

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

Criminal Revision No.2976 of 2015.

Decided on:-February 10, 2016.

Mehar Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. J.S. Hooda, Advocate
for the petitioner.

Ms. Shaveta Sanghi, AAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

Petitioner Mehar Singh son of Shri Kishan Lal, resident of village Godotha, Tehsil Hodal, District Palwal has filed the present revision petition challenging judgment dated 21.7.2015 passed by learned Additional Sessions Judge, Palwal, vide which the appeal (criminal) preferred by the petitioner against the judgment of conviction and order of sentence dated 13.5.2013 passed by learned Sub-Divisional Judicial Magistrate, Hodal, was dismissed.

Learned Magistrate vide judgment dated 13.5.2013 convicted the petitioner for offence punishable under Sections 279, 337 and 304-A IPC

and vide separate order of even date, sentenced him as under:

<u>Under Section</u>	<u>Sentence</u>
279 IPC	Simple imprisonment for a period of three months.
337 IPC	Simple imprisonment for a period of three months.
304-A IPC	Simple imprisonment for a period of one year.

However, all the substantive sentences were ordered to run concurrently.

Briefly stated, the case of the prosecution is that on 9.3.2006 Sumer Singh son of Ved Ram had telephonically informed to the Police Station Hodal that Rishi son of Vijay Ram after getting injured in a road side accident has expired. On receipt of said information, HC Ram Chander along with Constable Vijay Kumar reached General Hospital, Palwal and recorded the statement of Sumer Singh to the effect that on 8.3.2006 at about 5.45 p.m. he was going to Havana (UP) by riding his motorcycle. Ahead of him, Rishi and Debu were going to village Jalalpur on a separate motorcycle. In the meantime, a motorcycle bearing registration No.UP-85D-7845 which was being driven by its driver in a high speed and negligently came there and struck against the motorcycle of Rishi from the front side. Due to the impact, Rishi and his friend Debu fell down on the road and received injuries on their head and foot. The driver of offending motorcycle

also fell down in the side. On asking, he told his name as Mehar Singh son of Kishan Lal i.e. the present petitioner. Injured Rishi and Debu were got admitted in Diamond Hospital, Palwal, but on seeing serious condition of Rishi, he was referred to Medical Hospital, Delhi on 9.3.2006. However, he succumbed to his injuries on the way.

On the basis of the statement of complainant Sumer Singh, FIR No.76 dated 9.3.2006 under Sections 279, 337 and 304-A IPC was registered against the petitioner-accused at Police Station, Hodal. Statements of witnesses were recorded. Site plan was prepared and post-mortem of the dead body of Rishi was got conducted. After completion of investigation, challan was presented in the Court. Copy of challan was supplied to the petitioner-accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused was charge-sheeted by the trial Court for the commission of offence under Sections 279, 337 and 304-A IPC to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 5 witnesses including complainant Sumer Singh as PW5 and injured Dev Kishan as PW1. Thereafter, the statement of accused under Section 313 Cr.PC was recorded wherein he denied the allegations levelled against him. In his defence, he also examined Lal Chand as DW1 and Devender as DW2.

Considering the evidence so adduced, the trial Court vide its

judgment and order dated 13.5.2013 had convicted and sentenced the petitioner in the manner as mentioned above.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge, Palwal. However, the appellate Court vide judgment dated 21.7.2015 dismissed his appeal.

It is in these circumstances that the petitioner has filed the present revision petition challenging the verdicts of the courts below.

In view of order dated 17.8.2015 passed by this Court, whereby notice of motion was issued only to the limited extent of reduction of sentence, learned counsel for the petitioner has confined his arguments qua the quantum of sentence only. He has contended that as against the awarded sentence of one year, the petitioner is in custody since 21.7.2015 i.e. more than six and a half months. He has further contended that the FIR in question was registered on 9.3.2006 and since then, the petitioner is consistently facing mental agony about the pendency of the criminal case against him. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender and has two children and old parents to support. He has further prayed that the sentence of the petitioner be reduced to the period already undergone by him.

Learned counsel for the petitioner has further submitted that the legal heirs of deceased Rishi have already been awarded compensation by

the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988. In this regard, he has placed on record certified copy of order dated 21.11.2015 passed by MACT, Palwal which shows that the legal heirs of deceased Rishi have compromised the matter with the petitioner-accused and have received Rs.4,75,000/- as compensation from him.

On the other hand, learned State counsel has vehemently argued that the Court should not take liberal view in offence under Section 304-A IPC more particularly when both the Courts are against the petitioner.

I have heard learned counsel for the parties.

The Hon'ble Supreme Court in a recent judgment in ***State of M.P. Versus Mehtaab 2015(1) RCR (Criminal) 1008*** has held that when the accused was found guilty of causing death by negligence, the High Court was not justified in reducing sentence of imprisonment to the period of 10 days without awarding any compensation to the legal heirs of the deceased. As such, the Apex Court while modifying the order passed by the High Court had held that the order of the High Court can be upheld only with the modification that the accused will pay compensation to the heirs of the deceased. This judgment was also followed by this Court in ***Criminal Revision No.1761 of 2015 decided on December 07, 2015*** titled as ***Kashmir Singh Versus State of Punjab***.

Similarly, the Hon'ble Supreme Court in ***State of Himachal Pradesh Versus Ram Pal 2015(2) RCR (Criminal) 127*** has observed in para

Nos.13 and 14 of the judgment as below:

“13. *It is evident from the facts and circumstances of the case that the respondent has not called in question his conviction. We have before us only challenge to the inadequacy of the sentence in the present appeal filed by the State. Moreover, in an appeal under Article 136 of the Constitution, this Court does not re-appreciate the evidence, in absence of perversity or patent legal error, merely because a different view was also possible. We are thus, not inclined to reopen the correctness of conviction of the respondent and proceed to consider the question of adequacy of the sentence. In our view, the sentence of mere fine of Rs.40,000/- imposed by the High Court is not adequate and proportionate to the offence. We have been informed that a sum of Rs.3,60,000/- has been awarded as compensation by the insurance company to the heirs of the deceased. We are also of the view that where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section. This Court has dealt with the issue in **Suresh vs. State of Haryana, 2015 (1) RCR (Criminal) 148**, **Manohar Singh vs. State of Rajasthan & Ors. 2015 (1) RCR (Criminal) 747** and **State of M.P. vs. Mehtaab 2015 (1) RCR (Criminal) 1008**. Having regard to totality of circumstances of the present case, we feel that ends of justice will be served if the accused is required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs.*

14. *Accordingly, we modify the impugned order passed*

by the High Court and enhance the compensation to be paid by the respondent accused to Rs.1 lakh to be paid within four months failing which the sentence awarded by the Court of Session shall stand revived. In addition, we direct the State of Himachal Pradesh to pay interim compensation of Rs.3 lakhs. In case the respondent fails to pay any part of the compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. The amount already paid may be adjusted.”

Considering the fact that the learned trial Court had convicted and sentenced the petitioner and the learned appellate Court had upheld the verdict of the trial Court, this Court, however, cannot ignore the fact that the petitioner-accused while driving the offending motorcycle in a rash and negligent manner had struck the same with the motorcycle of deceased Rishi due to which he fell down and succumbed to his injuries later on.

However, considering the restricted arguments qua the quantum of sentence and coupled with the fact that the petitioner is suffering the agony of trial since 9.3.2006 when the FIR in question was registered and further as against the total sentence of one year, he has suffered incarceration for a period of more than six and a half months and there is no other criminal case pending against the petitioner, this Court feels that the ends of justice would be met in case the conviction of the petitioner-accused is upheld but the sentence awarded to him is reduced to the period already undergone by

him.

Accordingly, the conviction of the petitioner-accused is upheld but the sentence is reduced to the period already undergone by him. However, this Court, in the light of the judgments of Hon'ble Supreme Court in *Mehtaab's case (supra)* and *Ram Pal's case (supra)* directs the petitioner to pay compensation of Rs.25,000/- to the legal heirs of deceased Rishi.

The petitioner be released from custody forthwith, if not required in any other case, subject to his depositing of Rs.25,000/- with the trial Court. The trial Court shall disburse the amount of compensation to the legal heirs of deceased Rishi. It is made clear that in case the petitioner fails to deposit the amount of compensation with the trial Court, he shall be liable to undergo imprisonment as awarded by the trial Court and affirmed by the lower appellate Court.

With the aforesaid modification, the present revision petition stands dismissed.

February 10, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE