

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 228 of 2012

Mathura Thakur, Son of Late Bandhu Thakur, resident of Bhanwra 6 Number, P.O. & P.S. – Jorapokhar, District – Dhanbad

... ... Petitioner

-Versus-

The State of Jharkhand Opposite Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Sanjay Kumar Pandey, Advocate

For Opp. Party-State : Mr. Manoj Kumar Mishra, A.P.P.

Through Video Conferencing

JUDGMENT

C.A.V. on 17/04/2021

Pronounced on 06/05/2021

1. Heard Mr. Sanjay Kumar Pandey, the learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Manoj Kumar Mishra, the learned A.P.P. appearing on behalf of the Opposite Party-State.
3. The present criminal revision petition is directed against the Judgment dated 31.01.2005 passed by the learned Addl. Sessions Judge-VIII, Dhanbad in Criminal Appeal No. 166/1994 whereby and whereunder the conviction and sentence of the petitioner under Section 376/511 of the Indian Penal Code passed by the learned trial court was affirmed and the appeal was dismissed.
4. The petitioner had preferred the criminal appeal against the Judgment of conviction and the order of sentence dated 03.10.1994 passed by the learned 1st Assistant Sessions Judge, Dhanbad in Sessions Trial No. 240 of 1985 (arising out of Jorapokhar P.S. Case No. 101 / 1985 dated 09.03.1985 corresponding to G.R. No. 574 / 1985) whereby and whereunder the petitioner was held guilty and convicted under Sections 376/511 of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for 07 years

and to pay fine of Rs.5,000/- and in default in payment of fine, to undergo Rigorous Imprisonment for a further period of 01 month.

Arguments on behalf of the petitioner

5. The learned counsel appearing on behalf of the petitioner while advancing his arguments submitted that the incident is of 07.03.1985 at about 11:00 P.M. and the fardbeyan was recorded on 08.03.1985 at about 05:00 P.M. and the F.I.R was registered on 09.03.1985 at 8:45 A.M. under Sections 376/511 of Indian Penal Code. The charge-sheet was submitted on 22.03.1985 and charge was framed on 03.07.1989 under the aforesaid Sections.

6. The learned counsel further submitted that although 6 (six) witnesses were cited in the charge-sheet of the case, but only 5 (five) were examined and the Investigating Officer of the case was not examined. He also submitted that except P.W.-5, rest witnesses are interested witnesses. P.W.-4 is the informant of the case and the mother of the victims, but she herself is a hearsay witness as she has stated in her evidence that she was sleeping inside the room and came out of the room upon alarm raised by the victim. He further submitted that P.W.-1 is the father of the victims who was admittedly not present at the time and place of the occurrence and it was the mother who had narrated the entire incident to the father and accordingly, the father and mother both are hearsay witnesses. He further submitted that P.W.-5 is also not the eye witness to the occurrence and she had arrived at the place of occurrence when alarm was raised by the informant and other witnesses. The learned counsel submitted that P.W.-2 and P.W.-3 are the victim witnesses of the case. He further submitted that only one exhibit i.e. the fardbeyan has been exhibited in the case as Exhibit-1 and the F.I.R. itself has not been proved. He also submitted that the Investigating Officer of the case has not been examined and due to non-examination, serious prejudice has been caused to the petitioner and there are material contradictions in the evidence of the prosecution witnesses. He further submitted

that the aforesaid aspects of the case have not been properly considered by the learned courts below.

7. The learned counsel further submitted that the basic ingredients for the offence of attempt to commit rape are not satisfied in the present case and as such, the offence under Sections 376/511 of the Indian Penal Code is not made out against the petitioner and the present case, at best, may be a case under Section 354 of Indian Penal Code.

8. The learned counsel for the petitioner referred to the judgments passed by the Hon'ble Supreme Court in the cases of "*Aman Kumar and Another -vs- State of Haryana*" reported in (2004) 4 SCC 379 Paragraph Nos.11, 13 and 14; "*Tarkeshwar Sahu -vs- State of Bihar (now Jharkhand)*" reported in (2006) 8 SCC 560 and "*Koppula Venkat Rao -vs- State of A.P.*" reported in (2004) 3 SCC 602 in support of his contentions and submitted that at best, the offence under Section 354 of Indian Penal Code is made out against the petitioner.

9. The learned counsel further submitted that the incident of the present case is of the year 1985 and at that point of time, the maximum punishment for offence under Section 354 of Indian Penal Code was 02 years. He also submitted that the petitioner was in jail custody from 10.03.1985 to 19.03.1985 at pre-trial stage and during the pendency of the present criminal revision petition, he had surrendered before the learned court below on 16.02.2012 and this Hon'ble Court, vide order dated 25.09.2012, had granted bail to the petitioner and thereafter, release order of the petitioner was forwarded to L.N.J.P., Central Jail on 18.10.2012 and accordingly, the petitioner has already remained in jail custody for 08 months 12 days. The learned counsel submitted that as per the judgment of conviction, the petitioner was 35 years of age on 03.10.1994 and accordingly, the present age of the petitioner would be more than 60 years.

10. The learned counsel further submitted that without prejudice to the aforesaid submissions, the present case is the first offence of the petitioner and the petitioner is already out of employment and the learned courts below have refused to give the benefit of Probation of Offenders Act, 1958 to the petitioner.

11. During the course of arguments, it has not been disputed that the petitioner was in total denial of the incident while recording his statements under Section 313 of Cr.P.C. and no evidence was led by the petitioner in his defence.

Arguments on behalf of the Opposite Party-State

12. The learned A.P.P. appearing on behalf of the Opposite Party-State, on the other hand, while opposing the prayer submitted that there are consistent findings recorded by the learned courts below and there is no scope for re-appreciation of evidences and coming to a different finding. He further submitted that there is no illegality, perversity or impropriety in the impugned judgments calling for any interference in revisional jurisdiction. The learned counsel also submitted that considering the nature of offence, the petitioner is not entitled to the benefit of the Probation of Offenders Act, 1958 and this criminal revision petition is fit to be dismissed.

Findings of this Court

13. The prosecution case is based on the fardbeyan of the Informant (mother of the victims) recorded by S.I. S. Khan of Bhowra O.P. on 08.03.1985 at 17:00 hours alleging inter-alia that, on 07.03.1985 at about 11:00 P.M., the Informant (P.W.-4) was sleeping inside her house and her children namely, Tunni Kumari (P.W.-2), aged about 09 years and Seema Kumari (P.W.-3), aged about 06 years and the daughter of Sripati Bouri namely, Baishakhi, aged about 10 years were sleeping in the verandah of the house. In the meantime, Mathura Thakur (petitioner herein) entered into her house and enquired about the whereabouts of her

husband namely, Baleshwar Paswan @ Sadhujee to which she replied that he was not in house whereupon the petitioner told her that this is the day for merry making and whether there is any arrangement or not. Thereafter, the petitioner slept on the cot alongwith the girls and forcibly started untying the laces of their pants one by one and also threatened them not to raise any alarm, but Tunni Kumari raised alarm saying that the petitioner has untied their pants and has thrown away and is trying to commit rape upon them. Thereafter, the informant, who was sleeping inside the house rushed out and saw the petitioner adjusting his underwear and fleeing away. The informant chased the petitioner, but the petitioner entered inside his house and bolted the door from inside. When the informant returned to her house, she found the girls lying in naked condition and she clothed them. On being asked, the girls told her that the petitioner was trying to commit rape upon them.

14. On the basis of the fardbeyan, the case was registered as Jorapokhar P.S. Case No. 101 / 1985 dated 09.03.1985 under Sections 376/511 of the Indian Penal Code against the petitioner. After completion of investigation, charge-sheet was submitted against the petitioner under the same sections and on 02.04.1985, cognizance of the offence was taken against him under the same sections and vide order dated 26.07.1985, the case was committed to the Court of Sessions for trial and disposal. On 03.07.1989, the charge under Sections 376/511 of the Indian Penal Code was framed against the petitioner which was read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

15. On 27.09.1993, the statements of the petitioner were recorded under Section 313 of Cr.P.C. wherein he simply denied the incriminating evidences put to him and said that the occurrence is false and he has been falsely implicated. The

petitioner did not adduce any oral or documentary evidence in his defence.

16. This Court finds that the learned trial court considered the oral and documentary evidences adduced on behalf of the prosecution and the arguments advanced on behalf of the parties and recorded its ultimate findings at Para-8 which reads as under:

"8. In this case, the accused has not made out any positive case of defence. There is nothing on the record to show as to why the victim girl and the informant deposed against him for sustaining conviction U/s 376/511 I.P.C. when there was no previous enmity. Defence further failed to bring anything on record as to why he has been falsely implicated by the prosecution in this case. On the other hand, from the evidence on the record, I find that the victim girls are all minors, aged about between 6 and 10 years and the accused in the dead of night tried to commit rape on them when all the three girls were sleeping on the same cot as it would transpire from the evidence of Seema Kumari (P.W.-3)."

17. This Court further finds that the learned appellate court also considered the evidences adduced on behalf of the prosecution and also considered the arguments advanced on behalf of the parties and recorded its findings at Paras-5 and 6 which read as under:

"5. The defence has suggested the witness that out of grudge and enmity with the accused, the accused has been implicated in this case, but no instance of enmity, grudge, etc. would be any way established to hint false implication.

6. All the witnesses examined by the prosecution have nowhere contradict either their own statement or the statement of other witnesses at any material point. The allegation is the accused has put off the pants of the girls and that point is fully established on the evidence of the respective witnesses. The intention of person or accused is gathered from the circumstances. Inspite of cross-

examination, the allegations that on the alleged date and time, the accused has come to the house of informant asking for P.W.-1 could not be demolished. Subsequently, it also could not be demolished that in absence of P.W.-1 and while the girls P.W.-2, 3 & Basanti Kumari were sleeping on the cot, the said accused also slept on the same cot and this fact has also not been disbelieved and while remaining there, the accused has put off the pants of the 3 girls would also not been demolished. Thus, in the circumstances, the case of prosecution stood the test of evidence and considering the circumstances, the intention of the accused becomes clear that he was intending to molest or commit sexual offence with the girls. It has also to be considered that when the accused was fleeing towards his house, he was setting right his underwear and that action of the accused also points out the intention."

18. The prosecution examined altogether five witnesses. P.W. 1 is the father of the victims; P.W. 2 and P.W. 3 are the victims; P.W. 4 is the mother of the victims and P.W. 5 is the neighbour. There are clear findings that P.W. 1 has fully supported the prosecution case on the point of occurrence, but he was not present at the time of occurrence and had narrated the facts as narrated to him by his wife (P.W. 4). However, the statement of this witness could not be demolished in any way during cross examination. Further, it is not in dispute that P.W. 4 is the informant who had also narrated the entire incident as stated by her in Fardbeyan and her evidence also remained unshaken after cross-examination. However, the fact remains that at the time of the incident she was sleeping inside the room and came out only upon alarm raised by the victim and saw the accused adjusting his underwear and running away. She chased the accused to his house but he went inside his house and bolted the door from inside. P.W. 5 has also supported the prosecution case, but this witness had also not seen the occurrence and arrived when alarm was raised by P.W. 4, then

she came out and also chased the accused. The prosecution exhibited the signature of P.W.-1 on the fardbeyan as Exhibit-1.

19. This Court finds that P.W.-4 is the Informant of the case and is the mother of two victims i.e. P.W.-2 and P.W.-3. She deposed that it was the day of 'Holi' and at about 12 O'clock night, the petitioner came to her house and started calling the name of her husband whereupon she replied that her husband is not in the house and has gone to market. Thereafter, she went inside the house and closed the door and her daughters namely, Tunni and Seema and one Baishakhi, the daughter of her neighbour, were sleeping in a cot in the verandah. After sometime, when Tunni raised alarm, she came out and Tunni told her that the petitioner sat on their cot and untied their pants with bad intention to commit rape upon them. She saw the petitioner adjusting his underwear and fleeing away and when she chased him, he entered into his house and closed the door from inside. She further deposed that on raising alarm by her, Basanti Devi (P.W.-5) and other neighbours came there to whom she narrated about the occurrence. She further deposed that her husband (P.W.-1) returned after sometime and she narrated the entire occurrence to him. On the next day, she went to the house of Mukhiya to inform regarding the occurrence, but Mukhiya was not available. Thereafter, she got her fardbeyan recorded in which put her L.T.I. and her husband put his signature. She identified the petitioner in court. In her cross-examination, she deposed that Baishakhi is the daughter of Sripati Bouri.

20. P.W.-2 is one of the victim girls of the case. She deposed that on the date of occurrence, she was sleeping on a cot in the verandah alongwith her younger sister namely, Seema and Baishakhi Kumari and her mother was sleeping inside the house. At about 11 O'clock night, the petitioner came there calling the name of her father whereupon her mother told him that Sadhujee is not in the house and her mother closed the door. Thereafter, the

petitioner slept by her side in the cot and after untying, he threw away her pant and tried to commit rape upon her. When she raised alarm, the petitioner threatened her and, on her alarm, her mother came outside and she narrated the entire occurrence to her mother. In the meantime, the petitioner stood up and fled away holding his pant. Her mother chased the petitioner to his house, but the petitioner entered inside his house and closed the door. On raising alarm by her mother, neighbours assembled there and her mother narrated the occurrence to them. Thereafter, her father returned to the house at 12:30 night and she also told the entire occurrence to her father. She identified the petitioner in court. In her cross-examination, she deposed that when they were fast asleep, the petitioner had entered into the house and he untied her pant, she woke up and identified the petitioner. She stated that the petitioner had untied her pant, but he did not do anything to her.

21. P.W.-3 is also the victim girl of the case. She deposed that on the date of occurrence, she was sleeping on a cot in the verandah alongwith her sister namely, Tunni and one Baishakhi Bouri and at about 10 O'clock night, the petitioner came there calling the name of her father whereupon her mother came out of the house and told him that Sadhujee is not in the house and her mother closed the door and went to sleep. Thereafter, the petitioner slept in the same cot in which they were sleeping. She further deposed that the petitioner untied the pants of Tunni, her (P.W.-3) and Baishakhi and tried to molest her. The petitioner had also undressed his underwear. When her elder sister raised alarm, the petitioner threatened them and when her elder sister started weeping, her mother came outside and then, the petitioner started fleeing away towards his house adjusting his pant. Thereafter, she and her elder sister narrated the entire occurrence to their mother. Her mother chased the petitioner to his house, but the petitioner entered inside his house and closed the door. On raising alarm by

her mother, Basanti Bouri and other neighbours came there and her mother narrated the occurrence to them. Thereafter, her father returned to the house at 12:30 night and she also told the entire occurrence to her father. She identified the petitioner in court. In her cross-examination, she deposed that on hearing the alarm raised by Tunni, she woke up at 11 O'clock and she saw the petitioner fleeing away.

22. P.W.-1 is the husband of P.W.-4 and the father of P.W.-2 and P.W.-3, the two victims. He deposed that it was Holi on the date of occurrence and on the night of occurrence, he had gone to market alongwith his friends and her wife and two daughters were in the house and when he returned at 12 O'clock night, his wife told him about the occurrence committed by the petitioner. He further deposed that on the next day at about 05:00 P.M., he went to the police station alongwith his wife and the fardbeyan of his wife was recorded in which his wife put her thumb impression and he had put his signature. He identified his signature on the fardbeyan which has been marked as Exhibit-1. He identified the petitioner in court. He denied the suggestion that no such occurrence had taken place and they lodged the case due to enmity.

23. P.W.-5 is the neighbour of the informant. She deposed that on the date of occurrence at about 11 O'Clock, she had come out of her house on hearing the alarm raised by the mother of Tunni who had told her about the occurrence committed by the petitioner. She identified the petitioner in court.

24. Each of the prosecution witnesses were thoroughly cross examined and the learned court below recorded that all the prosecution witnesses have neither contradicted their own statement nor contradicted the statement of any witness on any material point. The learned counsel for the petitioner has not specifically pointed out any material contradiction in the evidence of the witnesses.

25. This Court finds that P.W.2 and P.W.-3 are the victim girls of the case and both are the daughters of P.W.-1 and P.W.-4 (Informant) and both were minors, aged about 09 Years and 06 years respectively on the date of occurrence, but at the time of recording their evidence, no objection has been raised on behalf of the petitioner with regard to their competency for adducing evidence in court.

26. In the judgement passed by the Hon'ble Supreme Court reported in **(2004) 4 SCC 379 (Aman Kumar and Another Vs. State of Haryana)**, the accused was convicted by the trial court under Section 376(2)(g) of the Indian Penal Code. In the said case, it was held in para 8 that in every crime, there is *first*, intention to commit, *secondly*, preparation to commit it, *thirdly*, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. In case the attempt fails, the crime is not complete, but the law punishes the person attempting the act which is punishable under Section 511 of Indian Penal Code. It has been held in para 9 of the said judgment that if a person fails to commit the offence due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of offence. It has also been held that the moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence and mere intention to commit an offence, not followed by any act, cannot constitute an offence. The Hon'ble Supreme Court also held that an attempt to commit a crime is to be distinguished from an intention to commit it and from preparation made for its commission. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it. It was held that dividing line between a mere preparation and an

attempt is sometimes thin and has to be decided on the facts of each case and that there is a greater degree of determination in attempt as compared with preparation. It has been held in para 10 and 11 of the aforesaid judgement as under:

"10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."

In the judgement passed by the Hon'ble Supreme Court reported in **(2004) 3 SCC 602 (Koppula Venkat Rao Vs. State of A.P.)**, similar view has been expressed by the Hon'ble Supreme Court.

27. The judgement passed in the case of *Tarkeshwar Sahu (supra)* has been distinguished by the Hon'ble Supreme court in the judgement of "*Chaitu Lal versus State of Uttarakhand*" reported in (2019) 20 SCC 272 in para 11 and it has been observed that the accused in *Tarkeshwar Sahu (supra)* failed at the stage of preparation of commission of offence itself. Para 22 of the judgement in *Tarkeshwar Sahu* reveals that in the said case the accused had neither undressed himself nor had asked the victim to undress herself, so there was no question of penetration. In the judgement of *Chaitu Lal (supra)* it has been held that the attempt to commit an offence begins when the accused commences to do an act with necessary intention. In the said case the accused pounced upon the victim, sat upon her and lifted her petticoat and the victim protested against his advances and wept. The victim's daughter pleaded the accused to let her go but the accused did not show any reluctance from committing the offence. In this backdrop the Hon'ble Supreme Court held that , had there been no intervention, the accused would have succeeded in executing his criminal design and upheld the conviction under 354 and 376/511 of IPC by holding that the conduct of the accused was indicative of his definite intention to commit the offence.

28. The present case is required to be examined in the light of the aforesaid law laid down by the Hon'ble Supreme Court considering the various stages i.e. intention, preparation, attempt and ultimate commission of offence. The distinction has also to be kept in mind between *indecent assault amounting to outraging the modesty of the victim* and *attempt to rape*. There can be no doubt that attempt to rape is an aggravated form of indecent assault.

It is required to be examined in the present case as to-

Whether the intention and preparation of the petitioner was to commit rape upon the victims and whether such intention and

preparation translated into an attempt to commit rape considering the conduct of the accused and circumstances of the case.

While examining the aforesaid point, it is to be seen-

Whether the petitioner would have succeeded in committing rape upon the victims, had there been no intervention by P.W-4.

29. From perusal of the evidences of P.W.-2, P.W.-3 and P.W.-4, this Court finds that there are specific and consistent evidences on record that it was 'Holi' on the date of occurrence and the petitioner had come to their house in the night calling the name of P.W.-1. P.W-4 informed the petitioner that P.W.-1 was not present in the house and shut the door of the house. It has also been proved from evidences on record that the petitioner slept on the same cot in the verandah on which the minor victim girls were sleeping and forcibly untied and removed the pants of the victim girls and when they protested, he gave threats to their lives. P.W-3 has also clearly deposed that the petitioner had untied the pants of all the three girls who were sleeping on the cot and the petitioner also occupied the cot and tried to rape all of them. She has also deposed that the petitioner also dropped his underwear and when P.W-2 raised alarm he threatened to shoot her and P.W-2 started weeping while raising alarm. However, upon raising of alarm by P.W.-2, her mother (informant -P.W.-4) came out of the house and saw the petitioner adjusting his underwear and fleeing away. When the Informant chased the petitioner, he entered inside his house and closed the door from inside. On raising alarm by the Informant, P.W.-5 and other neighbours came there to whom the Informant narrated about the occurrence and when her husband (P.W.-1) returned from market, she narrated the entire occurrence to him also.

30. Thus, the petitioner had not only untied the pants of the victim girls but also dropped his underwear, lied on the cot with

the victims and when they protested, he threatened them. This Court further finds that the sequence of the occurrence alongwith the evidences available on the records of the case establishes beyond any reasonable doubt that the petitioner was determined to commit rape upon the victims, made full preparation for the same by sleeping besides them on the cot and dropping his underwear on one hand and untying the pants of the victims on the other. It has also been proved beyond any reasonable doubt that after full preparation, step towards achieving his evil intention of committing rape was also taken by him and also threatening the victims of their life when they protested. Had P.W-2 not raised alarm by weeping in spite of threat to her life, the petitioner would have definitely succeeded in his evil intention to commit rape upon the victims. It was only due to raising alarm by P.W.-2 and timely arrival of the mother-informant, the petitioner failed and the victims could be saved. This Court also finds that if the P.W. 2 had not raised the alarm, the petitioner was determined to commit the offence of having sexual connection with the victims. This Court finds that the petitioner not only desired to gratify his passions upon the victims, but he intended to do so at all events and notwithstanding resistance on their part but could not succeed due to intervention of P.W-4.

The facts and circumstances of the case, conduct of the petitioner and the evidences on record clearly establish beyond any reasonable doubt that the petitioner intended and prepared to commit rape upon the victims and such intention and preparation translated into an attempt to commit rape and the petitioner tried to overpower the victims in spite of their protest and threatened to kill them. It has also been established beyond all reasonable doubts that the petitioner would have succeeded in committing rape upon the victims, had there been no intervention by P.W-4 upon alarm raised by P.W-2.

31. The investigating officer of the case has not been examined by the prosecution. However, no prejudice has been shown to have been caused to the petitioner on account of non-examination of the investigating officer of the case as there are consistent evidences on record including the evidences of the victim girls which established the case of the prosecution beyond all reasonable doubts. No evidence has been led by the defence regarding any reason for false implication of the petitioner and this aspect of the matter has been fully considered by the learned courts below.

32. The Hon'ble Apex Court has explained the power of revisional court in the case of "*Jagannath Choudhary and others Vs. Ramayan Singh and Another*" reported in (2002) 5 SCC 659 at para. 9 as under:-

"9. Incidentally the object of the revisional jurisdiction as envisaged under Section 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of (sic or) apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to individuals. (See in this context the decision of this Court in Janata Dal Vs. H.S. Chowdhary) . The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is

presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction."

33. The revisional power is further explained in the case of *Ramesh Kumar Bajaj reported in (2009) 1 JCR 684 (Jhar)* at para. 13 as follows:

"It is well settled that revisional interference may be justified where:

- (i) *the decision is grossly erroneous.*
- (ii) *there is no compliance with the provisions of law.*
- (iii) *the finding of fact affecting the decision is not based on evidence.*
- (iv) *material evidence of the parties is not considered and*
- (v) *judicial discretion is exercised arbitrarily or perversely."*

34. In view of the aforesaid discussions and findings and considering the entire facts and circumstances of this case, this Court is of the considered view that the learned courts below have passed well-reasoned judgements considering every aspect of the matter and every argument advanced on behalf of the petitioner. There being no perversity or illegality in the impugned judgements of conviction and sentence, no interference is called for. Considering the nature of offence and the manner it has been committed, any lenient view in the matter of sentence will defeat the ends of justice as substantial justice has been done by the impugned judgements.

35. Accordingly, this criminal revision petition is hereby **dismissed.**

36. Bail bond furnished by the petitioner is hereby cancelled.

37. Interim order, if any, stands vacated.

38. Pending interlocutory application, if any, is also dismissed as not pressed.

39. Let the lower court records be immediately sent back to the learned court below.

40. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Saurav/Pankaj