

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2283-2015 (O&M)
Date of decision: 04.12.2015

Sushali

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Satish Chaudhary, Advocate
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

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 11.05.2015 passed by learned Additional Sessions Judge, Palwal, whereby appeal of the petitioner was dismissed, his conviction and sentence awarded by the learned trial Court, vide impugned judgment of conviction dated 16.04.2013 and order of sentence dated 17.04.2013, was upheld.

Briefly put, facts necessary for disposal of the present case, as recorded by the learned Additional Sessions Judge, in para 2 & 3 of his impugned judgment, are that on 15.12.2015, ASI Sunder Singh with his police team was on patrol duty at Hassanpur Chowk. An information was received

that Amit and Monu have been admitted in Escorts Hospital in an injured condition. ASI Sunder Singh visited Escorts Hospital and recorded the statement of complainant Shiv Kumar (PW1) to the effect that he was Manager of Manas Shiksha Sadan and one Rajesh Sharma came to master Nahar Singh, Baidh, near Ram Het Colony for taking medicines. When they were returning back, they were standing near the house of Nahar Singh, master. At that time from the Palwal side, his son Mayank @ Monu and his nephew Amit Kumar came driving motorcycle bearing No.HR51P/7028 Mark Hero Honda and going towards Goverdhan at 8.30 AM. They reached near the house of master Nahar Singh from the back side when from Hassanpur Chowk, a truck bearing registration No.HR30J-0198 came driving at a high speed and in a rash and negligent manner and struck the motorcycle. Due to the said collision, Monu @ Mayank and Amit fell down from their motorcycle. The truck ran over them. Thereafter the truck stopped for sometime. Name of the driver was revealed as Sushali. The injured Mayank @ Monu and Amit were taken to Escorts Hospital for treatment, however, due to the injuries sustained by Monu @ Mayank and Amit, they died in the Escorts Hospital, Faridabad. It was mentioned by the complainant that accident was caused due to negligence driving of the truck driver namely Sushali.

Levelling a variety of allegations and narrating the sequence of events, in all, according to the prosecution, the accident in question had taken place due to rash and negligent driving by the accused, while driving the offending truck, in which, Mayank @ Monu and Amit Kumar sustained injuries and subsequently died. In the background of these allegations and in the wake of statement Ex.PW1/A of the complainant Shiv Kumar, the present

criminal case was registered against the accused by virtue of FIR No.257/05 dated 15.10.2005 under Sections 279/304A IPC Ex.PW2/A, on accusation of having committed offence punishable under Sections 279/304A IPC by the police of P.S. Hodal in the manner depicted hereinabove. After completion of investigation, the final police report (challan) was submitted by the police against the accused to face the trial for the indicated offences.

The challan having been presented, copy thereof along with the 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 found to be made out and accordingly the accused was charge-sheeted for the offences punishable under Sections 279/304A 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 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. In his defence, accused did not examine any witness.

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 vide impugned judgment of conviction dated 16.04.2013. Consequently, the convict was sentenced for the offences punishable under Sections 279/304A

IPC. Accused was sentenced to undergo three months S.I. for the offence punishable under Section 279 IPC, whereas he was sentenced to one year S.I. for the commission of offence punishable under Section 304-A IPC, vide order of sentence dated 17.04.2013. However, 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 11.05.2015 and his conviction was upheld. Hence this criminal revision petition, at the hands of convict-petitioner.

When the case came up for hearing on 02.07.2015, learned counsel for the petitioner, at the very outset, submitted that he does not intend to press this petition on merits. He further submitted that let the present petition be considered only for the limited purpose of reduction in sentence to the period already undergone by the petitioner. Accordingly, notice was issued only qua quantum of sentence.

Highlighting the mitigating circumstances in favour of the petitioner, learned counsel submits that petitioner has been facing the agony of criminal trial for the last about 10 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 also submits that as per the custody certificate dated 01.09.2015, petitioner has undergone total custody period for a period of about 07 months, out of total sentence awarded to him for 01 year. He prays for allowing the present petition.

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 instant 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 01.09.2015, he has undergone the sentence for a period of 07 months, out of total sentence awarded to him for 01 year. He has been found facing the agony of criminal trial for the last about 10 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.

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 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. It is so said because petitioner has already undergone substantial part of the sentence awarded to him.

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. Accordingly, while upholding the 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, if he is not required in any other case.

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

[RAMESHWAR SINGH MALIK]
JUDGE

04.12.2015
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