

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2378 of 2014 (O&M)
Date of Decision : 20.04.2015

Nirvail Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

- 1. *Whether Reporters of local papers may be allowed to see the judgment?***
- 2. *To be referred to the Reporters or not?***
- 3. *Whether the judgment should be reported in the Digest?***

Present: Ms. Satwant Mehta, Advocate
for the petitioner.

Mr. Gazi Mohd., DAG, Punjab.

R.P. Nagrath, J.

The petitioner was tried of the charges under Sections 304-A and 279 of the Indian Penal Code (IPC) for driving mini bus No. PB-02-A-9921 of M/s Sandhu Bus Service, rashly and negligently on a public highway, resulting into taking two innocent lives. The petitioner was convicted of both the charges and awarded sentence to undergo rigorous imprisonment for two years and to pay fine of ₹ 2000/-, in default to undergo simple imprisonment for 15 days under Section 304-A IPC and six months of rigorous imprisonment and to pay fine of ₹ 1000/-, in default to undergo simple imprisonment for seven days under Section 279 IPC, by the trial Court. Both the sentences were to run concurrently.

2. The aforesaid conviction and sentence awarded by the

trial Court was upheld by the learned appellate Court.

3. The petitioner has filed instant revision for challenging the concurrent findings recorded by the courts below.

4. The dispute mainly related to identity of the bus driver. When the matter was listed on 06.08.2014, learned counsel for the petitioner confined her arguments only on the quantum of sentence. So the notice of motion was issued to the respondent-State to that extent.

5. It would be necessary to briefly refer to the facts of present case. Complainant Parvej Masih alongwith Mukhtiar Masih was going on a scooter to village Bhojjan on 12.02.2004 at about 6.30 a.m. Raja Masih and Jaji Masih (deceased) were also going on separate scooter No. PB-02-Z-8454 towards same direction. The scooter of victims was ahead of the scooter of complainant. It was about 07.30 a.m. they reached little ahead of bus stop of village Sur Singh, that mini bus in question came from behind being driven rashly and negligently by the driver and hit the scooter of Jaji Masih. Both Jaji Masih and Raja Masih were crushed under the bus and the scooter was dragged to some distance towards fields on the left side of the road. The victims died at the spot. FIR was registered at the Police Station on the same day. The petitioner was named as driver of the vehicle who fled from the spot. Major Singh and Hare Ram, BSF personnel, who were present there at the spot also suffered injuries on their person. Both these injured were taken to the hospital for treatment in the official vehicle of BSF.

6. During investigation of the case, the petitioner was found

innocent and kept in column no. 2 of the challan and Davinder Singh was mentioned as the accused. After the complainant was examined as PW-1, application under Section 319 Cr.P.C. was moved and the petitioner was summoned as an additional accused to face trial alongwith Davinder Singh against whom the challan was presented. There was absolutely no challenge to the version that driver of mini bus was rash and negligent in driving his vehicle on a public highway especially in view of the manner in which the accident took place and offending bus dragged the scooterists to some distance and that too towards adjoining fields. It could be inferred that bus was at the very fast speed when it hit the victims. Principle of *res ipsa loquitur* would squarely apply.

7. Apart from identification of the petitioner by the witnesses as the driver of offending bus even defence witnesses bring support to the prosecution case. DW-1 Gursewak Singh in cross-examination stated that petitioner had been driving the mini bus for the past about six months. This witness in fact never made statement before the police during investigation for supporting the petitioner's innocence. There was also a similar statement of DW-2 Baldev Singh. The material evidence that the defence could bring was the record of the transporter by producing log book of the bus and duty roster, for remotely suggesting that it was in fact Davinder Singh and not Nirvail Singh, as driver of the offending bus. Anyhow, the aforesaid controversy need not detain us any more as notice of motion was issued by this Court only on the quantum of sentence.

8. Learned petitioner's counsel, vehemently, contended that

the incident took place in the year 2004 i.e. 11 years ago and therefore, leniency may be exercised in favour of the petitioner in the quantum of sentence.

9. Learned counsel for the petitioner referred to a judgment dated 30.03.2015 of the Hon'ble Supreme Court in **State of Punjab vs. Saurabh Bakshi, Criminal Appeal No. 520 of 2015**. That was a case in which the High Court reduced the punishment to the period of 24 days already undergone by the accused keeping in view the fact that he had also deposited an amount of ₹ 80,000/- towards compensation. It also came on record that the Motor Accident Claims Tribunal had already awarded the amount of compensation to the family of the victims in the said case.

10. It was contended by the learned counsel for the petitioner that Hon'ble Supreme Court had accepted appeal of the State of Punjab against the inadequate punishment and enhanced the sentence of the accused to undergo rigorous imprisonment for six months. I am of the view that the contentions that the period of sentence may be reduced to six months imprisonment or so does not deserve to be accepted. It all depends upon facts and circumstances of each case for awarding appropriate punishment. When the matter was listed on 25.09.2014, learned counsel for the petitioner sought time to have instructions with regard to payment of compensation @ ₹ 1 lac for each family of deceased. Learned petitioner's counsel contended that the petitioner is a poor person and is not able to deposit any amount towards compensation.

11. Anyhow, the observations of Hon'ble Supreme Court in

Saurabh Bakshi's case (supra) would be quite relevant. It was observed that the courts have to bear in mind that law is averse to any kind of chaos. It is totally intolerant of anarchy. If any one defies law, he has to face the wrath of law, depending upon the concept of proportionality that the law recognizes. At times certain crimes assume more accent and gravity depending on the nature and impact of the crime on the society. No court should ignore the same being swayed by passion of mercy. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalized. It cannot be said as a proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim, regardless of the gravity of the crime under Section 304-A, there can be reduction of sentence.

12. In **Dalbir Singh vs. State of Haryana, 2000 (5) SCC 82**, the Hon'ble Supreme Court observed that while considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence.

13. In **Saurabh Bakshi's case (supra)** the victims were in a Maruti car. The offending vehicle was Indica car, which was coming from opposite side at a very high speed and hit the car of the victim as a result of which the car fell in ditches. The present is a case where the petitioner was a professional driver of mini bus and had hit the scooterists from behind.

14. The aforesaid facts and circumstances would make the occurrence of serious magnitude for which leniency as contended by learned counsel for the petitioner cannot be extended.

15. In view of the aforesaid facts and circumstances, I would find that the petitioner deserves harsher punishment but in the circumstances of the case, the sentence of the petitioner is reduced from two years rigorous imprisonment to one year and six months under Section 304-A IPC, maintaining rest of the sentence including payment of fine and the default clause.

16. The revision is, therefore, dismissed on merits but it is partly allowed so far as the period of sentence is concerned in the manner indicated above.

April 20, 2015
jk

(R.P. NAGRATH)
JUDGE