

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

CRR-3358-2017(O&M)

Date of Decision:09.03.2018

Atul Kumar Gera

.....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Sanjiv Kumar, Advocate,
for the petitioner.

Mr.Ravi Partap, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioner has challenged the judgements of the learned trial Court as also the appellate Court, by which he has been convicted for the commission of offences punishable under Sections 304-A and 279 IPC; and sentenced to two years' simple imprisonment, with a fine of Rs.1,000/- imposed as regards the offence punishable under Section 304-A IPC; and a punishment of imprisonment of 3 months with a fine of Rs.500/- imposed in respect of the offence punishable under Section 279 IPC; with both the sentences to run concurrently.

This Court, vide its orders dated 17.01.2018 and 05.02.2018, had already expressed its opinion as regards the merits of the case, observing that it found no ground to interfere in the judgments of both the Courts, as regards the conviction of the petitioner, the petitioners' car having been recovered from the spot of the accident, even though he was not found to be present there, he having "slipped away" from the spot, upon a crowd having gathered. The car in question is not denied to be that of the petitioner.

However, learned counsel had thereafter argued only on reduction of the quantum of sentence of imprisonment imposed by the Courts below, which also had been opposed by the learned State counsel, who had relied upon a judgment of the Supreme Court in '**State of Punjab vs. Saurabh Bakshi**' 2015 (2) RCR (Criminal) 495, to submit that the sentence should not be reduced.

A perusal of the aforesaid judgment shows that in that case the accused, after conviction for the commission of an offence punishable under Section 304-A IPC, had been sentenced to 1 years' imprisonment, out of which he had undergone only 24 days of actual imprisonment, when this Court had reduced that sentence to the extent of the imprisonment already undergone by him.

In such circumstance the Supreme Court had held that reduction of the sentence to a mere period of 24 days imprisonment, was a case of misplaced sympathy and consequently, the sentence imposed by the trial Court had been reduced by the Supreme Court to 6 months imprisonment.

In the present case, as per the custody certificate filed in the Court by the learned State counsel, the petitioner is shown to have undergone 5 months and 29 days of actual sentence, with one months' remission earned thereupon.

Learned counsel for the petitioner has also referred to the affidavits sworn by Smt.Sham Lata and Sh.Hukam Chand, stated to be the parents of the deceased, Ashok Kumar.

As per the said affidavits, the parents of the deceased have no objection if the petitioner, Atul Kumar Gera, is acquitted by this Court or is

released on bail.

The said affidavits were actually annexed as Annexures P-4 and P-5 with CRM-39074 of 2017 by which advancement of the date of hearing in the application seeking suspension of sentence of the petitioner was sought, that application having been dismissed by this Court on December 07, 2017.

Upon query to learned counsel for the petitioner, as to the compensation paid to the parents of the deceased, who is stated to have been a young man of about 22 years, he submits that actually the Motor Accident Claims Tribunal, Karnal, had awarded an amount of Rs.6,29,800/- to the parents of the deceased, alongwith interest @ 7.5% per annum thereupon, vide its Award dated 03.02.2014, a copy of which he has produced in Court today, (and not Rs.5,00,000/- as recorded in the previous order of this Court).

Thereafter, upon an appeal having been filed by the deceaseds' parents before this court (FAO no.4231 of 2014), an additional sum of Rs.1,00,000/- had been awarded to them, with interest @ 9% ordered to run upon the enhanced amount. He has also produced a copy of the order passed by this Court in that appeal today.

Thus, a total amount of Rs.7,29,800/- was paid as compensation to the parents of the deceased.

Though, in the opinion of this Court, the said compensation may actually not be sufficient for the death of a young man, however, with the parents of the deceased having accepted the aforesaid compensation and having filed affidavits before this court, the father earlier also having appeared on one occasion before this Court, as pointed out by learned

counsel, and the petitioner also being a person stated to have a young child, I consider appropriate to reduce the quantum of sentence of imprisonment imposed upon him, to the extent of actual imprisonment already undergone by him in respect of each of the two offences he has been convicted for, i.e. punishable under Sections 304-A and 279 IPC. This would be in addition to payment of the fines already imposed upon him by the Courts below, of Rs.1000/- in respect of the offence punishable under Section 304-A IPC, and Rs.500/- in respect of the offence punishable under Section 279 IPC.

Consequently, he having undergone slightly more than 6 months of actual imprisonment as of today, if calculated from the custody certificate dated 05.03.2018, he be released from custody forthwith, upon his paying the aforesaid fines, if not already paid.

The petition stands allowed to the aforesaid extent.

March 09, 2018

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned	: YES/NO
Whether Reportable	: YES/NO