

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

CRR No.3407 of 2017.

Decided on:-September 14, 2018.

Nirbhai Singh alias Skintu.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Vishal Satija, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Jagjit Singh, Advocate
for the complainant.

HARI PAL VERMA, J.

The petitioner has filed the present criminal revision against the judgment dated 01.08.2017 passed by learned Additional Sessions Judge, Kapurthala whereby his appeal against the judgment of conviction and order of sentence dated 14.10.2015 passed by learned Judicial Magistrate 1st Class, Kapurthala, was dismissed.

Briefly stated, FIR No.56 dated 02.06.2012 under Sections 279, 337, 338, 427 and 304-A IPC was registered against the petitioner-accused at Police Station Bholath, District Kapurthala. As per the FIR, on 29.05.2012 at about 06.30 P.M., complainant Tarsem Kaur along with her son Harbhajan Singh was going towards village Bholath in connection with some urgent work on a motorcycle bearing registration No.PB-57B-3878 which was being

driven by her son. When they crossed Nala Wala bridge, a motorcycle came from the front side being driven in a rash and negligent manner and its driver struck the same with their motorcycle. The complainant and her son fell down on the road and received several injuries on their head and other parts of the body. The motorcycle was also badly damaged. The complainant along with her son were admitted in Sacred Heart Hospital, Maqsudan, where her son Harbhajan Singh died during the treatment.

Investigation was conducted by the police. The petitioner was arrested and produced in the Court. Statements of witnesses under Section 161 Cr.PC were recorded and after completion of investigation, report under Section 173 Cr.PC was presented in the Court.

The copy of Challan was supplied to the petitioner free of cost, as envisaged under Section 207 Cr.PC. On finding a prima facie case against the petitioner, he was charge-sheeted under Sections 279, 337, 338 and 304-A IPC, to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment and order dated 14.10.2015 convicted the petitioner for the commission of offence punishable under Sections 279, 338 and 304-A IPC and sentenced him as under:

<u>Offence</u>	<u>Sentence</u>
279 IPC	To undergo imprisonment for a period of six months and to pay a fine of Rs.1,000/- and in default thereof, to further undergo imprisonment for one month.
338 IPC	To undergo imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default thereof, to further undergo imprisonment for one month.

304-A IPC To undergone imprisonment for a period of two years and to pay a fine of Rs.3,000/- and in default thereof, to further undergo imprisonment for three months.

It was, however, ordered that all the substantive sentences of imprisonment shall run concurrently.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 01.08.2017, learned Additional Sessions Judge, Kapurthala dismissed his appeal.

It is in the aforesaid circumstances, the petitioner has filed the present criminal revision.

On September 21, 2017, when the instant criminal revision came up for hearing before this Court, learned counsel for the petitioner did not challenge the conviction of the petitioner, but sought reduction of the sentence awarded to the petitioner on the ground that it is a case of contributory negligence.

Learned counsel for the petitioner has contended that though this Court has suspended the sentence of imprisonment awarded to the petitioner vide order dated 13.07.2018, but the petitioner has not been able to furnish the bail bonds. In this manner, as against the awarded sentence of 2 years, the petitioner has already undergone imprisonment for a period of 1 year, 2 months and 9 days including remission. He has contended that the petitioner is a poor person and is the only bread earner of his family. He has been suffering the agony of criminal proceedings since 02.06.2012 i.e. the date of registration of the FIR in question.

He has further contended that the petitioner is a first time offender and there is no other case pending against him. He had also received injuries in the accident. Further, the legal heirs of deceased Harbhajan Singh have also been compensated by the Motor Accidents Claims Tribunal and an award of Rs.14,11,000/- has been passed in their favour. Thus, he has prayed that the sentence of the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has stated that as per the custody certificate already on record, the petitioner has undergone imprisonment for a period of 1 year and 9 days including remission as on 12.07.2018. Though he has opposed the plea of taking a liberal view, as pleaded by learned counsel for the petitioner, but conceded that there is no other case against the petitioner.

Learned counsel for the complainant has conceded the fact that the legal heirs of deceased Harbhajan Singh have duly been compensated by concerned Motor Accidents Claims Tribunal.

I have heard learned counsel for the parties.

Perusal of the impugned judgments passed by the Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 279, 338 and 304-A IPC. The appellate Court has also dismissed his appeal qua these offences. There is no illegality or perversity in the findings given by both the Courts below regarding conviction of the petitioner under Sections 279, 338 and 304-A IPC, which may warrant interference of this Court by

invoking its revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgments of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, the custody certificate so placed on record by learned State counsel shows that as against the awarded sentence of 2 years, the petitioner has already undergone actual imprisonment for 1 year and 9 days as on 12.07.2018 including remission. Besides this, learned counsel for the petitioner has stated that though vide order dated 13.07.2018 passed by this Court, the sentence awarded to the petitioner was suspended, but on account of his poor financial condition, he has not been able to furnish the bail bonds. If it is so, the petitioner has further undergone imprisonment for a period of two months. He is a first time offender and there is no other case pending against him. He has been facing the agony of criminal proceedings since 02.06.2012 i.e. the date when the FIR in question was registered against him. Moreover, the legal heirs of the deceased have adequately been compensated by the concerned Motor Accidents Claims Tribunal.

Therefore, taking into account the protracted trial, antecedents of the petitioner coupled with the fact that he has already suffered incarceration for a period of more than 1 year, 2 months and 9 days including remission, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

Ordered accordingly.

However, there shall be no change in the sentence of fine.

The petitioner be released forthwith, if not required in any other case, subject to payment of fine, as imposed by learned trial Court and affirmed by learned appellate Court.

With aforesaid modification in the order of sentence, the present revision petition stands dismissed.

September 14, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No