

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

CRR No.4830 of 2016 (O&M)

Date of Decision:08.03.2017

Balwinder Singh @ Binder

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. Veneet Sharma, Advocate,
for the petitioner.

Mr. Neeraj Sharma, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The present revision petition is directed against the judgment dated 14.12.2016 rendered by the learned Additional Sessions Judge, Amritsar, dismissing the appeal filed by the petitioner-accused against the judgment of conviction and order of sentence dated 02.03.2015 passed by the Judicial Magistrate Ist Class, Amritsar vide which the petitioner-accused was convicted for offence punishable under Sections 279/304-A of the Indian Penal Code and sentenced as under:

Sr. No.	Name of Convict	Under Section	Sentence
1.	Balwinder Singh	304-A IPC	Rigorous imprisonment for a period of two years and fine Rs.1000/- in default of payment of fine, one month R.I.
		279 IPC	Rigorous imprisonment for a period of six months.

Both sentences were directed to run concurrently.

Briefly stated, case of the prosecution is that complainant Jawala Prasad got his statement recorded on the allegations that on 07.07.2013 he and his younger brother, namely, Rakesh Gupta were proceeding on a scooter towards Fatehgarh Churian. Son of the

complainant, Sohail Gupta was also driving a pulsar motor-cycle and was going 15-20 yards ahead. Upon reaching near petrol pump, Fatehgarh Churian road one truck trolly bearing registration No.PB-04-N-4386 came from the side of the Rattan Singh Chowk being driven in a rash and negligent manner and hit the motorcycle being driven by his son Sohail Gupta from the rear side due to which son of the complainant fell down and the rear tyre of the truck trolly ran over him and due to which Sohail Gupta died at the spot.

After completion of investigation report under Section 173 of the Code of Criminal Procedure was filed against Balwinder Singh i.e. present petitioner-accused 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, Amritsar.

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 2013. The petitioner has faced the pangs of trial followed by appeal for a period of almost 04 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 custody period of 02 months and 21 days as of date including remission the total sentence undergone is 02

months and 29 days. The trial Court has chosen to impose the maximum sentence for offence under Section 304-A of IPC even though petitioner was a first time offender.

Counsel has furnished for perusal of this Court the award dated 12.11.2014 rendered by the Motor Accident Claims Tribunal, Amritsar whereby mother of the deceased has been awarded compensation of Rs.6,78,000/- at the hands of the owner, driver (present petitioner) and the Insurance Company and they have been held jointly and severally liable to pay the amount of compensation on account of death of Sohail Gupta. As per award the claimant i.e. mother of the deceased is also entitled to receive interest @ 7.5% per annum on the award amount from the date of filing of the claim petition till the date of the award.

Counsel during the course of hearing of the instant petition has suffered a statement that the petitioner would be ready and willing to pay an additional sum of Rs.75,000/- towards compensating the family members of the deceased.

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-accused is reduced to 04 months subject to prior deposit of Rs.75,000/- before the trial Court. Such view is being taken on account of the mitigating circumstances noticed hereinabove.

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 substantive sentence of the petitioner to the period of 04 months.

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 Rs.75,000/- before the trial Court and which in turn would be released to the mother of the deceased.

Disposed of accordingly.

08.03.2017

(TEJINDER SINGH DHINDSA)
JUDGE

vandana

Whether speaking/reasoned	Yes
Whether Reportable	Yes