

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

**Criminal Revision No.1746 of 2015 (O & M)
Date of Decision:-29.9.2015**

Satnam Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vivek Salathia, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

HARI PAL VERMA J.

CRM No.15865 of 2015

This is an application seeking condonation of delay of 49 days in filing the revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 49 days in filing the revision petition is condoned.

CRR No.1746 of 2015

Petitioner has filed the present revision petition challenging the judgment dated 16.12.2014 passed by learned Additional Sessions Judge, Tarn Taran, whereby the appeal against the judgment and order of

sentence dated 21.2.2012 passed by Sub Divisional Judicial Magistrate, Patti, was dismissed.

The trial Court vide judgment dated 21.2.2012 had convicted the petitioner for offence under Sections 279 and 304-A IPC and sentenced him as under :-

<i>U/Sec.</i>	<i>Conviction</i>
304-A IPC	RI for two years and fine of sum of Rs.2000/-, in default of fine RI for 15 days.
279 IPC	RI for six months and fine of Rs.1000/-, in default of fine RI for 7 days.

The case as set up by the prosecution is that the complainant's brother Sukhwinder Singh was in business of selling milk and on 8.3.2009 when his brother Sukhwinder Singh came to Patti on his motor-cycle bearing No. PB-63-4011, the complainant also came to Patti for some personal work. At about 2 at noon when Sukhwinder Singh while going and just passed the Lahore Chowk, a mini bus bearing No.PB02-H-9597 came in rash and negligent manner without blowing any horn and struck into the motor-cycle of Sukhwinder Singh. Upon this, Sukhwinder Singh fell on the ground and got injuries on his head. In the same mini bus the injured was taken to hospital at Patti, where he died.

Challan as required under Section 173 Cr.P.C. was presented and copy of the same as required under Section 207 Cr.P.C. was supplied to the accused.

Learned trial Court vide judgment dated 21.2.2012 convicted and sentenced the petitioner for the offences indicated above.

The judgment dated 21.2.2012 passed by learned Sub Divisional Judicial Magistrate, Patti convicting and sentencing the

petitioner under Section 304-A IPC and Section 279 IPC was made subject matter of challenge before the learned Additional Sessions Judge, Tarn Taran. However, the Appellate Court had dismissed the appeal and observed as under :-

“9. Keeping in view the arguments advanced by learned Additional P.P. and from the perusal of record, it is clear that appellant has not bothered to appear before the Court in spite of arrest warrants issued against him. It seems that appellant does not want to say anything on the impugned judgment and sentence order. Moreover, respondent has already examined all the material witnesses to prove the case against the appellant. There is no illegality and infirmity in the impugned judgment and sentence order. Hence, the present appeal is ordered to be dismissed. Information be sent to the learned Chief Judicial Magistrate, Tarn Taran for issuing re-arrest warrants/conviction warrants against the appellant/convict for undergoing the sentence awarded by the learned lower Court. Lower Court record is ordered to be sent back along with copy of this judgment for issuing conviction warrants/re-arrest warrants against the appellant/convict Satnam Singh, who is required to be taken into judicial custody for undergoing the imprisonment as awarded by learned lower Court. Appeal file pertaining to this Court is ordered to be consigned to the record room.

It is in the aforesaid circumstances the petitioner has filed the present revision petition.

This Court while issuing notice of motion on 14.5.2015, passed the following order :-

“Learned counsel for the petitioner contends that there was a dispute between the petitioner and his lawyer on the issue of legal fee. In this manner, neither the counsel had appeared before the appellate Court nor the petitioner was informed about the date fixed before the Court. On account of non-communication between them about the date fixed in the case before the appellate Court, the petitioner had neither appeared in the Court nor made any alternative arrangement.

*In support of his contention, learned counsel for the petitionere relies upon **Khaili and others vs. State of Uttar Pradesh** 1981 (sup) SCC 75.*

Notice of motion for 14.07.2015.

Notice re: suspension of sentence.”

Learned counsel for the petitioner on the strength of the judgment has argued that the learned lower Appellate Court has not granted sufficient opportunities to the petitioner to put forward his case. It is also argued by him that there was a dispute between the petitioner and his lawyer on the issue of payment of legal fee and, therefore, his counsel did not appear before the appellate Court. He submits that even the petitioner was not informed about the date fixed before the Court. Since the petitioner was not informed about the date of the case, the petitioner could not appear or made some alternative arrangement including engagement of another counsel.

Learned counsel for the petitioner has further argued that it was incumbent upon the learned Appellate Court to seek the assistance from the State Legal Services Authority to provide the counsel through the legal aid but the same was not adhered to. The institution of Legal

Service Authority is aimed to extend the legal help to the needy persons. By not resorting the requisition of service from the Legal Services Authority, learned Appellate Court had violated the very purpose of institution of the Legal Services Authority. During the course of arguments learned counsel has placed reliance upon ***Khaili and others vs. State of Uttar Pradesh*** 1981 (Sup) SCC 75. He refers to para Nos.1 and 2 of the judgment, which are as under :-

“It appears that at the time when Criminal Appeal No.980 of 1975 came up for hearing before a Single Judge of the Allahabad High Court, the learned Advocate appearing on behalf of the appellants stated that he had no instructions in the case and he would not, therefore, argue it. The reason why he stated that he had no instructions in the case was that he had addressed a communication to the appellants intimating to them that their appeal would be taken up for hearing on August 20, 1979 and requiring them to reach immediately with his fees and expenses for the paperbook so that the appeal could be argued. This communication, though correctly addressed to the appellants, did not reach them and an endorsement was made by the Postal Department on the envelope to the effect that “no person of this name lives in this area – returned”. Now obviously this endorsement was incorrect because the appellants did live at the address at which the communication was sent by the Advocate. But since the communication was not received by them, they could not come to Allahabad and pay the necessary fees and expenses of the Advocate. But even though the fees and expenses were not paid, the Advocate should not, in our opinion, have refused to argue the case. It must be remembered by every

advocate that he owes a duty to the Court, particularly in a criminal case involving the liberty of the citizen, and even if he has not been paid his fees or expenses, he must argue the case and assist the Court in reaching the correct decision. We can appreciate a situation where an advocate may be unable to argue the case in the absence of instructions from the client, but non-receipt of fees and expenses can never be a ground for refusing to argue the case. The learned Advocate in the present case, however, refused to argue the case and consequently the learned Judge went through the record of the case and decided the appeal. Now one thing is clear that howsoever diligent the learned Judge might have been and however careful and anxious to protect the interests of the appellants, his effort could not take the place of an argument by an advocate appearing on behalf of the appellants. We think that in a case such as this, what the learned Judge should have done was to appoint an advocate amicus curiae and then proceed to dispose of the appeal on merits.

2. We are, therefore, of the view that the Order passed by the learned Judge dismissing the appeal must be set aside and the appeal must be remanded to the High Court for being disposed of in accordance with law after hearing the appellants.”

Learned State counsel has filed the custody certificate of the petitioner, wherein as against the awarded sentence of two years under Section 304-A IPC, the petitioner is in custody for the last about 06 months and 23 days.

I have heard learned counsel for the parties and have gone through the case file carefully.

The dispute between the petitioner and his lawyer regarding payment of fee cannot deprive the petitioner from his legitimate claim of right to be heard. The reasoning put forward by the petitioner that his lawyer neither appeared before the Court nor he informed him about his own non-appearance, warrants interference in the present revision petition. In the event of non-appearance of the counsel or the client, learned Court should have resorted to the method of appointment of legal aid counsel through the State Legal Services Authority, which is the very object of the creation of such institution.

Considering the fact that the petitioner, who remained unrepresented before the learned Court below and while relying upon ***Khaili's*** case (supra), I accept the present revision petition and set aside the order passed in appeal and the case is remitted back to the learned Appellate Court to decide the case afresh in accordance with law, of course after hearing the petitioner. However, in case the petitioner is not able to afford a lawyer, to provide him the services of legal aid counsel from the State Legal Services Authority. Since the order passed by Additional Sessions Judge, Tarn Taran, dated 16.12.2014 is set aside, during the pendency of the appeal, the petitioner, who was earlier on bail, his sentence shall remain suspended during the pendency of the appeal before the lower Appellate Court subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the learned trial Court.

September 29, 2015
Vijay Asija

(**HARI PAL VERMA**)
JUDGE