

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-258-2011

Date of decision: 30.09.2015

Baldev Singh

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Rana, Advocate and
Mr. Akshay Rana, Advocate and
Mr. Sarvesh Kumar Gupta, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

Mr. Dhirinder Chopra, Advocate
for respondent No.2-complainant.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the impugned judgment dated 23.11.2010 passed by learned Additional Sessions Judge, Ludhiana, whereby appeal of the petitioner was dismissed and his conviction as well as sentence recorded by the learned trial Court, vide impugned judgment of conviction and order of sentence of even date i.e. 02.07.2009, was upheld.

Briefly put, facts necessary for disposal of the present case, as recorded by the learned Additional Sessions Judge, in para 2 of his impugned judgment, are that on 01.10.1999 a ruqa No.862 dated 01.10.1999 was received by ASI Jarnail Singh from Satluj Hospital, Ludhiana. On this, he went to Satluj Hospital for recorded the statement of injured Anjay Kumar where doctor opined the injured not to be fit for making statement. Thereafter on 02.10.1999 ASI Jarnail Singh along with CII Harjinder Singh and other police officials again went to Satluj Hospital to record the statement of injured Anjay Kumar and doctor again disclosed that the injured is not to be fit for making statement. When ASI Jarnail Singh along with other police party went back to the police station and then outside the gate of said Hospital, one person namely Laxman Tiwari complainant met them who got recorded his statement with the I.O. ASI Jarnail Sing to the effect that he is resident of c/o Gurbax Singh, Mohalla Guru Amardass Nagar, New House of Professor C.P. Singh, Lodhi Club, Ludhiana and he is having five sons and two daughters namely Sanjay aged about 18 years. Ranjay of 16 years age, Anjay of 14 years age, Ram of 12 years age, daughter Mata age about 10 years, Gopal of 7 years old and another daughter age about 5 years old. The complainant further stated that his son namely Anjay Kumar had been serving with Pritam Singh Behrrowal resident of 42, Ranjit Park, Ferozepur Road, Ludhiana for the last six years and he was residing with his owner. On 01.10.1999 at about 4 P.M. he went to the house of owner of Anjay to see his son Anjay where he came to know that on the rehri, his son had already gone to Aggar Nagar at the instance of his owner in connection with personal work and then he stopped at the shop of Ram Kumar Jha Panwala for the smoking of Birri. In the

meantime, Ram Kumar Jha gave a signal to him, his son Anjay along with rehri came from the side of Aggar Nagar and he (complainant) saw him and while he was seeing his son, one truck came from the side of Aggar Nagar in a rash and negligent manner and without blowing any horn struck behind the rehri of his son Anjay and due to this accident, his son Anjay had suffered several injuries and his rehri was also broken. Then he along with Ram Kumar Jha came at the spot and truck driver of the offending truck No.PB-10AD-9704 took his son in serious condition to Satluj Hospital. Truck driver also disclosed his name to be Baldev Singh son of Sh. Bachan Singh Jat, resident of Jassowal Kular, Police Station Sudhar, Ludhiana. In the end, complainant prayed that proceedings be initiated. Thereafter, further investigation was started. On 03.10.1999 accused was arrested in this case. Due to serious injuries, injured succumbed to the same. Offending truck along with documents was taken into possession vide separate memo, site plan was prepared at the spot and statements of the witnesses were recorded. After completion of other legal formalities, challan against the accused was presented before the Court for trial.

Police report under Section 173 (2) of the Code of Criminal Procedure ('Cr.P.C.' for short) having been presented, copy thereof along with the documents attached therewith, was supplied to the accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found and accordingly the accused were 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 the charges framed against the accused,

prosecution examined as many as 08 PWs, besides producing on record other relevant documentary evidence. On conclusion of the prosecution evidence, statement of accused was recorded under Section 313 of Cr.P.C. All the incriminating material brought on record, was put to the accused. Accused denied the allegations, alleged false implication and pleaded complete innocence. Opting to lead his defence evidence, accused produced one witness namely Nirmal Singh as DW1.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the prosecution has duly proved its case, bringing home the guilt against the accused. Accordingly, the accused was held guilty and was convicted accordingly vide impugned judgment of conviction dated 02.07.2009. Consequently, the convict was sentenced vide impugned order of sentence dated 02.07.2009. The sentences awarded to the convict, read as under: -

<u>“Under Section</u>	<u>Imprisonment</u>	<u>Fine</u>
279 IPC	R.I. for six months	Rs.500/-
304-A IPC	R.I. for two years	Rs.1000/-”

Both the sentences were ordered to run concurrently.

Feeling aggrieved against the abovesaid impugned judgment of conviction and order of sentence, petitioner-convict filed his appeal, which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 23.11.2010. Hence this criminal revision petition, at the hands of convict-petitioner.

When the case came up for motion hearing, it was rightly argued on behalf of the petitioner that petitioner was not averse to giving some more

compensation to the LRs of the deceased but for that purpose, he was required to be released on interim bail. While issuing notice of motion, this Court accepted the abovesaid prayer made by learned counsel for the petitioner and he was granted the concession of interim bail. Thereafter, interim order was ordered to continue and finally the criminal revision petition came to be admitted for regular hearing vide order dated 29.03.2012. That is how this Court is seized of the matter.

Learned counsel for the petitioners, at the very outset, fairly states that he has got the instructions from the petitioner, who is present in the Court, that although he is a poor man, yet in compliance of the order dated 10.03.2011 passed by this Court, he is not averse to give some more compensation to the LRs of the deceased. He further submits that petitioner undertakes to pay an amount of ₹25,000/- to respondent No.2 namely Sh. Lakshman Tiwari, father of the deceased who is presently residing at Village Sigal SOD, c/o Bagga Singh son of Arjun Singh, Police Office Mand, Police Station Lambra, District Jalandhar, within a period of three months from today. He also submits that as per the custody certificate, petitioner has undergone total custody period for 04 months and 12 days out of total sentence awarded to him R.I. for 02 years. He would next contend that petitioner has been facing the agony of criminal trial for the last 16 long years. He is neither a previous convict nor has been found involved in any other criminal case. Petitioner is the only bread-winner of his family and now aged about 65 years.

Highlighting the abovesaid mitigating circumstances in favour of the petitioner, learned counsel submits that let the conviction of the petitioner

be upheld and his sentence may be reduced to the period already undergone by him, subject to payment of ₹25,000/- by the petitioner to the complainant-respondent No.2, within the abovesaid stipulated period.

On the other hand, learned counsel for the State as well as learned counsel for respondent No.2-complainant submit that since the learned Courts below have already shown sufficient leniency in favour of the petitioner, while awarding him the sentence, petitioner deserves no further leniency, at the hands of this Court. They pray 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 contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, noticed hereinabove, present petition deserves to be accepted partly, for the following more than one reasons.

It is a matter of record that petitioner was not a previous convict nor he has been found involved in any other criminal case. It has also gone undisputed on record that petitioner was the only bread-winner of the family. As per the custody certificate, he has undergone the sentence for a period of 04 months and 12 days, including the period of remission out of total sentence awarded to him for a period of 02 years R.I. Petitioner is a poor man and is aged about 65 years as on date. He has been found facing the agony of criminal trial for the last 16 long years. Having said that, this Court feels no hesitation to conclude that it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction and also subject to payment of ₹25,000/- to the complainant within

the abovesaid stipulated period.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the case of **2006(4) R.C.R. (Criminal) 645** titled as **“R. Soundarajan v. Seed Inspector, Coimbatore and another”** and **“Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723.**

The relevant observations made by the Hon'ble Supreme Court in the case of **R. Soundarajan v. Seed Inspector, Coimbatore and another** (supra) are 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 v. State of Haryana** (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.”

Reverting back to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, it is unhesitatingly held that petitioner is entitled for the reduction of sentence to the period already undergone by him. No useful purpose will be served by sending the petitioner inside the jail, after this long period of about 16 years. Further, although the petitioner is a poor man, yet he has been found to be reasonable, while undertaking to pay an amount of ₹25,000/- to the complainant-respondent.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that petitioner deserves to be granted the relief as indicated above.

Consequently, petitioner is directed to pay an amount of ₹25,000/- to complainant-respondent No.2 namely Sh. Lakshman Tiwari, father of the deceased who is presently residing at Village Sigal SOD, c/o Bagga Singh son of Arjun Singh, Police Office Mand, Police Station Lambra, District Jalandhar, by way of bank draft in the name of Sh. Lakshman Tiwari, within a period of three months from today, failing which this petition would be deemed to have been dismissed. Upholding the conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him. His bail bonds shall stand discharged.

Resultantly, with the abovesaid observations made and directions issued, present criminal revision petition stand disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

30.09.2015
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