

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRR-2661-2014 (O&M)
Date of decision:26.03.2015**

Ranbir Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.Amardeep Hooda, Advocate for
Mr.Sarfraj Hussain, Advocate for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition is directed against the judgment dated 21.7.2014 passed by the learned Additional Sessions Judge, Rohtak, whereby he dismissed the appeal of the petitioner and upheld the judgment of conviction dated 5.1.2012 passed by the learned Judicial Magistrate First Class, Rohtak, however, sentence of the petitioner was reduced by the learned Additional Sessions Judge from two years' rigorous imprisonment to one year for the offence under Section 304-A IPC.

Brief facts of the prosecution case are that on 11.7.2004 a VT was received from the control room Rohtak in the police station that a dead body was lying at village Titoli turn. On receipt of said information, Head Constable Shamsheer Singh along with constable Ved Parkash reached at village Titoli turn, where complainant Satyawar made the statement that he was resident of village Titoli and he was agriculturist. Mukesh son of Surat Singh was the son of his brother and he and Mukesh were running a hotel at

Jind Road Rohtak. On 11.7.2004 at 10.00 P.M. Mukesh proceeded on his scooter bearing No. HR-12C-3583 from his hotel to home and complainant also proceeded on the Motorcycle bearing No. HR-13-8655 from the hotel to his home. He was going behind the scooter of Mukesh. Umesh son of Surat Singh, his nephew, was also pillion rider on his motorcycle. At about 10.15 P.M., when the scooter of Mukesh reached near nut bolt factory, then one truck came from the behind. Driver was driving the truck in a fast speed and in a rash and negligent manner who hit the scooter of the deceased from the driver side. Resultantly, Mukesh fell down from the scooter and the rear tyre of the truck rolled over the scooterist Mukesh. Then driver of the truck stopped the truck and he noted the number of the truck as HR-46B-1710 and the driver of the truck disclosed his name as Ranbir Singh son of Ganga Shah resident of village Titoli. Thereafter, driver of the truck fled away from the spot towards village along with the truck. Injured Mukesh succumbed to the injuries at the spot due to the accident. The accident was caused due to rash and negligent driving of the truck driver and he requested that legal action be taken against him. He left Umesh near the dead body and when he was going to report, police met him. On this, Head Constable Shamsheer Singh put his endorsement on it and sent the tehrir through constable Ved Parkash. On this, formal FIR bearing no.113 dated 12.7.2004 was got registered under sections 279/304-A IPC in the Police Station Sadar, Rohtak. After that, investigation agency swung into action. Site plan of the place of accident was prepared and proceedings under section 174 Cr. P.C. were carried out. Post mortem on the dead body of the deceased was got conducted. The accidental scooter was taken by the police in their possession from the place of accident and photographs were

also taken. Statements of the witnesses were recorded. Accused was arrested and the accidental truck, its RC and driving license of accused were taken by the police in their possession. The accidental vehicles were got mechanically inspected and their reports were obtained. On completion of necessary investigation, the challan was prepared and presented in the court for commencement of trial of the accused.

The police report under Section 173 Cr. P.C. having been filed in the Court, copy thereof was supplied to the accused free of costs, as required under Section 207 Cr. P.C.

Having found a prima facie case, charge was framed against the accused for committing the offence punishable under Sections 279/304-A IPC. The accused pleaded not guilty and claimed trial. With a view to prove its case, prosecution examined as many as five prosecution witnesses, besides tendering relevant documents in evidence. After closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., while putting the entire incriminating material to him. The accused denied his involvement and pleaded false implication. However, the accused did not lead any evidence in defence.

After hearing the learned counsel for the parties and going through the record of the case, the learned trial Court came to the conclusion that the prosecution has duly proved its case beyond reasonable shadow of doubt. Consequently, accused was convicted for the offence punishable under Sections 279 and 304-A IPC, vide impugned judgment of conviction dated 5.1.2012. The order of sentence was passed on 6.1.2012, thereby awarding the sentence of rigorous imprisonment for two years and to pay a fine of Rs.7,000/- for the offence punishable under Section 304-A

IPC. In default of payment of fine, the accused was ordered to further undergo rigorous imprisonment for a period of two months. However, no separate sentence was awarded under Section 279 IPC. Fine was paid by the convict.

Dissatisfied with the above-said judgment of conviction and order of sentence passed by the learned Judicial Magistrate First Class, Rohtak, convict filed his appeal before the learned Sessions Court, which came to be dismissed by the learned Additional Sessions Judge, Rohtak, vide impugned judgment dated 21.7.2014, however, sentence of the petitioner was reduced from 2 years' RI to 1 year's RI. Hence this criminal revision petition.

When the matter came up for hearing before this Court on 29.8.2014, learned counsel for the petitioner, at the very outset, submitted that he does not intend to challenge the conviction of the petitioner. He restricted his prayer to consider the present criminal revision petition only qua the quantum of sentence of the petitioner. Accordingly, notice of motion was issued only with regard to quantum of sentence and pursuant thereto, custody certificate by way of affidavit dated 20.1.2015 was filed.

Learned counsel for the petitioner, while highlighting mitigating circumstances in favour of the petitioner, submits that the FIR was registered as far back as on 12.7.2004 and the petitioner has been facing the mental agony of criminal trial for the last about 11 years. The petitioner was an old person of more than 60 years. He was not found involved in any other FIR, as per the custody certificate. He has already paid the fine and has undergone the sentence including remissions for a period of 9 months and 14 days as on 20.1.2015. He prays for reduction of

sentence to the period already undergone by him.

Per contra, learned counsel for the State submits that since the petitioner has caused death because of his negligence which has been duly proved by the prosecution, he was not entitled for reduction of sentence. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction. It is so said, because the petitioner is an old man of more than 60 years. He is not found involved in any other FIR. He has been facing the mental agony of criminal trial for the last about 11 years. Further, out of total sentence of one year, as ordered by the learned Additional Sessions Judge, Rohtak, vide impugned judgment dated 21.7.2014, petitioner has already undergone the sentence for a period of 9 months and 14 days including remissions as on 20.1.2015. Thus, by now petitioner has undergone virtually the entire sentence. Hardly, a period of about two weeks would be left to be undergone by the petitioner.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass v/s State of Himachal Pradesh 1988 (2) RCR (Criminal)**. The relevant observations made by Hon'ble the Supreme Court in **Braham Dass's case** (supra), which can be gainfully followed in the instant case, read as under:-

“6. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f).

The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.”

In another case titled as “**Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723,**” 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.”

An identical question fell for consideration before this Court in **Des Raj v/s State of Haryana 1996(1) RCR (Crl.) 689.** The relevant observations made in para 9 of the judgment aptly apply here and the same read as under:-

“9. Now, it is well settled that the right to speedy and

expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that the speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.”

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the judgements, referred to hereinabove, coupled with the reasons aforementioned, conviction of the petitioner is upheld. However, his sentence is ordered to be reduced to the period already undergone by him.

Resultantly with the above-said modification in the impugned

judgments, the instant criminal revision petition stands partly allowed.

Petitioner is directed to be released forthwith, if he is not required in any other case.

Disposed of, accordingly.

26.03.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE