

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

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CRR No.4113 of 2016

Date of Decision: April 26, 2017

Dil Bahadur

....Petitioner

vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. D.S. Sandhu, Advocate
for the petitioner.

Mr. Varun Sharma, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The present revision petition is directed against the judgment dated 14.09.2016 rendered by learned Additional Sessions Judge, S.A.S. Nagar, Mohali, dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 18.04.2015 passed by the Chief Judicial Magistrate, S.A.S. Nagar, Mohali, vide which the petitioner, stands convicted for offence punishable under Section 279/304 A of the Indian Penal Code and sentenced as under:-

Name of convict	Under Section	Imprisonment	Fine	In default of payment of fine
Dil Bahadur	279 IPC	Rigorous imprisonment for a period of six months	--	-

Name of convict	Under Section	Imprisonment	Fine	In default of payment of fine
Do	304-A IPC	Rigorous imprisonment for a period of two years	Rs.10,000/-	Simple imprisonment for a period of two months

The sentences were directed to run concurrently.

2. Briefly stated the process of law was set into motion on the complaint of Manjinder Singh who was working as a driver of an Ambulance. It was asserted that on 12.01.2012, he was bringing a patient namely Madal Lal in the Ambulance bearing Registration Number PB-65K-7269 from Chandigarh towards Prabh Ashram, Mohali. One Ashwani Kumar was also sitting in the Ambulance on the adjoining seat to the driver. At about 12 midnight, when the Ambulance reached near the traffic signal lights, Quark City, a Scorpio came from the left side being driven in a rash and negligent manner and struck against the Ambulance, as a result of which, the Ambulance overturned. The complainant Manjinder Singh, Ashwani Kumar as also Madan Lal suffered injuries and were taken out by some passerby. Madan Lal was referred from Civil Hospital, Mohali to PGI, Chandigarh and where he succumbed to his injuries. Complainant asserted that the accident took place due to the rash and negligent driving of accused/present petitioner while driving a Scorpio bearing Registration Number CH-01-AF-8543. On the basis of the statement recorded of the complainant, FIR

was registered.

3. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was filed against Dil Bahadur i.e the present petitioner and driver of the offending vehicle. In the trial that ensued the petitioner stands convicted and sentenced by the trial Court as afore noticed and appeal filed by him against the judgment of conviction and order of sentence has been dismissed by the learned Additional Sessions Judge, S.A.S. Nagar, Mohali.

4. Learned counsel appearing for the petitioner at the very outset makes a submission that he is not assailing the conviction on merits but would confine the scope of the instant revision petition only as regards quantum of sentence. Learned counsel would submit that the petitioner is a poor person and the sole bread earner of the family.

5. Learned State counsel would, however, submit that a life has been lost in the accident and other occupants of the Ambulance also suffered injuries on account of the rash and negligent driving of the petitioner and as such, there would be no occasion for this Court to interfere with the quantum of sentence.

6. State counsel has referred to a recent judgment of the Hon'ble Supreme Court of India in **Criminal Appeal No.520 of 2015** (arising out of SLP (Criminal) No.5825 of 2014, "**State of**

Punjab vs. Saurabh Bakshi”) decided on 30.03.2015 in support of his contention.

7. Learned counsel for the parties have been heard and the judgments rendered by the Courts below have been perused.

8. In Saurabh Bakshi's case (supra), accused had been convicted for offences under Sections 279/304-A of the Indian Penal Code for having caused death of two persons by rash and negligent driving of motor vehicle. The High Court while dealing with the revision petition filed by the accused therein had taken notice of a deposit of 85,000/- having been made before the trial Court towards compensation to be paid to the legal representatives of the two deceased persons and while upholding the conviction of Saurabh Bakshi had reduced the sentence to the period already undergone i.e. of 24 days. It is in the light of such facts that the Hon'ble Supreme Court had accepted the appeal preferred by State of Punjab and had observed that the High Court had been swayed by the passion of mercy in applying the principle that payment of compensation is a factum for reduction of sentence to 24 days. It was held that such course was in the realm of mis-placed sympathy. It was further held that it cannot be said as a proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim, regardless of the gravity of the crime under Section 304-A of the Indian Penal Code, there can be reduction of sentence.

9. In **Shailesh Jasvantbhai v. State of Gujarat, (2006) 2**

SCC 359, it had been observed by the Apex Court as under:

“.....The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect – propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the valuebased social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion.”

10. Adverting back to the facts of the present case, undoubtedly, Madal Lal lost his life in the accident and the two other occupants of the Ambulance including complainant Manjinder Singh suffered injuries. However, there are sufficient mitigating circumstances that would justify this Court's intervention as regards quantum of sentence.

11. The accident relates back to the year 2012. The petitioner has faced the pangs of trial followed by appeal for a period of five years. He is stated to be a poor person and the

sole bread earner of the family.

12. As per custody certificate furnished by the learned State counsel, the petitioner has already undergone an actual sentence period of seven months and 15 days as on 25.04.2017. The trial Court has chosen to impose maximum sentence for offence under Section 304-A of the Indian Penal Code, even though the petitioner was a first time offender.

13. Counsel appearing for the petitioner during the course of hearing today, makes a statement that even though the petitioner comes from a poor family, yet he would be ready and willing to compensate the family of the deceased with a sum of ₹25,000/-. Court has been apprised that the fine of ₹10,000/- imposed by the trial Court has already been deposited by the petitioner.

14. In the totality of circumstances, this Court is of the considered view that the ends of justice would be met if the substantive sentence of the petitioner is reduced to eight months, subject to a prior deposit of ₹25,000/- before the trial Court. Such view is being taken on account of the mitigating circumstances noticed hereinabove.

15. For the reasons recorded above, the present revision petition is partly allowed to the extent of upholding the conviction of the petitioner but reducing the sentence to a period of eight months.

16. The petitioner would be released upon completion of such reduced sentence. It is however made clear that the benefit of this order would enure to the petitioner only upon a prior deposit of ₹25,000/- before the trial Court and which, in turn, would be released to the family/legal heir of the deceased.

17. Disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

26.04.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No