

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

JUSTICE ACHAL KUMAR PALIWAL

CRIMINAL APPEAL No.1393 of 2019

BETWEEN:-

**SAMEER ANWAR KHAN S/O ANWAR
ABDUL KHAN, AGED ABOUT 27
YEARS, R/O HOUSE NO.23, BHAI UDAR
PHOOLPUR, VARANASHI (U.P.), AT
PRESENT HOUSE NO.10, BASAI ROAD,
AVAR SHINE CITY, THANE (WEST
MAHARASHTRA)**

.....APPELLANT

(BY SHRI AMITABH GUPTA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH: POLICE STATION,
ASHOKA GARDEN, BHOPAL (M.P.)**

.....RESPONDENT

(BY SHRI YADUVENDRA DWIVEDI - PANEL LAWYER)

Reserved on : 14.09.2023
Pronounced on : 29.09.2023

*This criminal appeal having been heard and reserved for
judgment, coming on for pronouncement this day, Justice Achal Kumar
Paliwal pronounced the following:*

JUDGMENT

This appeal has been filed by appellant under Section 374(2) of the
Code of Criminal Procedure, 1973 (in short “the Cr.P.C.”) against

judgment dated 23.1.2019 passed by learned 18th Additional Sessions Judge, Bhopal, in Sessions Trial No.230/2018, whereby appellant was held guilty for commission of offence under Section 376(2)(N) of IPC and sentenced to undergo R.I. for 10 years with fine of Rs.10,000/- and under Section 419 of IPC and sentenced to undergo R.I. for 3 years with fine of Rs.5,000/- with default stipulation.

2. That, the case of the prosecution in brief is that prosecutrix lodged a report on 11.12.2017 at Police Station Ashoka Garden, Bhopal to the effect that her father had created a profile for her marriage at Shaadi.Com. and through that, a request had come on her profile. Thereupon, her father talked on Mobile No.7011096200, given in the request & the person, with whom her father talked on above mobile no., stated his name Aarif Khan and told that he is posted in ATS Bombay and during conversation, he told that his nephew Sameer is undercover DSP in CBI and presently, he is posted in Chennai and he had given Sameer's Mobile No.9711970078. On above mobile no., prosecutrix's father talked, then, Sameer asked him to get his daughter talk to him and if it suits him, then, matter will be discussed further. Thereupon, prosecutrix's father gave his daughter's mobile number to Sameer. In the beginning of October, 2017, a call on prosecutrix's mobile came from Sameer's mobile and she talked to him and he told her about his family. Thereafter, they were continuously in contact through mobile and whatsapp.

3. On 22.10.2017, Sameer came to Bhopal and prosecutrix picked him from Railway Station and he took prosecutrix from there to Hotel Noor-us-sabah Palace at Bhopal, where both of them stayed for two days. There Sameer told prosecutrix about his family and also stated that he liked him and he wants to marry. Thereupon, in view of Sameer's family and his post, prosecutrix also consented for marriage. When prosecutrix

gave her consent for marriage, then, Sameer established physical relations with her in the Hotel. Thereafter, Sameer went to Delhi, stating about some official work. Thereafter, Sameer called & told her that his father and family members have become aware of their stay in the Hotel and they are angry. He is coming to Bhopal and he will convince them within some time.

4. On 2.11.2017, Sameer came to Bhopal and stayed at Hotel Noor-us-sabah Palace, where prosecutrix used to go daily to meet Sameer. From 8.11.2017 for about 10-15 days, prosecutrix stayed with him in the Hotel. During this period also, Sameer established physical relations with her frequently. Sameer called Quazi in the Hotel itself and he stated in front of him that he is performing Nikah and accepting prosecutrix as his wife. Thereafter, prosecutrix and Sameer went to Sagar to meet their parents and after coming back from Sagar, they stayed at prosecutrix's house at Vardhman Green Park Colony and there also, Sameer established physical relations with the prosecutrix frequently and continuously. He (Sameer) always used to say that at present he is undercover DSP in the CBI, he has been selected in the IPS. The training thereof is to be held in Hyderabad, for some reasons, there is stay but it has now been cleared, therefore, he has to go to Hyderabad for training. He also wore uniform of IPS and told that whenever there is official meeting, he used to go there in this uniform. He also showed him many documents having his own seal and told that these have to be filed in the Court. Sameer took Rs.2.00 lakh at different times on the pretext of training expenses and that family is not supporting him. Prosecutrix had given Sameer above amount on account of his being IPS officer and on the belief that he will marry him. Whenever prosecutrix used to ask about his family and ask him to perform registered Nikah, he, on one pretext or other, used to

make excuses just to postpone the matter. Sameer never introduced his family members to prosecutrix. When she became suspicious, then, she talked to her parents and thereafter, she and her parents asked for documents about Sameer's post and degree, then, he avoided the same and tried to escape from the house with his bag.

5. When prosecutrix told him that she will make complaint about him in the Police, he said if any complaint is made in the Police with respect to him, then, he will kill prosecutrix and her whole family. She has brought Sameer after catching him with the help of her parents and other acquaintances of her father to the Police Station. Sameer has sexually exploited her and taken money on the pretext of being IPS Officer and on the same ground convincing prosecutrix for marriage. On the basis of narration of above facts, S.I./I.O. R.P. Singh (PW-12) registered F.I.R. No.652/2017 against accused under Section 170, 419, 420, 471, 472, 473, 376, 506 of IPC.

6. Dr. Zareena Khan (PW-13) examined prosecutrix and prepared report Ex.P/4 and Dr. Abhishek Arora examined accused and prepared report Ex.P/12. During investigation, Investigating Officer R.P. Singh prepared site map Ex.P/2 and prepared memorandum of accused Ex.P/5. Thereafter, in pursuance of above memorandum, Investigating Officer recovered khaki colour police uniform containing star of DIG IPS etc. vide recovery memo Ex.P/6 and various documents articles A20 to A36 from Sameer vide recovery memo Ex.P/7 and arrested Sameer vide arrest memo Ex.P/14. Investigating Officer R.P. Singh again interrogated Sameer and prepared memorandum Ex.P/15. During investigation, he sent letter Ex.P/16 to Manager of Hotel Noor-us-sabah for making available documents etc. with respect to stay of Sameer and prosecutrix and on being presented by General Manager of Hotel, documents article

A1 to A19 were recovered. During investigation, prosecutrix's statement Ex.P/18 under Section 164 of Cr.P.C. was also recorded. Investigating Officer R.P.Singh also sent prosecutrix and accused for medical examination vide letter Ex.P/19 and 20. Head Constable S.L. Baghel seized prosecutrix's vaginal slide etc. vide recovery memo Ex.P/11. Articles recovered during investigation were sent for forensic examination vide drat Ex.P/21 and receipt thereof Ex.P/22 and FSL report is Ex.P/23. Investigating Officer R.P.Singh also recorded statement of witnesses. After completion of investigation, charge-sheet was filed against appellant under Section 170, 419, 420, 471, 472, 473, 376, 506 of IPC in the court of JMFC and same was committed to the court of Sessions Judge, Bhopal.

7. Learned trial court framed charges under Section 419, 420, 465, 467, 471, 474, 376(2)(n), 506 part-2 of IPC against appellant and the same were read over to appellant & appellant pleaded not guilty & he claimed to be tried for the offences, he was charged with. To bring home the charges against the appellant, the prosecution examined 13 witnesses. Prosecution also brought on record documentary evidence through aforesaid witnesses. After completion of prosecution evidence, appellant was examined u/s 313 Cr.P.C. & denied the prosecution case in toto.

8. Appellant has stated in his examination under Section 313 of Cr.P.C. that he got introduced through complainant's father and not through Shaadi.Com. and he went to Delhi after talking to father. After one week, complainant's call came to him that she wants to meet him, then, he came to Bhopal. Complainant told her that she wants to marry him but her family members are not in favour of marriage. She wants to marry. Then, they went to the hotel & got married. When he informed complainant's father about the fact of marriage, then, complainant's

father told him that as both of you have performed marriage, don't come here. After 2-3 days, complainant's father asked them to come. At that time, they didn't go to Sagar but later on, they went to Sagar. He stayed in Sagar for 2-3 days and again came to Bhopal and thereafter, complainant accompanied him to Delhi. Thereafter, they came to Bhopal from Delhi and stayed at complainant's house at Bhopal. Thereafter, they went to Sagar. Complainant's father was aware that they are married. He wanted to go home and complainant wanted that he should stay in Bhopal & on account of same, false report has been lodged. No recovery has been made from him. Complainant's father has prepared false documents to implicate him. He never introduced himself as undercover officer. His lap top, ID card, Aadhar Card etc. are in the complainant's house. They should be given to him. After evaluating the evidence that came on record, the learned 18th Additional Sessions Judge, Bhopal vide judgment dated 23.1.2019 convicted & sentenced the appellant as mentioned above.

Submissions of learned counsel for the appellant:-

9. Learned counsel for the appellant submits that there is no legal evidence to connect the appellant with the alleged offence. Learned trial Court has wrongly convicted and sentenced the appellant. There are lot of contradictions and omissions in the depositions of the prosecution witnesses. Prosecution has failed to prove its case beyond reasonable doubt. From evidence on record, it cannot be said that appellant did not solemnize marriage with the prosecutrix and trial Court has also not concluded that no marriage was performed. If there are no two witnesses to the *nikah*, then, the *nikah* will be irregular. Thus, even if marriage is not valid, then, at the most, it would be an irregular marriage. Still then, no offence under Section 376 of IPC would be made out. Therefore, it

cannot be said that appellant had established sexual relations on false pretext of marriage.

10. Investigating Officer/prosecution has not collected any evidence to show that appellant impersonated as under cover DSP in CBI/as IPS Officer. There is no recovery from appellant to show that appellant has impersonated as CBI officer/IPS officer. Learned trial Court has discharged the appellant from offence under Section 170 of IPC but has still convicted the appellant under Section 419 of IPC, which is not permissible in law. No profile of appellant at shaadi.com. has been obtained. The recoveries relating to CBI officer have been made from complainant's house/at the instance of complainant/complainant's family members. Prosecution has failed to prove its case and learned trial Court has erred in law and facts in convicting and sentencing the appellant. On the above grounds, it is submitted that his appeal be allowed and impugned order be set aside and appellant be acquitted of the charges leveled against him.

Submissions of Learned Government Advocate:-

11. Learned counsel for the State has vehemently opposed the contentions made by the learned counsel for the appellants and has supported the impugned judgment. He further submits that learned trial Court has properly appreciated the evidence on record and has rightly convicted & sentenced the appellants, as above. Hence, appeal is liable to be dismissed.

12. I have heard learned counsel for the parties and perused the record of the trial Court minutely.

FINDINGS:-

13. Perusal of testimonies of prosecutrix (PW-1), her father (PW-2), brother (PW-3), mother (PW-4), Nadeem Khan (PW-5), Mohd. Masroor

Khan (PW-6), Monika Prajapati (PW-7), Jitendra Mehra (PW-8), Dr. Abhishek Arora (PW-9), Parmanand Sahu (PW-10), Ramji Maravi (PW-11), Dr. Jarina Khan (PW-13), Investigating Officer R.P. Singh (PW-12) FIR (Ex.P/1), prosecutrix's M.L.C. (Ex.P/4), appellant's MLC (Ex.P/12), recovery memos (Exs.P/11, P/12, P/19, P/20) and FSL report (Ex.P/23) clearly establish that appellant has established sexual relations with the prosecutrix only with the consent of prosecutrix and sexual relations between the parties were made before marriage and after marriage and it is also apparent from above that prosecutrix has consented for the marriage and only thereafter appellant has established sexual relations with prosecutrix. It is also evident from above that *nikah* between appellant and prosecutrix was performed by Mohd. Masroor Khan (PW-6), though *nikah* appears irregular as there were no witnesses to the *nikah* as required in Muslim Law but in the present context, it is not of much consequence. Thus, from evidence on record, it cannot be said that appellant did not intend to marry prosecutrix and did not marry him. Therefore, it cannot be said that the appellant established sexual relations with prosecutrix on the false pretext of marriage

14. But from evidence as referred in the preceding para, it is apparent that prosecution's case is that prosecutrix gave her consent for marriage and consequently for sexual relations only on the ground/representation made by appellant that he is an IPS officer and undercover D.S.P. CBI and on this ground, prosecution's case is that as the appellant is not proved to be an IPS Officer/undercover D.S.P. CBI, therefore, prosecutrix's consent for marriage with appellant and for sexual relations cannot be said to be a well informed/free consent. Therefore, the question for determination before this Court is whether appellant impersonated

himself as IPS Officer/undercover D.S.P. CBI and represented as such to prosecutrix etc..

15. Perusal of evidence adduced by prosecution on above point/aspect reveals that on above point/aspect evidence may be categorized in three categories i.e. oral evidence, documentary evidence and circumstantial evidence. Now I will discuss each category of evidence one by one.

Oral Evidence:-

16. Depositions of prosecutrix (PW-1) (Para-1, 2, 3, 13, 16), her father (PW-2) (Para 1 and 4), brother (PW-3) (Para- 1, 2, 3 and 6), mother (PW-4), Para-1, 3, 5, 22, 23 and Mohd. Masroor Khan (PW-6) (Para 1 and 3) clearly establish that appellant had represented to above witnesses/impersonated himself as an IPS Officer/undercover D.S.P. C.B.I. to them and above witnesses are consistent on above point and they have remained unshaken during their cross-examinations on above points and nothing substantial in their cross-examinations has come out to show that above witnesses are not reliable/trustworthy on above point.

17. Further, perusal of Para 25 to 30 of prosecutrix's testimony, Para 15 to 19 of PW-2's testimony, Para- 7 to 9, 12, 14, 20 of PW-3's testimony and Para 7, 15, 17, 18, 20 of PW-4's testimony along with their examination-in-chief and police statements Ex.D/1 to Ex.D/4 reveal that between above witnesses' Court testimonies and their police statements, there are no material contradictions, omissions and discrepancies, which go to the root of the case and make above witnesses wholly/partially unreliable/untrustworthy. Nature and extent of omissions etc. as referred in above paras of above prosecution witnesses' testimonies reveal that they are only with respect to additional/collateral facts.

18. Therefore, in this court's opinion, if testimonies of above prosecution witnesses are considered and assessed as a whole, then, above witnesses appear to be wholly reliable witnesses on the point that appellant represented to them/impersonated himself to them as IPS officer/undercover D.S.P. C.B.I.

Documentary Evidence:-

19. Investigating Officer R.P. Singh (PW-12) has deposed in his examination-in-chief that he questioned accused Sameer Anwar Khan on 12.12.2017 in the presence of witnesses and therein, he voluntarily stated that seals and documents relating to CBI recovered from him, documents were downloaded by him from net and he had signed them after affixing his name's seal of CBI. He got prepared seal from Bhagalpur, Bihar and he purchased uniform of Police officer DIG and star from Bhagalpur and he got stitched uniform from tailor Deepak of Bhagalpur and he has concealed uniform of DIG Police Officer with police star in junk materials lying on roof of prosecutrix's house and he will get them recovered. On the basis of above information, he prepared memorandum Ex.P/5. As per Investigating Officer R.P. Singh, on above date, in pursuance of accused Sameer Anwar's memorandum/information Ex.P/5, he recovered one polythene containing therein a khakhi colour police uniform having shirt with star of DIG IPS Officer and a plate containing a badge and from pocket of shirt of accused Sameer, a passport size photo in uniform, after accused Sameer Anwar took them out from junk materials lying on the roof of complainant's house & presented them. Thereafter, he prepared seizure memo Ex.P/6 in the presence of witnesses. Uniform recovered vide seizure memo Ex.P/6 is Article A/44 and Sameer Anwar's passport size photo is Article A/45.

20. Prosecutrix (PW-1), prosecutrix's mother (PW-4) and witnesses of above memorandum and recovery proceedings prosecutrix's father (PW-2) and brother (PW-3) have deposed almost identically to the deposition of Investigating Officer R.P. Singh (PW-12).

21. Now question arises as to whether with respect to appellant's memorandum (Ex.P/5) and recovery in pursuance thereof (Ex.P/6), above witnesses are reliable/trustworthy. With respect to above, I have gone through cross-examinations of above witnesses especially Para-21, 22, 23, 24, 28 etc. of cross-examination of Prosecutrix's father (PW-2), Para-16 and 18 etc. of cross-examination of prosecutrix's brother and Para-23 of cross-examination of prosecutrix's mother (PW-4) and Para-33, 34 of cross-examination of Investigating Officer R.P. Singh and in this Court's considered opinion, there is nothing in their cross-examinations which show that they are not reliable/trustworthy on above point and there is nothing in their cross-examinations which would cast a shadow of doubt on their credibility on above point. In this Court's opinion, prosecution witnesses, Investigating Officer R.P. Singh (PW-12) and prosecutrix and her parents/brother are wholly reliable with respect to appellant's memorandum/recovery as above.

22. Thus, from evidence on record, in pursuance of appellant's memorandum Ex.P/5, recovery of above articles vide recovery memo Ex.P/6 is clearly proved.

23. So far as, other recovery from appellant vide seizure memo (Ex. P/7) is concerned, Investigating officer R.P. Singh has deposed in his examination-in-chief that on 12.12.2017, on being presented by accused Sameer Anwar, he seized a bag made of cloth, on which it is written "Deepak tailor only uniform police Bhagalpur" and from inside the bag, a form of Rajeev Gandhi Prodhogiki Vidyalaya in the name of Mohd.

Yasir Mansoori and other documents, photocopies of CBI documents No.1 to 16 having written thereon in english “Sameer Anwar Khan under cover D.S.P. CBI ACB Hyderabad 5432173”, vide seizure memo Ex.P/7 in the presence of witnesses.

24. As per Investigating officer R.P. Singh, articles seized vide seizure memo Ex.P/7, form of Rajeev Gandhi Prodhogiki Vidyalaya in the name of Mohd. Yasir Mansoori and other documents, photocopies of CBI documents No.1 to 16 having written thereon in english “Sameer Anwar Khan under cover D.S.P. CBI ACB Hyderabad 5432173” are article A-20 to A-36, a bag made of cloth having written thereon “Deepak Tailor only police uniform” is article A-17, stamp round seal containing mono of Ashok is article A-38, Sameer Anwar Khan’s PAN Card bearing No. ELHPK 1732D is article-A-39, Sameer Anwar’s Adhar Card bearing No.7192815297551 is article A-40, stamp pad is article A-41 and two seals are article A-42 and A-43.

25. Testimonies of prosecutrix, prosecutrix’s father (PW-2), brother (PW-3) and mother (PW-4) reveal that they have also deposed almost identically to the deposition of Investigating Officer R.P. Singh. Prosecutrix’s father (PW-2) & brother (PW-3) are also witnesses of recovery (Ex.P/7).

26. Now the question arises whether above witnesses are reliable and trustworthy with respect to above recovery. Perusal of depositions of Investigating Officer R.P. Singh (PW-12), prosecutrix, Prosecutrix’s father, brother and mother & especially para 32, 34, 35 of Investigating Officer R.P. Singh, para 20, 21, 22, 23, 24 and 28 of cross-examination of prosecutrix’s father, para-16, 17, 18 19 of cross-examination of prosecutrix’s brother, Para 16, 24 of cross-examination of prosecutrix and para-23 of cross-examination of prosecutrix’s mother reveal that there

are contradictions in their depositions as to whether recovery vide recovery memo Ex.P-7 was made in police *thana* or in prosecutrix's house and whether appellant was carrying the bag with him, when he was brought to police *thana*. Apart from above, on no other points there are any contradictions and omissions between testimonies of above witnesses on the point of recovery vide recovery memo (Ex. P/7). Otherwise, also there is nothing in cross-examinations of above witnesses so as to throw any doubt over reliability/trustworthiness of above witnesses on above point & above witnesses appears to be reliable and trustworthy. Thus, from testimonies of above witnesses recovery from appellant vide recovery memo (Ex. P/7) is proved.

Other circumstances/circumstantial evidence:-

27. In the instant case, with respect to reliability/credibility/trustworthiness of prosecution witnesses and recoveries made from appellant as above, it is also important to note as to when/as to how & from where appellant was arrested.

28. From depositions of prosecutrix, her parents/brother, Investigating Officer R.P. Singh and FIR Ex. P/1, it is evident that FIR Ex.P/1 has been lodged by prosecutrix on 11.12.2017 at 22:00 P.M. and therein it is mentioned that Sameer tried to run away from their house with his bag & she has brought Sameer to thana after catching him with the assistance of her parents & other acquaintances of her father. Above facts are also mentioned in the depositions of prosecutrix, her parents/brother and from above evidence, it is also evident that at the time of lodging of above FIR appellant was residing with prosecutrix in her house.

29. As per Investigating Officer, R.P. Singh, he arrested accused Sameer Anwar Khan vide arrest memo (Ex.P/14) on 12.12.2017. Investigating Officer R.P. Singh has stated in Para-11 of his cross-

examination that it is correct that in this case crime has been registered on 12.12.2017 at 12:25 in the night. It is correct that accused has been arrested in *thana* premises at 12:50 in the night. Accused was brought to *thana* by prosecutrix's father. It is correct that he did not release the accused. He made him to sit in the *thana*. It is correct that seizure memo (Ex.P/7) has been prepared at 12:30 in the night. It is correct that at that time, arrest memo of accused was not prepared. When accused was brought to *thana*, he was carrying the articles seized from him. Complainant party had not taken the bag from accused. It is also apparent from Investigating Officer R.P. Singh's testimony and memo (Ex.P/5) and seizure memo (Ex.P/6)), (Ex.P/7) that above documents have been prepared on 12.12.2017. Memorandum (Ex.P/5) has been prepared on 12.12.2017 at 10:30. Recovery vide seizure memo (Ex.P/6) has been effected on 12.12.2017 at 18:30 P.M.

30. In Para-24 of her cross-examination, prosecutrix has deposed that when she got accused arrested by police, accused was staying at her house for 10 to 15 days before that. When she got accused arrested, at that time, her parents had also come to Bhopal. In para 36 of her cross-examination, prosecutrix has stated that it is wrong to say that story of service in CBI and documents relating to CBI is concocted one which has been created with the assistance of police just to make offence more serious. Prosecutrix's father has deposed in his cross-examination that it is wrong to say that Ex.P/6 and Ex.P/7's seizure have been forged just to give offence a serious colour. Prosecutrix's mother has denied in her cross-examination that they have forged the seized documents/uniform & have created false evidence to implicate the accused.

31. Investigating Officer R.P. Singh has stated in his cross-examination that it is wrong to say that just to give a serious colour to the offence,

above documents have been forged and have been taken into the evidence. It is wrong to say that seals relating to CBI and documents has been given to him by prosecutrix later on. It is wrong to say that seized seals have been prepared by him. It is not correct that he has prepared the seized articles to create evidence. It is not correct that after bringing above articles himself, he has shown them to have been seized from accused.

32. Thus, cross-examination of above witnesses reveal that contradictory suggestions have been given to them as to who forged documents/seals etc. recovered vide seizure memos (Ex.P/6 and P/7) and when they were given to/who gave them to Investigating Officer.

33. From appellant's examination under Section 313 of Cr.P.C. and documents Ex.P/5 to P/7, P/12, P/14, P/16 and P/20, Articles A/1, A/2, it is evident that appellant is resident of village Bhoi, District Varanasi, Uttar Pradesh. Appellant has stated in his examination under Section 313 of Cr.P.C. that his laptop, cell phone, credit card and debit card, identity card and Rado company watch are in prosecutrix's house and they be given to him. Thus, from above also, it is apparent that on 11.12.2017, appellant was residing in prosecutrix's house. From cross-examination of prosecution witnesses and appellant's examination under Section 313 of Cr.P.C., it is evident that appellant has not clarified and no such suggestion has been given to any of the prosecution witnesses, that if he was not arrested in the manner/mode as deposed by prosecution witnesses and as discussed in preceding paras, then, how and when and from where he was arrested.

34. Appellant has also stated in his examination under Section 313 of Cr.P.C. that he wanted to go home but prosecutrix wanted him to stay in Bhopal and on account of that, false report has been lodged and just to

implicate him, prosecutrix's father has prepared false documents. Appellant has not specifically mentioned in his examination under Section 313 of Cr.P.C. that as to when above dispute arose between them. Further, apparently appellant has not given any such suggestion to any of the prosecution witnesses that he wanted to go home but prosecutrix wanted him to stay in Bhopal and on account of that, false report has been lodged and just to implicate him, prosecutrix's father has prepared false documents as stated by appellant in his examination under Section 313 of Cr.P.C. Further, appellant has not clarified in his examination under Section 313 of Cr.P.C. as to when did above dispute arise between them.

35. Perusal of cross-examination of prosecution witnesses, as discussed in earlier paras of the judgment and appellant's examination under Section 313 of Cr.P.C., reveals that appellant has taken contradictory stand with respect to preparation/forgery of documents/seals etc. recovered at appellant's instance and from his bag, as to who prepared above forged documents/false documents etc. allegedly said to have been recovered from appellant.

36. Therefore, if facts, especially relating to date, time, place, manner/mode of appellant's arrest & recoveries from appellant, along with duration of time/period between lodging of FIR, arrest of appellant & recoveries from appellant, as mentioned and discussed in the preceding paras are assessed and evaluated/appreciated conjointly/cumulatively, then, in this court's considered opinion, it is not established and it is highly improbable/impossible that prosecutrix's family/ police may have forged and prepared false documents etc. recovered from appellant vide seizure memos Ex.P-6 & Ex.P-7 just to falsely implicate appellant.. Therefore, it cannot be said that documents/uniform/seals etc. recovered

from appellant has been forged/prepared falsely just to implicate appellant.

37. Hence, in view of above, it is immaterial/inconsequential that Investigating Officer R.P. Singh has not cross-checked/verified the documents etc. recovered from appellant and has not examined the concerned tailor etc. & did not make any inquiries from CBI etc. Thus, above facts also corroborates testimonies of prosecution witnesses in material particulars with respect to recoveries vide seizure memos Ex.-P6 & Ex.-P7

38. From evidence on record, especially testimony of prosecutrix and Investigating Officer R.P. Singh and Ex. P/8's information provided in pursuance of letter (Ex. P/16 and Article A-1 to A-19 clearly establish that appellant had stayed in Welcome Heritage Hotel, Noor-us Sabah palace, Bhopal, from 02.11.2017 to 23.11.2017 and he had left the hotel without paying bills of Rs.2,15,311/- and had also left above hotel leaving his luggage there. Learned counsel for the appellant has submitted that no bills were due when appellant left the hotel. The appellant has not filed any documents/receipt of payment of bills of Article A-1 to 19. Further, appellant has not clarified and has not given any explanation as to why he left the hotel leaving his luggage there.

39. In this connection, it is also important to examine that if appellant did not impersonate/represented himself as IPS Officer/undercover D. S.P. CBI, then, what was appellant doing at the relevant point of time or what was his job profile etc. In examination under Section 313 of Cr.P.C. appellant has stated his occupation as "private job". Similarly, in recovery memos Ex.P/6 and P/7, appellant's job is mentioned as "private service" and in arrest memo Ex.P/14, appellant's job is mentioned as business of cloths/tailor and education qualification B.Tech. But appellant has not

stated/specified his exact job/nature of work/service etc. It is apparent from record of the case that appellant has stayed with prosecutrix in luxurious hotel “Welcome Heritage Noor-us Sabah palace”.

40. So far as, ID profile of appellant and prosecutrix on shaadi.com. is concerned, from testimonies of prosecutrix and her father and her brother and Ex.P/9, it is established that there was prosecutrix’s ID profile on shaadi.com. Prosecutrix has deposed in her examination-in-chief that a request for marriage was received on her shaadi.com. profile and the person, to whom her father talked, told him that his name is Arif Khan and also told that he is posted in ATS Bombay and he also told during conversation that his nephew Sameer Anwar Khan is undercover D.S.P. C.B.I. and he is presently posted in Chennai and gave Sameer’s mobile number to her father.

41. Prosecutrix’s father has deposed in his examination-in-chief that there was profile of Sameer Anwar Khan’s on shaadi.com. wherein accused was mentioned as officer in C.B.I. After seeing the profile, he had sent request for marriage of her daughter (prosecutrix) and accused has accepted his request and when he talked on mobile number, mentioned on accused’s profile, it was Aarif Khan, uncle of accused, who talked with him and he told that he is posed at ATS Bombay and also told that his nephew accused is undercover D.S.P. in CBI. Prosecutrix’s father has also deposed in his examination-in-chief that he had made a profile for his daughter/prosecutrix’s marriage on shaadi.com. and with respect to above, he had procured document from shaadi.com. and profile ID number is SH81765898, which is Ex.P/9. He had also requested shaadi.com. to make him available Sameer Anwar Khan’s profile details and reply thereof is Ex.P/10.

42. Prosecutrix's father has stated in his cross-examination that he never took out appellant's (accused) profile on shaadi.com.& never gave it to the police. Witness voluntarily states that accused had deleted it. It is wrong to say that he never got introduced to accused through shaadi.com. and no conversation with respect to marriage took place. It is wrong to say that there was no profile of accused & his daughter/prosecutrix on shaadi.com..

43. Prosecutrix's brother and mother have also deposed almost identically with respect to profile of appellant and prosecutrix on shaadi.com. etc. Investigating Officer R.P. Singh has admitted in his cross-examination that complainant/prosecutrix did not give him any document relating to registration on shaadi.com. with respect to prosecutrix and appellant.

44. Thus, it is correct that there is no documentary evidence with respect to appellant's registration/profile ID on shaadi.com. but document with respect to prosecutrix's registration/profile ID on shaadi.com. is on record. Perusal of testimonies of prosecution witnesses, especially cross-examination of prosecution witnesses, reveal that no specific suggestion has been given to any of the prosecution witnesses that profile ID No.SH82258712 as mentioned in Ex. P/10 is not of appellant and it is of someone else. Appellant has stated in his examination under Section 313 of Cr.P.C. that he got introduced to prosecutrix through his father and not through shaadi.com. After having talk with father, he went to Delhi but appellant has not stated in his examination under Section 313 of Cr.P.C., as to how and when he got mobile number etc. of prosecutrix's father/got introduced to prosecutrix's father. Further, testimonies of prosecution witnesses reveal that on above points, no specific suggestions have been given to any of the prosecution witnesses. Therefore, it is not established

from record of the case that appellant got introduced to prosecutrix through his father and not through shaadi.com.

45. Thus, above facts/circumstances also support/corroborate prosecution story/prosecution witnesses' testimony on the point that appellant impersonated himself/represented himself as an IPS Officer/undercover D.S.P. CBI.

Conclusions:-

46. In view of discussion/evaluation/appreciation of evidence on record in the foregoing paras, in this Court's considered opinion, if testimonies of prosecution witnesses, recoveries made from appellant and other established facts and circumstances are taken into consideration as a whole/cumulatively/conjointly, then, from above, it is clearly established that appellant impersonated himself/represented himself as IPS Officer/undercover D.S.P. CBI to prosecutrix etc. and prosecutrix gave her consent for marriage and consequently for sexual relations, before/after marriage, on appellant's above representation/impersonation. Hence, it cannot be said that, when prosecutrix gave her consent for marriage/sexual relations, her consent was free/well informed consent. Therefore, it is a case of no consent either for marriage or for sexual relations and therefore, in the instant case ingredients constituting offence under Section 376(2)(n)) and 419 of IPC are clearly established.

47. Hence, in view of discussion in the foregoing para and appreciation/evaluation of evidence on record, in this court's considered view, there is no illegality or perversity in the conclusions drawn by learned trial court with respect to conviction and sentence of appellant Sameer Anwar Khan under Section 376(2)(n)) and 419 of IPC. The view taken by the learned trial court is a plausible one.

48. Further, in this court's opinion, in view of nature & surrounding circumstances of incident, it can not be said that the sentence imposed by the learned trial court is improper or disproportionate to the offence proved.

49. Therefore, no interference is required regarding conviction of appellant under Section 419 of IPC & Section 376 (2) (N) of IPC Act and sentence imposed by the learned trial court. Hence, appeal is **dismissed** and impugned judgment passed by learned trial court is hereby **affirmed**.

50. A copy of this judgment be sent forthwith to 18th Additional Sessions Judge, Bhopal, District Bhopal & to concerned jail for information and necessary action.

51. Present appeal is disposed of accordingly.

(ACHAL KUMAR PALIWAL)
JUDGE

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