

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT  
CHANDIGARH**

**Criminal Revision No.4027 of 2016(O&M)**

**Date of Decision: May 1 , 2017.**

Jitesh Kumar ..... PETITIONER (s)

**Versus**

State of Haryana ..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Ms. Deepa Jain, Advocate  
for the petitioner.

Mr. Ramesh Kumar, AAG, Haryana.

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**LISA GILL, J.**

**CRM-34378-2016**

Reply by way of affidavit of Sh. Sakir Hussain, HPS, Assistant commissioner of Police, NIT Faridabad to the application for suspension of sentence of the petitioner on behalf of respondent No. 1 has been filed in Court today with copy thereof to learned counsel for the petitioner. The same is taken on record subject to just exceptions.

**CRM-34377-2016**

This application has been filed by the petitioner seeking condonation of 279 days delay in filing the revision petition.

It is submitted that the petitioner is a juvenile. Neither the petitioner nor his father were aware that the remedy of filing a revision petition

was available. It is due to this reason that a delay of 279 days occurred in filing this revision petition. The delay is neither intentional nor deliberate or actuated by any negligence on the part of the petitioner. The petitioner, it is submitted, has nothing to gain by delay in filing of this revision petition.

Learned counsel for the State has opposed this application while submitting that no cogent ground is made out for condonation of delay of 279 days in filing of this revision petition.

I have heard learned counsel for the parties.

The petitioner, a juvenile is admittedly in confinement. For the reasons mentioned in the application and the arguments addressed, it is considered just and expedient to condone the delay of 279 days in filing this revision petition and hear the matter on merits rather than dismiss the same on technical considerations of delay in filing the petition.

Accordingly, delay of 279 days in filing this revision petition is condoned.

Application is allowed.

**CRR No.4027 of 2016**

The petitioner is aggrieved of judgment and order dated 15.01.2015 and 16.01.2015, respectively, passed by the learned Juvenile Justice Board, Faridabad (for short, the 'Board') convicting him for the offences punishable under Sections 323/376 IPC and directing him to be sent to Special Home, Ambala for three years for involvement in the abovesaid offences. He is also aggrieved of the judgment dated 19.10.2015 passed by the learned Additional Sessions Judge, Faridabad upholding the decision dated 15/16.1.2015.

Brief facts of the case are that, the victim aged about six years was admitted at B.K.Hospital on 11.12.2012. A telephonic information was received in this regard at Police Station SGM Nagar, Faridabad. The police officials reached the hospital where the victim was declared unfit for recording her statement. Her father Somnath Sharma (PW1) stated that he was working as a Chowkidar and living on rent in House No.4077, Sainik Colony, Faridabad. He has three daughters aged 17 years, 6 years and 1-½ years. His daughter aged 6 years had gone to answer the call of nature at a nearby hill on 11.12.2012 at about 1.00 p.m. The complainant had gone to the shop at that time. When he come back home, his daughter had not returned. He started looking for her as she normally used to come back within ten minutes. Somnath Sharma found his daughter in the bushes of a nearby hill lying soaked in blood. It appeared that some wrong act was committed with her by an unknown person. The complainant brought her to B.K.Hospital for treatment. FIR No.394 was registered on 11.12.2012 on the abovesaid statement. A Special Team was constituted for tracing the culprit. The present petitioner was apprehended on 15.12.2012 and he was identified by the mother of the victim. He suffered a confessional statement and marked the place of occurrence. Final report under Section 173 Cr.P.C. was presented after completion of investigation. A notice of accusation was served upon the petitioner on 08.02.2013 to which he pleaded not guilty and claimed trial.

The prosecution examined as many as 23 witnesses to prove its case.

The petitioner while denying the incriminating evidence put to him,

pleaded innocence and false implication in his statement under Section 313 Cr.P.C. Three witness were examined in defence.

PW1 Somnath Sharma, the father of the victim reiterated the prosecution version. He further stated that 50-60 photographs of various persons were shown by the police to them and the petitioner was identified in one of the photographs. PW2 ASI Balwant Singh, the Investigating Officer, testified regarding the details of investigation. While giving the other details of investigation, it is specifically stated by PW2 ASI Balwant Singh that the petitioner refused to give his consent for the test identification parade.

PW3 is the mother of the victim. She stated that when her daughter (the victim) did not return home after having gone to answer the call of nature, she and her husband set out in search of the victim. They found her lying unconscious in a pit. The victim, it is stated, was soaked in her own blood. PW3 saw the petitioner running away from the spot. The police officials had shown them a number of photographs. The petitioner was identified from the said photographs by her on the next day of the occurrence. PW5 Indu is the Protection Officer, in whose presence the statement of the victim was recorded.

The victim (PW12) stated that she went to answer the call of nature. A boy came at the spot and called out to her. He dragged her inside the jungle and did something wrong with her down below. She stated that the accused closed her mouth and thrust soil into her mouth. He strangulated her and hit her with a stone as well. The victim identified the petitioner present before the Board. It is revealed by the victim that she did not know the petitioner earlier.

A categoric question was put to the victim by the Board whether she has seen

the juvenile on any day prior to coming to the court. The victim replied that she saw him on the day of occurrence when she went to the jungle and she had clearly seen him when she was dragging her in the jungle. PW15 Dr. Vandana Sharma who medico-legally examined the victim proved MLR (Ex.PW15/A). PW18 Amit Jain proved the school certificate (Ex.PW18/A) and admission register (PW18/B).

The defence witnesses DW1 Shanker, DW2 Dhannu and DW3 Babloo, all residents of village Navada Koh stated that police officials had come to their village on 11.12.2012. They were all rounded up and taken to CIA Badkhal where they were tortured and interrogated in respect to the commission of the crime. It is stated by the abovesaid witnesses that seven boys were rounded up by the police and except for the petitioner, all of them were allowed to leave.

The learned Board after taking into consideration the entire facts and circumstances of the case as well as the evidence on record concluded that the prosecution has proved the case against the petitioner beyond reasonable doubt, thereby convicted the petitioner for the offences punishable under Sections 323/376 IPC vide judgment dated 15.01.2015. It was directed that the petitioner be sent to Special Home, Ambala for three years for involvement in the offences punishable under Sections 323/376 IPC

The petitioner preferred an appeal before the learned Additional Sessions Judge, Faridabad which has also been dismissed vide judgment dated 19.10.2015. Hence aggrieved, the present revision petition has been preferred by the petitioner challenging the abovesaid judgments.

Learned counsel for the petitioner submits that in fact the identity of the petitioner has not been established. PW1 the father of the victim, at the outset, has not given the description of any person and neither has he stated that he saw anyone at the spot. PW3 the mother of the victim has given a contradictory statement inasmuch as that she has stated that she is the one who saw the petitioner and revealed the harassment by the petitioner whereas, in the cross-examination she has stated that she did not know the petitioner beforehand. Identification of the petitioner merely looking at the photographs is not justified. Samples lifted from the victim were tampered with therefore, no reliance can be placed on the reports thereon. It is vehemently urged that sole reliance on the testimony of a child witness is not justified in the facts and circumstances. There are material infirmities and contradiction in the testimonies of the victim as well as other material witnesses. The petitioner is not a previous offender and has been falsely implicated. Therefore, the impugned judgments and orders be set aside.

In the alternate, it is urged that the sentence imposed upon the petitioner is excessive inasmuch as the maximum sentence has been imposed upon him. The sentence imposed upon the petitioner should therefore be reduced. It is further urged that the petitioner be afforded the benefit of probation.

Learned counsel for the State, per contra, while refuting the abovesaid arguments submits that there is ample evidence on record to prove the prosecution case against the petitioner. The petitioner has been duly identified.

The testimony of the child witness as well as the other witnesses is trustworthy

and reliable. The medical evidence on record further proves the case of the prosecution against the petitioner. It is thus prayed that this revision petition be dismissed.

I have heard learned counsel for the parties and have gone through the file of this case with their able assistance.

Much stress has been laid on the question of identification of the petitioner in this case. However, the argument on behalf of the petitioner that the identity of the petitioner has not been established, is not tenable. It is relevant to note that the victim (PW12) has clearly identified the petitioner to be the perpetrator of the crime. There is nothing on record to show that there was any enmity between the petitioner and the victim or her family. The victim in her deposition has clearly pointed out to the petitioner as the accused person. The victim's deposition is found to be trustworthy and reliable. The learned Board has duly certified the child to be competent to depose before a Court of law. It is thus rightly held by the learned Board that any illegality during the arrest of the petitioner cannot be a ground for his acquittal.

At this stage, it is to be noted that the petitioner has declined to participate in the test identification parade. This is proved by the statement of PW2 ASI Balwant Singh. Therefore, it does not lie with the petitioner to urge at this stage that the petitioner was not identified to be the accused in this case. The so-called discrepancies in the statements of the parents of the victim regarding identification of the petitioner clearly pale into insignificance in view of the categorical and cogent testimony of the victim.

The credibility of the victim is sought to be impeached on the ground

that she is a child witness. Therefore her testimony, it is strongly contended, deserves to be discarded. This argument is indeed fallacious in the given set of circumstances. It is a settled position of law that testimony of a child witness can be relied upon once it is established that the child is otherwise capable of deposing before the court. There is nothing on record to show that the child victim was suffering from any intellectual incapacity. She was found rationale, aware of the circumstances and competent to depose. It is so certified by the Board before recording her evidence.

It has been held by the Hon'ble Supreme in Acharaparambath Pradeepan and another v. State of Kerala, 2006(13) SCC 643 that after a careful scrutiny of evidence of a child witness, if the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of child witnesses.

As noted above, the victim was found competent to testify. She gave rational answers to the questions put to her. The victim in this case has given clear and graphic details of the occurrence in question. The argument on behalf of the petitioner that the victim has not rendered the complete details is incorrect and not borne out from the record. The learned Board has succinctly dealt with this aspect in para 45 of the judgment dated 16.01.2015. Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned judgments in this respect.

Furthermore, the medical evidence on record clearly proves the commission of the offence. PW15 Dr. Vandana Sharma has stated that she medico-legally examined the victim on 11.12.2012. Following injuries were

found on her person:-

“On G/E the patient is well oriented to time, place and person, but highly uncooperative so evaluation done under anesthesia on the same day after admission.

On local examination: small lacerations present in the vagina and perineal area, small lacerations also present in the anal region.

Adv: gynae opinion, surgeon opinion.

Age of menarche: not started.

Secondary sexual character not developed

L/E Hymen torn and ruptured with irregular margins and bleeding edges, vulval swelling and erythema present. Debris present around the vagina.

P/V os admits one finger

Adv. UPT, USO lower abdomen

other injuries

CLW on left temporal partial region of scalp of size 3 inches, active bleeding present.

Adv: surgeon opinion, stitching under LA

Multiple abrasion on right hand and wrist, right knee, right leg laterally, left leg laterally.

Adv. ortho opinion.

Abrasion on right cheek below right eye, swelling and tenderness present.”

PW15 Dr. Vandana Sharma has specifically stated that the abovesaid injuries were caused due to forcible sexual intercourse. The victim sustained injuries on her head, genitalia anal region, hands as well as her legs. It cannot be said by any stretch of imagination that the said injuries are self-inflicted in nature. The FSL reports Ex.PX, Ex.PY and Ex.PZ further cement the prosecution case against the petitioner. The medical evidence is reflective of the gravity of the offence.

Learned counsel for the petitioner has attempted to impeach the credibility of the victim on the ground that she mentions the presence of three other boys at the spot. The abovesaid does not in any manner detract from her testimony wherein the victim has alleged the involvement of only the petitioner

in the commission of crime in question. No act has been attributed to any other person. There is nothing on record to show as to why the present petitioner would be falsely involved in this case by the victim and her family. The petitioner was not even known to them. There was evidently no enmity between them. The complainant had no axe to grind against the petitioner. Thus there is no plausible reason for falsely implicating the petitioner in this case.

Keeping in view the factual matrix, there is no illegality and infirmity in the impugned judgment and order dated 15.01.2015 and 16.01.2015, respectively, passed by the learned Juvenile Justice Board, Faridabad and judgment dated 19.10.2015 passed by the learned Additional Sessions Judge, Faridabad.

The contention of learned counsel for the petitioner that the sentence imposed upon the petitioner is excessive and should be reduced or the petitioner be afforded the benefit of probation is rejected being untenable.

The Hon'ble Supreme Court in **State of Madhya Pradesh versus Saleem @ Chamaru and another, 2005(5) SCC 554** has specifically observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not endure under such threats. Similarly, the Hon'ble Supreme Court in **State of Madhya Pradesh versus Sheikh Shahid, 2009 (12) SCC 715** has observed that any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect to such offences will be counter productive in the long run and against societal interest, which needs to be taken care of and strengthened by string of

deterrence inbuilt in the sentencing system.

Learned counsel for the petitioner is unable to point out any such mitigating circumstance, which would justify reduction of the sentence imposed upon the petitioner or for affording the benefit of probation to the petitioner. The victim in this case is a child of tender years. The fact that the petitioner was under 18 years of age at the time of occurrence or that he has been facing protracted proceedings since 2012, by itself cannot be mitigating circumstances for reduction of the sentence.

Therefore finding no merit, this revision petition is dismissed.

May 1 , 2017.  
'om'

( LISA GILL )  
JUDGE

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