

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1931-2010 (O&M)
Date of Decision: 23.7.2019

Chander Bhan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Virender Kumkar, Advocate, for the petitioner.
Mr. Pritam Saini, Additional Advocate General, Haryana.

HARNARESH SINGH GILL, J

Challenge in the present petition is to the judgment dated 29.4.2010 passed by the learned Additional Sessions Judge, Karnal, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction and order of sentence dated 09.06.2008 passed by the learned Additional Chief Judicial Magistrate, Karnal, was upheld.

The petitioner was tried for the offences under Sections 279, 304-A of the Indian Penal Code, 1860 ('IPC' for short). As per the prosecution case, on 4.7.2000 at about 4/4.30 p.m., when complainant-Rohtas along with his family members, was present at bus stand, Kuchhpura for going towards village Staundi, a three-wheeler bearing registration No. HR-45-5406 being driven by the petitioner came from the side of Karnal at a very high speed and without blowing horn. The said three wheeler hit the daughter of the complainant, namely, Sonia, aged 11 years, as a result of which, she had received grievous injuries on her head, mouth and chest. She died

at the spot. On the statement of complainant Rohtas, FIR No. 168 dated 4.7.2000 under Sections 279, 304-A IPC was registered at Police Station Nissing.

After completion of investigation and necessary formalities, challan was presented against the petitioner.

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

In order to prove its case, the prosecution had examined as many as six witnesses.

In the statement recorded under Section 313 Cr.P.C., the petitioner-accused denied the charges and pleaded false implication. In evidence, he had examined DW1-Beer Singh.

On the basis of the evidence led, the guilt of the petitioner under Sections 304-A and 279 IPC stood proved. He was, accordingly, sentenced to undergo simple imprisonment for a period of three months under Section 279 IPC and simple imprisonment for a period of one year under Section 304-A IPC. Both the sentences were ordered to run concurrently.

Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Karnal. However, vide judgment dated 29.4.2010 passed by the learned Additional Sessions Judge, Karnal, the appeal was dismissed, thereby affirming the judgment and order passed by the learned trial Court.

Still aggrieved, the petitioner has preferred the present revision petition.

Admittedly, the rash and negligent driving of the petitioner resulted into the death of minor Sonia aged 11 years. The learned trial Court after having scrutinized the oral as well as documentary evidence on record, recorded a finding that on the basis of the

testimony of PW2-Lakshmi, PW3-Rohtas (complainant) and PW6-Dr. S.K. Bhatia, it stood proved on record that the accused was driving the offending vehicle rashly and negligently and Sonia daughter of Rohtas had died after having received multiple grievous injuries in the accident caused by the accused.

At the very outset, learned counsel for the petitioner, while relying upon the judgments of this Court in CRR-3003-2016-Tara Chand Vs. State of Punjab, decided on 21.5.2019 and CRR-2979-2016 – Kartar Singh @ Onkar Singh Vs. State of Punjab, decided on 23.5.2019, confines his prayer to the quantum of sentence only. It is further submitted that the petitioner has been facing the agony of trial for the last 19 years and that out of the total sentence of one year, he has already undergone an actual period of 4 months and 7 days. Learned counsel, thus, submits the sentence awarded to the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has, while controverting the aforesaid submissions, argued that as a result of the rash and negligent driving of the petitioner, the accident in question took place in which Sonia, minor daughter of Rohtas (complainant), had lost her life. 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, even qua the sentence part.

I have heard learned counsel for the parties and have also gone through the record of the Courts below, with their able assistance.

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 view of the evidence on

record, 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.

However, the prayer of the learned counsel for reduction of the substantive sentence of the petitioner to six months in view of the Hon'ble Supreme Court's judgment in **State of Punjab versus Saurabh Bakshi, 2015 (2) RCR (Criminal), 495**, merits acceptance.

It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 4 months and 7 days out of the total sentence of one year imposed upon him.

The Hon'ble Supreme Court in **Saurabh Bakshi's** case (supra), while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. one year to the period already undergone by him i.e. 24, days, awarded the sentence of six months to the accused-respondent therein. It was held as under:-

“17. In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing

recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months."

Admittedly, the petitioner has already undergone 4 months and 7 days of actual sentence out of the total sentence of 1 year imposed upon him. As per **Saurabh Bakshi's** case (supra), the petitioner is required to undergo six months of sentence. However, taking into consideration that there is a shortfall of only 1 month 23 days in this case, in my opinion, no useful purpose will be served by sending the petitioner behind the bars one again to undergo the meager sentence of 1 month and 23 days so as to make the total undergone sentence as six months in terms of **Saurabh Bakshi's** case (supra). Rather the said process would prove to be a cumbersome one, thereby causing unnecessary burden on the public exchequer as also harassment to the petitioner. Therefore, considering the shortfall of 1 month 23 days being a meager one, the sentence already undergone by the petitioner (i.e. 4 months 7 days), is treated to be six months.

Accordingly, the conviction of the petitioner under Sections 279, 304-A IPC is maintained. However, sentence qua imprisonment of the petitioner is reduced to the period already undergone by him. The petitioner is directed to deposit the fine of Rs.25,000/- with the Chief Judicial Magistrate concerned within a

period of one month from the date of receipt of certified copy of this order. The fine so deposited, shall be paid as compensation to the legal heirs of the deceased. It is made clear that in the event of failure to deposit the said amount, the revision petition shall stand dismissed.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

23.7.2019
ds

Whether speaking/reasoned : Yes
Whether reportable : Yes