

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.318 of 2017

Date of Decision: May 30, 2017

Surender son of Shri Shankar LalPetitioner

Versus

State of HaryanaRespondent

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

Present: Ms.Ruchi Sekhri, Advocate
for the petitioner.

Mr.Satish Saini, Deputy Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the judgment dated 17.1.2017 rendered by the learned Additional Sessions Judge, Hisar dismissing the appeal preferred by the petitioner against the judgment of conviction dated 21.10.2013 and order of sentence dated 23.10.2013 passed by the Judicial Magistrate Ist Class, Hisar vide which the petitioner stands convicted for offences punishable under Sections 304-A, 338, 337, 279 of the Indian Penal Code and sentenced as under:

Section	Sentence	In Default
304-A IPC	RI for 1 year along with fine of ₹2500/-	SI for 1 month
338 IPC	RI for 6 months along with fine of ₹500/-	SI for 10 days
337 IPC	RI for 1 month along with fine of ₹500/-	SI for 10 days
279 IPC	RI for 1 month along with fine of ₹500/-	SI for 10 days

All substantive sentences have been ordered to run concurrently.

2. Briefly noticed, the process of law was set in motion on the statement of Narender. Complainant asserted that on 17.8.2007, he along with one Subhash Chander and Shanta Rani was coming from Batra Hospital, New Delhi in an Indica Car bearing registration No.DL-3CU-6030 and when they reached Meham, a lift was given to his friend, namely, Naveen son of Ram Niwas. Upon reaching PVC Pipe Factory, Hisar Cantt., one Eicher Canter bearing registration No.HR-39B-0312 and which was being driven in a rash and negligent manner, suddenly came from Hisar side and hit the Indica Car, as a result of which, passengers of Indica Car received injuries and were taken to CMC Hospital, Hisar for treatment. Subhash Chander is stated to have succumbed to his injuries suffered in the accident.

3. On the basis of the statement made by complainant – Narender, formal FIR was registered under Sections 279, 336, 337 and 427 of the Indian Penal Code. During the course of investigation, after obtaining x-ray report of injured-Shanta Rani, Section 338 of the Indian Penal Code was added and thereafter, Subhash Chander having expired, Section 304-A of the Indian Penal Code was also added.

4. After completion of investigation, challan was presented in the Court. Finding a prima facie case, accused-petitioner was charge sheeted under Sections 279, 337, 338 and 304-A of the Indian Penal Code being the driver of the offending vehicle. Accused, however, did not plead guilty and claimed trial.

5. Prosecution, to prove its case, examined 11 prosecution witnesses. After closure of the prosecution evidence, statement of accused-petitioner under Section 313 of the Code of Criminal procedure was recorded. The entire incriminating evidence was put to him. Petitioner denied allegations and pleaded innocence. Petitioner, however, failed to lead any evidence in defence.

6. Trial has culminated in the judgment of conviction and order of sentence as noticed hereinabove.

7. Learned counsel appearing for the petitioner, at the very outset, makes a submission that she 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 with a sum of ₹60,000/-.

8. Learned 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 other occupants of the Car had suffered injuries. Learned State counsel would contend that there would be no occasion for this Court to interfere with the quantum of sentence.

9. Learned State counsel has referred to the 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.

10. Learned counsel for the parties have been heard and

the judgments rendered by the Courts below have been perused.

11. 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.

12. 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.”

13. Adverting back to the facts of the present case, undoubtedly, Subhash Chander has lost his life and other occupants of the Indica Car suffered injuries.

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

15. The accident relates back to the year 2007. The petitioner has faced the pangs of trial followed by an appeal for the period of almost one decade. He is stated to be a poor person and the sole bread earner of the family. Petitioner is a first time offender.

16. During the course of arguments, learned counsel appearing for the petitioner has also referred to the award made by the Motor Accident Claims Tribunal, Hisar and in terms of which, Shanta Rani i.e. wife of deceased Subhash Chander as also Rajan Kumar and Gaurav Kumar i.e. sons of the deceased have been granted compensation amount of ₹4,27,450/-. Furthermore, Shanta Rani, who had suffered injuries herself in the accident, has been awarded compensation to the tune of ₹40,000/-. The afore-noticed compensation amount has been awarded along with interest @ 7% per annum from the date of filing of the claim petition till the date of realization. The driver i.e. the present petitioner, owner and insurer of the offending vehicle had been held jointly and severally liable to pay the compensation.

17. Learned counsel submits that in addition thereto, the petitioner inspite of belonging to a poor family is ready and willing to pay a sum of ₹60,000/- to compensate the family of the deceased.

18. As per custody certificate furnished by the learned State counsel, the petitioner has undergone a custody period of 2 months and 19 days as on 4.4.2017. In other words, as of date, the petitioner has undergone an actual custody period in excess of four months.

19. 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 six months rigorous imprisonment.

20. 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 six months rigorous imprisonment.

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

22. The deposit of ₹60,000/- to be made by the petitioner before the trial Court would be released in favour of Smt.Shanta Rani i.e. the injured as also wife of deceased Subhash Chander.

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

May 30, 2017
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

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