

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2239-2009

Date of Decision: September 12, 2019

Rajbir Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. S.S. Siao, Advocate, for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

Mr. Vijay Rana, Advocate, for the complainant.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offences under Sections 279 and 304-A IPC. Vide judgment and order dated 3.2.2007 passed by the learned Sub Divisional Judicial Magistrate, Amloh, the petitioner was found guilty for the aforesaid offences and was sentenced to undergo RI for six months under Section 279 IPC and RI for one year under Section 304-A IPC and to pay a fine of Rs.2000/- and, in default of payment of fine, to further undergo RI for one month.

Aggrieved against the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Fatehgarh Sahib. However, vide judgment dated 28.7.2009, the learned Sessions Judge,

Fatehgarh Sahib, dismissed the appeal, thereby affirming the judgment and order passed by the learned trial Magistrate.

Still aggrieved, the petitioner has preferred the present revision petition before this Court.

As per the prosecution case, on 14.03.2004 on receipt of a ruqa from Civil Hospital, Gobindgarh regarding admission of injured Bhajan Singh, who later on succumb to his injuries, and admission of Rajbir Singh son of Balwinder Singh, Kamaljit Singh ASI along with other police officials reached the Civil Hospital, Gobindgarh. Harinder Singh son of Bhajan Singh met the police at the main gate of the hospital and got his statement (Ex.PA) recorded. In the said statement, he stated he was a truck driver; that on 14.03.2004 he alongwith his father Bhajan Singh, had been crossing the lights at Gobindgarh, when one scooterist while driving his LML Vespa scooter without any number plate, at a very high speed and in a negligent manner, came from the Sirhind side, and hit Bhajan Singh. As a result thereof, both, Bhajan Singh and the said scooterist, fell on the road. Bhajan Singh sustained injuries on his head. Upon enquiry, the name of the scooterist was revealed as Rajbir Singh son of Balwinder Singh. Bhajan Singh, father of the complainant, was removed to Civil Hospital, Gobindgarh, where during medical treatment, he succumbed to his injuries. On the basis of the said statement, FIR in this case was registered.

After completion of investigation, the challan was presented in the Court.

Charge under Sections 279 and 304-A IPC was framed against the petitioner, to which he pleaded not guilty and claimed trial.

The prosecution in order to prove its case, had examined as many as 6 witnesses.

In his statement recorded under Section 313 Cr.P.C., the petitioner alleged false implication and pleaded innocence.

The learned trial Court after having taken into consideration the entire evidence, found that as a result of the rash and negligent driving of the accused-petitioner, death of Bhajan Singh, took place and thus, found the petitioner guilty for the offences under Section 279 and 304-A IPC and sentenced him accordingly. The appeal filed by the appellant was also dismissed by the learned Sessions Judge, Fatehgarh Sahib.

In the present petition, the applicant-petitioner has filed an application (CRM-26191-2019) under Section 320(2) Cr.P.C. for grant of permission to compound the offence between the parties on the ground that the petitioner as well as the complainant Harinder Singh and other legal representatives of deceased Bhajan Singh, have settled the matter amicably, after having received an amount of Rs.4,00,000/- (Rupees Four Lacs) vide Demand Draft No. 015631 dated 26.8.2019 drawn at HDFC Bank and that they have agreed to appear before this Court and accept the said amount and that the complainant and the other legal representatives of the deceased do not want to pursue the proceedings against the accused-petitioner.

In support of his contentions, learned counsel for the petitioner has relied upon a Division Bench judgment of this Court reported as Sube Singh and another Vs. State of Haryana and another, 2013(4) RCR (Criminal) 102. Reliance is also placed on the Single Bench judgments of this Court in Anil Kumar Vs. State of Punjab, 2009(3) (Criminal) 258, Balwinder Singh Vs. State of Punjab, 2016(2) RCR (Criminal) 549 besides placing reliance upon the judgments of the Hon'ble Supreme Court in Khursheed and another Vs. State of U.P. and another, 2007(4) RCR (Criminal) 495 and Puttaswamy Vs. State of Karnataka & another, 2009(1) RCR (Criminal) 501.

On the other hand, learned State counsel, submits that the offence under Section 304-A IPC cannot be compounded for the reason that the victim in this case was deceased Bhajan Singh. Thus, in the absence of the victim, the offence under Section 304-A IPC cannot be allowed to be compounded.

On merits, it is argued by the learned State Counsel that that as a result of the rash and negligent driving of the petitioner, the accident in question took place in which Bhajan Singh, had suffered serious head injuries and subsequently, he had died as a result thereof. The learned State Counsel has further argued that both the Courts below, have appreciated the evidence and facts on record in the right perspective and hence, the findings recorded by the Courts below do not require any interference by this Court.

I have heard learned counsel for the parties and with their able assistance, have gone through the records of the case.

So far as the compounding of offence under Section 304-A IPC is concerned, suffice it say that admittedly in the present case, the victim is no longer alive, because of him having died as a result of the injuries suffered by him in the accident in question. Thus, in the absence of the victim, the compounding of offence, in my opinion, cannot be allowed. Reliance in this regard may be placed on the Division Bench judgment of this Court reported as in Baldev Singh Vs. State of Punjab, 2016(3) Law Herald 2020, wherein while setting at rest the controversy involved in the present case and after considering the divergent judgments of the High Court(s) and further taking into account the judgment of the Hon'ble Supreme Court State of Punjab Vs. Saurabh Bakshi, 2015(2) RCR (Criminal) 495, it was held that the legal representative(s) of the deceased cannot be allowed to compound the offence, when the victim has already died. It was held as under:-

“20. To say that Courts should not hesitate to intervene in favour of the accused in such cases is indeed a dangerous proposition with a potential to provide an impetus to a proclivity on the part of the drivers to continue with their rash and negligent act buoyed by the thought that they would get away with the crime by affording sufficient compensation to the victim's legal representatives. Once it has been authoritatively held by the Supreme Court that even grant of compensation under Section 357(3) Cr.P.C. is not to be regarded as a mitigating circumstance to reduce the sentence imposed and neither can it be a substitute for an adequate sentence in all cases, it cannot be held that in cases where the matter is settled with the legal

heirs of the deceased by giving adequate compensation, the proceedings should be quashed.

21. Likewise, to draw an analogy that in cases involving the offence under Section 307 which are of heinous nature, it has been opined by the courts that the factum of a settlement or compromise between the parties can be a guiding factor, is not justified. In the case under Section 304-A the victim is obviously not present to settle the matter. To permit a legal representative or legal heir to compromise or settle the matter is indeed an invitation to a dangerous trend and cannot be permitted. To quash the proceedings under Section 304-A solely on the basis of a settlement or compromise arrived at between the accused and the legal representatives is not permissible and militates against all canons of justice. Inclusion of the legal representatives in the definition of victim does not clothe him/them to enter into such a settlement, though the legal representative, undoubtedly has the authority to file an appeal or receive compensation.”

In view of the said authoritative pronouncement of the Division Bench, there remains nothing to be dilated. Accordingly, the prayer of the petitioner for compounding of the offence, is declined.

Thus, the judgment of the Hon’ble Single Bench in Anil Kumar’s case (supra) does not lay down a good law and the same stands superseded with the Full Bench judgment in Baldev Singh’s case (Supra). None of the remaining judgments relied upon by the learned counsel for the petitioner, involves the compounding the offence under Section 304-A IPC.

At this stage, learned counsel appearing for the petitioner contends that the FIR in this case was registered on

14.3.2004. At the time of the accident, the petitioner was a young boy of 23 years and by now, he has turned 38 years of age, thus, losing his prime youth to the protracted trial for the last 15 years. It is further submitted that the petitioner has already undergone 1 month and 25 days of the actual sentence out of his substantive sentence of one year. Thus, a prayer is made that in view of the compensation amount paid by the petitioner and accepted by the legal heirs of deceased-Bhajan Singh, the sentence imposed upon the petitioner may be reduced to the period already undergone.

Both the Courts below after having scrutinized the evidence on record, have rightly convicted the petitioner for the offences under Sections 304-A and 279 IPC. In my opinion, there is no scope for interference in the findings of the Courts below, so far as the conviction part is concerned. Hence, the conviction of the petitioner under Sections 304-A and 279 IPC is upheld.

While coming to the sentence part, by now, the petitioner has undergone 1 month and 25 days of actual sentence out of his total substantive sentence of one year. Taking into consideration that the FIR in this case was registered on 14.3.2004 and the fact that the petitioner has been facing the agony of trial for the last 15 years, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again, to undergo the remaining sentence. Rather, ends of justice would be suitably met, if the substantive sentence imposed upon the petitioner is reduced to the period already undergone by him, subject of course, to the already paid

compensation of Rs.4.00 lacs by the petitioner and received by the legal heirs of deceased-Bhajan Singh vide Demand Draft No. 015631 dated 26.8.2019 drawn at HDFC Bank. Reference may be made to a Coordinate Bench Judgment of this Court in CRR-3753-2012 titled as Sukhbir Singh Vs. State of Haryana decided on 26.11.2018, the sentence imposed upon the accused-petitioner therein was reduced to the period already undergone, subject to payment of Rs.50,000/- to the legal representatives of the deceased.

In view of the above, while upholding the conviction of the petitioner under Sections 304-A and 279 IPC, the substantive sentence imposed upon the petitioner is reduced to the one already undergone by him subject to the already paid amount of Rs.4.00 lacs by the petitioner to the legal heirs of deceased-Bhajan Singh.

Revision Petition is disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

September 12, 2019
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No