

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 823 of 2011 (O&M)
Date of Decision: 23.9.2019

Ravinder Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Arun Sharma, Advocate
for the petitioner.

Ms. Bhavana Gupta, Sr. DAG, Punjab.

HARNARESH SINGH GILL, J.

The petitioner has preferred this petition being aggrieved of the judgment dated 17.3.2011, passed by Additional Sessions Judge, Sri Muktsar Sahib, vide which the appeal filed by him, challenging the judgment of conviction and order of sentence dated 28.7.2010, passed by Sub Divisional Judicial Magistrate, Gidderbaha in case FIR No. 231 dated 13.12.2004 under Sections 304-A, 427, 279, 337, 338 IPC, registered at Police Station Lambi, was dismissed.

As per the prosecution case, on 13.12.2004, complainant Vijay Kumar had got recorded his statement that on 12.12.2004, at 12.00 noon, he was going on his scooter bearing registration No. HR-25A-6352 and Sandeep Kumar was riding on the pillion seat whereas Shalinder Kumar was following them on his motorcycle bearing registration No. HR-25-2275. At about 12.30 P.M., when they reached near village Bhagu, a white colour car

with registration number UP-16E-1605 being driven by a clean-shaven person at a high speed and in negligent manner, came from the opposite side and collided with the scooter and due to the impact, he along with Sandeep Kumar fell on the road. The car also collided with the motorcycle and Shalinder Kumar also fell on the road. They all received injuries but injuries on the person of Sandeep Kumar were serious and ultimately he succumbed to injuries. On the basis of the statement of the complainant, the FIR in question was registered.

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

Charge was framed against the petitioner under Sections 304-A, 279, 337, 338 IPC to which he pleaded not guilty and claimed trial.

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

In the statement recorded under Section 313 Cr.P.C., the petitioner denied the prosecution case and pleaded false implication. He pleaded that he had been falsely implicated in this case. He took a plea that in 2004, he had been working as a Manager in a company and on the fateful day, he had been travelling in a official car, being driven by Farookh Mohammad and the accident in question had occurred because a jeep coming from the rear side, driven in a rash and negligent manner, overtook the car and the footrest of the jeep hit the scooter of the complainant, which was the real cause of accident.

No witness was examined by the petitioner-accused in his defence.

The trial Court vide judgement and order dated 28.7.2010

convicted and sentenced the petitioner as under:-

<i>Under Sections</i>	<i>Sentence awarded</i>
<i>279 IPC</i>	<i>To undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo simple imprisonment for 30 days</i>
<i>304-A IPC</i>	<i>To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.</i>
<i>337 IPC</i>	<i>To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.</i>
<i>338 IPC</i>	<i>To undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo rigorous imprisonment for 30 days.</i>

All the sentences were ordered to run concurrently.

The appeal preferred by the petitioner was dismissed by the Appellate Court vide judgment dated 17.3.2011.

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

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

Learned counsel for the petitioner has argued that there is a delay in lodging the FIR as the occurrence took place on 12.12.2004 at 12 noon, whereas the FIR in question was registered on 13.12.2004. Moreover, the doctor had declared the complainant to be fit to give the statement, but the complainant had stated that he would get recorded his statement on the next day. There was no reason for refusal of the

complainant from getting his statement recorded.

It has also been argued that injury Nos. 2 and 5 were sustained by Sandeep Kumar subsequently after he was taken to Civil Hospital, Bathinda and these injuries were not mentioned by PW-4 Dr. K.S.Brar, who had examined Sandeep Kumar at the first instance. Therefore, as per the counsel these injuries were not there till Sandeep Kumar was referred from Civil Hospital, Bathinda to DMC, Ludhiana whereas, injuries No. 2 and 5 were stated to be the cause of death.

Per contra, learned State counsel has argued that the petitioner had not denied his presence at the place of occurrence but had taken a plea that he was on an official visit and was travelling in the car which was being driven by Farookh Mohammad, but the petitioner had not brought on record any evidence that at the time of accident, Farookh Mohammad was travelling with him. It is further argued that as per address given by the petitioner, he is the resident of Noida (U.P.) whereas Vijay Kumar (PW-1) is from Bathinda and are not known to each other nor there is any enmity. Thus, there is no reason for PW-1 to give false evidence against the petitioner. Moreover, PW-2 had identified the petitioner in the Court.

After hearing the learned counsel for the petitioner and the learned State counsel, I am not inclined to interfere with the well reasoned judgments and order passed by the Courts below.

It is a case where as a result of the accident caused by the rash and negligent driving of the petitioner, right leg of Sandeep Kumar was amputated below knee joint, who had later succumbed to the injuries whereas complainant Vijay Kumar and Shalinder Kumar had sustained injuries, who identified the petitioner in Court, while appearing as PW-1

and PW-2, respectively. As per Dr. Manmohan Singh Deol (PW-3), cause of death was due to excessive bleeding resulting into shock and death. 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, taking into consideration that the FIR in this case was registered on 13.12.2004 and the fact that the petitioner has been facing the agony of trial for the last 14 years and also taking into consideration the affidavit dated 27.3.2011 (Annexure P-1) executed by Ganpat Ram, father of the deceased, in my opinion, the ends of justice would be suitably met, if the substantive sentence imposed upon the petitioner is reduced to six months keeping in view the judgment passed by the Apex Court in ***State of Punjab versus Saurabh Bakshi 2015(2) R.C.R. (Criminal) 495.***

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."

Therefore, considering the entire facts and the circumstances, I am of the view that ends of justice would be fully met if the substantive sentence awarded to the petitioner is reduced to six months.

Thus, while partly allowing the revision, the sentence awarded under Section 304-A IPC is reduced to six months. There would be no modification in the fine.

The petitioner is on bail. He is directed to surrender before the

Court of Chief Judicial Magistrate concerned within 15 days from the date

of passing of this order to undergo remaining part of sentence. Copy of this order be sent to the Courts below.

With the above said modification in the quantum of sentence, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

September 23, 2019
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes