

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-411-2007
Date of decision:15.7.2015

Kashmir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.J.B.S.Gill, Advocate for the petitioner.

Mr. Daljeet Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

The present criminal revision petition is directed against the impugned judgments passed by the learned courts below, whereby petitioner was convicted for the offence under Sections 304-A, 279 and 337 IPC and were sentenced to undergo for a period of 1 year and 6 months, besides payment of fine of Rs.700/-, by the impugned judgment of conviction and order of sentence of even date, i.e. 16.4.2004 passed by the learned Sub Divisional Judicial Magistrate, Dasuya ('SDJM' for short), which was upheld by the learned Additional Sessions Judge, Hoshiarpur vide his impugned judgment dated 23.2.2007.

Brief facts of the case, as recorded by the learned trial Court in paras 2 and 3 of the impugned judgment of conviction, are that on 6.9.1999, one ruqa/chit was received from the doctor on duty at Civil Hospital, Dasuya with regard to the arrival of the dead body of Sukhwinder Singh as road side accident case. That SI Mohan Lal along with other police officials

went to Civil Hospital, Dasuya at where Jhugar Singh son of Nirmal Singh, who was eye witness, met the investigating officer and got recorded his statement to the effect that he was resident of Village Terkiana and doing computer work at Dasuya. On the day of incident, he along with his nephew namely Sukhwinder Singh and one Surjit Singh, residents of Village Terkiana were coming to Dasuya on scooter bearing No. PB-07-E-6921. Sukhwinder Singh was driving the said scooter and he (complainant) and said Surjit Singh were sitting on the pillion seat of the scooter. When their scooter passed road bridge namely Kahawala chowk, A truck bearing no. PB-08-D-0797 came from the opposite side in a rash and negligent manner hit their scooter and dragged them. Truck ran over Sukhwinder Singh due to which Sukhwinder Singh died at the spot. The complainant further stated that he and Surjit Singh also suffered injuries in the said accident. It was time about 10.20 AM. Later on he learnt name of the truck driver as Kashmir Singh son of Karan Singh r/o V. Dalli Police Station Bhogpur Distt. Jalandhar. The complainant further stated that he made arrangement of the vehicle and took the dead body of Sukhwinder Singh to Civil Hospital, Dasuya. He also told to the doctor regarding injuries suffered by them. Above-said statement was got recorded by the complainant before the investigating officer at Civil Hospital, Dasuya. He further stated that accident took place due to rash and negligent driving of truck driver Kashmir Singh. So the action be taken against him. On the basis of above-said statement of the complainant, FIR of the present was got registered. Investigation was carried out. Inquest report was prepared. Post-mortem was got conducted. Rough site plan was got prepared. After completion of

necessary formalities, challan was presented to the competent court of competent jurisdiction.

Finding a prima facie case against the accused, learned trial Court framed the charges against the accused-petitioner, for commission of offences under Sections 279, 337 and 304-A IPC. The accused pleaded not guilty and claimed trial.

The prosecution, with a view to prove its case, produced as many as 9 prosecution witnesses, besides placing on record other documentary evidence. On closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. He denied the allegations, alleged false implication and claimed complete innocence. However, the accused did not lead any evidence in his defence.

After hearing the learned counsel for both the parties and going through the record of the case, the learned trial Court came to the conclusion that the prosecution has successfully proved its case, bringing home the guilt against the accused. Accordingly, the accused was convicted and sentenced vide impugned judgment of conviction and order of sentence of even date, i.e. 16.4.2004. Sentence awarded to the petitioner reads as under:-

Section 304-A IPC To undergo RI for a period of one year and six months and to pay a fine of Rs.500/- (Rs.five hundred only). In default of payment of fine to further undergo RI for a period of one month more.

Section 279 IPC To undergo RI for a period of six

*months and to pay a fine of Rs.100/-.
In default of payment of fine to
further undergo RI for a period of 15
days more.*

Section 337 IPC

*To undergo RI for a period of six
months and to pay a fine of Rs.100/-
(Rs.one hundred only). In default of
payment of fine, to further undergo RI
for a period of 15 days more.*

Feeling aggrieved, convict filed his appeal against the above-said impugned judgment of conviction and order of sentence but the appeal of the present petitioner also came to be dismissed by the learned Additional Sessions Judge, Hoshiarpur, vide impugned judgment dated 23.2.2007. Hence this criminal revision petition.

The criminal revision petition was admitted for regular hearing vide order dated 14.5.2007 and thereafter vide order dated 23.7.2007 sentence of the petitioner was suspended, during the pendency of the revision petition. That is how, this Court is seized of the matter.

Learned counsel for the petitioner 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 to the period already undergone by him. He further submits that in terms of the custody certificate filed by way of affidavit dated 15.7.2015, petitioner has undergone the actual sentence for a period of 11 months and 12 days, out of the total sentence awarded to him for a period of 1 year and 6 months.

Highlighting the mitigating circumstances in favour of the petitioner,

learned counsel for the petitioner submits that the petitioner has been facing the agony of criminal trial for the last about 16 years and he has undergone substantial part of the sentence awarded to him, which entitles the petitioner for reduction of the sentence to the period already undergone by him. He prays for allowing the present petition to the limited extent, as indicated above.

On the other hand, learned counsel for the State opposes the prayer made by the learned counsel for the petitioner, contending that in view of the circumstances of the case, petitioner was not entitled for any kind of relief. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction. It is so said, because in terms of the custody certificate filed by way of affidavit dated 15.7.2015, petitioner has undergone the actual sentence for a period of 11 months and 12 days, out of the total sentence awarded to him for a period of 1 year and 6 months.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass v/s State of Himachal Pradesh 1988 (2) RCR (Criminal)**. The relevant observations made by Hon'ble the Supreme Court in **Braham Dass's case** (supra), which can be gainfully followed in the instant case, read as under:-

“6. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High

Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.”

In another case titled as “**Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723,**” 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.”

An identical question had arisen before this Court in **Des Raj**

v/s State of Haryana 1996(1) RCR (CrI.) 689. The relevant observations

made in para 9 of the judgment, aptly apply here and the same read as under:-

“9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that the speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.”

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the judgments, referred to hereinabove, 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.

Resultantly with the above-said modification in the impugned judgments, the instant criminal revision petition stands partly allowed. Petitioner is directed to be released forthwith, if he is not required in any other case.

Disposed of, accordingly.

15.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE