

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

**CRR No.118 of 2017 (O&M)
Date of Decision: 06.04.2017**

Safidin

... Petitioner

Versus

State of Haryana

... Respondent

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

Present:- Mr. Aman Bahri, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The instant revision is directed against the order dated 11.11.2016 passed by the learned Additional Sessions Judge, Jind and whereby the judgment of conviction dated 22.09.2015 and order of sentence dated 24.09.2015 passed by the trial Court holding the petitioner guilty and convicting him under Sections 279 and 304-A IPC and sentenced him to undergo imprisonment for a period of two years and to pay a fine of Rs.5000/- for commission of offence punishable under Section 304-A IPC and sentenced to undergo imprisonment for a period of 6 months for commission of offence punishable under Section 279 IPC has been dismissed.

Brief facts that may be noticed are that statement of Om Parkash was recorded to the effect that on 26.12.2012, Om Parkash along with his son Deepak and one Devender Sharma were going from Panchkula towards Hisar in a Tata Vista bearing registration No.HR-20S-5657. Deepak was driving the vehicle and Devender Sharma was sitting on the rear seat. When they reached near Sacha Khera, a truck bearing registration No.HP-12D-8870 being driven by its driver in a rash and negligent manner came and rammed into their car. As a result of the accident,

Deepak expired and Devender Sharma as also Om Parkash (father of the deceased) suffered injuries. On the statement of Om Parkash, FIR No.300, dated 26.12.2012, under Sections 279/304-A IPC was registered at Police Station Sadar Narwana. After completion of investigation, report under Section 173 Cr.P.C. was presented against the accused/present petitioner being the driver of the offending vehicle. Petitioner was charge sheeted for offence under Sections 279/304-A IPC by the trial Court vide order dated 26.07.2013 to which he pleaded not guilty and claimed trial. Prosecution evidence was led and the entire incriminating material/evidence was put to the accused. He was examined under Section 313 Cr.P.C. However, no evidence was led by the accused in his defence. After hearing arguments of both sides, trial Court vide order of sentence dated 24.09.2015 has convicted and sentenced the petitioner as noticed hereinabove. The judgment of conviction and order of sentence stand affirmed by the lower Appellate Court. Resultantly, the instant revision petition.

Counsel at the very outset made a submission that he would not be assailing the conviction of the petitioner on merits but would confine the scope of the petition as regards quantum of sentence.

Learned State counsel would, however, submit that a young life 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 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.”

Adverting back to the facts of the present case, undoubtedly, a young man lost his life in the accident. However, there are sufficient mitigating circumstances that would justify this Court's intervention as regards quantum of sentence. The petitioner has faced the pangs of trial followed by an appeal for the period of almost 5 years. He is stated to be a poor person and sole bread winner of his family. Petitioner has been in custody since 11.11.2016. He has been awarded the maximum punishment for offence under Section 304-A IPC inspite of being a first time offender.

The award dated 02.09.2016 of the Motor Accident Claims Tribunal, Hisar placed on record at Annexure P-5 has been adverted to and as per which the widow, minor sons and parents of deceased Deepak has been awarded Rs.16.27 lakhs along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The amount of compensation has been directed to be paid by the driver i.e. the present petitioner, owner and the Insurance Company jointly and severally.

Learned counsel appearing for the petitioner during the course of arguments has submitted that he has instructions as regards readiness and willingness of the petitioner to pay an amount of Rs.1 lakh to the family of the deceased over and above the award of the Motor Accident Claims Tribunal.

In view of the 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 a period of 6 months.

Petitioner would be released upon completion of such reduced period.

However, benefit of this order would enure to the petitioner only upon making a prior deposit of Rs.1 lakh before the trial Court and which in turn would be disbursed to Nisha Sharma i.e. widow of deceased Deepak.

Petition disposed of.

06.04.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |