

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 2568 of 2016 (O&M)
Date of Decision: 29.5.2019

Sahab Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Anupam Bhardwaj, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

HARNARESH SINGH GILL, J

Challenge in the present petition is to the judgment dated 6.6.2016 passed by the learned Additional Sessions Judge, Hisar, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction dated 18.2.2014 and order of sentence dated 19.2.2014, passed by the learned Sub Divisional Judicial Magistrate, Hansi, were upheld.

The petitioner was tried for committing the offences under Sections 279, 304-A of the Indian Penal Code, 1860 ('IPC' for short). As per the prosecution, the petitioner being driver of Tata 407 vehicle bearing registration No. HR-25-GA-1675, had, while driving the said truck in a rash and negligent manner, struck the same against Karnail Singh, who along with Ishar Jogi had gone to the house of Surjit Gujjar for confectioner work in the marriage of his son. The Tata 407 vehicle in which D.J. (Dance Junction) was installed, had caused the accident near Nehru College, Hansi.

Karnail Singh was taken to the General Hospital, Hansi where he died. On

the statement of complainant Mehtab Singh (father of the deceased), FIR No. 232 dated 7.5.2009 under Sections 279, 304-A IPC was registered at Police Station City Hansi.

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 two years under Section 304-A and to pay a fine of Rs. 1,000/-. In default of payment of fine, he was to further undergo simple imprisonment for 20 days. 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 Additional Sessions Judge, Hisar. However, vide judgment dated 6.6.2016 passed by the learned Additional Sessions Judge, Hisar, 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, as a result of the rash and negligent driving of the petitioner, death of Karnail Singh, had been caused. The learned trial Court after having scrutinized the oral as well as documentary evidence on record, recorded a finding that the prosecution had fully proved that on 6.5.2009, at about 10.30 P.M., in front of Nehru College, Hansi, the petitioner drove Tata 407 in such a rash and negligent manner so as to endanger human life and personal safety to others and that by said rash and negligent act, he had caused the death of Karnail Singh. The said finding was affirmed by the learned Additional Sessions Judge, Hisar, while dismissing the appeal filed

By the petitioner.

Learned counsel appearing for the petitioner has argued that the findings recorded by the Courts below suffer from patent illegality and material irregularity inasmuch, the learned Courts below have failed to take into consideration that the accident in question took place on account of the negligence on the part of the deceased, who died in a roadside accident. It is further argued that the petitioner was driving the truck at a moderate speed and the same cannot be said to be a high speed so as to treat the same as rash and negligent driving.

It has been further argued by the learned counsel for the petitioner that the case was registered on the statement of Mehtab Singh, who had been examined as PW-2. The said witness admitted in his cross-examination that he was not present at the spot when the accident took place and the entire incident was narrated to him by his elder son Jarnail Singh. This witness had further stated that Jarnail Singh was the only eye witness of the accident who was examined by the prosecution as PW-8. However, at the first instance, in his statement recorded by the police, he had stated that the driver of the offending vehicle had fled away from the spot after the accident and, therefore, the identity of the petitioner-accused does not stand proved beyond the shadow of reasonable doubt. Alternatively, it is submitted that if this Hon'ble Court comes to the conclusion that the conviction of the petitioner does not require any interference, then in view of the judgment of the Hon'ble Supreme Court in *State of Punjab versus Saurabh Bakshi, 2015 (2) RCR (Criminal), 495*, the substantive sentence of the petitioner may be reduced to the period of six months.

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 Karnail Singh, had suffered serious injuries and subsequently, he had died as a result thereof. 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 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 ***Saurabh Bakshi's case***, merits acceptance.

It may be noticed that as per the custody certificate produced on record, the petitioner has already undergone 7 months and 9 days out of the total sentence of two years 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."

Keeping in view of the law laid down by the Hon'ble Supreme

Court in **Saurabh Bakshi's** case (supra) and further taking into consideration the fact that the petitioner has been facing the agony of trial for the last more than ten years, in my opinion, it is a fit case, where the substantive sentence imposed upon the petitioner can be reduced to the period already undergone by him i.e. seven months.

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 period already undergone by him i.e. seven months with a condition that he would pay ₹ 20,000/- as compensation to the legal heirs of deceased-Karnail Singh.

The amount of compensation shall be deposited within a period of two months from the receipt of certified copy of this order, with the Chief Judicial Magistrate, concerned, failing which this petition shall be deemed to have been dismissed and the petitioner would undergo imprisonment as awarded by the Court below. The Chief Judicial Magistrate concerned would disburse the said amount to the legal representatives of the deceased against proper receipt and identification.

Revision petition is disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

May 29, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes