

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

**CRR No.871 of 2016 (O&M)
Date of Decision:15.2.2017**

KULWANT SINGH

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sneh Deep, Advocate for
Mr.Peeyush Gagneja, Advocate
for the petitioner.

Mr. Jashanpreet Singh, A. A.G., Punjab.

RAJ MOHAN SINGH, J.

Petitioner has filed this revision petition against the judgment dated 30.10.2015 passed by Additional District and Sessions Judge, Ferozepur, vide which judgment of conviction and order of sentence dated 13.10.2014 passed by the trial Court were upheld with partial modification.

In the instant case, prosecution story started with the allegations that the petitioner was driver of a school van. On 2.2.2009 at about 8.08 A.M. while driving the van in a rash and negligent manner accident took place at railway crossing wherein three students, who were occupants in the said van succumbed to injuries at the spot. 15 to 18 students also

received simple and grievous injuries.

Petitioner was chargesheeted for the offences under Sections 304-A, 279, 337 and 338 IPC, to which he pleaded not guilty and claimed trial. Thereafter prosecution led evidence. Statement of the petitioner was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication.

Thereafter, petitioner led evidence in his defence by examining Gurmeet Singh (DW-1) and Malkiat Singh (DW-2).

Trial Court, vide judgment and order dated 13.10.2014, convicted and sentenced the petitioner to undergo rigorous imprisonment for two years and to pay fine of ₹ 5,000/- along with default mechanism under Section 304-A IPC; to further undergo rigorous imprisonment for six months and to pay fine of ₹ 500/- along with default mechanism under Section 337 IPC and to undergo rigorous imprisonment for six months and to pay fine of ₹ 500/- along with default mechanism under Section 338 IPC.

Petitioner remained unsuccessful in appeal before the lower Appellate Court. However, the lower Appellate Court proceeded to add offence under Section 279 IPC against the petitioner and sentenced him to undergo rigorous imprisonment for six months and to pay fine of ₹ 500/- along with default mechanism. However, sentences were ordered to run concurrently.

It is worth noticing that the trial Court vide judgment of

conviction dated 13.10.2014 proceeded to hold the petitioner guilty for the offences under Sections 304-A/ 337/ 338 IPC and acquitted him under Section 279 IPC on the ground that the offence under Section 279 IPC is to be merged under Section 304-A IPC and no separate conviction is required to be recorded.

The appeal was preferred by the petitioner only and there was no cross appeal by the State in respect of acquittal of the petitioner under Section 279 IPC.

I have heard learned counsel for both the parties.

At the time of issuance of notice of motion, notice regarding suspension of sentence was issued. During the course of arguments, learned counsel for the petitioner did not address arguments on merits rather preferred to confine his arguments on the quantum of sentence in view of the period already undergone by him, his family composition and his financial status. Learned counsel further stated that the petitioner is the first offender and no other case of similar nature is pending against him.

Learned counsel for the petitioner relied upon the decision dated 15.12.2015 passed in CRR No. 4196 of 2015 titled as "Ajay Kumar vs. State of Haryana", wherein reliance was placed on the decision of the Hon'ble Apex Court in CRA No.520 of 2015 titled as "State of Punjab vs. Saurabh Bakshi", reducing the sentence to six months in case under Section

304-A IPC. In Saurabh Bakshi's case (supra), there were two deaths and the Hon'ble Apex Court has reduced the sentence even after recording that rash and negligent driving has assumed alarming proportions these days.

Learned counsel for the petitioner, while relying upon the judgment dated 30.5.2016 passed in CRR No.1367 of 2016 titled as "Ishwar Singh vs. State of Haryana" and judgment dated 10.2.2016 passed in CRR No.2976 of 2015 titled as "Mehar Singh vs. State of Haryana, further contended that the correctness of the judgment of conviction and order of sentence, even if, not to be opened on merits, this Court can interfere on the quantum in view of the period already undergone by the petitioner. The financial capability of the accused-petitioner, even if, is on weaker side, the Court is competent to award compensation in terms of Section 357-A Cr.P.C against the State from the funds available under the Victim Compensation Scheme framed by the State.

The aforesaid mechanism was discussed by the Hon'ble Apex Court in **Suresh vs. State of Haryana, 2015 (1) RCR (Cri.) 148, Manohar Singh vs. State of Rajasthan and others 2015 (1) RCR (Cri.) 747 and State of M.P. vs. Mehtaab 2015 (1) RCR (Cri.) 1008.**

As per custody certificate dated 2.12.2016, petitioner has already undergone a period of 1 year 4 months and 9 days

of actual sentence out of total sentence of two years. By now, the petitioner has undergone more than one year and six months of actual sentence.

I have considered the aforesaid submissions and found that the petitioner has already undergone more than one year and six months of actual sentence. The trial Court acquitted the petitioner for the offence under Section 279 IPC. The addition of the offence by the lower Appellate Court in the absence of cross appeal filed by the State would have been a debatable issue, but keeping in view the total incarceration of the petitioner, It would be just and appropriate to reduce the sentence of the petitioner for the period already undergone by him, subject to increase of fine to the tune of ₹ 20,000/- each for the family of the deceased children. Though, vide order dated 5.12.2016, it was noticed that the petitioner sought time to implead the legal representatives of the victims, but necessary compliance was not done.

In view of above, sentence of the petitioner is reduced to the period already undergone by him subject to increase of fine payable as compensation to the legal representatives of deceased children in each case. The petitioner would deposit an amount of ₹ 20,000/- each i.e. ₹ 60,000/- in total in the trial Court within a period of one month from the date of receipt of certified copy of this order, failing

which, this order will be of no consequence. In default thereof, the petitioner would serve remaining sentence as ordered by the Courts below.

Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

February 15, 2017

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No