

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

**CRR No.1288 of 2005 (O&M)
Date of Decision: 9.09.2015**

Jaswant Singh

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

- 1. To be referred to the Reporters or not?**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J.

Present criminal revision petition is directed against the impugned judgment dated 13.7.2005, passed by the learned Additional Sessions Judge, Panipat, whereby appeal of the petitioner against the judgment of conviction dated 3.11.2004 and order of sentence dated 4.11.2004, passed by the learned Additional Chief Judicial Magistrate, Panipat, was dismissed and conviction as well as sentence awarded to the petitioner, was upheld.

Brief facts of the case, as recorded by the learned Additional Sessions Judge, in para 2 of the impugned judgment, are that on 29.6.1997, complainant namely Rajinder Singh with his son

Ashu, aged 3 years, boarded bus bearing No. HR45-0703 from Samalkha at 6:30 P.M., for returning to their village Adhmi. Accused Jaswant Singh was on its wheels. The bus reached in front of the house of the complainant at 7:15 P.M., where it was stopped by the accused. When the complainant and his son, after alighting from the bus, were passing from the front of the bus to cross the road for going to their house, accused without blowing horn moved the bus abruptly. Front left side of the bus struck against them. They fell down. The complainant fell on the kacha portion of the road whereas his son Ashu was run over by the bus and died at the spot. The accused stopped the bus after covering a considerable distance. The complainant reported the matter to the police. His statement Ex.PA was recorded by Head Constable Randhir Singh on which FIR Ex.PW10/C was lodged.

Head Constable then went to the place of accident and carried out spot inspection. He prepared rough site plan of the place of accident Ex. PW10/D. The bus involved in the accident was taken into possession, vide memo EX.PE4/A. Inquest was held. The dead body of the child was sent to Civil Hospital, Panipat, for post-mortem examination where autopsy on the body was conducted by Dr. Rajinder Singh. On examination, he found a lacerated wound extending from root of nose to scalp longitudely in the middle with clotted blood. On dissection, clotted blood was found present beneath the scalp bone and bone was fractured at multiple places. Brain matter was coming out of the fractured bone at places. Brain was also lacerated at various places. Two more lacerated wounds in the

occipital area of scalp and on the left fore-arm were found. In the opinion of the doctor, the cause of death was injury to brain. All the injuries were ante-mortem in nature.

Challan having been presented, copy thereof alongwith documents attached therewith, was supplied to the accused. A prima facie case was found to be made out against the accused and accordingly, he was charge sheeted for the offences punishable under Sections 279/304-A of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial. In order to substantiate charges framed against the accused, prosecution examined as many as 11 PWs, besides tendering other relevant documents into evidence.

On closure of the prosecution evidence, statement of the accused was recorded under Sections 313 of the Code of Criminal Procedure ('Cr.P.C.' for short). All the incriminating material brought on record was put to the accused. Accused denied the allegations, alleged false implication and claimed complete innocence. Accused opted to lead defence evidence and examined DW1.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has duly proved its case, bringing home guilt against the accused. Accordingly, accused was held guilty and convicted for the offences punishable under Sections 279/304/A IPC, vide impugned judgment of conviction dated 3.11.2004. Convict was sentenced vide impugned order of sentence dated 4.11.2004, awarding him sentence as under:-

- a. to undergo rigorous imprisonment for a period of six months for the offence under Section 279 IPC and
- b. to further undergo rigorous imprisonment for a period of one year and to pay a fine of ₹500/- for the offence under Section 304-A and in default of payment of fine, to further undergo simple imprisonment for two months.
- c. both the sentences to run concurrently.

The abovesaid impugned judgment of conviction and order of sentence were challenged by the petitioner by way of appeal, which also came to be dismissed by the learned Additional Sessions Judge, Panipat, vide impugned judgment dated 13.7.2005. Hence this criminal revision petition.

The revision petition was admitted for regular hearing vide order dated 21.7.2005 and thereafter, vide order dated 18.8.2015, sentence of the petitioner was suspended. That is how, this Court is seized of the matter.

Learned counsel for the petitioner, at the very outset, submits that he does not intend to press this petition on merits. He further submits that let conviction of the petitioner be upheld and the present criminal revision petition may be considered only for the purpose of reduction of sentence.

Highlighting the mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that he is not previous convict. Petitioner was the only breadwinner of the family. Petitioner has not been found involved in any other case, at a later point of time as well. Petitioner has been facing agony of criminal trial

for about 18 years. He also submits that let fine may be reasonably enhanced so as to compensate the family of the deceased. In this regard, he places reliance on the judgment of this Court in Jai Pal Vs. State of Haryana, 2009 (4) RCR (criminal) 513. He prays for reduction of sentence to the period already undergone by the petitioner.

Per contra, learned counsel for the State submits that learned trial court itself has shown leniency, while awarding sentence to the petitioner on lower side. In such a situation, there was hardly any scope for further reduction in the sentence. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction. To say so, reasons are more than, one which are being recorded hereinafter.

It is a matter of record that petitioner is the first offender. Petitioner has been facing the agony of criminal trial for the last more than 18 years. Petitioner has not been found involved in any other case. Further, in terms of the custody certificate dated 18.8.2015, petitioner has already undergone total sentence for a period of 1 month and 22 days out of total sentence awarded to him for a period of 1 year RI. Having said that, this Court feels no hesitation to

conclude that it is in the fitness of things if the sentence of the petitioner is ordered to be reduced to the period already undergone by him.

Learned counsel for the petitioner was found justified in placing reliance on the judgment in Jai Pal's case (supra), wherein a convict like the present petitioner, for the offence under section 279/304-A was granted benefit of reduction of sentence, while enhancing fine to ₹35,000/-, despite the fact that petitioner therein had undergone only for a period of 10 days.

However, in the present case, as per custody certificate dated 18.8.2015, petitioner has undergone sentence for 1 month and 22 days, out of total sentence awarded to him for a period of one year. Thus, taking into consideration the abovesaid mitigating circumstances in favour of the petitioner, ends of justice would be adequately met if the sentence of the petitioner is ordered to be reduced to the period already undergone by him, enhancing the amount of fine to ₹ 40,000/-

The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of **R. Soundarajan v. Seed Inspector, Coimbatore and another, 2006(4) R.C.R. (Criminal) 645; Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723; Gulab Das and others Vs. State of M.P., 2012 (1) RCR (criminal) 220; S. Mahaboob Basha Vs. State of Karnataka, 2014 (4) RCR (criminal) 769; Vinay and others and State of Karanataka and another, 2015 (2) RCR (criminal) 831; Nanda Gopalan Vs. State of Kerala, 2015 (2) RCR (criminal) 861 and Ravinder Singh**

Vs. State of Haryana, 2015 RCR (criminal) 698,

The relevant observations made by the Hon'ble Supreme Court in R. Soundarajan's case (supra), which can be gainfully followed in the present case, read as under:-

“26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment.”

In Umrao Singh's case (supra), the Hon'ble Supreme Court observed as under:-

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16(1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum

sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents. 2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith. 3. The appeal is disposed of accordingly.”

In view of the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, conviction of the petitioner is upheld, however, his sentence is ordered to be reduced to the period already undergone by him. Amount of fine is ordered to be enhanced to ₹ 40,000/- over and above the fine already deposited by the petitioner.

Petitioner is directed to pay the amount of fine to the family of deceased against proper receipt, within a period of three months from the receipt of copy of this order. It is also made clear that if the petitioner is unable to locate the family members of the

deceased , he will deposit the fine in the Court of learned Chief Judicial Magistrate, Panipat, who will disburse the same to the rightful claimants, by following the due procedure, in accordance with law. However, if the petitioner fails to deposit the amount of fine within the stipulated period, present petition would be deemed to have been dismissed.

Resultantly, with the modification in the sentence, as indicated above, the instant criminal revision petition is disposed of, accordingly.

(RAMESHWAR SINGH MALIK)
JUDGE

9.9.2015
Ak Sharma