

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2261-2015

Date of decision: 05.10.2015

Shamsher Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. K.S. Dhaliwal, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

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 03.06.2015 passed by the learned Sessions Judge, Patiala, 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. 26.03.2014, was upheld.

Briefly put, facts necessary for disposal of the present case, as recorded by the learned Sessions Judge, in para 2 of his impugned judgment, are that on 18.04.2010, complainant Sh. Faquir Chand son of Chiranji Singh of Chhimba community, resident of Village Bibipur, PS Julkan, Tehsil and District Patiala, aged 42 years, engaged in avocation of agriculture had gone

to Chandandeep Petrol Pump, Near Tangri River, Patiala on Pehowa road on his bicycle to bring diesel. At about 6.00 pm, when he was returning home on his bicycle after taking diesel, he observed Boota Singh son of Sh. Urad Ram of his village going ahead of him on his motorcycle No.PB-11AK-3342 make Hero Honda. Balwinder Singh son of Mukhtiar Singh, resident of Village Bibipur, was pillion riding on that motorcycle. When they had gone upto a distance of about 60/70 yards from the petrol pump on the main road, in the meanwhile a car No.HR-99AG-T-4607 make Alto, came from Patiala side, being driven in rash and negligent manner and by going on wrong side, it hit the motorcycle being driven by Boota Singh. As a result the said motorcycle along with its riders Boota Singh and Balwinder fell on the road side. Both the riders suffered multiple injuries. Boota Singh succumbed to those injuries at the spot, whereas Balwinder Singh who had also sustained multiple injuries on his person was taken to Rajindra Hospital, Patiala in a vehicle. When the complainant while leaving Kuldeep Singh son of Ranjit Singh resident of Village Harigarh near the dead body of Boota Singh, was proceeding towards police post Roharjagir, to lodge the report regarding the accident, on the way near Tangri river bridge, he came across police party headed by HC Gurmeet Singh and got his statement Ex.PW2/A recorded with him. In said statement, he stated that he came to know about the name of car driver as Shamsher Singh son of Gurnam Singh, resident of Village Pehowa (Haryana). The statement Ex.PW2/A was signed by Faquir Chand in Punjabi and HC Gurmeet Singh attested his signatures. HC Gurmeet Singh appended his endorsement Ex.PW5/B below such statement and sent ruqa to the police station through PHG Jasbir Singh at about 10.30 pm, on the basis of which,

formal FIR Ex.PW5/C was recorded at PS Julkan, under signatures of ASI Nirmal Singh. The police party accompanied by complainant Faquir Chand then went to the place of accident. The investigating officer prepared rough site plan of place of accident with correct marginal notes as Ex.PW5/E. He got the snaps of place of accident clicked from Nasib Singh, Photographer. Both the vehicles involved in the accident were taken into possession vide recovery memo Ex.PW5/F, attested by CII Harnek Singh. The investigating officer carried out inquest proceedings with respect to unnatural death of Boota Singh and prepared inquest report Ex.PW5/G. He drafted application Ex.PW5/H for getting the post mortem examination conducted on dead body of Boota Singh and handed over the same to CII Harnek Singh for getting the needful done from Rajindra Hospital, Patiala. On return to the police station, he deposited the case property with MHC Sukhdev Singh.

On 19.04.2010 HC Gurmeet Singh while heading a police party, went to Rajindra Hospital, Patiala, where CII Harnek Singh submitted post mortem report of Boota Singh to him. Balwinder Singh injured was admitted in emergency ward of that hospital. Investigating officer moved an application enquiring about the fitness of injured Balwinder Singh to make statement, on which the attending doctor declared him unfit to make statement. As such the police party headed by HC Gurmeet Singh went to Village Devigarh and while being present at turning of Village Channa, Harvinder Singh resident of Village Gajipur brought accused Shamsher Singh before him. Shamsher Singh was accordingly arrested in this case vide memo Ex.PW5/J, signed by the accused Shamsher Singh in Hindi and attested by CII Harnek Singh. Personal search of accused was conducted and memo of jamatalashi Ex.PW5/K was

prepared in that respect, signed by the accused Shamsheer Singh in Hindi and attested by CII Harneek Singh. As the offences happened to be bailable, he was released on bail.

On 21.04.2010, Rajinder Kumar, mechanic tested both the vehicles involved in the accident and submitted test report with respect to motorcycle No.PB-11AK-3342 Ex.PW4/A and car No.HR99-AGT-4607 Ex.PW4/B. During investigation, the investigating officer recorded statements of the witnesses. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Area Magistrate, Patiala.

The challan having been presented in the Court of learned Area Magistrate, Patiala, 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 to be made out against the accused and accordingly he 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.

In order to substantiate the charges framed against the accused, prosecution examined as many as 05 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. However, the accused did not lead any evidence in his defence.

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 under Section 279, 337, 304-A IPC and was convicted accordingly vide impugned judgment of conviction dated 26.03.2014. Consequently, the convict was sentenced for the offence punishable under Section 279 R.I. for a period of six months and to pay a fine of Rs.500/-. In default of payment of fine, he was further ordered to undergo simple imprisonment for 15 days. He was sentenced to undergo R.I. for six months under Section 337 IPC and to pay a fine of Rs.500/-. In default of payment of fine, he was further ordered to undergo simple imprisonment for 15 days. He was sentenced to undergo one year R.I. for the offence under Section 304-A IPC and to pay a fine of Rs.1000/-. In default of payment of fine, he was further ordered to undergo simple imprisonment for one month, vide impugned order of sentence dated 26.03.2014. However, all 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 Sessions Judge, Patiala vide his impugned judgment dated 03.06.2015. Hence this criminal revision petition, at the hands of convict-petitioner.

When the case came up for motion hearing on 29.06.2015, learned counsel for the petitioner submitted that he does not intend to press this petition on merits. He further submitted that let the conviction of the petitioner be upheld and the instant criminal revision petition may be considered only for the limited purpose of reduction of sentence of the

petitioner, he being the first offender. Accordingly, notice of motion was issued and pursuant thereto, custody certificate by way of affidavit dated 04.10.2015 filed in the Court today, is taken on record.

Learned counsel for the petitioners, at the very outset, fairly states that he does not intend to press this petition on merits and the present petition may be considered only for the limited purpose of reduction of sentence to the period already undergone by the petitioner, while upholding his conviction and directing the petitioner to pay ₹30,000/- to the victim. Highlighting other mitigating circumstances, he submits that as per the custody certificate dated 04.10.2015, petitioner has undergone total custody period for 05 months and 12 days, including the period of remission, out of total sentence awarded to him. He would next contend that petitioner has been facing the agony of criminal trial for the last more than 05 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. He prays for allowing this petition in abovesaid terms.

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 him the sentence, petitioner deserves no further leniency, at the hands of this Court. 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 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 dated 04.10.2015, he has undergone the sentence for a period of 05 months and 12 days, including the period of remission out of total sentence awarded to him for a period of one year. He has been found facing the agony of criminal trial for the last more than 05 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 directing him to pay ₹30,000/- to the victim.

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 more than 05 years.

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, while upholding conviction of the petitioner, his sentence is ordered to be reduced to the period already undergone by him. Petitioner is directed to be released forthwith, in case he is not required in any other case.

Petitioner is directed to deposit ₹30,000/- in the Court of learned Chief Judicial Magistrate, Patiala, within a period of three months, failing which this revision petition would be deemed to have been dismissed. The amount of ₹30,000/- shall be paid to the legal representatives of the deceased, in accordance with law but at an early date.

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

[RAMESHWAR SINGH MALIK]
JUDGE

05.10.2015
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