

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1496-2005

Date of Decision: November 4, 2015

Inderjit Singh Bhatia

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. P.S. Paul, DAG, Punjab,
for the respondent.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J (Oral)

Challenge in the present criminal revision petition is to the judgment dated 6.8.2005, passed by learned Additional Sessions Judge, Patiala, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offences punishable under Sections 279 and 304-A, IPC, recorded by learned Additional Chief Judicial Magistrate, Patiala, was dismissed, after acquitting the petitioner for the

offence punishable under Section 279, IPC.

On 28.10.2015, when the present criminal revision petition came up for hearing before this Court, then learned counsel for the petitioner submitted that he would confine his arguments with regard to quantum of sentence only and sought time to place on record the documents to show that the petitioner had served in Indo Tibetan Border Police Force (for brevity, 'ITBP') and was a well decorated officer and, as such, the case was adjourned for today.

Learned counsel for the petitioner has produced letter dated 2.10.2015, issued under the hand of Commandant 51st Btn, ITBP, which is taken on record. A copy of the said letter has been supplied to learned counsel for the State.

Learned counsel contends that the petitioner was born in the year 1943; he joined the Intelligence Bureau (IB) in the year 1962 and thereafter ITBP in 1963, which was raised on 24.10.1963, after the Chinese aggression; during the service, the petitioner received a Special War Medal in the year 1972 for his outstanding contribution for compliance of the tasks and missions assigned to him during 1971 war; he was decorated with "*Kathin Sewa Medal*" in the year 1983 for his outstanding services and thereafter deployed at extreme difficult region of

Ladakh for six years; he was also honoured with the Presidential Medal for his meritorious services in the year 1987; during militancy in Punjab, he was posted there from 1990 to 1994 and he played vital role to suppress the militancy; from 1964 to 1967, the petitioner parted training to new recruits at Guirilla Training Centre, Naogaon; he also worked as Adjutant as well as Senior Instructor at ITBP Academy, Mussoorie, from 1995 to 1997 and groomed several officers; in the year 1997, he gracefully superannuated from ITBP Academy, Mussoorie; and that even after retirement, the petitioner was invited several times to ITBP Academy for guest lectures.

He further submits that at present the petitioner is aged about 74-year. He is a first offender. During pendency of trial, appeal and present revision petition, the petitioner was released on bail, but he did not violate the terms and conditions of the bail granted to him. The petitioner has already suffered incarceration for two months and five days out of the awarded sentence of two years for the offence punishable under Section 304-A, IPC. It has also been pointed out that a sum of ₹2,24,000/- (Rupees two lacs and twenty-four thousand only) was awarded by learned Motor Accidents Claims Tribunal, Patiala, to the dependents of Navkiran Deep Singh (since deceased).

Learned counsel also points out that still the petitioner is ready to further compensate the parents of the deceased. He also submits that in view of the services rendered by the petitioner to motherland India and the State of Punjab during difficult times, the sentence of the petitioner may be reduced to the period already undergone by him. In support of his contentions, learned counsel has placed reliance on the judgments of Hon'ble the Supreme Court in the cases of **State of Punjab v. Saurabh Bakshi**, 2015 (2) R.C.R. (Criminal) 495; **State of M.P. v. Mehtaab**, 2015 (1) R.C.R. (Criminal) 1008; **Sushil Ansal v. State through CBI**, 2015 (4) Recent Apex Judgments 697; **State through C.B.I., Anti Corruption Branch, Chandigarh v. Sanjiv Bhalla and another**, 2014 (4) R.C.R. (Criminal) 17; and **Ismail v. Police Sub Inspector, Hospet**, 2013 (1) R.C.R. (Criminal) 826, and a judgment of this Court in the matter of **Major Jai Rajan v. State of Punjab** (CRR-3241-2012, decided on 31.01.2013).

Learned counsel for the State after going through the unblemished and meritorious service record of the petitioner and further taking into consideration his age, has not much opposed the prayer for reducing the substantive sentence of the petitioner to the period already undergone by him. However, he

submits that adequate compensation be awarded to the parents of the deceased so that a balance is created between the offence committed by the petitioner and the sentence.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Though learned counsel for the petitioner has opted not to challenge the conviction of the petitioner, but to satisfy the conscience of this Court, the material available on record has been thoroughly scanned with the help of learned counsel appearing for the parties.

As per prosecution version, on 11.8.2001, Hardeep Singh (PW-3)/informant on his two-wheeler, bearing Registration No. PCI-5706, had reached the main gate of Punjabi University Campus, Patiala. Navkiran Deep Singh (since deceased), who was riding a two-wheeler, bearing Registration No. PB-11-D-1238, had to go to Gol Market Chowk, Patiala, within the Punjabi University Campus. Navkiran Deep Singh requested Hardeep Singh (PW-3) to accompany him and both of them on their separate two-wheelers started going towards the Gol Market. Navkiran Deep Singh (since deceased) was a little ahead of the two-wheeler being driven by the informant, Hardeep Singh

(PW3). When Navkiran Deep Singh reached on Gol Market Chowk, Patiala, then the petitioner while driving his Maruti Car, bearing Registration No. PB-11-T-0358, emerged there and hit the scooter being driven by Navkiran Deep Singh and as a result thereof he (Navkiran Deep Singh) fell down on the road and received head injury. Hardeep Singh (PW-3) reached near Navkiran Deep Singh and in the meantime Gurjant Singh (PW-4) and Sunny, students of the University also reached there.

Navkiran Deep Singh was firstly carried to Deep Hospital and thereafter to Amar Hospital, Patiala. Navkiran Deep Singh succumbed to the injury on 14.8.2001 at 10:05 a.m. On the basis of the statement suffered by Hardeep Singh (PW-3), FIR (Ex. PB/3) was registered for the offences punishable under Sections 279 and 304-A, IPC.

After completion of investigation and presentation of the charge-sheet (challan), charges for the offences punishable under Sections 279 and 304-A, IPC, were framed against the petitioner, to which he pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined HC Piara Singh, Motor Mechanic, as PW-1; Dr. Arun Bansal as PW-2; Hardeep Singh/informant as PW-3; Gurjant Singh as PW-4; Dr. D.S. Bhullar as PW-5; Grover Singh, Photographer, as

PW-6; and HC Prem Singh, Investigating Officer, as PW-7.

After completion of the prosecution evidence, the statement of the petitioner in terms of Section 313, Cr.P.C., was recorded. He denied the incriminating evidence emerging against him and pleaded innocence. No evidence in defence was led by the petitioner.

After hearing learned counsel for the parties, learned Additional Chief Judicial Magistrate, Patiala, returned the verdict of guilt for the offences punishable under Sections 279 and 304-A, IPC, and ordered the petitioner to undergo the following sentences:

Under Section	Sentence (R.I.)	Fine (in ₹)	In Default (R.I.)
279, IPC	6 months	--	--
304-A, IPC	2 years	2,000/-	3 months

Both the substantive sentences were ordered to run concurrently.

Dissatisfied with the judgment of conviction and the order of sentence, the petitioner preferred an appeal before Court of Session, which was decided by learned Additional Sessions Judge, Patiala, on 6.8.2005, as mentioned in the initial part of this judgment.

Perusal of the deposition of Hardeep Singh (PW-3) and Gurjant Singh (PW-4) would spell out that both the Courts below have returned the verdict of guilt on the basis of their depositions and, as such, learned counsel for the petitioner has correctly opted not to challenge the conviction of the petitioner for the offence punishable under Section 304-A, IPC.

This Court has independently come to the conclusion that the conviction of the petitioner for the offence punishable under Section 304-A, IPC, is well based and, as such, no interference is called for by this Court.

So far as the contention of learned counsel for the petitioner for reduction of the sentence is concerned, there appears to be substance in it.

In the matter of **Saurabh Bakshi (supra)**, Hon'ble the Supreme Court has held as under:-

“ The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a

way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

In the matter of **Mehtaab (supra)**, in para 10 of the judgment, Hon'ble the Supreme Court has held as under:-

"10. As already observed, the respondent having been found guilty of causing death by his negligence,

the High Court was not justified in reducing the sentence of imprisonment to 10 days without awarding any compensation to the heirs of the deceased. We are of the view that in the facts and circumstances of the case, the order of the High Court can be upheld only with the modification that the accused will pay compensation of ₹ 2 lakhs to the heirs of the deceased within six months. In default, he will undergo RI for six months. The compensation of ₹ 2 lakhs is being fixed having regard to the limited financial resources of the accused but the said compensation may not be adequate for the heirs of the deceased. In such situation, in addition to the compensation to be paid by the accused, the State can be required to pay compensation under Section 357-A. As per judgment of this Court in Suresh (supra) [Suresh v. State of Haryana, 2015 (1) R.C.R. (Criminal) 148], the scheme adopted by the State of Kerala is applicable to all the States and the said scheme provides for compensation upto ₹ 5 lakhs in the case of death. In the present case, it will be appropriate, in the interests of justice, to award interim compensation of ₹ 3 lakhs under Section 357-A payable out of the funds available/to be made available by the State of Madhya Pradesh with the District Legal Services, Authority, Guna. In case, the accused does not pay the compensation awarded as above, the State of Madhya Pradesh will pay the entire amount of compensation of ₹ 5 lakhs within three months after expiry of the time granted to the accused.

In the matter of **Sushil Ansal (supra)**, Hon'ble the Supreme Court had reduced the sentence of an accused of aged 74-year, who committed the offence punishable under Section 304-A, IPC, to the period already undergone. However, the fine was enhanced in view of the facts of the said case.

Similarly, in the matter of **Major Jai Rajan (supra)**, this Court, keeping in view the unblemished service record of an Army Officer, who was an accused of committing the offence punishable under Section 304-A, IPC, had kept the substantive sentence in abeyance and released him on probation of good conduct.

While awarding appropriate sentence, the Court has to keep in mind the protection of society and stamping out criminal proclivity must be the object of law and the same can be achieved by imposing appropriate sentence. While considering the quantum of sentence, the Court has also to keep in mind that law should adopt the corrective machinery or deterrence would depend upon the facts of the case. The Court has also to keep in mind *the circumstances in which the offence was committed, the nature of the offence, whether it was committed after preparation, the motive for committing the said*

crime, the conduct of the accused and the nature of the instruments used for committing the crime. Equally, the Court has to bear in mind the '*principle of proportionality*' between the crime and the punishment.

In the matter of **Shailesh Jasvantbhai v. State of Gujarat**, (2006) 2 SCC 359, Hon'ble the Supreme Court held that the '*principle of just punishment*' is the bedrock of sentencing in respect of a criminal offence. It was further held that a punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. *In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu and sometimes lapse of time in the commission of crime and his conduct in the interregnum bearing in mind the nature of the offence, may be the guiding factors.*

In the present case, though the petitioner has not been extended any benefit of the shortcomings in the prosecution case while holding him guilty and maintaining his conviction for the offence punishable under Section 304-A, IPC,

but while considering the quantum of sentence, the Court can take the same into consideration.

It has not been disputed that at present the petitioner is 74-year old; he is a first offender; he joined the Intelligence Bureau in the year 1962 and thereafter joined the ITBP in 1963 at the time when it was raised on 24.10.1953; during his service, he was assigned very sensitive assignments; the petitioner received a Special War Medal in the year 1972 for his outstanding contribution during the war in the year 1971; the petitioner was also decorated in the year 1983 with a *Kathin Sewa Medal* for his deployment at extreme difficult region of Ladakh for continuously six years; the petitioner was also honoured with the Presidential Medal for meritorious service in 1987; during the difficult time, i.e. at the time of terrorism in Punjab, the petitioner was posted over there for suppression of terrorism; considering his excellent services, he was assigned the duty as Senior Instructor at ITBP Academy, Mussoorie, from 1995 to 1997; and that he groomed several officers.

During arguments, the son of the petitioner appeared before this Court and disclosed that he and his brother have also joined the ITBP and serving the nation. It was further disclosed that till recent past the petitioner was being invited to the ITBP

Academy for guest lectures. It has also been pointed out that after the incident in question, the petitioner has stopped driving the vehicles.

It has also been disclosed at the bar that a sum of ₹2,24,000/- (Rupees two lacs and twenty-four thousand was awarded by learned Motor Accidents Claims Tribunal, Patiala, to the dependents of Navkiran Deep Singh (since deceased) and the petitioner is still ready to pay more compensation to the parents of the deceased, therefore, this Court finds all the mitigating circumstances in favour of the petitioner to take a lenient view while considering the substantive sentence.

There is no doubt that a convict for the offence punishable under Section 304-A, IPC, has to be dealt with heavy hands, but keeping in view the peculiar facts and outstanding services rendered to the nation by the petitioner, this Court is of the considered opinion that the sentence awarded by learned Trial Court and affirmed by learned Court of Session is on higher side. It would be in the interest of justice if the jail imprisonment of the petitioner is reduced to the period already undergone by him.

As a sequel to the above discussion, the present criminal revision petition is partly allowed. The substantive

sentence of the petitioner for the offence punishable under Section 304-A, IPC, is reduced from rigorous imprisonment of two years to the period already undergone by him, i.e. two months and five days. The fine imposed for the said offence by learned Trial Court and affirmed by learned Additional Sessions Judge, Patiala, is maintained.

At the same time, this Court also deem it necessary to order that a sum of ₹2,00,000/- (Rupees two lacs only) shall be deposited by the petitioner with learned Trial Court within one month of passing of this judgment and the said amount would be disbursed to the parents of Navkiran Deep Singh (since deceased) as compensation. After deposit of the amount by the petitioner, learned Trial Court will issue a notice to the parents of Navkiran Deep Singh (since deceased) to withdraw the amount in accordance with settled norms. It is made clear that if the amount as stated above is not deposited within stipulated period, then the sentence awarded by learned Court below shall enure.

The records received from learned Courts below be sent back forthwith alongwith a copy of this judgment for compliance.

November 4, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE