

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 262

Criminal Revision No.3393 of 2015 (O & M)
Date of Decision: *February 05, 2016*

Jaswinder Singh

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

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PRESENT: Mr. Amandeep Chhabra, Advocate, for the petitioner.

Mr. Arjinder Singh Sidhu, Assistant Advocate General,
Punjab.

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Jaspal Singh, J

1. The instant petition has been preferred by Jaswinder Singh against judgment dated June 9, 2015 passed by the Additional Sessions Judge, Pathankot whereby judgment of conviction and order of sentence dated February 2, 2012 rendered by the Sub Divisional Judicial Magistrate, Pathankot, in case FIR No.70 dated July 7, 2009 under Sections 279 and 304-A IPC, Police Station, Division No.2,

Pathankot, has been upheld. The petitioner was convicted and sentenced by the trial court under Section 279 IPC to undergo RI for six months, fine ₹ 500/-, in default of payment of fine, to undergo RI for one month; and under Section 304-A IPC to undergo RI for one year, fine ₹ 2,000/-, in default of payment of fine, to undergo RI for three months.

2. Briefly stated, on July 7, 2009, ASI Anil Kumar alongwith other police officials was present at Housing Board Colony, Dhangu Road, Pathankot, where complainant – Arun Kumar came and got recorded his statement to the effect that he is working as Naik in 13 JAK Rifles, Mamoon Cantt. On July 7, 2009, at about 11:45 AM, he alongwith his wife Renu Bala, his son Ketan (aged about 3 years) and daughter Anshu (aged about 6 years) was going from defence colony towards Military Hospital, Pathankot, on his Aactiva scooter bearing No.PB-35-K-8304. When they went 100 yards ahead of CIA chowk, a truck bearing No.RJ-31-G-3647, being driven at a very high speed in rash and negligent manner, came and struck against his scooter, as a result of which, he and his wife fell on the left side and his son Ketan & daughter Anshu fell on the right side. Thereafter, the truck went over their bodies. His son Ketan died on the spot and daughter Anshu died on her way to Military Hospital. Truck driver ran away from the spot leaving behind the vehicle.

3. After completion of investigation, challan against the accused was presented in the court of jurisdictional Magistrate. He was

supplied the copies of police report and other documents appended therewith as required under Section 207 Cr.P.C. Finding a prima facie case against the accused, he was charge-sheeted under Sections 279, 304-A IPC, to which, he claimed not guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as 9 witnesses. Incriminating circumstances appearing in the prosecution evidence were put to accused in his statement under Section 313 Cr.P.C., who denied the same and pleaded his innocence. No evidence was led by the accused in his defence.

5. After hearing learned counsel for the parties and having gone through the material available on record, accused was held guilty under Sections 279 and 304-A IPC. Accordingly, he was convicted and sentenced, as detailed to above. Appeal preferred by accused – petitioner Jaswinder Singh also failed before the lower appellate court. In this backdrop of facts, instant revision petition has been preferred by the accused – petitioner challenging the aforesaid judgment(s)/order(s).

6. At the very outset of arguments, learned counsel for the petitioner has submitted that he does not challenge the conviction of the petitioner, however, the petition may be heard on the quantum of sentence only. This court has also scrutinised the impugned judgments as well as the relevant documents/evidence and is of the considered view that there is no scope for any interference in the impugned judgment(s) as far as the conviction of petitioner under Sections 279, 304-A IPC is concerned. As such, the conviction of petitioner is

7. As far as quantum of sentence is concerned, learned counsel for the petitioner has submitted that petitioner is 48 years of age. He has asserted himself to be first offender. No other case of similar nature is either pending or disposed of against the petitioner. He is the only bread winner in the family. He never misused the concession of bail during trial. He has already undergone a period of more than 10 months, out of substantive sentence of one year. Accordingly learned counsel for the petitioner prays that sentence imposed upon the petitioner be reduced to the period already undergone.

7. This Court has given an anxious thought to the submissions made by learned counsel and have gone through the record available on file.

8. As per the custody certificate dated February 4, 2016, the petitioner has already undergone 9 months and 28 days (including remission) out of total sentence of one year.

9. In similar circumstances, the Hon'ble Apex Court in case **Harjit Singh v. State of Haryana, (2002) 10 SCC 695** had reduced the sentence of 7 years under Section 25 of the Arms act as already undergone (more than 5 years). To the same effect is the judgment in case **Kirpal Singh v. State of Punjab, 2009(1) AICLR 243**, whereby this Court had reduced the sentence of petitioner to already undergone, taking into consideration the fact that petitioner has three children – there is no one to look after his family – petitioner has already undergone sentence of more than 5 months out of total sentence of one

Law Herald 1849; Surjit Singh v. State of Punjab, 2003(2) RCR (Criminal) 429; Sudhir v. State of Haryana, 2001(2) RCR (Criminal) 336; and Chhotu Ram v. State of Haryana, 2013(4) RCR (Criminal) 630, similar view has been adopted.

10. Taking into consideration the totality of facts and circumstances, though, conviction of the appellant is upheld but the sentence imposed upon him under Sections 279 and 304-A IPC is reduced to the period already undergone by him and is ordered to be released forthwith.

11. With the above modification in the sentence, revision petition is dismissed.

February 05, 2016
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(Jaspal Singh)
Judge