THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Revisional Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, ACJ.

Crl. Rev. P. No. 07 of 2015

Mr. Gopal Pradhan,
S/o Late Lall Bahadur Pradhan,
R/o Indira Bye-Pass, Gangtok,
East Sikkim.

... Revisionist

versus

State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

... Respondent/
Prosecution.

Revision under Sections 397 and 401 read with Section 482 of the Criminal Procedure Code, 1973.

Appearance:

Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Binita Chettri, Advocate for the Revisionist.

Mr. Karma Thinlay, Additional Public Prosecutor with Mr. Santosh Kr. Chettri and Ms. Pollin Rai, Assistant Public Prosecutors for the State.

J U D G M E N T
(22.08.2016)

Satish K. Agnihotri, ACJ

The instant Revision Petition, assailing the validity of conviction and sentence imposed on the convict/Revisionist by the Chief Judicial Magistrate, East & North Sikkim, at Gangtok in General Register Case No. 23 of 2012, vide judgment dated 31.05.2013 and confirmed by the Sessions Judge, West Sikkim, at Gyalshing in Criminal Appeal No. 01 of 2015, vide judgment dated 08.06.2015, is filed under the provisions of Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr. P.C.').

2. The case of the prosecution is that on 16.05.2011 at around 1500 Hrs. the guardians of the alleged victims, Mr. M.T. Lachungpa, Mr. M.B. Rai and Mr. Pradip Lohar, submitted a letter addressed to the Principal of Kaluk Senior Secondary School, which was registered as FIR. The allegation in the said communication was, on 12.05.2011, the Revisionist herein/ convict sexually assaulted three minors namely, Ms. H, Ms. K and Ms. S (real names are hidden for the purpose of maintaining sanctity), while teaching in the classroom. All the minor victims were students of Class III. After investigation, the Revisionist/convict was charged for having committed the

offence under Section 354 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). The Chief Judicial Magistrate, East and North Sikkim, at Gangtok by judgment dated 31.05.2013 held the Revisionist/convict as guilty of offence punishable under Section 354 IPC and sentenced to undergo simple imprisonment for a period of two years.

3. Feeling aggrieved, the Revisionist preferred an appeal in the Court of Sessions Judge, West Sikkim, at Gyalshing. Learned Sessions Judge, vide judgment dated 08.06.2015, dismissing the appeal, upheld the conviction and sentence imposed by the Chief Judicial Magistrate.

4. Assailing the afore-stated conviction and sentence, Mr. A.K. Upadhyaya, learned Senior Counsel assisted by Ms. Binita Chettri, learned Advocate appearing for the Revisionist/convict, would submit that both the courts below have convicted the revisionist without there being any evidence. Thus, this Court is called upon to examine the case in exercise of its revisional jurisdiction. Mr. Upadhyaya would further contend that the conviction is based on hearsay evidence as the victims never shouted or made any complaints at any point of time. Their guardians did not lodge the FIR, as is evident from their depositions. It is further contended that the alleged incident occurred on 12.05.2011 and the FIR was lodged on

16.05.2011, without explaining the cause for such a long delay. The content of the said FIR was based on the dictation made by the Principal, Mr. L.M. Sharma, when the complainants have stated that they were not aware of the contents as it was never explained or read over to them. They have lodged the FIR on the advice tendered by the Principal. According to Mr. Upadhyaya, the nature of FIR and delay in lodging it is fatal to the prosecution's case as the same has not been explained satisfactorily by the prosecution. Referring to a decision of the Supreme Court in ***Thulia Kali vs. The State of Tamil Nadu***[1] and also ***Gorle S. Naidu vs. State of A.P. and Others***[2], it is urged by Mr. Upadhyaya that silence of the parents/guardians for a longer period and also lodging the FIR belatedly on the advice of the Principal, creates a serious dent in the prosecution's case and as such the prosecution has failed to prove its case beyond reasonable doubt, which was completely ignored by the courts below.

5. Referring to certain portions of the statements made by the minor victims, it is submitted that a lady teacher was first allegedly informed by Ms. S. and as such, she is supposed to be a material witness, but was never examined. It is further contended that Ms. H was not present on the date of alleged

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1 AIR 1973 SC 501
2 (2003) 12 SCC 449

incident, as it is clear from the attendance register, as clearly stated by the Principal. It is also urged by Mr. Upadhyaya that the allegation of abuse of the said minors by the Revisionist when they were in second standard, is incorrect on the face of it, as the Revisionist never taught the students of second standard. The investigation was done by the police officers without there being proper authority. Lastly, it is contended that if the prosecution has not established its case to the hilt, the principle of the innocence of the accused must be favoured by the court and the Revisionist is entitled to acquittal on granting benefit of doubt, which is apparent in the case.

6. Countering the submissions of Mr. Upadhyaya, Mr. Karma Thinlay, learned Additional Public Prosecutor, would contend that the instant revision petition deserves to be rejected on a simple ground that the Revisionist has not pointed out any error to the effect that any evidence pointed out by the defence was not examined and also that admissible evidence was not accepted. It is also not the case of the Revisionist that the Court below has no jurisdiction or has not looked into the material evidence. Referring to and relying on judicial pronouncement laid by the Supreme Court in ***Central Bureau of Investigation vs. Ashok Kumar Aggarwal & Anr.***[3] and

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3 (2013) 15 SCC 222

also ***Suryakant Dadasaheb Bitale vs. Dilip Bajrang Kale & Anr.***[4], it is submitted by Mr. Thinlay that the revisional powers under Section 397 read with Section 401 Cr.P.C. is exercisable by the Court only to examine the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceedings of the inferior Court.

7. Learned Additional Public Prosecutor would further contend that the parents/guardians of the child victims were not aware of the sexual assault made by the Revisionist. The Principal, having come to know the incident, discussed the matter inside the school and, thereafter, summoned the parents/guardians and advised them to file First Information Report (FIR). Addressing of a letter to the Principal, which was forwarded to the Police Station, was rightly treated as FIR. The Principal of the School was responsible to ensure that the children are safe in the school. The Principal had accompanied the parents/guardians of the child victims to the Police Station. The enquiry by the Principal in the school is sufficient explanation for causing delay in lodging FIR. FIR may be lodged even by a person, who was not directly informed and it cannot be held as fatal to the prosecution case when the prosecution has proved the offence alleged in the FIR by other credible evidences. The victims, who are minors, have been categorical

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4 (2014) 13 SCC 496

in their deposition and it was not demolished even in the cross-examination. The Courts below have examined the evidences at length properly, leaving no scope for any irregularity as required for exercise of revisional jurisdiction.

8. To buttress his contention, the learned Additional Public Prosecutor refers to – (i) ***Ram Asrey vs. State of U.P.***[5]; (ii) ***Krishna Mochi & Ors. vs. State of Bihar***[6]***;*** (iii) ***Sree Vijayakumar & Anr. vs. State, by Inspector of Police, Kanyakumari***[7]***;*** (iv) ***Mohd. Kalam vs. State of Bihar***[8]*;* (v) ***Rajinder alias Raju vs. State of Himachal Pradesh***[9]; (vi) ***Bable alias Gurdeep Singh vs. State of Chhattisgarh***[10]; (vii) ***Harivadan Babubhai Patel vs. State of Gujarat***[11] and (viii) ***Kunwarpal alias Surajpal & Ors. vs. State of Uttarakhand & Anr.***[12]

9. In rejoinder, Mr. Upadhyaya would contend that the FIR lodged by an informant without having the personal knowledge is no FIR. Thus, the subsequent investigation and case of the prosecution on the basis of this kind of FIR falls to the Ground.

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5 1993 Supp (4) SCC 218
6 (2002) 6 SCC 81
7 (2005) 10 SCC 737
8 (2008) 7 SCC 257
9 (2009) 16 SCC 69
10 (2012) 11 SCC 181
11 (2013) 7 SCC 45
12 (2014) 16 SCC 560

10. Having given anxious consideration to the submissions put forth by the learned Counsel appearing for the parties, it is necessary to examine the scope and ambit of the revisional jurisdiction under Section 397 read with Section 401 of the Cr.P.C. as raised by the learned Additional Public Prosecutor. The revisional jurisdiction under the afore-stated provisions is invocable, when there is an apparent procedural irregularity or non-appreciation or erroneous appreciation of evidences produced by the parties or the material witnesses produced by the parties have been overlooked. This jurisdiction can also be invoked when the Court without having jurisdiction has tried the case. If the conviction or sentence is based on no evidence, the Court may exercise revisional jurisdiction even suo motu.

11. The Supreme Court, on several occasions, examined the scope and extent of revisional jurisdiction under provisions of Section 401 read with Section 397 Cr.P.C.

12. In ***Sheetala Prasad & Ors. vs. Sri Kant & Anr.***[13]**,** held as under:

> "12. ..... Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of a private complainant
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> *(1)* where the trial court has wrongly shut out evidence which the prosecution wished to produce,

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13 (2010) 2 SCC 190

> *(2)* where the admissible evidence is wrongly brushed aside as inadmissible,
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> *(3)* where the trial court has no jurisdiction to try the case and has still acquitted the accused,
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> *(4)* where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and
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> *(5)* where the acquittal is based on the compounding of the offence which is invalid under the law."

13. Subsequently, in ***Central Bureau of Investigation***[3] case, the Supreme Court held as under:

> "40. So far as the entertainment of the case at the behest of the respondent by the High Court is concerned, we may state that he may not have a legal right to raise any grievance, particularly in view of the law laid down by this Court in *Ranadhir Basu* v. *State of W.B. : (2000) 3 SCC 161.* However, the revisional powers under Section 397 read with Section 401 CrPC can be exercised by the court suo motu, particularly to examine the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceeding of the inferior court. These two sections in CrPC do not create any right in the favour of the litigant but only empower/enable the High Court to see that justice is done in accordance with recognised principles of criminal jurisprudence. The grounds of interference may be, where the facts admitte4d or approved, do not disclose any offence or the court may interfere where the facts do not disclose any offence or where the material effects of the party are not considered or where judicial discretion is exercised arbitrarily or perversely. (See also *Everest Apartments Coop. Housing Society Ltd.* v. *State of Maharashtra : AIR 1966 SC 1449* and *State of U.P.* v. *Kailash Nath Agarwal : (1973) 1 SCC 751.)*"

14. In another case in ***Suryakant Dadasaheb Bitale***[4], holding that the scope of revisional jurisdiction under provisions of Cr.P.C. is limited, the Supreme Court held as under:

> "11. The scope of revisional jurisdiction was considered by this Court in *K. Chinnaswamy Reddy* v. *State of A.P.: AIR 1962 SC 1788* and held as follows: (AIR p. 1789)
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> > "Where the appeal court wrongly ruled out evidence which was admissible, the High Court would be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised after taking into account the evidence which was wrongly ruled out as inadmissible. But

> the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also...."
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> 12. In *Akalu Ahir* v. *Ramdeo Ram* : *(1973) 2 SCC 583*, this Court held that where the material evidence have been overlooked by the trial court or Sessions Court, the High Court in revisional jurisdiction can interfere with the finding of acquittal."

In the case on hand, learned Counsel, appearing for the Revisionist, had primarily submitted that the delay in filing FIR by a person, who has no personal information of alleged offence, leads to conviction of the Revisionist. Thus, a serious procedural irregularity has occurred in the trial court as well as before the appellate court. Thus, this is a fit case for examination under revisional jurisdiction of the High Court, under the afore-stated provisions.

15. I have examined the depositions made by the prosecution witnesses and other witnesses wherein the sequence of the events leading to filing of FIR does not cause unexplained delay and, as such, lodging FIR by three persons, who happened to be parents/guardians of the alleged victims, on the basis of the information furnished by the Principal of the school, cannot be held as an irregularity. Mr. Upadhyaya refers to and relies on a decision of the Supreme Court in ***Gorle S. Naidu***[3] to buttress his submission that evidence can be re-appreciated even in revision. Re-appreciation of any evidence only depends on several factors. In the case on hand, I have

already examined the entire case from all angles. Without deciding the issue of admissibility of the revision, at this stage, I proceed to re-consider the case in its totality to find out illegality, irregularity or error, if any, as pleaded by the Revisionist.

16. Mr. Upadhyaya has urged significantly the principle of 'innocence until proven guilty'. The notion of 'innocence until proven guilty' is globally accepted principle in criminal jurisprudence. The concept was officially explained and rationalised in ***Coffin vs. U.S.*** (1894) in United States, wherein the Coffin case involved two defendants, Francis A. Coffin and Percival A. Coffin, who had been convicted of misapplication of funds and making false entries in their employer's bank records. The concept of innocence is relevant when a person is held guilty without proper trial. In the case on hand, the case was properly examined by the trial court, which was re-examined by the appellate court upholding the conviction. Thus, the notion of 'innocence until proven guilty' as pleaded by the learned Counsel for the Revisionist, is not relevant and applicable in the instant case.

17. On consideration of the depositions made by the witnesses, duly examined by the trial court as well as by the

appellate court, it is evident that the Principal of the school, namely, Mr. L.M. Sharma, came to know the incident of assault with intent to outrage modesty of the child victims by the Revisionist allegedly occurred on 12.05.2011 in Kaluk Senior Secondary School, West Sikkim. As clearly deposed by him, he enquired about the incident which took some time and, thereafter, with intent to bring the culprit to book, summoned the parents/guardians, namely, Mr. M. T. Lachungpa, Mr. M. B. Rai and Mr. Pradip Lohar, to the school on 16.05.2011 and, thereafter, it was advised to lodge the FIR. The parents/ guardians, accordingly, addressed a letter to the Principal. The Principal accompanied the parents/guardians of the alleged victims to the Police Station along with the letter which was treated as FIR. The parents/guardians, as afore-stated, having come to know of the alleged incident, addressed a letter to the Principal, which may not be in a proper format, but it was placed before the Police. Such information comes within the definition of FIR. Accordingly, FIR was lodged. Thus, the contention of the learned Counsel for the Revisionist that the FIR was lodged by a person who has no personal information, has no basis. The delay also in the process is properly explained.

18. Father of Ms. H., namely Mindup Bhutia, who was a party to the writing of the letter, has clearly stated in his cross-

examination that the contents of the said letter were explained to him. Mr. Man Bir Rai, uncle/guardian of Ms. S., who had scribed the letter, had clearly admitted his signature and also the fact of the writing of the letter on the advice of the Principal.

19. Reliance of Mr. Upadhyaya, on a judicial pronouncement of the Supreme Court in ***Thulia Kali***[1], in support of his contention that the FIR, being an extremely vital and valuable piece of evidence, cannot be ignored, particularly, when the same is filed by a person, who has no personal information, belatedly is not of much assistance to the case of the Revisionist. As explained hereinabove, the information of alleged offence was furnished by none other than the Principal of the school, wherein the alleged offence was committed, to the parents/guardians who addressed the letter to the Principal and the said letter was taken to the Police Station by them accompanied by the Principal. The incident narrated in FIR is fully corroborated in the trial. As afore-stated, the object of lodging an FIR is to set the investigation in motion and on proper investigation and trial, the allegation, as narrated in the FIR, was proved and as such, it cannot be held as an irregularity.

20. In the case of ***Krishna Mochi***[6] wherein the informant was not examined and a plea was made that for want of examination of informant, the accused persons are entitled to order of acquittal, the Supreme Court observed as under:

> "35. It has been further submitted that the informant, Satendra Kumar Sharma has not been examined as such, the first information report cannot be used as a substantive piece of evidence inasmuch as on this ground as well the appellants are entitled to an order of acquittal. The submission is totally misconceived. Even if the first information report is not proved, it would not be a ground for acquittal, but the case would depend upon the evidence led by the prosecution. Therefore, non-examination of the informant cannot in any manner affect the prosecution case."

21. In the case of ***Kunwarpal alias Surajpal***[12], the Supreme Court held as under:

> "12. ..... There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion (*Nirpal Singh* v. *State of Haryana : (1977) 2 SCC 131, Bhagwan Singh* v. *State of M.P.: (2002)4 SCC 85* and *Raj Kishore Jha* v. *State of Bihar : (2003) 11 SCC 519). .....*"

22. Examining the case of ***Bable***[10] wherein the informant, lodging FIR, did not support the case of prosecution. The Supreme Court held as under:

> "14. Once registration of the FIR is proved by the police and the same is accepted on record by the court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. The FIR, Ext. P-1, has duly been proved by the statement of PW 10, Sub-Inspector, Suresh Bhagat. According to him, he had registered the FIR upon the statement of PW 1 and it was duly signed by him. The FIR was registered and duly formed part of the records of the police station which were maintained in normal course of its business and investigation. Thus, in any case, it is a settled proposition of law that the FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstance of the evidence produced by the investigating agency. Merely because PW 1 had turned hostile, it cannot be said

> that the FIR would lose all its relevancy and cannot be looked into for any purpose."

23. Where there is a delay of lodging an FIR, the case cannot be rejected solely on the ground of delay, as observed by the Supreme Court in ***Harivadan Babubhai Patel***[11] below:

> "12. In this context, we may refer with profit to the authority in *State of H.P.* v. *Gian Chand : (2001) 6 SCC 71* wherein a three-Judge Bench has opined that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay. If the explanation offered is satisfactory and there is no possibility of embellishment, the delay should not be treated as fatal to the case of the prosecution."

24. In Indian society, normally there is a tendency to hush up such incident. The girls feel little hesitant to talk to the father directly about such an incident. However, it has come on record that Ms. H had informed twice about the assault to her mother, namely, Mrs. Santi Rai, who had deposed as Witness No.5 and has categorically stated in her deposition which has also been confirmed even in the cross-examination. It has also come into examination that one lady teacher was informed about the incident who had not chosen to take the matter further and was not examined. This is not of much significance to treat as discrepancy in the prosecution's case. All the female children, namely, Ms. H, Ms. K and Ms. S, have clearly stated that the Revisionist, while teaching English, used to ask all the students to put their heads down. If someone attempted to raise his head, he was beaten by him. Thereafter, he used to go

to the victims taking out his genital and used to place the said genital in the hands of those children and also used to molest them. The deposition of said child victims could not be demolished even in the cross-examination. Such an evidence of the child victims cannot be set aside on the ground that there were some discrepancies in the narration of facts by the prosecution and other witnesses like he used to do this act, when they were in 2nd standard or one of the child victims was absent as per the attendance register.

25. A specific question in respect of making false statement was put to the victims and it was strongly denied by them. It has not come on record that there was any tutoring and, as such, there is no reason to reject the evidence of child victims. Their statements were duly corroborated by mother of one of the victims, Ms. H.

26. In the case of ***Mohd. Kalam***[8], the Supreme Court held as under:

> "7. In *Panchhi* v. *State of U.P. : (1998) 7 SCC* 177 it was observed by this Court that the evidence of a child witness cannot be rejected outright but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. The court has to assess as to whether the statement of the victim before the court is the voluntary expression of the victim and that she was not under the influence of others.
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> 8. The trial court and the High Court have found the evidence of the child witness cogent, credible and had grain of truth. The High Court found that the evidence of victim was free from any influence. Therefore, the trial court and the High Court have relied upon the evidence of the victim.

> Additionally, it would be appropriate to take note of the observations of this Court in *Rameshwar* v. *State of Rajasthan* : *AIR 1952 SC 54*. At para 25 it reads as follows: (AIR p. 58)
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> > "25. Next, I turn to another aspect of the case. The learned High Court Judges have used Mt. Purni's statement to her mother as corroboration of her statement. The question arises, can the previous statement of an accomplice or a complainant be accepted as corroboration?"
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> The answer was, it was to be treated as corroborative."

27. Further contention of Mr. Upadhyaya is that no one has seen the alleged offence of criminal assault, as alleged. In this kind of offence, it is difficult to get direct evidence. Particularly, in the fact of the case, when the allegation is that the convict used to force the children to put their heads down and if someone attempted to raise the head, they were caned. The convict/Revisionist has taken care to ensure that his nefarious activity is not noticed by anyone. At this stage, it is necessary to refer to a passage from a decision of the Supreme Court in ***Radhu vs. State of Madhya Pradesh***[14], which reads as under:

> "6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rate states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a "rape", if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim.

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14 (2007) 12 SCC 57

> Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

28. For the reasons mentioned hereinabove, as a sequel, there is no merit in this revision petition. The revision is, accordingly, dismissed, upholding the conviction and sentence imposed by the Courts below.

29. A copy of the order with all the papers be sent forthwith to the Chief Judicial Magistrate, East & North, Sikkim at Gangtok for necessary action.

Sd/-
Acting Chief Justice
22.08.2016

Approved for Reporting : Yes/~~No~~.

pm **Internet : Yes/~~No~~.**