

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.4248 of 2016 (O&M)
Date of Decision:14.03.2017

Kaptan Singh
... Petitioner

Versus

State of Haryana
... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ramender Chauhan, Advocate,
for the petitioner.

Mr. C.S. Bakhshi, Additional A.G., Haryana.

TEJINDER SINGH DHINDSA, J.

The present revision petition has been filed against the judgment dated 09.11.2016 rendered by the learned Sessions Judge, Rohtak dismissing the appeal filed by the petitioner-accused against the judgment of conviction dated 07.09.2016 and order of sentence dated 09.09.2016 passed by the learned Judicial Magistrate Ist Class, Rohtak vide which the petitioner-accused was convicted for offences punishable under Sections 279/304-A of the Indian Penal Code and sentenced as under:

Sr. No.	Name of Convict	Under Section	Sentence
1.	Kaptan Singh	304-A IPC	To undergo simple imprisonment for a period of 01 year and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo simple imprisonment for a period of 02 months.
		279 IPC	To undergo simple imprisonment for a period of 03 months and to pay a fine of Rs.500/- and in default of payment of fine, he shall further undergo simple imprisonment for a period of 15 days.

Both the sentences were directed to run concurrently.

Briefly noticed, the process of law was set in motion on the

complaint of Satyawar with the allegations that he along with his son Pardeep had gone to city Rohtak for some personal work on 25.09.2012. After completing the work, complainant and his son Pardeep boarded an auto-rickshaw bearing registration No. HR-46C-8317 for reaching back home. At about 1:00 p.m. when they reached near Chowk of Sector 14, Rohtak then an Alto car black colour being driven at a fast speed and in a rash and negligent manner came from behind and struck against the auto-rickshaw. As a result of such collision, auto-rickshaw turned turtle and his son Pardeep sustained serious injuries and succumbed to the same.

After completion of investigation report under Section 173 of the Code of Criminal Procedure was filed against Kaptan Singh i.e. present petitioner-accused to face trial being the driver of the offending Alto car. He 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 Sessions Judge, Rohtak.

Learned counsel appearing for the petitioner, at the very outset, makes a statement 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. Counsel would submit that petitioner is a poor person and sole bread winner of the family.

Learned State counsel would, however, submit that the life of a young boy has been lost 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.

Learned 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 V. Saurabh Bakshi”), decided on 30.3.2015 in support of his contention.

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

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 Rs.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.

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 value based 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.”

Adverting back to the facts of the present case, undoubtedly a young life has been lost. However, there are sufficient mitigating circumstances that would justify this Court's intervention as regards quantum of sentence.

The incident relates back to the year 2012. The petitioner has faced the pangs of trial followed by an appeal for a period of almost 05 years. He is stated to be a poor person and the sole bread winner of the family.

As per custody certificate furnished by learned State counsel,

the petitioner has already undergone a sentence period of 03 months and 26 days as on 01.03.2017. In other words, as of date the petitioner has undergone a total sentence period in excess of 04 months and 10 days. The present petitioner was the driver of a private car. He would not fall in the category of a professional commercial vehicle driver and who are otherwise notorious of driving recklessly on public highways. The petitioner is a first time offender. Further more counsel appearing for the petitioner has suffered a statement that the petitioner would be ready and willing to pay a sum of Rs.60,000/- towards compensating the family members of the deceased.

Taking into account the afore-noticed mitigating circumstances, the present revision petition is partly allowed to the extent of upholding the conviction of the petitioner but reducing the sentence to the period already undergone.

It is, however, clarified that benefit of this order would enure to the petitioner only upon making a prior deposit of Rs.60,000/- before the trial Court and such amount would be released to the father of the deceased.

Disposed of accordingly.

14.03.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes