

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1597-2011
Date of Decision: 24.7.2019

Dharamvir

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Yashveer Kharab, Advocate, for the petitioner.

Ms. Tanisha Peshwaria, Additional AG, Haryana.

Harnaresh Singh Gill, J.

Challenge in the present petition is to the judgment dated 15.7.2011 passed by the learned Additional Sessions Judge, Sonapat, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction and order of sentence dated 29/30.10.2009 passed by the learned Sub Divisional Judicial Magistrate, Ganuar, has been upheld.

The petitioner was tried for committing the offences under Sections 279, 337, 338, 304-A. As per the prosecution, on 22.9.2000, the police party headed by SI Avtar, present near three-wheeler stand, Railway Road, Sonapat, came to know about an accident of a bus at Khubru road at some distance from Seikhpura, in which many passengers were reported to have sustained injuries. Some of the passengers were admitted in Aggarwal Hospital and some were in other hospital. On receipt of the said information, the police party reached

Aggarwal Hospital, where the Doctors had produced the MLRs of the injured, including injured Rajesh. Accordingly, statement of injured Rajesh (Exhibit PB) was recorded by the police. He stated in his statement that he had come to Ganaur for his personal work. At Ganaur he boarded a bus bearing Registration No. HR-46-1727 for going to Gohana. There were about 25/30 passengers sitting in that bus. The bus driver was driving the said bus in a rash and negligent manner and when the bus reached near a brick-kiln which was slightly ahead of Seikhpura, the driver could not control the bus and it stuck against the Neem Tree and then got turned turtle. Many passengers sustained injuries, out of whom two persons had expired at the spot itself. On the basis of the said statement of Rajesh, FIR in this case was registered.

On the basis of the evidence led, it stood proved before the learned trial Court that on account of the rash and negligent driving of the petitioner, two persons, namely, Harphool Singh and Krishan had expired after having sustained injuries in the accident. Post mortem reports of the deceased were proved PW3-Dr. S.S. Bhogal. The stand of the accused-petitioner that the accident in question took place due to breaking of the belt (Patta) of the bus, did not find any favour with the trial Court, as the said plea was not corroborated by any evidence in this regard. Consequently, vide judgment/order dated 29/30.10.2009, the petitioner was convicted under Sections 279, 337, 338, 304-A IPC and sentenced to undergo RI

for 6 months each under Sections 279 and 337 IPC and RI for a period of one year each under Sections 338 and 304-A IPC.

Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the Sessions Court. However, vide judgment dated 15.7.2011 passed by the learned Additional Sessions Judge, Sonapat, 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.

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

In the instant case, on the basis of the evidence on record, it stood proved on record that on account of the rash and negligent driving of the accused-petitioner, two persons, namely, Harphool Singh and Krishan, had lost their lives. Besides, many passengers had sustained injuries in the said accident. A perusal of the trial Court record shows that the accused-petitioner had taken a plea that the accident in question took place due to the breaking of the belt (*patta*) of the bus, but such plea was not supported by any evidence, particularly when the testimony of PW1-HC Naresh, who had mechanically examined the accidental bus, did not mention any such fact. The said witness was cross-examined by the counsel for the accused, but neither any suggestion was put to him nor

was he asked any question in this regard. In view of the said fact, I do not find any patent illegality or perversity in the findings recorded by the Courts below. Hence, the conviction of the petitioner as recorded by the Courts below, is upheld.

However, while coming to the sentence part, by now, the petitioner has undergone 4 months and 16 days out of his total substantive sentence of one year. Taking into consideration that the FIR in this case was registered on 22.9.2000 and the fact that the petitioner has been facing the agony of trial for the last 19 years, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again, to undergo the remaining sentence. The ends of justice would be suitably met, if the substantive sentence imposed upon the petitioner is reduced to the one already undergone by him.

The Hon'ble Supreme Court in State of Punjab Vs. Saurabh Bakshi, 2015(2) RCR (Criminal) 495, while setting aside the order of the High Court, thereby reducing the sentence imposed upon the accused i.e. 1 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 16 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 14 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 14 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 14 days being a meager one, the sentence already undergone by the petitioner (i.e. 4 months 16 days), is treated to be six months.

In view of the above, while upholding the conviction of the petitioner under Sections 279, 337, 338, 304-A IPC, the substantive sentence imposed upon the petitioner is reduced to the one 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.

Revision Petition is disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

24.7.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No