

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.257 of 2015

Date of Decision: April 27, 2015

Jagdish Kumar son of Sarwan RamPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sandeep Arora, Advocate for the petitioner.

Mr.Nikhil K.Chopra, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

The present revision petition has been filed against the judgment dated 14.10.2014 rendered by the learned Additional Sessions Judge, Jalandhar dismissing the appeal filed by the petitioner-accused against the judgment of conviction and order of sentence dated 11.12.2012 passed by the Chief Judicial Magistrate, Jalandhar vide which the petitioner-accused was convicted for offences under Sections 279/304-A of the Indian Penal Code and sentenced as under:

U/s 279 IPC Sentenced to undergo RI
for a period of 6 months.

U/s 304-A IPC Sentenced to undergo RI
for a period of 1 year & payment
of fine of ₹1000/-, in default
of payment of fine further RI
for one month.

The sentences were ordered to run concurrently.

2. Briefly stated, case of the prosecution is that on 10.9.2007 Dikshita was pillion riding on an Aactiva Scooter and at about 12.00 Noon, a bus bearing registration No.PB-09-G-9019, which was being driven in a rash and negligent manner by the petitioner-accused, struck against the Scooter from behind and as a result of which Dikshita, a girl of young age and student of Frankwin Institute fell on road and died at the spot. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was filed against the petitioner-accused to face trial. He stands convicted and sentenced by the trial Court as afore-noticed and appeal filed by him against the judgment of conviction and order of sentence has been dismissed by the learned Additional Sessions Judge, Jalandhar.

3. Learned counsel appearing for the petitioner, at the very outset, makes a submission that he is not assailing the conviction on merit but would confine the scope of the instant revision petition only regards quantum of sentence. Learned counsel would submit that the petitioner is a poor person and the sole bread-winner of the family and would be willing to pay a sum of ₹75,000/- towards compensation to the family of the deceased.

4. Learned State counsel would, however, submit that the life of a young girl has been lost on account of the rash and negligent driving of the petitioner and as such, there would be no occasion for this Court to interfere with the quantum of sentence. Learned State counsel has referred to a recent judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.520 of 2015 (arising out of SLP (Criminal) No.5825 of 2014 “**State of Punjab**

v. **Saurabh Bakshi**”), decided on 30.3.2015 in support of his contention.

5. Learned counsel for the parties have been heard and the judgments rendered by the Courts below have been perused.

6. In **Saurabh Bakshi's** case (supra), accused had been convicted for offences under Sections 279/304-A of the Indian Penal Code for having caused death of two persons by rash and negligent driving of motor vehicle. The High Court while dealing with the revision petition filed by the accused therein had taken notice of a deposit of ₹85,000/- having been made before the trial Court towards compensation to be paid to the legal representatives of the two deceased persons and while upholding the conviction of Saurabh Bakshi had reduced the sentence to the period already undergone i.e. of 24 days. It is in the light of such facts that the Hon'ble Supreme Court had accepted the appeal preferred by State of Punjab and had observed that the High Court had been swayed by the passion of mercy in applying the principle that payment of compensation is a factum for reduction of sentence to 24 days. It was held that such course was in the realm of mis-placed sympathy. It was further held that 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 of the Indian Penal Code, there can be reduction of sentence.

7. In **Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359**, it had been observed by the Apex Court as under:

“.....The concept of proportionality allows a

significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect – propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion.”

8. Adverting back to the facts of the present case, undoubtedly, a young life has been lost. However, there are sufficient mitigating circumstances that would justify this Court's intervention as regards quantum of sentence.

9. The incident relates back to the year 2007. The petitioner has faced the pangs of trial followed by appeal for a period in excess of seven years. He is stated to be a poor person and the sole bread-winner of the family. As per custody

certificate furnished by learned State counsel, the petitioner has undergone a custody period of 5 months and 11 days as on 25.3.2015. In other words, as of date, out of the substantive sentence of one year awarded, the petitioner has already undergone a sentence of almost 6-1/2 months. He is not stated to be involved in any other criminal proceedings. During the course of trial, the petitioner was on bail and he, concededly, has not mis-used such concession. Furthermore, the petitioner is ready and willing to even compensate the family of the deceased by an amount of ₹75,000/- keeping in view his financial status.

10. Taking into account the afore-noticed mitigating circumstances collectively, the present revision petition is partly allowed to the extent of upholding the conviction of the petitioner but reducing the sentence of the petitioner to the period already undergone.

11. Benefit of this order would enure to the petitioner and he would be released only upon a deposit of ₹75,000/- being made before the trial Court and such amount would, in turn, be disbursed to the immediate family of deceased Dikshita.

12. Disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

April 27, 2015
SRM

Note: Whether to be referred to Reporter? (Yes/No)