

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.1843 of 2014
Date of Decision : 5.10.2015

Mohan Lal @ Mohna

.....Petitioner

Vs.

State of Punjab

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. H.S. Saini, Advocate for the petitioner.
Mr. K.D. Sachdeva, Addl. A.G. Punjab.

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

RAMESHWAR SINGH MALIK, J

Present criminal revision petition is directed against the impugned judgement dated 4.6.2014 passed by the learned Sessions Judge, Gurdaspur, whereby appeal of the petitioner was dismissed and his conviction as well as sentence recorded by the impugned judgement of conviction and order of sentence of even date i.e. 10.12.2012 passed by the learned Judicial Magistrate Ist Class, Batala, were upheld.

Brief facts of the case, as recorded by the learned Sessions Judge in paras 2 and 3 of the impugned judgement, are that on 29.4.2004, he was returning from his duty on his Bajaj scooter bearing no.PB-18-F 9323. His wife Sukhwinder Kaur called him from bus stand Dhandoi. At about 9.30 a.m. they started for Qadian for some domestic work. When they reached near drain bridge

in the area of village Thariyewal, one truck bearing No.DL-IG-3629, being driven by accused appellant, in a rash and negligent manner and at high speed came from the side of Batala and hit the scooter from behind, as a result of which they fell down. The rear tyre of the truck hit against the head of his wife and she died at the spot. The occurrence was also witnessed by Dr. Kuldip Singh and Harpinder Singh son of Ajit Singh.

The investigation of this case was conducted by ASI Balwinder Singh. He recorded the aforesaid statement of the complainant, put his endorsement on it and got registered the FIR. Then he went to the spot, prepared the inquest report on the dead body of Sukhwinder Kaur. He also prepared the rough site plan of the accident, took into possession the truck in question and recorded the statements of the witnesses. Accused was arrested in this case and after completion of the investigation, challan against the accused was presented in the court.

Report under Section 173 (2) Cr.P.C., was presented and copy thereof alongwith documents attached therewith were supplied to the accused as envisaged under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly accused was charge sheeted for the offence punishable under Section 304-A IPC. Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 9 PWs, besides bringing on record the other relevant evidence. After conclusion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. He denied the allegations, alleged false implication and pleaded complete innocence. However, accused did not lead any defence evidence.

After hearing learned counsel for the parties and going through the

evidence on record, the learned trial court came to the conclusion that the prosecution has duly proved its case, bringing home the guilt against the accused. Accordingly, accused was held guilty and convicted for the offence punishable under Section 304-A IPC. Consequently, the convict was awarded the sentence to undergo R.I. for 2 years and to pay a fine of Rs.1,000/- for the offence punishable under Section 304-A IPC. In the event of non payment of fine, convict was ordered to undergo additional R.I. for one month, vide impugned judgement of conviction and order of sentence of even date i.e. 10.12.2012.

Feeling aggrieved, petitioner filed his appeal, which also came to be dismissed by the learned Sessions Judge, vide impugned judgement dated 4.6.2014. Hence this criminal revision petition.

When the case came up for hearing on 16.6.2014, learned counsel for the petitioner contended that keeping in view the concurrent findings recorded by both the courts below, he would not challenge the conviction of the petitioner. Accordingly, notice of motion was issued with regard to quantum of sentence only. Thereafter, vide order dated 11.9.2014, petitioner was directed to be released on interim bail, so as to enable him to settle the dispute by paying reasonable amount of compensation to the legal representative of the deceased. Vide order dated 11.12.2014 passed by this court, parties were directed to appear before the Illaqa Magistrate on 19.12.2014 for getting their statements recorded with regard to compromise.

In compliance of the above said order dated 11.12.2014, report from the learned Judicial Magistrate Ist Class, Batala, has been received, which is available on record. Learned counsel for the petitioner submits that the agreed amount has been paid by the petitioner to the legal representative of the

deceased and the matter has been mutually settled between the parties. Highlighting other mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that the petitioner was not a previous convict. He has not been found involved in any other criminal case. Petitioner was the only bread winner of the family. He has been facing the agony of criminal trial for the last 11 years. Concluding his argument, learned counsel for the petitioner submits that let the conviction of the petitioner be upheld and his sentence may be reduced to the period already undergone by him.

On the other hand, learned counsel for the State submits that since the learned courts below have already shown sufficient leniency in favour of the petitioner, while awarding sentence to him, he is not entitled for any further reduction in sentence. He prays for dismissal of the present petition.

Having heard 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 peculiar facts and circumstances of the case noticed herein above, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction, for the following more than one reasons.

It is a matter of record that the petitioner was not a previous convict. He has also not been involved in any other case. It has also gone undisputed on record that the petitioner was the sole bread winner of the family. As per the custody certificate, petitioner has undergone the total custody for a period of 4 months and 23 days, out of total sentence awarded for a period of 2 years. In compliance of the order dated 11.12.2014 passed by this court, report received from the learned Judicial Magistrate Ist Class, Batala, is

available on the record of the case. Statements of the parties were recorded by the learned Magistrate. Sh. Rattan Singh S/o Darshan Singh, legal representative of the deceased has made a statement before the learned Magistrate on 19.12.2014 that he has got no objection, in case the FIR is quashed. Agreed amount is stated to have been paid by the petitioner to the complainant. Having said that, this court feels no hesitation to conclude that the instant one has been found to be a fit case for reduction of sentence of the petitioner to the period already undergone by him, while upholding his conviction.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass Vs. 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 fell for consideration before this Court in **Des Raj v/s State of Haryana 1996(1) RCR (Crl.) 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 facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as by this court, in the cases referred to hereinabove, it is unhesitatingly held that since the petitioner has compromised the matter with the complainant and has undergone about 1/4th sentence awarded to him, ends of justice would be adequately met, if the sentence of the petitioner is reduced to the period already undergone by him. Ordered accordingly.

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 present petition deserves to be partly allowed. Accordingly, while upholding the conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him, as he has already undergone about 1/4th of the sentence i.e. about five months out of total sentence of 2 years R.I. Let the petitioner be released forthwith, if he is not required in any other case. His bail bonds shall stand discharged.

With the above said observations made and directions issued, present criminal revision petition stands disposed of.

5.10.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE