

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.4810 of 2016(O&M)

Date of Decision: March 28, 2017

Harpreet Singh son of Shri Pavitar SinghPetitioner

Versus

State of PunjabRespondent

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

Present: Mr.SS Sarwara, Advocate
for the petitioner.

Mr.PS Grewal, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

The present revision petition is directed against the judgment dated 1.10.2016 rendered by the learned Additional Sessions Judge, Patiala dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 26.5.2016 passed by the Judicial Magistrate Ist Class, Rajpura vide which the petitioner was convicted for offence punishable under Sections 279/304-A/337 of the Indian Penal Code and sentenced as under:

U/s 279 IPC	To undergo RI for six months and to pay fine of ₹500. In default of payment of fine, to further undergo S.I. for 10 days.
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U/s 304-A IPC	To undergo RI for two years and to pay fine of ₹2000. In default of payment of fine, to further undergo S.I. for one month.
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U/s 337 IPC	To undergo RI for six months and to pay
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fine of ₹500. In default of payment of fine, to further undergo S.I. For 10 days.

The sentences were directed to run concurrently.

2. Briefly stated, the process of law was set into motion on the complaint of Gurdeep Singh son of Ran Singh. Complainant asserted that on 11.11.2009 he had gone to village Lang to attend a marriage ceremony. After attending the marriage, complainant was returning back to his village in his car. It was further asserted that Jaswinder Kumar along with his family in a 'Santro' car bearing registration No.CH-04-2672 was proceeding in front. When the car of Jaswinder Kumar reached in front of Church of village Khadoli, a bus bearing No.PB-11-AK-8380 came at a very high speed being driven in a rash and negligent manner and hit the car of Jaswinder Kumar. Complainant is stated to have then stopped his car and took out Jaswinder Kumar, his son Sourav kumar, wife Mamta Rani and daughter Monika with the help of passers-by got them admitted in A.P.Jain Hospital, Rajpura. Sourav Kumar is stated to have succumbed to his injuries while the other injured were referred to PGI Chandigarh after providing first aid.

3. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was filed against Harpreet Singh i.e. the present petitioner and driver of the offending vehicle. 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, Patiala.

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-winner of the family.

5. Learned State counsel would, however, submit that the life of a young boy has been lost and other occupants of the car suffered serious 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. 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.

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 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.”

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

11. The incident relates back to the year 2009. The petitioner has faced the pangs of trial followed by appeal for a period of almost eight years. He is stated to be a poor person and the sole bread-winner of the family.

12. As per custody certificate furnished by the learned State counsel, the petitioner has already undergone a custody period of 4 months as on 31.1.2017. In other words, as of date, the petitioner has undergone actual custody period of six months against the substantive sentence of two years rigorous imprisonment. 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. Learned counsel has furnished for perusal of this Court the award dated 8.11.2011 rendered by the Motor Accident Claims Tribunal, Patiala whereby an amount of ₹1,85,000/- has been awarded on account of death of Sourav Kumar, ₹4,28,664/- to Mamta Rani (mother of deceased Sourav Kumar) having suffered 35% permanent disability and ₹18,38,113/- to Jaswinder Kumar (father of deceased Sourav Kumar) for having suffered 100% permanent disability. The afore-noticed amounts have been awarded along with interest @7.5% per annum from the date of claim petition i.e. 16.3.2010 till realization.

14. Learned counsel during the course of hearing of instant petition has suffered a statement that the petitioner would be ready and willing to pay an additional sum of ₹1 lac towards compensating the parents of the deceased.

15. 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 six months subject to prior deposit of ₹1 lac before the trial Court. Such view is being taken on account of the mitigating circumstances noticed hereinabove.

16. 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 of the petitioner to a period of six months.

17. 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 ₹1 lac before the trial Court and which, in turn, would be released to the parents of the deceased.

18. Disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

March 28, 2017

SRM

Note: *Whether speaking/reasoned?* *Yes/No*
 Whether Reportable? *Yes/No*