

224

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRR No.4813 of 2016 (O&M)****Date of Decision:31.05.2017**

Bhupinder Singh @ Pappu

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. K.S. Brar, Advocate for the petitioner.

Mr. Varun Sharma AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the judgment dated 04.10.2016, rendered by the learned Additional Sessions Judge, Moga, dismissing the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 09.04.2013, passed by the Additional Chief Judicial Magistrate, Moga, vide which, the petitioner stands convicted for offence punishable under Sections 279, 337, 304A of Indian Penal Code and sentence as under:-

<i>Under Section</i>	<i>R.I.</i>	<i>Fine</i>	<i>In default of fine</i>
279 IPC	Six months	₹1,000/-	One month
337 IPC	Six months	₹500/-	Fifteen days
304-A IPC	Two years	₹5,000/-	Three months

2. Briefly noticed the process of law was set in motion on the statement of Baljinder Singh. The complainant had stated that he is an employee with the Shiromani Gurdwara Parbandhak

Committee and on 18.10.2005, he accompanied his wife Ranjit Kaur, daughter Pardeep Kaur, sister Harjinder Kaur along with her son Kuldeep Singh and daughter Mandeep Kaur, sister Sarpinder Kaur along with her son Gurtaj Singh and daughter Simran Kaur, had gone to meet sister of the complainant at Village Poohla, Police Station Nathana, District Bathinda. The family members boarded bus bearing Registration No. PB-04F-9953 belonging to Hargobind Bus Service, Jaitu, from Bhagta at about 1.00 PM and were proceeding to Moga. The complainant asserted that driver of the bus was driving at a very high speed and in a rash and negligent manner. When the bus reached Village Gill at about 2.00 p.m., another bus of another private company came from the opposite side and upon noticing the oncoming bus, the vehicle in which the complainant and his family members were travelling went out of control on account of the high speed and struck a house wall. The bus halted after hitting an electric pole. Gurtaj Singh, nephew of the complainant, expired having succumbed to the injuries suffered in the accident. That apart Kuldeep Singh, Pardeep Kaur, Mandeep Kaur and Kuldeep Kaur, relatives of the complainant suffered injuries.

3. After completion of investigation, report under Section 173 of the Code of Criminal Procedure, was filed against Bhupinder Singh i.e. the present petitioner being the driver of the offending bus. 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, Moga.

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. It has further been submitted that the petitioner is ready and willing to compensate the family of the deceased as also the injured with a total sum of ₹1,60,000/-.

5. State counsel would however submit that a life has been lost in the accident on account of the rash and negligent driving of the petitioner and four others have suffered injuries. State counsel would contend that 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, Gurtaj Singh, a young boy has lost his life and four others i.e. relatives of the complainant have suffered injuries.

11. However, there are sufficient mitigating circumstances that would justify this Court's intervention as regards quantum of sentence.

12. The accident relates back to the year 2005. The petitioner has faced the pangs of trial followed by an appeal for a period of almost 12 years. He is stated to be a poor person and a sole bread earner of the family. The petitioner has been imposed the maximum punishment under Section 304-A IPC inspite of being a first time offender.

13. As per custody certificate furnished by learned State counsel, the petitioner has already undergone a sentence period of almost eight months as on date. The petitioner has also shown his readiness and willingness to compensate the family of the deceased as also the injured.

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 a period of one

year rigorous imprisonment.

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 one year rigorous imprisonment.

16. The petitioner would be released upon completion of such reduced sentence period but only upon a prior deposit of ₹1,60,000/- with the trial Court as also upon deposit of fine as imposed by the trial Court, if not already paid.

17. The deposit of ₹1,60,000/- to be made by the petitioner before the trial Court would be apportioned and distributed as follows:-

(i) ₹1,00,000/- would be released to Sarpinder Kaur, mother of deceased Gurtaj Singh.

(ii) ₹15,000/- each would be disbursed to injured Kuldeep Singh, Pardeep Kaur, Mandeep Kaur and Kuldeep Kaur.

18. Revision petition is disposed of in the aforesaid terms.

31.05.2017

anju rani

**(TEJINDER SINGH DHINDSA)
JUDGE**

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