

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

CRR-3838-2014 (O&M)
Date of decision:17.03.2015

Brijesh Kumar

...Petitioner

Versus

State of UT Chandigarh and others

...Respondents

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.Jainainder Saini, Advocate for the petitioner.

Mr.J.S.Toor, Additional P.P. for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner has approached this Court against the impugned judgment dated 14.11.2014 passed by the learned Additional Sessions Judge, Chandigarh, whereby his conviction recorded by the learned Judicial Magistrate First Class, Chandigarh, vide judgment of conviction dated 9.8.2012 was upheld, however, his sentence was reduced from one year's rigorous imprisonment to six months under Section 304-A IPC.

Brief facts of the prosecution case are that a wireless message was received in the police station regarding an accident at the round about of Sector 20/30 and Sector 32/33, Chandigarh. Upon receiving such information, SI Karnail Singh along with other police officials reached at the spot where Ramesh Chand S/o Sh. Hari Krishan, resident of House No. 374, Sector-4, Panchkula met him and got recorded his statement to the effect that his real brother-in-law namely Surinder Kumar Goyal S/o Gian Chand was partner in Bhavneesh Sharma & Associates and was Chartered

Accountant by profession. On 16.9.2003, he had come to meet him at his office at SCO No. 47, Sector 20, Chandigarh and after the office hours, they left for their house. They crossed the round about of Sectors 20/30 and 32/33 and reached at Chandigarh-Ambala road where buses used to halt. He was standing on the footpath of the road, whereas his brother-in-law was standing at the side of the road. At about 7.15 p.m., bus of Haryana Roadways bearing registration No. HR-39-8387 came there being driven by its driver in rash and negligent manner at a very high speed and without blowing horn came and hit against his brother-in-law. Due to the impact, he fell down and bus passed over him. Alarm was raised upon which driver of the bus stopped the bus. Surinder Kumar Goyal died at the spot. Bus driver came to him and disclosed his name as Brijesh Kumar R/o House No. 11, Vivek Vihar, Hisar, Haryana i.e. present accused. Somebody had informed the police and it reached at the spot. He had further stated that accident in question occurred due to rash and negligent driving of the accused. Upon such statement of the complainant, FIR under Section 279/304-A IPC was registered against him. Investigating Officer inspected the spot and prepared the rough site plan of place of occurrence. Accused was arrested at the spot. Bus in question was also taken into police custody. Post mortem of the deceased was got conducted. Statement of the witnesses were recorded. On completion of investigation, challan was prepared and was presented in court;

Police report under Section 173 Cr. P.C. having been presented in the court, copies thereof were supplied to the accused free of costs, as required under Section 207-IPC. Having found a prima facie case against the accused, charge was framed for committing the offence punishable

under Sections 279 and 304-A IPC. The accused pleaded not guilty and claimed trial. With a view to prove its case, prosecution examined as many as eight 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. He opted for leading defence evidence and examined four defence witnesses.

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 brought home the guilt, proving its case beyond reasonable shadow of doubt. Consequently, accused was held guilty and convicted for the offence punishable under Sections 279 and 304-A IPC vide judgment of conviction dated 9.8.2012. Vide impugned order of even date, i.e. 9.8.2012, the learned Judicial Magistrate First Class, Chandigarh, sentenced the petitioner to undergo rigorous imprisonment for a period of three months with fine of Rs.1,000/-. In default of payment of fine, he was ordered to undergo further rigorous imprisonment for 15 days for the offence under Section 279 IPC. Petitioner was ordered to undergo rigorous imprisonment for a period of one year with fine of Rs.1,000/- and in default thereof, to undergo rigorous imprisonment for 15 days for the offence under Section 304-A IPC.

Dissatisfied with the judgment of conviction and order of sentence of even date, i.e. 9.8.2012 passed by the learned Judicial Magistrate First Class, Chandigarh, the convict filed his appeal before the learned Sessions Court, which came to be dismissed by the learned

Additional Sessions Judge, Chandigarh, vide his impugned judgment dated 14.11.2014, whereby conviction of the petitioner was upheld, however, his sentence was reduced from one year to six months under Section 304-A IPC.

Feeling aggrieved against the above-said impugned judgments of conviction and order of sentence, petitioner has approached this Court by way of present revision petition. That is how, this Court is seized of the matter.

Learned counsel for the petitioner, at the very outset, submits 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. While highlighting the mitigating circumstances in favour of the petitioner, he submits that the FIR was registered as far back as on 16.9.2003 and the petitioner has been facing the mental agony of criminal trial for the last more than long 11 years. The occurrence took place at the spur of moment, without there being any intention of the petitioner to commit an offence. There was no previous enmity of the petitioner either with the author of the FIR or any of his relatives. He was the first offender and was not involved in any other FIR, as per the custody certificate dated 17.3.2015. He concluded by submitting that since the petitioner has already undergone the sentence for 4 months and 21 days, out of the total sentence of six months, he deserves 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 and increasing the fine. It is so said, because the petitioner has already undergone the major and substantive part of his sentence. He has not been found involved in any other FIR. The petitioner was first offender and he has been facing the mental agony of criminal trial for the last more than 11½ years.

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 judgments, referred to hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that petitioner deserves reduction of sentence to the period already undergone by him.

Accordingly, sentence of the petitioner is ordered to be reduced to the period already undergone by him, while increasing the amount of fine of Rs.5,000/- in addition to what has already been imposed by the learned trial Court. The enhanced fine of Rs.5,000/- shall be deposited before the learned trial Court, within a period of three months from the date of receipt of a certified copy of this judgment. On deposit of Rs.5,000/- within the stipulated period, the same shall be remitted to the Haryana State Legal Services Authority.

However, it is made clear that in case the enhanced amount of fine of Rs.5,000/- is not deposited within the stipulated period as directed above, this revision petition shall be deemed to have been dismissed and the order of sentence passed by the learned courts below shall stand revived automatically and in that case petitioner shall undergo the remaining sentence.

Resultantly with the above-said modification in the impugned judgments, the instant criminal revision petition stands partly allowed. Conviction of the petitioner is upheld but his sentenced is reduced to the period already undergone by him, subject to payment of Rs.5,000/- in addition to what has already been imposed by the learned trial Court, as indicated above. Petitioner is directed to be released forthwith, if he is not required in any other case.

Disposed of, accordingly.

17.03.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE