

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

**CRR No. 2162 of 2015 (O&M)
Date of Decision: 15.9.2015**

Dal Chand

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Ashish Yadava, Additional A.G. Haryana.

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

RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the impugned judgment dated 25.5.2015 passed by the learned Additional Sessions Judge, Palwal, whereby, appeal of the petitioner against the impugned judgment of conviction dated 20.12.2012 as well as order of sentence dated 21.12.2012 passed by the learned Chief Judicial Magistrate, was dismissed, upholding the conviction and order of sentence, petitioner has approached this Court by way of instant criminal revision petition, for setting aside the impugned judgments and order of conviction.

Briefly put, relevant facts of the case, as noticed by the learned Additional Sessions Judge, in para 2 of the impugned judgment, are that the case was registered on the statement of Bal

Kishan son of Dyoji Ram, resident of Dugrapur, District Palwal, to the effect that after completion of his labour work at village Sallagarh, he was standing at Kithwari Chowk to return to his village with his younger brother Budh Ram Chaudhary, who also used to supervise the buses of President, Surender son of Tejpal, resident of Jajru, of Cooperative Society Palwal, who used to ply buses from Palwal to Hathin Ransika. On 13.1.2010, at around 6:00 P.M., abovesaid Surender, while driving motor cycle No. HR-29-N-6246, was going towards bus stand from Agra Chowk. Mahesh son of Rama was the pillion rider. When they reached at Kithwari Chowk, a truck registration No. HR-38-P-6756 came, being driven by unknown driver, at a high speed, in a rash and negligent manner and hit the motor cycle of his brother. As an impact, his brother fell down on the road and the wheel of the truck run over his brother. His brother received serious and multiple injuries. Driver of the truck sped away his truck. Onlooker rushed his brother to Om Spero Hosptial, Palwal. He also reached there. His brother died on account of injuries sustained in the accident in question. His dead body was lying in mortuary, G.H. Palwal and prayed prompt action against the culprit. On the basis of his statement, a formal FIR was registered. Investigation was launched.

Challan having been presented, copy thereof alongwith documents attached therewith, was supplied to the accused, as envisaged under Section 207 of the Code of Criminal Procedure ('Cr.P.C.' for short). A prima facie case was made out and the accused was charge sheeted for the offences punishable under

Sections 279/337/304-A of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial. With a view to prove its case, prosecution examined as many as 11 PWs, besides bringing on record other relevant documents.

On conclusion of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material available on record was put to the accused. Accused denied the allegations, alleged false implication and claimed complete innocence. However, accused did not lead any evidence in his defence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has proved its case, bringing home guilt against the accused. Accordingly, accused was held guilty for the offences punishable under Sections 279/337/304-A IPC, vide judgment of conviction dated 20.12.2012. Consequently, convict was sentenced to undergo rigorous imprisonment for a period of 6 months for the offence punishable under Section 279 IPC. Similarly, he was sentenced to undergo rigorous imprisonment for a period of 6 months for the offence punishable under Section 337 IPC. Again, convict was sentenced to undergo rigorous imprisonment for a period six months and to pay a fine of Rs. 500/- for the offence punishable under Section 304-A IPC. However, all the sentences were ordered to run concurrently, vide order of sentence dated 21.12.2012. Fine was paid by the convict. Convict challenged the abovesaid impugned judgment of conviction and order of sentence by way of appeal which came to

be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 25.5.2012. Hence this criminal revision petition.

When this case came up for motion hearing on 9.6.2015, learned counsel for the petitioner, at the very outset, submitted that he did not intend to press the present criminal revision petition on merits. He further submitted that let conviction of the petitioner be upheld and the present petition may be considered only for granting the benefit of probation to the petitioner, he being the first offender. Accordingly, notice of motion was issued and pursuant thereto, learned counsel for the State appeared and filed custody certificate by way of affidavit dated 10.8.2015, copy of which was supplied to the learned counsel for the petitioner.

Highlighting the mitigating circumstances in favour of the petitioner, learned counsel for the petitioner submits that as per custody certificate dated 10.8.2015, petitioner has undergone total sentence for a period of 3 months and 2 days as on 9.8.2015, including the period of remission, out of total sentence awarded to him for a period of 6 months RI. He submits that by now, petitioner has undergone total sentence for 4 months. He further submits that neither petitioner is a previous convict, nor he has been found involved in any other case. Petitioner has been facing agony of criminal trial for the last more than 5½ years. Petitioner is the only bread earner of the family. Finally, learned counsel for the petitioner submits that petitioner is entitled for granting the benefit of probation under Section 4 of the Probation of Offenders Act, 1958 ('Act of 1958')

for short). He prays for allowing the present petition to the extent indicated above.

On the other hand, learned counsel for the State submits that keeping in view the peculiar facts and circumstances of the case, petitioner is not entitled for the benefit of probation. He further submits that since the learned courts below have already taken a lenient view, petitioner is not entitled for any further relief. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that it is just and expedient to grant benefit of probation to the petitioner, he being the first offender. To say so, reasons are more than one, which are being recorded hereinafter.

Mitigating circumstances highlighted by the learned counsel for the petitioner have gone uncontroverted in favour of the petitioner and rightly so, it being a matter of record. Petitioner has been found to be the first offender and he has not been found involved in any other case. The most material mitigating circumstance in favour of the petitioner, which weighed with this Court, is that as per custody certificate dated 10.8.2015, petitioner has already undergone total sentence for a period of 4 months as of now, including period of remission, out of total sentence of 6 months RI. Having said that and also keeping in view the other mitigating circumstances in favour of the petitioner, this Court feels no hesitation to conclude that petitioner

deserves to be released on probation of good conduct.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **State through C.B.I. Anti Corruption Branch, Chandigarh Vs. Sanjiv Bhalla and others, 2014 (4) RCR (Crl.) 17**, judgments of this Court in **State of Punjab Vs. Harinder Singh @ Raju, 2008 (2) RCR (Crl.) 294 (DB)**, **Sant Lal Vs. State of Haryana, 1999 (2) RCR (Crl.) 563**, **Crl. Revision No.97 of 2002 (Mani Ram Vs. State of Punjab) decided on 30.7.2010**, **Crl. Revision No.1385 of 2012 (Chander Parkash Vs. State of UT., Chandigarh) decided on 15.5.2012** and **Crl. Revision No. 1289 of 2015 (Pardeep and others Vs. State of Haryana) decided on 30.4.2015**.

The relevant observations made by the Hon'ble Supreme Court in para 27 of its judgement in **Sanjiv Bhalla's case (supra)**, which can be gainfully followed in the present case, read as under :-

“These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift – from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of Sections 360 and 361 of the Criminal Procedure Code and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition ^{(18)} or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing*

mission must not be forgotten.

**(18) Probation of Offenders Act, 1958 3: Power of court to release certain offenders after admonition –*

When any person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years or with fine or with both, under the Indian Penal Code or any other law and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation – For the purposes of this section, previous conviction against a person shall include any previous order made against him under this Section or Section 4.

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this court, in the cases referred to hereinabove, it can be safely concluded that keeping in view the peculiar facts and circumstances of the case, sentence awarded to the petitioner

deserves to be set aside and petitioner deserves to be released on probation of good conduct.

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 it is just and expedient to extend the benefit of probation to the petitioner, he being the first offender.

Consequently, while upholding conviction of the petitioner, order of sentence of the petitioner is set aside. Petitioner is ordered to be released on probation of good conduct, on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount, to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Palwal, for a period of one year, to appear and receive sentence, as and when called upon during this period and in the meantime, to maintain peace and be of good behaviour, besides furnishing an undertaking not to commit such an offence during the period of probation. On his furnishing personal bonds and undertaking, as indicated above, petitioner is directed to be released forthwith, if he is not required in any other case.

Resultantly, with the abovesaid observations made, present criminal revision petition stands disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

15.9.2015
Ak Sharma