

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 2979 of 2016 (O&M)
Date of Decision: 23.5.2019**

Kartar Singh @ Onkar Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. F.S.Virk, Advocate
for the petitioner.

Mr. S.S.Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J

Challenge in the present petition is to the judgment dated 12.5.2016 passed by the learned Additional Sessions Judge, Patiala, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction and order of sentence dated 9.11.2015, passed by the learned Judicial Magistrate, 1st Class, Samana, has been 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, the petitioner, who was driving the truck bearing registration No. PB-10-BC-0573 in a rash and negligent manner, came from the opposite side and struck against the motorcycle driven by Raghbir Singh. After the accident, the accused-petitioner ran away from the spot with his truck. Raghbir Singh was taken to the hospital, but he died on the way. On the statement of complainant Nazar Singh, FIR No. 93 dated 7.9.2011 under

Sections 279, 304-A IPC was registered at Police Station Ghagga.

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 eight witnesses.

In the statement recorded under Section 313 Cr.P.C., the petitioner-accused denied the charges and pleaded false implication. The accused did not lead any evidence in his defence.

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 imprisonment for a period of six months under Section 279 IPC and rigorous imprisonment for a period of two years under Section 304-A and to pay a fine of Rs. 1,000/- and in default of payment of fine, he was to further undergo simple imprisonment for 10 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 Sessions Judge, Patiala. However, vide judgment dated 12.5.2016, passed by the learned Additional Sessions Judge, Patiala, 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 Raghbir Singh. 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 6.9.2011, complainant Nazar Singh along with his father Raghbir Singh and one Pritpal Singh went to Samana. When they reached near village Mavi Kalan, a truck came from the opposite side at a very high speed and hit the motorcycle driven by Raghbir Singh. After the accident, the petitioner ran away from the spot with his truck. Thus, the petitioner drove the truck 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 Raghbir Singh.

Learned counsel appearing for the petitioner has argued that the findings recorded by the Courts below suffer from material irregularity inasmuch, the learned Courts below failed to take into consideration that the accident in question took place on account of the negligence on the part of the deceased, who was driving the motorcycle in a wrong manner. 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.

Still further it is argued by the learned counsel for the petitioner that the prosecution witnesses PW-7 Sukhbir Singh and PW-8 Sanjeev Kumar were declared hostile and their testimonies cannot be taken into consideration and the benefit of doubt has to be extended to the petitioner and he may be acquitted.

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 Raghbir Singh, had suffered serious 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 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 9 months and 2 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 seven 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. nine 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 i.e. nine months with a condition that the petitioner would pay ₹ 30,000/- as compensation to the legal heirs of deceased.

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 23, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes