

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No. 581 of 2015 (O&M)
Date of Decision: 31.08.2015**

Manoj Kumar

--Petitioner

Vs

State of Haryana

--Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajesh Lamba, Advocate for
Mr. Amit Arora, Advocate,
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

Mr. Lalit K. Gupta, Advocate,
for respondents No. 2 and 3.

RAMESHWAR SINGH MALIK J.

Instant criminal revision petition is directed against the impugned judgment dated 15.01.2015 passed by learned Sessions Judge, Faridabad whereby appeal of the petitioner was dismissed and impugned judgment of conviction dated 20.12.2013 as well as order of sentence dated 21.12.2013, passed by the learned Judicial Magistrate Ist Class, Faridabad, were upheld.

Brief facts of the case, as noticed by the learned Sessions Judge in paras 2 and 3 of the impugned judgment are that the case of the prosecution emanating from the trial Court record is that on 05.06.2010 after receipt of information regarding the death of Hema daughter of Madan Kumar resident of Jawahar Colony from B.K.Hospital, Faridabad, SI Tej Ram of Police Station Saran rushed

to the hospital where complainant *Nand* Kishore met him and got recorded his statement alleging therein that he was resident of Jawahar Colony, Faridabad and was employed in Thomson Press Faridabad. As usual at about 4.00 p.m. to join his duty he had stepped out of his house and found that his niece Hema, aged about 2 1/2 years daughter of Madan Kumar was playing in the street in front of his house. In the meanwhile his neighbour Manoj Kumar resident of Jawahar Colony, NIT, Faridabad while driving the vehicle Innova bearing registration No. HR-55 HT1889 in a rash and negligent manner, struck against said Hema and due to impact of the same, she sustained multiple and serious injuries. Immediately after lifting her, he had taken her to B.K.Hospital, Faridabad and after sometime of admission in the hospital she succumbed to the injuries. He also alleged that the said occurrence was witnessed by his wife Reetu and Gurmeet Kaur wife of his brother Madan Kumar and other persons had also gathered at the spot and also asked for initiation of legal action against the accused.

On the basis of the aforesaid statement the case was registered. During investigation the accused was arrested and was subsequently released on bail. Site plan qua the place of occurrence was prepared and statements of the witnesses under Section 161 of the Code of Criminal Procedure were recorded. The offending vehicle was got mechanically examined and on completion of investigation report under Section 173 *Cr.P.C.* was submitted against the accused.

The challan having been presented, copy thereof along

with documents attached therewith was supplied to the accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly, the accused-petitioner was charge-sheeted for the commission of offences under Section 279 and 304-A of the Indian Penal Code (for short 'IPC'). Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 7 PWs, besides producing other relevant documentary evidence. On closure of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material available on record was put to the accused. He denied all the allegations, alleged false implications and pleaded complete innocence. Accused opted to lead his evidence in defence and tendered documents Ex.D-1 and Ex.D-2.

Having heard the learned counsel for the parties and going through the evidence brought on record, the learned Judicial Magistrate Ist Class, Faridabad (for short 'JMJC') came to the conclusion that the prosecution has successfully proved its case, to bring home the guilt against the accused. Accordingly, he was held guilty and convicted for the offences punishable under Sections 279 and 304-A IPC, vide impugned judgment dated 20.12.2013. The convict was sentenced vide impugned order of sentence dated 21.12.2013 to undergo rigorous imprisonment for 02 months for offence under Section 279 IPC. He was further sentenced to undergo rigorous imprisonment for 01 year for the commission of offence under Section 304-A IPC. Both the sentences were ordered to

run concurrently.

Feeling aggrieved against the judgment of conviction and order of sentence, convict-petitioner filed his appeal which also came to be dismissed by the learned Sessions Judge, Faridabad vide impugned judgment dated 15.01.2015. Hence this Criminal Revision Petition.

When the case came up for motion hearing on 24.04.2015, learned counsel for the petitioner, at the very outset, submitted that he does not intend to press this petition on merits. He further submitted that let the conviction of the petitioner be upheld and the present petition may be considered only qua quantum of sentence. Thereafter, vide Criminal Misc. No. 22101 of 2015, petitioner sought to implead the parents of the deceased as respondents No. 2 and 3. The application was allowed as prayed for and amended memo of parties was permitted to be placed on record vide order dated 20.07.2015. Notice was issued to the newly added respondents. They appeared and sought free legal aid which was provided to them vide order dated 11.08.2015.

Learned counsel for the petitioner submits that in view of the fresh custody certificate filed by way of an affidavit dated 31.08.2015, petitioner has already undergone for a period of 09 months and 26 days including the period of remission, out of total sentence awarded to him for a period of one year RI. Highlighting other mitigating circumstances in favour of the petitioner for reduction of sentence to the period already undergone by him, learned counsel for the petitioner submits that petitioner is neither a previous convict

nor he was found involved in any other criminal case. He further submits that petitioner is the only bread winner of the family. He would next contend that hardly any period is left to be undergone by the petitioner because of which the sentence of the petitioner deserves to be reduced to the period already undergone by him. He prays for allowing the present petition, to the limited extent, indicated above.

On the other hand, learned State counsel as well as learned counsel for respondent Nos.2 and 3 would submit that petitioner is not entitled for any reduction in sentence because the learned Courts below have already taken a lenient view. They further submit that there was no special reason or sufficient mitigating circumstance to reduce the sentence any further. They jointly pray for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of the facts and circumstances of the case noted above, it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction, for the following more than one reasons.

The first and strong circumstance in favour of the petitioner is that as per the latest custody certificate dated 31.08.2015, petitioner has already undergone total sentence for a period of 09 months and 26 days, as on 30.08.2015, out of total

sentence awarded to him for a period of one year RI. It is also not in dispute that petitioner is neither a previous convict nor he has been found involved in any other criminal case. Further he has been stated to be only bread-winner of the family. Having said that, this Court feels no hesitation to conclude that petitioner has been found entitled for reduction of sentence to the period already undergone by him.

The above said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in the cases of **2006 (4) R.C.R. (Criminal) 645 titled as R.Soundarajan v. Seed Inspector, Coimbatore and another and Umrao Singh Vs. State of Haryana, 1981 AIR (SC) 1723.**

The relevant observations made by the Hon'ble Supreme Court in **R. Soundarajan's case (supra)**, read as under:-

“We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment.”

In **“Umrao Singh v. State of Haryana (supra)**, 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.

3. The appeal is disposed of accordingly.”

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, in the judgments referred to here-in-above, it is unhesitatingly held that ends of justice would be squarely met, if the conviction of the petitioner is upheld and his sentence is ordered to be reduced to the period already undergone by him.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition deserves to be partly allowed. Consequently, while upholding conviction of the

petitioner, his sentence is ordered to be reduced to the period already undergone by him. Petitioner is directed to be released forthwith, if not required in any other case.

Resultantly, with the above said observations made and directions issued, present petition stands partly allowed to the extent indicated above, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

31.08.2015
vandana

Whether to be referred to reporter? Yes.