

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.349 of 2015(O&M)

Date of Decision: May 29, 2015

Harjinder Kumar son of Sohan LalPetitioner

Versus

State of PunjabRespondent

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

Present: Mr.BS Aulakh, Advocate for the petitioner.

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

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TEJINDER SINGH DHINDSA, J.

CRM No.3468 of 2015

For the reasons mentioned in the misc. application,
delay of 318 days in filing the revision petition is condoned.

2. Application stands allowed.

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3. The instant revision petition is directed against the judgment dated 18.12.2013 passed by the learned Additional Sessions Judge, Ludhiana affirming the judgment of conviction and order of sentence dated 31.3.2012 of the Judicial Magistrate 1st Class, Ludhiana, whereby the petitioner was convicted under Section 304-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹5,000/- and in default of payment thereof, to undergo simple

imprisonment for a period of 15 days.

4. At the very outset, learned counsel appearing for the petitioner submits that he does not assail the conviction on merit and only prays for reduction of sentence.

5. In view of such limited prayer, this Court need not dilate on the facts of the case in detail. Brief prosecution version, however, was that complainant Devinder Pal Singh got recorded a statement with regard to an occurrence that took place on 23.8.2008 when at about 12.00 noon, he was going on his motorcycle from Cancer Hospital to Samrala Chowk and his brother Harpal Singh was also going in front of him on his motorcycle bearing registration No.PB10-CC-9781 and when they reached near Moti Nagar cut, a vehicle make Tata 709 bearing registration No.PB-13E-8311 came from behind and hit the motor cycle of Harpal Singh, who succumbed to the injuries having been suffered.

6. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was filed against the petitioner-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 Additional Sessions Judge, Ludhiana.

7. Learned counsel appearing for the petitioner would submit that the petitioner was a first time offender, is a poor person and having family to support and the only bread earner of the family.

8. As per custody certificate furnished by the learned State counsel, the petitioner has undergone an actual sentence period of one year and three months as on 18.3.2015. In other words, as of date, the petitioner has already undergone an actual sentence period of one year, five months and ten days approximately. He is not stated to be involved in any other criminal proceedings.

9. 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."

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

11. The incident relates back to the year 2008. The petitioner has faced the pangs of trial followed by appeal for a period of almost seven years. He is a poor person and the sole bread-winner of the family. Out of the substantive sentence of two years rigorous imprisonment awarded to him, the petitioner has already undergone a period in excess of one year and five months. He is not stated to be involved in any other criminal proceedings.

12. 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.

13. Petitioner be released forthwith if he is not required in any other case subject to deposit of fine if not already paid.

14. With such modification in the matter of sentence, the revision petition stands disposed of.

May 29, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

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