

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.2715 of 2014 (O&M)
Date of Decision: 10.07.2015

Bhajan Singh

...Petitioner

Versus

State of Punjab and another

... Respondents

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

Present:- Mr. S.S.Goraya, Advocate,
for the petitioner.

Mr. Mikhail Kad, AAG, Punjab.

TEJINDER SINGH DHINDSA. J

The present revision petition has been filed against the judgment dated 04.06.2014 rendered by learned Sessions Judge, Gurdaspur dismissing the appeal filed by the petitioner/accused against the judgment of conviction and order of sentence dated 06.06.2013 passed by the learned Judicial Magistrate Ist Class, Gurdaspur vide which the petitioner was convicted for offences under Section 279/304-A /427 of the Indian Penal Code and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
279 of Indian Penal Code	To undergo rigorous imprisonment for a period of six months and fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days.

<i>Under Section</i>	<i>Sentence</i>
304-A of Indian Penal Code	To undergo rigorous imprisonment for a period of two years and fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days.
427 of Indian Penal Code	To pay fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 10 days.

The sentences were ordered to run concurrently.

The process of law was set in motion on the statement of Prem Masih who stated that on 03.07.2007 he had proceeded to Tibri Cantt. to meet his brother, namely, Kamal Masih. At about 2:15 p.m. he was waiting for a bus at Tibri Bridge. At that point of time, his father Karnail Masih, mother Roji and nephew Akash Masih were coming on a motorcycle from Gurdaspur towards Tibri Cantt. and when the motorcycle reached near Tibri Bridge then one truck bearing registration No.PB-08/R/9547 came at a very high speed and being driven in a rash and negligent manner and struck the motorcycle from behind. Father, mother and nephew of the complainant lost their lives in such accident.

After completion of investigation, challan was presented in the Court in which the present petitioner was nominated as an accused being the driver of the offending vehicle. Petitioner 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 Sessions Judge,

Gurdaspur.

Learned counsel appearing for the petitioner, at the very outset, makes a submission that he is not assailing the conviction on merits but would confine the scope of the instant revision petition only regards quantum of sentence.

It may be apposite to take note that notice of motion was issued in the present revision petition on 03.09.2014 on such limited issue.

Counsel for the petitioner while seeking reduction in quantum of sentence would submit that the petitioner would be open to compensate the LRs of the deceased monetarily. It has been contended that the petitioner has already undergone approximately 04 months' sentence and as such upon grant of adequate compensation to the LRs of the deceased, the sentence be reduced to the period already undergone while maintaining conviction.

Having heard counsel for the parties at length, this Court is of the considered view that there would be no warrant for interference even as regards quantum of sentence.

In ***State of Punjab Versus Saurabh Bakshi (2015) 05 Supreme Court Cases 182***, the Hon'ble Supreme Court has examined the aspect of quantum of sentence in relation to conviction under Section 304-A of the Indian Penal Code. In Saurabh's case (supra) accused had been convicted for offences under Sections 279/304-A IPC for having caused death of two persons by rash and negligent driving of a motor vehicle. The High Court while dealing with the revision petition filed by the accused had taken notice of a

deposit of Rs.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. The Apex Court accepted the appeal preferred by the State of Punjab and observed that the High Court had been swayed by the passion of mercy in applying the principle that payment of compensation is a relevant consideration for reduction of sentence. It was held that such course was in the realm of misplaced 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 IPC, there can be reduction of sentence. Relevant observations made by the Hon'ble Supreme Court in this regard are contained in paras 23, 24 and 25 of the judgment and the same are reproduced herein:-

23 *"In the instant case the factum of rash and negligent driving has been established. This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact*

that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, is worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental.

24. *Needless to say, the principle of sentencing recognises the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is , in a way mockery of justice. Because justice is “the crowning glory”, “the sovereign mistress” and “queen of virtue” as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.*

25. *Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilised persons drive in constant fear but still apprehensive about the obnoxious attitude of*

the people who project themselves as “larger than life”. In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC. We say so with immense anguish.”

Adverting back to the facts of the present case, petitioner/accused has been found guilty of rash and negligent driving. Three innocent lives have been lost. The judgment of conviction passed by the trial Court and affirmed by the appellate Court are based on cogent and valid reasoning and upon due appreciation of evidence adduced. In any case conviction is not being assailed as per statement made by counsel. Upon conviction, the substantive sentence awarded is of rigorous imprisonment for a period of two years and a fine of Rs.1000/- and in default of payment of fine to further undergo RI for a period of 10 days for offence under Section 304-A of the Indian Penal Code. The same would not call for any intervention in exercise of the revisional jurisdiction of this Court.

Petition is, accordingly, dismissed.

10.07.2015

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**