

**213 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.4231 of 2015.
Decided on : 21.11.2017.**

Smt. Anju

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : None for the petitioner.

Ms. Dimple Jain, AAG Haryana.

**Mr. Balraj Gujjar, Advocate,
for respondent No.2.**

JITENDRA CHAUHAN, J.

CRM No. 36368 of 2015

Reply by way of affidavit filed on behalf of respondent No.1 today in the Court is taken on record subject to all just exceptions.

There is delay of 196 days in filing the revision petition. It is pleaded that the order of acquittal was passed on 07.01.2015, however due to wrong advice, the applicant-petitioner filed appeal against the order dated 07.01.2015 before the Sessions Judge, Bhiwani whereas, revision in the matter was maintainable.

Accordingly, the appeal was got withdrawn and the present revision petition was filed.

Keeping in view the contents of the application, the same is allowed and the delay of 196 days in filing the revision petition is condoned subject to all just exceptions.

Main case

This revision is directed against the judgment dated 07.01.2015, passed by Juvenile Justice Board, Bhiwani vide which respondent No. 2 was acquitted in case FIR No.159 dated 22.07.2013, registered under Section 376 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012, at Police Station Badhra, District Bhiwani.

Brief facts of the case as noticed by the trial Court in para No.2 in the judgment are being reproduced are as under:-

“In the present case, criminal law was set into motion upon the written complaint of Anju, daughter of Kamal Singh, caste Nai, resident of village Kari Aadu, Police Station Badhra, District Bhiwani dated 22.07.2013 i.e. Ex.PW-2/A upon the case file moved to the Superintendent of Police for taking legal action against present juvenile Rakesh son of Subhash, Pooja daughter of Subhash and Sharda wife of Subhash, Subhash son of Dharma, Tara Devi wife of

Jaipal and Satpal son of Dharma, caste Nai, resident of village Kari, Aadu, police Station Badhra, District Bhiwani. According to prosecution, vide Ex.,PW-2/A Anju reported to the police that she is divorcee from Brahmanand, resident of Tigrana and has been residing at village Kari Aadu. She has one daughter who is studying in 8th class in Nav Jiwan Public School, Bheelwara (Rajasthan). She further stated that her brother Yogender died on 21.05.2013 and her daughter had also come at village Kair Aadu. Complainant further alleged that on 12.06.2013 at about 03.00/4.00 p.m., when daughter of complainant was playing at home, then accused No.2 of about same age of her daughter who used to play together with her daughter, came and took her daughter to her house and pushed daughter of the complainant into a room where present juvenile was already present. He pressed the mouth of her daughter and committed rape with her. When daughter of the complainant made rescue call, then accused No.3 came near the door and threatened to kill daughter of the complainant in case she dared to make a noise. It is further case of the complainant that on 21.07.2013 at

about 6.00/6.030 p.m., when present was peeping over the wall, then her daughter perturbed and came to the complainant and started weeping. Only then, she narrated the incident to the complainant. Thereafter, complainant and her mother went to the house of the accused persons and complained about this occurrence. Complainant further alleged that accused persons armed with dandas came to their house and abused them and threatened to kill them if matter is reported to anyone. The complainant prayed for taking legal action in the matter.”

Notice of accusation for commission of offences punishable under Sections 120-B, 376 and 506 IPC was served upon the accused to which he did not plead guilty and claimed inquiry.

In order to prove its case, the prosecution has examined PW-1 the prosecutrix, PW-2 Anju-complainant, PW-3 Dharmender Singh Draftsman, PW-4 L/HC Neetu Bala, PW-5 E/SI Wazir Singh, PW-6 Constable Subhash, PW-7 Daan Singh SI, PW-8 Dr. Ravinder, Assistant Director, PW-9 Dr. Parveen Kumar, PW-10 Dr. Anita Gulia, PW-11 Jagbir and PW-12 Ramesh Kumar, D.S.P.

Statement of juvenile was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to him. He denied the same and pleaded

false implication.

In defence evidence, the juvenile has tendered certain documents as Ex.D-1 to D-17 and closed the same.

After conducting inquiry, the learned Juvenile Justice Board, acquitted respondent No. 2 by observing that the complainant, mother of the prosecutrix, in her initial complaint i.e. Ex.PW-2/A had levelled allegations against Pooja, Sharda, Subhash, Tara Devi, Satpal and Rakesh. However, during investigation, Pooja, Sharda, Subhash, Tara Devi and Satpal were found innocent. An application under Section 319 Cr.P.C was moved for summoning Pooja and Sharda as co-accused. In the said application, the complainant did not mention the name of remaining accused, namely, Subhash, Tara Devi and Satpal. The complainant is implicating and exonerating the persons on her own choice and has been making improvements and embellishments in her version. The medical evidence does not corroborate the version of the complainant. The FIR was lodged after unexplained delay of 40 days.

Perused.

A perusal of the case file shows that the complainant has been changing her stance. Initially, the complaint was made qua Pooja, Sharda, Subhash, Tara Devi, Satpal and Rakesh however when the police found Pooja, Sharda, Subhash, Tara Devi and Satpal to be innocent, the complainant moved an application under Section 319 Cr.P.C for summoning Pooja and Sharda as additional accused. Names

of Subhash, Tara Devi and Satpal were left out by the complainant. PW-10, Dr. Anita Gupta, who medico legally examined prosecutrix has mentioned in the MLR that no sign of injury was found on vaginal walls and cervix. She also reported that hymen was present. As per FSL report i.e. Ex.PA, no semen was detected on the underwear worn by prosecutrix and the bed sheet recovered on demarcation of the prosecutrix from the house of the juvenile. Ex.PW-8/A i.e. crime scene report shows that in the room where the offence was committed and on the bed sheet on which the offence was committed as pointed out by victim herself, no incriminating clue relating to the crime has been found. The FIR was registered after unexplained delay of 40 days. As per the case of the prosecution, the prosecutrix told the incident of 12.06.2013 to her mother on 21.07.2013 at about 6.30 p.m still the matter was reported to the police on 22.07.2013 at about 6.00 p.m after gap of 48 hours. These factors cast doubt on the story propounded by the prosecution.

In **Abbas Ahmad Choudhary vs. State of Assam** **(2010) 1 SCR 869** it was held by Hon'ble the Supreme Court that the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.

It is a settled law as has been held in *C. Antony Vs.*

K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In view of above, this Court does not find any illegality or irregularity in the impugned judgment calling for interference by this Court in exercise of its revisional jurisdiction. Consequently, the impugned judgment is upheld and the revision is dismissed.

21.11.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No