

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

239

CRR No.404 of 2017

Date of Decision: May 16, 2017

Amit Kumar

....Petitioner

vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Lalit Singla, Advocate
for the petitioner.

Mr. P.S. Grewal, DAG, Punjab.

Mr. V.P.S. Mithewal, Advocate for
Mr. Amit Gupta, Advocate
for respondent No.2.

TEJINDER SINGH DHINDSA, J.

The present revision petition is directed against the judgment dated 10.01.2017 rendered by learned Additional Sessions Judge, S.A.S. Nagar, Mohali, dismissing the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 19.09.2015 passed by the Judicial Magistrate 1st Class, S.A.S. Nagar, Mohali, vide which the petitioner, stands convicted for offence punishable under Section 279/304 A of the Indian Penal Code and sentenced as under:-

Name of convict	Under Section	Imprisonment
Amit Kumar	279 IPC	Rigorous imprisonment for a period of six months
Do	304-A IPC	Rigorous imprisonment for a period of two years

The sentences were directed to run concurrently.

2. Briefly stated the process of law was set into motion on the complaint of Jai Parkash. It was asserted that on 18.10.2011, at about 9.00 AM, the complainant along with his son Gaurav, was going to the School and when they reached near the liquor shop in the colony, then one motorcycle bearing Registration No.CH-04A-9439, being driven by Amit Kumar (present petitioner) at high speed and in a rash and negligent manner hit Gaurav. Petitioner/accused is stated to have fled away from the spot. Injured Gaurav was shifted to PGI, Chandigarh by the complainant and where he succumbed to his injuries and died on 01.11.2011.

3. After completion of investigation, report under Section 173 of the Code of Criminal Procedure, was filed against Amit Kumar i.e. the present petitioner as driver of the offending motorcycle. In the trial that ensued the 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, S.A.S. Nagar, Mohali.

4. Learned counsel appearing for the petitioner at the very outset makes a submission 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. It has further been submitted that the petitioner is ready and willing to

compensate the complainant i.e. the father of the deceased, with a sum of Rs. one lac.

5. Learned State counsel would, however, submit that a young life has been lost in the accident on account of 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.

6. 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 vs. Saurabh Bakshi**") decided on 30.03.2015 in support of his contention.

7. Learned counsel for the parties have been heard and the judgments rendered by the Courts below have been perused.

8. 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.

9. 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.”

10. Adverting back to the facts of the present case,

undoubtedly, Gaurav, a young boy lost his life in the accident. However, there are sufficient mitigating circumstances that would justify this Court's intervention as regards quantum of sentence.

11. The accident relates back to the year 2011. The petitioner has faced the pangs of trial followed by appeal for a period of almost six years. He is stated to be a poor person and a sole bread earner of the family. Petitioner is a first time offender.

12. As per custody certificate furnished by learned State counsel , the petitioner has already undergone an actual sentence period of four months and six days as on date.

13. Complainant Jai Parkash is present in person. He is duly represented by counsel namely, Mr. V.P.S. Mithewal, Advocate. A draft of Rs. One lac has been handed over to the complainant in Court towards compensation. The complainant has suffered a statement as regards acceptance of compensation. The prayer made on behalf of the petitioner as regards a lenient view to be taken regarding quantum of sentence, is not opposed . This Court has also been apprised that the complainant has received a sum of Rs.4,14,000/- as per award rendered by the Motor Accident Claims Tribunal.

14. 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. Such view is taken on

account of the mitigating circumstances, noticed hereinabove and coupled with the compensation amount that the petitioner has made over to the complainant i.e. father of Gaurav (since deceased).

15. 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.

16. The petitioner would be released upon completion of such reduced sentence period.

17. Disposed of accordingly.

18. Pending applications, if any, also stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

16.05.2017
anju rani

Whether speaking/reasoned : ***Yes/No***
Whether reportable : ***Yes/No***