

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

CRR-735-2014
Date of decision:13.03.2015

Baljit Singh @ Beeta

...Petitioner

Versus

State of Punjab and another

...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.Vikram Anand, Advocate for the petitioner.

Ms.Anmol Grewal, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant criminal revision petition is directed against the judgment dated 18.9.2013 passed by the learned Additional Sessions Judge, Fatehgarh Sahib, whereby appeal of the petitioner against the impugned judgment of conviction and order of sentence dated 7.4.2012 passed by the learned learned Additional Chief Judicial Magistrate, Fatehgarh Sahib, was dismissed, upholding the conviction and sentence of the petitioner.

Brief facts of the case are that criminal law was set into motion on the statement of Amarpreet Singh son of Harvinder Singh resident of Jamitgarh, which was recorded on 14.1.2005 by ASI Harnek Singh. The author of the FIR stated that he was doing the work of agriculture. He further stated that on 14.1.2015, he was going on his motorcycle and his parental uncle Didar Singh son of Amar Singh, Caste Ahluwalia resident of Dehm, was going on his separate scooter bearing No. PB-52-1109 Mark Bajaj Chetak from Village Jamitgarh to Badali for the purpose of getting the

marriage card of his sister printed. Didar Singh was going ahead of his scooter about 20 KARAM to the complainant. He was following him. It was about 10.30 am when Didar Singh reached Manhera turn then one truck bearing No. PB-12-1352 came from the opposite side. It was driven by Baljit Singh @ Beeta son of Piara Singh, Caste-Jat, resident of Manhera, P.S. Sirhind in a very rash and negligent manner. It hit on the scooter of Didar Singh and the scooter was entangled under the front mud guard of the truck and Didar Singh resultantly fell down on the road and the head of Didar Singh came under the tyre of the truck and was crushed badly. Didar Singh also received many other injuries. The truck driver after stopping the truck fled away from the spot. When he went at the spot, Didar Singh succumbed to the injuries at the spot. The complainant shifted Didar Singh in the said condition to Civil Hospital, Fatehgarh Sahib, where his statement was got recorded by ASI Harnek Singh.

The above-said statement of the complainant was Ex. PW2/A. Consequently, FIR was registered under Sections 279/437/304-A IPC at Police Station Sirhind. During investigation, statements of witnesses were recorded, copy of post-mortem report was collected and accused was put under arrest. Rough site plan of the place of occurrence was prepared. After completion of the investigation, final report under Section 173 Cr.P.C. was presented to the learned court of competent jurisdiction.

Having found a prima facie case against the accused, charge was framed for committing an offence punishable under Section 304-A IPC. The accused pleaded not guilty and claimed trial. With a view to prove its case, prosecution examined as many as seven 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., All the incriminating material was put to him. The accused denied his involvement and pleaded false implication. He opted for leading defence evidence and examined two 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 duly proved its case. Consequently, accused was convicted for the offence punishable under Section 304-A IPC, vide judgment of conviction dated 7.4.2012. The order of sentence was passed on the even date, thereby awarding the sentence of rigorous imprisonment for two years and to pay a fine of Rs.2,000/-. In default of payment of fine, the accused was ordered to further undergo rigorous imprisonment for six months.

Dissatisfied with the judgment of conviction and order of sentence of even date i.e. 7.4.2012 passed by the learned Additional Chief Judicial Magistrate Fatehgarh Sahib, convict filed his appeal before the learned Sessions Court, which came to be dismissed by the learned Additional Sessions Judge, Fatehgarh Sahib, vide his impugned judgment dated 18.9.2013.

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, 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 12.5.2014 of Gurpal Singh Sarowa, Superintendent, Maximum Security Jail Nabha, was filed by the learned counsel for the State. In terms of the custody certificate, petitioner has undergone the actual sentence for 7 months and 22 days as on 12.5.2014. Thus, by now petitioner has undergone the actual sentence for 1 year 5 months and 23 ays, out of the total sentence of 2 years' RI.

Learned counsel for the petitioners, while highlighting mitigating circumstances in favour of the petitioner, submits that the FIR was registered as fas back as on 14.1.2005. Petitioner has faced the mental agony of criminal trial for the last more than 10 years. The occurrence took place all of a sudden. There was no previous enmity. Petitioner was not even known to the victim, complainant or any of their family members. The sentence awarded was two years, whereas, the petitioner has undergone the actual sentence of more than 1 year and 5 months. After adding the remissions period of about three months, petitioner has already undergone the sentence for 1 year and about 9 months, in terms of his custody certificates. Learned counsel for the petitioner also submits that petitioner was not found involved in any other FIR. He prays that the petitioner, being the first offender, 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. It is so said, because the petitioner was first offender and he has faced the mental agony of criminal trial for a long period of more than 10 years. He has already undergone the substantive part of the sentence.

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 had arisen before this Court in **Des Raj v/s State of Haryana 1996(1) RCR (CrI.) 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.

13.03.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE