permitted to stay and was asked to sleep in the third floor of the house. The second floor comprised of one hall and two rooms. The entire family used to sleep in the hall as it had an air conditioner. The accused slept in the guest room on the third floor. At about 2.00 a.m. PW-1 got up to go to the toilet. The toilet was on the balcony outside the hall. Harish called her asking for water at the third floor; when she went upstairs he pulled her inside the room and bolted the room from inside; he forcibly committed rape upon her. PW-1 raised alarm; her mouth was shut by him. At that point of time PW-1's brother Padam Goel came to the third floor and knocked on the door. Harish opened the door and PW-1's brother learnt about the fact that Harish had committed rape upon her. The rest of the family was awakened. PW-1 narrated the incident to her parents. Her father PW-2 wanted to call the police but Harish stated that some kind of

Crl. Appeal Nos.134/2001 and 149/2001

arrangement could be worked out and he was ready to marry PW-1. Accordingly the parents and uncles of Harish as also PW-1's uncle and a neighbor were called; it was agreed that the matter could be put to rest if Harish and 'R' were to get married and accordingly the marriage was fixed for 13.7.1997. On the same day at about 7.00-8.00 a.m PW-2 performed the Tika Ceremony; cash and sweets were given. On 24.6.1997 the father of the accused called her parents to his house. On 25.6.1997 parents of the victim went to the house of the accused where the family of the accused demanded a washing machine and cash of Rs.1 lac. The same was given to them. A demand for an air conditioner was also made which was also met. Engagement ceremony was fixed for 12.7.1997 and the marriage was fixed for 13.7.1997. PW-2 Ram Avtar had booked the Gola Banquet Hall for the marriage ceremony. Sagan ceremony took place. However, on 13.7.1997 Girdhari Lal (father of Harish) telephoned her house (PW-1) and made an additional demand of Rs.5 lac which the family of the victim was unable to meet. The matter could not be settled. Harish refused to perform the marriage. The invitation cards had been sent and the guests were admittedly gathered at the Banquet Hall but Harish and his family did not deter

from their demand of Rs.5 lac as an additional dowry. The marriage could not be performed. Police was accordingly informed.

13 In the lengthy cross-examination of the victim she stuck to her stand; she reiterated that her house was surrounded by other houses. She had gone to the toilet when Harish called her from the third floor and asked her to give him water. The distance between the stairs leading to the third floor and the toilet was about 10 to 12 paces. She reiterated that Harish forcibly caught her and pulled her inside the room and committed rape upon her. PW-1 was confronted with her earlier statement recorded under Section 164 of the Cr.P.C. (Ex.PW-1/A) and although in her statement on oath in Court she had stated that her brother had come to the room when the accused was in the process of committing sexual intercourse, in this version she had only stated that when her brother knocked on the door the accused was committing the offensive act upon her. This is no improvement. In fact in the entire cross-examination of PW-1 learned senior counsel for the appellant has not pointed out any such improvement. The chart which has been filed in Court also shows that the version of PW-1 has been consistent on all scores i.e. right from the initial statement (which had formed the basis of CrI. Appeal Nos.134/2001 and 149/2001

the FIR), her version under Section 164 of the Cr.P.C. recorded on 03.09.1997 and thereafter her version on oath in Court which was almost three years later. Minor discrepancies, if any (not highlighted), would not in any manner deter the otherwise cogent and coherent version of PW-1; also noting the fact that the witness had finally entered the witness box in the year 2000. There was also no reason whatsoever for PW-1 to have falsely implicated the accused. In fact no such argument has also been addressed before this Court. It was an admitted position that up to 1996-1997 Harish and his family were living in the neighbourhood where PW-1 was living. It had been admitted that both the families were known to each other. It was in this context that Harish had requested the family of PW-1 to allow him to stay in the midnight of 23.6.1997 and accordingly he was permitted to stay there and sleep in the guest room on the third floor of the house. Version of PW-1 as already noted supra post permission granted to Harish to sleep in the guest room is fully credible. PW-1 had the courage to report the matter to the police; an untoward act had been committed upon her on 23.6.1997 but when Harish and the victim agreed to the perform marriage ceremony the matter had got allayed. In this intervening

Crl. Appeal Nos.134/2001 and 149/2001

Page 13 of 24

period dowry articles to the best of the ability and capability of the family of PW-1 had been sent to the house of Harish but the additional demand of Rs.5 lac could not be met.

14 The testimony of Naresh Kapoor (PW-10) partner of the Gola Banquet Hall is also fully corroborative of the version of PW-1 which is to the effect that Ram Avtar (PW-2) father of 'R' had booked the Gola Banquet Hall for the marriage ceremony of his daughter, the wedding cards (proved as Ex.PW-2/B and Ex.PW-2/C) also fortify this version. There is absolutely no reason for a public witness (PW-10) to have deposed about a fact which was incorrect. In fact the argument of the appellant that the Gola Banquet Hall had been booked for a dinner is negated by the statement of PW-10 who in his cross-examination categorically stated that his marriage hall could only have been booked for the purpose of marriage; he denied that the Banquet Hall had been booked for a dinner event. Counter foil of the advance booking amount has also been proved as Ex.PW-10/A.

15 PW-2 the father of PW-1 was also fully supportive of the versions of PW-1 and PW-10. He reiterated that on 23.6.1997 his son had gone up stairs and on peeping through ventilator he saw Harish and his

CrI. Appeal Nos.134/2001 and 149/2001 Page 14 of 24

daughter inside the room; on knocking the door he learnt of the offensive act having been committed by Harish upon his daughter. They were brought down. At the request of Harish that the matter could be settled, his parents as also his uncles Hukum Chand and Mahesh Kumar were called; one neighbour was also called. Brothers-in-law of PW-2 Ram Kishore and Ashok Kumar Bansal were also summoned. The relations of both the sides agreed that the matter could be resolved if Harish and 'R' were married and the marriage date was accordingly fixed for 13.7.1997.

16 PW-2 has reiterated that Girdhari Lal had come to their house on which day PW-2 had given him cash of Rs.1 lac and sweets which was a pre-marriage 'sagan'. On the demand of Gayatri Devi and Sumitra Devi a washing machine was also sent to their house and so also air conditioner. At the time of tika ceremony, a wrist watch, ring, clothes and Rs.11000/- were given to Harish. Other articles were also sent to the house of Harish. On 13.7.1997 (date of marriage) Girdhari Lal telephoned PW-2 stating that unless an additional amount of Rs.5 lac was given, the marriage would not be performed. This amount could not be arranged at such a short notice. Harish refused to perform the

Crl. Appeal Nos.134/2001 and 149/2001

marriage. Accordingly, a complaint was filed.

17 PW-2 was subjected to a lengthy cross-examination but he stuck to his stand and reiterated that Girdhari Lal, Harish, Yogender and Gayatri Devi had demanded Rs.5 lac. He was confronted with his earlier version but no improvement could be pointed out by the learned defence counsel.

18 Usha Goel (PW-3) the mother of the victim had also deposed on the same lines as PW-1 and PW-2. She had stated that on 12.7.1997 Sumitra Devi and Gayatri Devi had come to perform 'sagan' ceremony at their house, and in the evening male persons of her family went to the house of Harish to perform Tika ceremony; wrist watch, rings, utensils, sweets, clothes, gold coins and some cash were also given in the ceremony. On 13.7.1997, while the family was preparing for the wedding, a call with additional demand of Rs.5 lac was made by Girdhari Lal. The demand could not be met and as such a police complaint was filed. This witness was also subjected to a lengthy cross-examination. She did not deter.

19 H.C.Rajinder Singh (PW-13) joined the investigation and in the course of the investigation, vide seizure memos Ex.PW-13/A and Crl. Appeal Nos.134/2001 and 149/2001

Ex.PW-13/B one A.C., utensils, wrist watch and gold chain were seized from the house of Yogender and Sumitra Devi which was on 16.7.1997 and documented by the aforementioned exhibits.

20 Offence of rape which was a forcible act committed upon the victim has been fortified not only by her own cogent and credible version but also supported by the version of PW-2 and PW-3 who had stated that Padam Goel their son had gone up stairs and then he learnt about this forcible act of rape being committed by Harish upon the victim. One line of argument adopted by learned senior counsel for the appellant qua this offence is that no such act was committed. This court is not inclined to believe this argument. No victim of rape would make a false statement, with no reason whatsoever (there is no defence on this score) putting a stigma on her own reputation. This was a public statement which PW-1 had given as admittedly marriage celebrations were on but the marriage had to be cancelled and it was not only the immediate family of PW-1 who learnt about the cancellation of marriage but probably all the guests who were invited for the wedding. The victim and her parents (PW-2 and PW-3) were brave enough to accost the accused and his family on this count. Question of false implication

in such a situation especially when another sister of the victim was yet to get married would not arise. It was not an easy task for PW-1 and her family to report the matter to the police but this is a clear case where there was no other option. Testimony of PW-1 was also fortified by the version of the doctor (PW-17) who had examined her on 13.7.1997. PW-17 had proved the MLC of the victim as Ex.PW-17/A wherein it was recorded that her findings were suggestive of sexual intercourse. In cross-examination PW-17 had admitted that it has not been specifically mentioned in Ex.PW-17/A that hymen was ruptured but her finding was otherwise categorical in the MLC that on local examination of the victim, the findings were suggestive of sexual intercourse. Thus the medical evidence of the victim was fully corroborative of the oral version of PW-1. Thus evidence which has been collected, both oral and documentary, establishes that the offence of rape had been committed upon PW-1 by Harish.

21 The law on Section 376 of the IPC has been categorized and reiterated by the courts time and again. Testimony of a victim of such an offence if found cogent and credible by itself is sufficient to nail the accused. No other supportive evidence is also required. However, the

Crl. Appeal Nos.134/2001 and 149/2001 Page 18 of 24

courts have to be cautious while examining the testimony of such a victim. [see (2004) 8 SCC 153 State of Himachal Pradesh Vs. Shree Kant Shekari]. In the instant case there is nothing whatsoever to suggest that PW-1 would implicate the accused for a false purpose. No such suggestion has also been given in this regard. In fact by reporting this incident it was the honour and reputation of PW-1 which was at stake. The matter was obviously not reported on 23.6.1997 (date of the incident) for the reason that the parties had agreed that the matter could be resolved by the parties marrying one another. This did not in any manner mean that the act of the accused stood condoned. This was only to overcome the harrowing situation which had arisen and since both the families were known to each other for several years having lived in the same vicinity, and when the parents of the accused and both his uncles in the presence of their neighbour had agreed that Harish would marry PW-2, it was agreed that the matter would not be reported to the police.

22 Thus in such a situation, it can no manner be said that there was a delay in lodging the FIR. The offence under Section 376 of the IPC qua Harish stood fully proved.

23 Proceedings against Girdhari Lal, father of Harish (since
Crl. Appeal Nos.134/2001 and 149/2001

deceased) have since abated. Apart from Harish, his elder brother Yogender and his mother Sumitra Devi have also been convicted under Section 3 of the said Act. All the accused persons had been charged for the offence under Section 406 of the IPC also but they all stood acquitted of the said offence.

24 Submission of the learned counsel for appellants Yegender and Sumitra being that since offence under Section 406 of the IPC was not proved, the necessary corollary would be that offence under Sections 3 and 4 of the said Act also stands disproved. This submission has to be examined in the light of the said provisions of law.

25 Section 406 of the IPC necessarily mandates that there must be criminal intent on the part of the accused to misappropriate the property which has been entrusted to him. There must be a dishonest intention. Section 3 of the said Act deals with giving or taking of dowry. Section 4 deals with a demand of dowry. Dowry has been defined in Section 2 of the said Act. 'Dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party at or before marriage or at any time after the marriage. Thus 'dowry' as defined in Section 2 of the said Act must

have an inextricable nexus with the marriage. [see (2011) 4 SCC 427 *Bachni Devi & Anr Vs. State of Haryana through Secretary, Home Department*]. Section 3(2) presupposes that presents which are given at the time of marriage without any demand would not come within this penal provision.

26 It is in this legal background that conviction of the appellants under Sections 3 and 4 of the said Act has to be examined.

27 Version of the prosecution rests upon two recovery memos Ex.PW-13/A and Ex.PW-13/B besides the oral version of the witnesses i.e.PW-1, PW-2 and PW-3 coupled with the members of the investigating team. What had been recovered from the house of Yogender and Sumita Devi (brother and mother of Harish) was a Titan watch, air conditioner, gold chain and a ring. The air conditioner in a normal course would have been fixed in the room of the bride. Parties were known to each other. They were of the same 'gotra'. PW-2 was a shopkeeper having his shop at Khari Baoli. He was a man of means. It can be presumed that even in a normal course an air conditioner and a washing machine and some gold articles like a gold chain or a ring would have been given to his daughter at the time of her marriage.

These would only be to add to her comfort and as per tradition at the time of a Hindu marriage, presents and articles are given by the parents of the bride to the bridegroom and his family. Keeping in view the financial status of PW-2 it cannot be said that these articles which were received by Yogender and Sumitra Devi (from whom they were recovered) amounted to a taking of dowry. The offence under Section 3 of the said Act qua all the appellants has not been proved; they are entitled to benefit of doubt and a consequent acquittal. Accordingly, they are all acquitted under Section 3 of the said Act.

28 Qua the role attributed to Harish for a demand of dowry as has been postulated under Section 4 of the said Act, this Court finds that there is sufficient material against him qua this conviction. In fact the entire version of the prosecution rests upon this demand. It is this demand of Rs.5 lac which was made by Girdhari Lal (since deceased) that was followed up by his son Harish which had led to the break in the marriage as it could not be met. If this demand was not reiterated by Harish the marriage would have gone through. The demand of Rs.5 lac initially raised by Girdhari Lal was followed up by Harish. He was the bridegroom who had to perform the marriage and it has been established

that the marriage could not be performed by Harish as this additional demand of Rs.5 lac was not met. Even presuming that Harish had not made the demand directly to the parents of the victim but the telephone call on 13.7.1997 was made by him through his family; the demand was nevertheless made indirectly to the parents of the bride (which in this case was made by Harish through his father Girdhari Lal). The offence under Section 4 of the Said Act is made out. In this background conviction of Harish under Section 4 of the Said Act cannot be faulted with.

29 This Court notes that the Trial Judge while sentencing the appellant Harish for his conviction under Section 376 of the IPC (unamended) had given a sentence lesser than the minimum i.e. sentence the sentence of 5 years. The power of the Court to give a sentence lesser than the minimum is contained in the proviso to the said Section. This power has to be exercised on sound judicial principles and only when a case is made out. No reason has been spelt out by the Trial Court as to why the sentence lesser than the minimum should have been awarded to convict Harish for having committed the offence under Section 376 of the IPC (unamended). Once a conviction under Section

Crl. Appeal Nos.134/2001 and 149/2001 Page 23 of 24

376 of the IPC stood proved it was the obligation of the Court to have given the minimum sentence, unless for reasons to be spelt out, the Court was exercising its discretion to reduce the minimum. As noted supra no such reason has been given. However, be that at it may, since the State has not filed any appeal against the sentence and it had also not chosen to address any argument qua this issue, this Court while maintaining the sentence of 5 years RI for the conviction of Harish under Section 376 of the IPC (unamended) also thinks it fit not to modify the sentence which has been imposed upon him under Section 4 of the said Act which is RI 2 years. Sentences were to run concurrently. Benefit of Section 428 of the Cr.P.C. is also granted to the convict.

30 Appellant Harish be taken into custody to serve the remaining sentence.

31 Appeals are disposed of in the above terms.

INDERMEET KAUR, J

AUGUST 27, 2014

ndn