

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

*BEFORE*

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

CRIMINAL REVISION No.30 of 2007

PAPPU

Vs

THE STATE OF MADHYA PRADESH

Appearance:

(SHRI RAJENDRA SINGH YADAV- ADVOCATE FOR THE  
PETITIONER)

(SHRI SAKET UDHANIYA - PUBLIC PROSECUTOR FOR  
RESPONDENT/STATTE)

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Reserved on : 13.08.2024  
Pronounced on : 16.08.2024

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*This revision having been heard and reserved for order,  
coming on for pronouncement this day, Justice Sanjeev S  
Kalgaonkar pronounced the following:*

**ORDER**

This Criminal Revision, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, is filed assailing the judgment of conviction and order of sentence dated 12.12.2006 passed by learned First Additional Sessions Judge, Ashok Nagar,

District Guna (M.P.) in Criminal Appeal No.738 of 2006 whereby the judgment of conviction and order of sentence dated 07.11.2006 passed by learned Judicial Magistrate First Class, Ashok Nagar in Criminal Case No.214 of 2005 has been confirmed by which revision-petitioner has been convicted under Section 377 IPC and sentenced to undergo Rigorous Imprisonment for three years with a fine of Rs.10,000/- and in default of payment of fine to undergo additional RI for six months.

2. For the sake of convenience, revision-petitioner/Pappu shall be referred as “Accused”.

3. The exposition of facts, giving rise to this revision-petition, is as under:-

(A) The father of the victim reported to Police Station Kachnar, District Guna (M.P.) that on 21.02.2001, his son aged around five years was playing near girls school. He was working in farmyard (*Khalihan*). He heard cries of his son. So, he and his wife Kusum Bai reached near Lohre Ghat of river. They saw that their son was lying on the ground and accused-Pappu was committing intercourse against the nature with their son. Their son was crying. When accused Pappu saw them coming, he fled away. On such allegations, Police Station Kachnar, District Guna (M.P.) registered FIR at Crime No.14/2001 for the offence punishable under Section 377 of IPC against accused. Victim was forwarded for medico-legal examination. Accused was arrested. Relevant

seizures were made. Statements of witnesses were recorded. On completion of investigation, Final Report was submitted.

(B) Learned Judicial Magistrate First Class, Ashok Nagar framed charges for the offence punishable under Section 377 of IPC against the accused. On completion of trial, after hearing both the parties, learned Judicial Magistrate First Class, Ashok Nagar, Guna (M.P.) convicted the accused for offence punishable under Section 377 of IPC and sentenced him to undergo Rigorous Imprisonment for three years with fine of Rs.10,000/- with default stipulation of six months' RI in case of default in payment of fine amount vide judgment of conviction and order of sentence dated 07.11.2006 passed in Criminal Case No.214 of 2005.

(C) Feeling aggrieved by the judgment of conviction and order of sentence dated 07.11.2006, convict Pappu preferred appeal under Section 374 of Cr.P.C. before the learned Sessions Judge. The learned First Additional Sessions Judge, Ashok Nagar, District – Guna (M.P.) rejected the appeal and confirmed the judgment of conviction and order of sentence vide judgment dated 12.12.2006 in Criminal Appeal No.738 of 2006.

4. This Criminal Revision is filed assailing the concurrent findings of conviction and concurrent order of sentence on the following grounds:

(A) (PW-1) and (PW-2) are parents of the victim (PW-3),

therefore, they are related and interested witnesses. No independent witness was examined by the prosecution;

(B) There are material inconsistencies in the version of incident stated by father (PW-1) and mother (PW-2) of the victim;

(C) The accused was aged 17 years. The learned courts below have committed error in sentencing him for rigorous imprisonment for three years.

On these grounds, it is prayed that the impugned judgment of conviction and order of sentence be set aside and the petitioner be acquitted.

5. Learned counsel for the petitioner, in addition to the grounds mentioned in the revision-petition, contends that there was enmity between the parties over grazing of cattle. There is a discrepancy with regard to apparel worn by the victim at the time of incident. The parents of the victim state that victim was wearing Pajama whereas Victim (PW-3) stated that he was wearing pant. Learned counsel further submits that there is a delay in lodging the FIR. The learned Trial Court ignored these aspects of the matter. Learned counsel further submits that appellant was aged around 17 years at the time of incident. The incident relates to 2001 and the revision-petitioner is facing stigma of conviction for the last 23 years, therefore, lenient view on quantum of sentence be taken.

6. *Per contra*, learned counsel for the State submits that both the courts on detailed appreciation of evidence convicted the petitioner

and considering his age, he was sentenced to rigorous imprisonment for three years only. The victim was aged five years only on the date of incident, therefore, no reason for interference in concurrent findings of facts and order of sentence is made out.

**7. Under Section 397 of the Cr.P.C.,** the Court is vested with the power to call for and examine the record of any inferior Court for the purpose of satisfying itself as to legality and regularity of any proceedings or order made in a case. The object of this provision is to correct the patent defect or an error of jurisdiction or the perversity which has crept in the proceedings.

This Court, in revision, exercises supervisory jurisdiction of restricted nature. It cannot re-appreciate the evidence, as second Appellate Court, for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. Recently, in case of *Malkeet Singh Gill v. State of Chhattisgarh*, reported in (2022) 8 SCC 204, the Supreme Court observed as under-

**“10.** Before advertng to the merits of the contentions,at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,

recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

***(Duli Chand v. Delhi Admn.(1975) 4 SCC 649; State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand (2004) 7 SCC 659 also relied).***

8. Victim (PW-3) stated that the accused had taken him to the river on the pretext of giving him Ice Candy (*Chuski*). Accused opened his pant and forced him to lie. Thereafter, accused removed his underwear and sodomized him. Blood started oozing from his anus. When accused was sodomizing him, his parents came there. So the accused left him and fled away. His parents took him home. The testimony of victim remained unshaken in cross-examination. No material contradiction or inconsistency is available in the evidence of victim. The testimony of Victim (PW-3) is duly corroborated by his father (PW-1) and mother (PW-2) who stated that when they reached near river they saw that their son (victim) was lying naked on ground and accused Pappu was committed sodomy with the victim. There was injury and bleeding on anus of victim. There is no material inconsistency in the evidence of these witnesses. So far as the inconsistency with regard to apparel of the victim is concerned, in common parlance, pant is called Pajama in

the villages, therefore, no importance can be attached to this inconsistency. Dr. Madanlal Agrawal (PW-8) stated that he had found a lacerated wound on anus of the victim aged five years. Further, he had found clotted blood at the injury. Thus, medical evidence corroborates testimony of victim. ASI K.R. Arya (PW-6) has proved FIR (Ex.P-1) written at the instance of father of the victim. Considering the distance of 10 kms from the place of incident to the police out post Bhadon, it is apparent that FIR is lodged promptly. Prompt and consistent FIR corroborates the testimony of victim and his father. Learned Trial Court and the First Appellate Court considered these aspects of the matter and gave well-reasoned finding that the victim was subjected to sexual assault against the nature by the accused. No case is made out for interference in the concurrent findings regarding conviction of accused/revision- petitioner for the offence punishable under Section 377 IPC.

So far as the sentence is concerned, Trial Court and Appellate Court ignored the fact that accused was aged around 17 years at the time of incident. The age of the accused was determined on the basis of X-ray Ossification Test. The incident relates to the year 2001. Learned First Appellate Court, in para 18 of the judgment, dealt with juvenility of the petitioner. Learned First Appellate Court concluded that the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force with effect from 01.04.2001 whereas the alleged incident relates to 21.02.2001. Thus, at the time of incident, the

Juvenile Justice Act, 1986 was in force with effect from 02.10.1987. Section 2(h) of the Act 1986 defines the term “Juvenile” which means “a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years”. In view of the discussion, it is apparent that learned First Appellate Court committed no error in concluding that the petitioner was not covered under the definition of Juvenile at the time of alleged incident. Still, Trial Court and Appellate Court should have taken cognizance of young age of the accused while determining the sentence of imprisonment. No criminal antecedent is alleged against the petitioner. He is under stigma of alleged offence of sodomy for the last 23 years. He has already undergone custody for more than 09-1/2 months. As per the record, revision-petitioner was in custody from 01.03.2001 to 13.03.2001 during trial, thereafter, from 07.11.2006 to 14.11.2006, from 12.12.2006 to 10.01.2007 and then from 11.12.2023 to till date post conviction.

**9.** In view of these facts, this revision is partly allowed only with regard to order of sentence. Accordingly, the order of sentence is amended as under:

*“Petitioner/accused- Pappu S/o Kallu Baretha is sentenced to the period already undergone by him in custody for the offence punishable under Section 377 of IPC. Further, the fine amount is reduced to Rs.5,000/- (Rupees Five Thousand Only) with default sentence of Rigorous Imprisonment for three months in case the fine amount is*



*not deposited. On deposit of fine amount, Rs.4,000/- be paid to the victim under Section 357(3) of Cr.P.C.*

*Petitioner be released, if not required in any other matter.*

**10.** Accordingly, revision-petition stands ***disposed of***.

A copy of this order be sent to First Appellate Court and the Trial Court along with their respective record.

**(Sanjeev S Kalgaonkar)**  
**Judge**

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