

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

CRR No. 212 of 2017 (O&M)

Date of Decision: 16.03.2017

DalbirPetitioner

Versus

State of HaryanaRespondent

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

Present: Mr. Narender Kaajla, Advocate
for the petitioner.

Ms. Gagandeep Kaur, A.A.G, Haryana.

RAJ MOHAN SINGH, J. (oral)

Petitioner was convicted and sentenced to undergo rigorous imprisonment for one year along with fine of Rs.2,000/- under Section 304-A IPC along with default clause.

Petitioner remained unsuccessful in the appeal before the lower Appellate Court. Conviction and sentence of the appellant were maintained.

The accident took place on 28.03.2008 wherein a 7 year child namely Naveen Kumar had died. The FIR was registered at the instance of Sajjan Kumar, father of the

deceased that he along with his child had come to meet his sister Usha Rani in village Bado Patti. At about 9/9.30 a.m., the complainant along with his brother-in-law Ramesh Kumar and child Naveen Kumar were walking near Rana Minor. When they had walked about 10-15 feet, from the said Rana Minor, the offending vehicle i.e. Cluser jeep came from the back side in a rash and negligent manner and hit the child directly. The child fell down and received multiple injuries on his person. The child died at the spot. The driver of the jeep succeeded in running away as the jeep came to be halted due to interruption of a bullock cart after leaving behind the offending vehicle.

The petitioner was found to be driver of the offending vehicle and on finding prima-facie case, he was charged under Section 279 and 304-A IPC. Prosecution led the evidence. The prosecution succeeded in bringing the guilt of the petitioner to the hilt by examining the complainant Sajjan Kumar as PW-1 and his brother-in-law Ramesh Kumar as PW-5. The evidence of the prosecution remained unshattered. The plea of the petitioner

on the point of test identification parade remained worst inasmuch as that both the witnesses i.e. PW-1 and PW-5 were categorical in their depositions that the accused was earlier known to PW-5. Since, there was no rivalry between the parties, therefore, test identification parade was not held to be material and identification of the accused in the Court was found on lawful note.

Petitioner was found to be rash and negligent in driving the vehicle that ultimately caused the accident in question. Prosecution story was corroborated by eye witness account.

During course of arguments, learned counsel for the petitioner confined his arguments to the quantum of sentence as the petitioner has already undergone about six months of actual sentence.

I have considered the submissions made at the bar.

Prayer for probation was declined by the trial Court while sentencing the petitioner. Petitioner has two children

besides old mother to maintain. He is a driver by vocation.

Learned counsel for the petitioner relied upon order dated 15.12.2015 passed in CRR No. 4196 of 2015 titled as **“Ajay Kumar vs. State of Haryana”**, wherein by relying upon ratio of the case titled as **“State of Punjab vs. Saurabh Bakshi”** passed in CRA No.520 of 2015, the sentence was reduced to six months in a case under Section 304-A IPC.

Learned counsel for the petitioner also relied upon judgment dated 30.05.2016 passed in CRR No.1367 of 2016 titled as **“Ishwar Singh vs. State of Haryana”** and judgment dated 10.02.2016 passed in CRR No.2976 of 2015 titled as **“Mehar Singh vs. State of Haryana”** and contended that even if there is no scope to interfere with conviction and order of sentence on merits, this Court can interfere on the quantum of sentence in view of period of sentence already undergone by the petitioner. Even if the financial capacity of the accused-petitioner is weak, the Court is competent to award compensation in terms of Section 357(A) Cr.P.C.

Learned counsel relied upon **Suresh vs. State of Haryana, 2015 (1) RCR (Crl.) 148, Manohar Singh vs. State of Rajasthan and others 2015 (1) RCR (Crl.) 747** and **State of M.P. vs. Mehtaab 2015 (1) RCR (Crl.) 1008** and contended that award of 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 can be resorted to.

In the present case, there is no evidence on record to presume that financial capacity of the accused is so weak so as to attract the funds available with the State under the Victim Compensation Scheme. It is highly debatable as to whether such scheme is in operation in the State of Haryana or not.

But at this juncture, keeping in view the attending circumstances of the case, I hereby reduce the sentence of the petitioner to the period already undergone subject to increase of fine to the tune of Rs.30,000/-, payable as compensation to the father of the deceased. The amount in question shall be over and above the amount of fine already imposed by the trial Court.

The accused-petitioner be released forthwith on deposit of amount of Rs.30,000/- before the trial Court, failing which, the petitioner would serve remaining sentence as ordered by the Courts below. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

16.03.2017

jjyoti Y.

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No